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# **Asset Lock and Voluntary Loss of Social Enterprise's Status: a Comparative Legal Analysis**

## **Abstract**

Legal architectures for asset dedication in social enterprises have proliferated across Europe, yet the durability of the asset lock at the point of voluntary exit remains insufficiently theorized. Existing scholarship focuses predominantly on formation and governance conditions, treating the asset lock as a static rule rather than a dynamic commitment susceptible to erosion when organizations seek to reorient or abandon their social purpose. This article develops a lifecycle-based analytical framework and examines the resilience of asset dedication following the voluntary loss of social enterprise status across four jurisdictions: the United Kingdom (UK), Ireland, Luxembourg, and Italy. The study demonstrates that the asset lock's resilience depends not merely on its nominal adoption, but on its legal inseparability from organizational identity and its enforceability at exit. The UK's Community Interest Company (CIC) and the Italian social cooperative represent form-constitutive regimes in which the asset lock is legally entrenched, and exit is structurally foreclosed. By contrast, Ireland's policy-defined Company Limited by Guarantee (CLG) model and Luxembourg's accreditation-dependent Société d'Impact Sociétal in cooperative form (SIS-SCOP) regime reveal vulnerabilities, notably when voluntary derecognition lacks statutory guardrails and when internal voting structures permit mission drift. Italy illustrates a dual-track system: immutable dedication in ex lege social cooperatives versus reversible, sector-bounded dedication in non-social cooperatives with social enterprise status (CONSIS). The comparative findings suggest that where asset dedication is tied to discretionary membership decisions rather than immutable legal form, social value becomes susceptible to private recapture or sectoral reallocation. The article argues that exit regulations (i.e., in cases of voluntary relinquishment of social enterprise status), rather than entry criteria, constitute

the fundamental normative element of social enterprise regulation. Legal frameworks for social enterprises must establish dedicated residual assets, prevent unilateral mission reversals, and incorporate regulatory oversight at the point of voluntary exit to safeguard social commitments.

**Keywords:** asset lock, social purpose, CIC, CLG, SIS-SCOP, social cooperatives, governance

## Introduction

Across Europe, social enterprise law has evolved to channel entrepreneurial activity toward social purposes while leveraging private organizational forms. Central to this regulatory model is the asset lock, a mechanism designed to insulate social assets from private appropriation and ensure that organizational wealth continues to serve social purposes. Yet despite its normative importance, the resilience of asset locks remains neither uniform nor secured across jurisdictions.

Many legal scholars have concentrated on entry architecture – qualification criteria, social goal tests such as the community interest test, and regulatory oversight. Far less attention has been paid to the moment of voluntary exit from social enterprise status. This gap is consequential. Social enterprises operate at the intersection of market and welfare spheres and are therefore uniquely vulnerable to pressures arising from capital needs, member realignment, and mission drift. It is precisely when an entity seeks to abandon its social-enterprise identity that the legal system reveals whether the asset lock constitutes a binding social obligation or a revocable organizational choice.

This article, therefore, adopts a temporal and structural perspective, analyzing the resilience of asset dedication not at formation or during operation but at the point of voluntary withdrawal. The core question is straightforward: Does the legal system safeguard social assets when a social enterprise voluntarily relinquishes its social-enterprise status?

Employing comparative doctrinal methodology, the article analyzes four European models. The UK's CIC represents a form-constitutive regime in which social purpose and asset dedication are embedded in legal personality and protected by regulatory veto, rendering voluntary exit impossible. Ireland, lacking legal social-enterprise status, relies primarily on CLGs operating under policy-based criteria; here, constitutional amendment and internal governance determine the resilience of the asset lock, creating

differentiated resilience among licensed CLGs (Group 1 CLGs) and unlicensed CLGs (Groups 2 and 3). Though grounded in ministerial accreditation, Luxembourg's SIS regime is marked by statutory silence on voluntary deaccreditation and post-exit asset treatment, leaving accumulated social value vulnerable, particularly within SIS-SCOPs, where voting rules may dilute cooperative safeguards. Italy presents a dual structure: social cooperatives, as *ex lege* social enterprises, are permanently bound by asset-lock obligations, while CONSIGES may exit and redirect assets to cooperative mutual funds, prioritizing sectoral solidarity over general-interest preservation.

Three findings are identified. First, voluntary loss of social-enterprise status constitutes the doctrinal site at which regulatory credibility is exposed: entry declares purpose; exit enforces commitment. Second, form-constitutive systems – such as UK CICs and Italian social cooperatives – ensure irreversible asset dedication, whereas voluntary or accreditation-based systems – most notably Ireland's non-licensed CLGs (Groups 2 and 3), Luxembourg's SIS-SCOP, and Italy's CONSIGES – render asset dedication conditional and amendable. Ireland consequently operates a differentiated model, with Section 1180-licensed CLGs (Group 1 CLGs) enjoying statutory entrenchment, while non-licensed entities remain governance-dependent and comparatively vulnerable. Third, social enterprise law must be assessed through the fate of assets at exit rather than solely through organizational form.

Ultimately, this article argues that social enterprise frameworks must secure asset dedication as an irrevocable commitment once public trust and social assets have been mobilized. This does not necessarily require a single uniform model, but it does require credible exit governance, including mandatory redirection of residual assets to asset-locked bodies (e.g., in mixed regimes, to mission-protected entities), constitutional entrenchment of social purpose clauses, regulatory oversight of organizational transformation, and strict limits on voluntary exit where status arises *ex lege*. Absent such safeguards, hybrid corporate forms risk enabling the private capture of socially accumulated value and eroding the legitimacy of social-enterprise law. In this sense, exit rules are not peripheral but constitute the doctrinal core of a credible and resilient European social-enterprise regime.

This article proceeds as follows. Section 1 analyzes the UK CIC regime as a form-constitutive model characterized by statutory irreversibility and regulator-controlled exit. Section 2 examines Ireland's CLG framework, highlighting the layered asset-lock resilience between Section 1180-licensed entities and non-licensed CLGs under policy-based recognition. Section 3

evaluates Luxembourg's SIS regime, focusing on legislative silence regarding voluntary deaccreditation and post-exit asset direction, particularly for SIS-SCOPs. Section 4 considers Italy's dual system, contrasting the immutable asset-lock obligations of social cooperatives with the reversible, sector-oriented exit pathway available to CONSIS. Section 5 synthesizes the comparative findings and advances normative implications for designing credible exit governance in European social enterprise law.

## 1. British CIC model: balancing legal rigidity and organizational flexibility

The UK CIC represents a mandatory and non-reversible asset-lock model, in which a CIC cannot voluntarily revert to a traditional for-profit company. According to the Companies Act 2006, a CIC is established as a type of company<sup>1</sup> rather than a new legal form.<sup>2</sup> In the UK, where CICs are among the most notable forms of social enterprise,<sup>3</sup> their legal construction reflects a tension between the interests of their embedded communities and their private company structure.

This analysis is restricted to the two principal categories of CIC currently recognized in practice: companies limited by guarantee without share capital and companies limited by shares. Although the Companies Act 2006 abolished the possibility of establishing or converting into a company limited by guarantee with share capital, a minimal number of such legacy entities may still technically exist. Their existence is acknowledged herein for completeness; however, they remain peripheral to the primary focus, which pertains to the predominant forms that most exemplify the operation of the statutory asset lock.

Crucially, a CIC cannot voluntarily relinquish its CIC designation<sup>4</sup> and revert to a traditional company limited by shares (CLS) or by guarantee (CLG). Instead, exit options are limited to conversion into a charity,

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<sup>1</sup> Companies Act 2006 (UK), s. 6.

<sup>2</sup> Stuart R. Cross, "The Community Interest Company: More Confusion in the Quest for Limited Liability?" *Northern Ireland Legal Quarterly* 55, no. 3 (2004): 302.

<sup>3</sup> Fergus Lyon, Bianca Stumbitz, and Ian Vickers, *Social Enterprises and Their Ecosystems in Europe: United Kingdom* (Luxembourg: Publications Office of the European Union, 2019).

<sup>4</sup> UK Government, Community Interest Companies, Community Interest Companies Guidance, Updated 9 February 2024, <https://www.gov.uk/government/publications/community-interest-companies-how-to-form-a-cic/community-interest-companies-guidance-chapters> accessed 25 June 2024.

conversion into a registered society, or dissolution. This regulatory framework indicates that the CIC asset lock is inherently embedded at the level of corporate identity rather than being a matter of contractual choice.

A significant legal ambiguity exists regarding whether a CIC may continue to function as a CLS or CLG following the loss of its accreditation. However, legal provisions explicitly clarify that CIC status cannot be terminated except in cases of dissolution or conversion into a charity or registered society.<sup>5</sup> This limitation reflects a deliberate policy preference for continuity of community benefits over private corporate flexibility.

Consequently, if a CIC seeks to discontinue operating as such, it faces a binary pathway: conversion or dissolution. This rigid framework illustrates a structural prioritization of asset preservation for community benefit over member autonomy, enforced through the statutory asset lock that restricts residual asset appropriation.

This framework extends beyond voluntary removal from the register scenarios. Where a resolution to leave CIC status is passed but subsequently rejected by the Regulator,<sup>6</sup> the Regulator may mandate dissolution rather than permit reversion to a for-profit company. This oversight power subordinates shareholder autonomy to the regulatory protection of the community's interests, presenting a potential tension between internal corporate governance and external mission protection.

In such cases, the proportion of pro-social shareholders or members may be insufficient to sustain the CIC mission. Yet regulatory insistence on continued CIC status may risk institutionalizing a formally compliant but substantively hollow social enterprise, especially when directors and shareholders no longer prioritize community interests. When this governance

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<sup>5</sup> Companies (Audit, Investigations and Community Enterprise) Act 2004 (UK), s. 53.

<sup>6</sup> Community Interest Company Regulations 2005 (UK), reg. 13. British laws or regulations do not specify whether the requirement for CICs, in this case, shall apply to and require consent from the Regulator; in effect, a CIC voluntarily loses its status as a social enterprise may wish to revert to its prior form, i.e., to return to being a traditional for-profit company – either a CLS or a CLG – both of which are oriented toward maximizing the interests of shareholders or members, which conflicts with the CIC's original objective to serve the interests of the community. In this circumstance, the content of such a resolution would necessarily involve an alteration of the CIC's memorandum concerning the statement of the company's objects, which requires the agreement of the Regulator. This is the rationale behind the assertion in the main text that the request to revert to a CLS or CLG may be declined by the Regulator, who may subsequently order the entity's dissolution.

drift occurs, and the Regulator declines to permit exit from CIC status, the result may not be organizational correction but regulatory deadlock.<sup>7</sup>

If dissolution is ordered, winding up triggers the mandatory distribution of assets to an approved asset-locked body, reinforcing the protective operation of the asset lock. While this ensures preservation of community assets, it also demonstrates the system's inflexibility in accommodating organizational change without termination. In effect, the CIC regime enforces a structural dichotomy: mission continuity or corporate dissolution.

From a critical perspective, this rigid dichotomy may hinder innovation when evolving social needs or funding models necessitate greater organizational adaptability. Nonetheless, the model ensures the insulation of community assets from private capture, reflecting a strong normative commitment to the preservation of community benefits. The UK, therefore, may exemplify the most stringent form of legal asset lock among hybrid organizational regimes.

## **2. Irish CLG model: organizational flexibility and the erosion of asset permanence**

While the UK has established a comprehensive legal framework for social enterprises through the CIC regime, the Irish approach demonstrates a significant distinction in its regulatory management of social enterprises. Unlike the statutorily mandated asset-lock mechanism in the UK CIC model, the Irish CLG structure functions within a more adaptable regulatory environment. This section examines how this flexibility, although advantageous for organizational autonomy, may impact the long-term stability of asset locks in Irish social enterprises.

The discussion of asset-lock protection in the context of losing social enterprise status poses a unique analytical challenge in Ireland. Unlike the UK's legal recognition of social enterprises through the CIC designation, Ireland has yet to establish a specific legal form or status for social

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<sup>7</sup> S. Andreadakis, "Social Enterprises, Benefit Corporations and Community Interest Companies: The UK Landscape," in *The International Handbook of Social Enterprise Law*, ed. H. Peter et al. (Cham: Springer, 2023), 884; Sealy McLaughlin, *Unlocking Company Law*, 4th ed. (London: Routledge, 2019), 211–36; J.S. Liptrap, "Corporate Purpose, Social Enterprise Law, and the Future of the Corporation," *European Company and Financial Law Review* 21, no. 2 (2024): 762.

enterprises.<sup>8</sup> In this regard, the concept of “voluntary or involuntary loss of social enterprise status” (either as a particular type of legal entity or as a specific legal “status,” “mark,” “qualification,” “certification,” “label,” etc.)<sup>9</sup> – which presupposes jurisdictional recognition of social enterprises either as a distinct legal entity or through formal certification – requires reframing within Ireland’s regulatory landscape.

Nevertheless, the absence of formal legal status does not preclude the examination of scenarios in which Irish CLGs cease to function as social enterprises. The Irish government has established a policy-driven definition of social enterprise<sup>10</sup> that aligns with the fundamental criteria of the EU operational definition.<sup>11</sup> This administrative framework provides a basis for analyzing asset-lock protection when CLGs deviate from their social-enterprise characteristics, particularly when they no longer satisfy the government’s definitional requirements.

A critical concern arises when examining the circumstances under which a CLG, which is also a social enterprise, may choose to cease operating as a social enterprise. In particular, when a CLG modifies its organizational purpose to eliminate or substantially diminish its social object, it effectively transitions away from its social-enterprise character.

This scenario raises fundamental questions about asset-lock protection: Can the safeguarding of assets be ensured when an organization’s mission shifts away from its social-enterprise roots?

In such instances, the fundamental challenge becomes whether, and through what mechanisms, the asset lock can be effectively protected, given the absence of statutory safeguards comparable to those found in the UK CIC regime.

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<sup>8</sup> Government of Ireland, *Trading for Impact: National Social Enterprise Policy 2024–2027* (Dublin, 2024), p. 37.

<sup>9</sup> Antonio Fici, *Social Enterprise Laws in Europe after the 2011 “Social Business Initiative”: A Comparative Analysis from the Perspective of Worker and Social Cooperatives*, Working Paper (2020), p. 19.

<sup>10</sup> Government of Ireland, *Trading for Impact: National Social Enterprise Policy 2024–2027* (Dublin, 2024), 14; Government of Ireland, *National Social Enterprise Policy for Ireland 2019–2022* (Dublin: Department of Rural and Community Development, 2019), p. 8.

<sup>11</sup> Mary O’Shaughnessy, *Social Enterprises and Their Ecosystems in Europe: Ireland* (Luxembourg: Publications Office of the European Union, 2020).



## 2.1 Doctrinal and organizational foundations of the asset lock in Irish CLGs

Before assessing asset-lock protections meaningfully, it is necessary to establish a consistently used classification of CLGs based on their alignment with the definitional criteria of social enterprises under Irish national policy. This step is essential for evaluating how these entities might retain or lose asset-lock protections when they transition away from a social-enterprise identity.

In line with the 2024 Trading for Impact policy – which reaffirms that social enterprises must trade on an ongoing basis, reinvest surpluses into achieving social objectives, operate transparently and independently, and transfer assets to similarly purposed organizations upon dissolution<sup>12</sup> – only those CLGs that clearly and verifiably pursue such goals may be classified as social enterprises.

This interpretive reference is essential because the policy definition is programmatic rather than statutory in nature. The legal analysis begins with the Companies Act 2014, which provides the fundamental framework for CLGs in Ireland. It outlines three key features of CLGs: they can pursue any lawful purpose,<sup>13</sup> operate without share capital, and are not permitted to issue shares.<sup>14</sup> However, this broad framework means that not all CLGs automatically qualify as social enterprises. Only those CLGs whose constitutional objects and operational practices align with public-policy commitments – such as surplus reinvestment and social goals – can be considered part of this category.

Accordingly, this section employs a tripartite classification of CLGs. This harmonization is vital for ensuring analytical consistency and enabling the comparative assessment of legal constraints and mission durability across various corporate structures.

Group 1 CLGs include those that have obtained a ministerial license under Section 1180 and are therefore bound by legal obligations regarding asset retention, surplus reinvestment, and mission permanence. Group 2 CLGs, by contrast, have voluntarily incorporated similar provisions into their constitutions – such as non-distribution clauses and asset-transfer mechanisms – but have not received formal exemption from the naming

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<sup>12</sup> Government of Ireland, *Trading for Impact*, p. 14.

<sup>13</sup> Companies Act 2014 (Ireland), s. 1174(1).

<sup>14</sup> Companies Act 2014 (Ireland), ss. 1172, 1181(4).



requirement. Group 3 CLGs lack both legal requirements and internal constitutional mechanisms for asset locks.

Accordingly, the classification may be summarized as follows:

Table 2.1-A: Harmonized Terminological Summary of CLG Group Classifications

Terms	Description (unified across the paper)
Group 1 CLG	Statutorily constrained CLGs under CA 2014 s.1180; includes mandatory asset-lock provisions and public benefit objectives; often registered as charities.
Group 2 CLG	Constitutionally constrained CLGs that voluntarily include non-distribution and asset transfer clauses; may or may not have applied for s.1180 exemption.
Group 3 CLG	CLGs without statutory or constitutional asset constraints; rely primarily on reputational norms and public accountability.

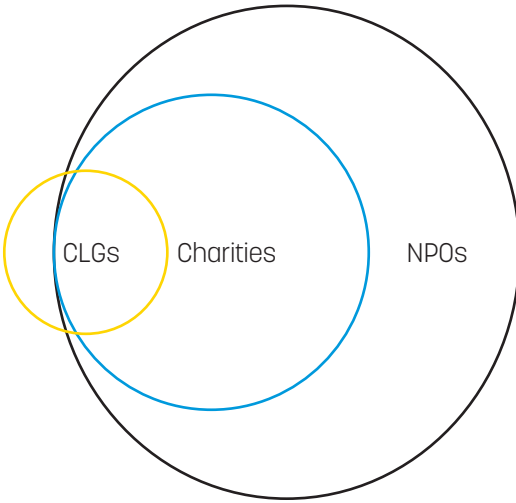
[Source: Author’s compilation.]

In brief, Section 1180’s naming exemption (license) distinguishes Group 1 (statutory asset-lock clauses) from Group 2 (voluntary clauses) and Group 3 (no binding safeguards), as outlined in Table 2.1-A; therefore, detailed explanation is omitted here to prevent repetition.

This tripartite grouping provides a practical framework for assessing asset-lock resilience in cases of mission drift or voluntary reorientation, allowing for a systematic comparison of enforceability, reputational pressures, and structural vulnerability across different organizational types.

The figure below illustrates the overlap among CLGs, charities, and non-profit organizations in Ireland. While it does not explicitly define the Group 1–3 classification, it highlights the structural hybridity of many entities that operate at the intersection of these categories. It illustrates the difficulty of drawing clear legal boundaries based solely on registration status.

Figure 2.1: Overlap Among CLGs, Charities, and NPOs in Ireland



[Source: Author's compilation.]

To illustrate how this taxonomy applies in practice, a representative subset of five CLGs is provided below. These organizations represent key combinations of charitable status, statutory licensing, and constitutional configuration, and have been selected to exemplify the Group 1 and Group 2 classifications outlined in this section. Their inclusion enables a grounded comparative analysis of how formal structures impact the enforceability and resilience of asset locks within the Irish legal framework.

It is important to note that no organization examined fits the definition of a Group 3 CLG. This absence does not imply that such entities do not exist but highlights the practical challenge of identifying CLGs that function entirely outside statutory and charitable constraints. Organizations lacking Section 1180 licensing or charitable registration – those without both constitutional and regulatory protections – may exist but are often under-documented or lack transparency. Therefore, Group 3 remains a valid theoretical category and is discussed further in Sections 2.2 and 2.3 below as part of the risk analysis related to legal reclassification and mission drift.

Table 2.1-B: Selected CLG Profiles Illustrating Group 1 and Group 2 Classifications<sup>15</sup>

No.	Company Name	Group	Charity	S.1180 Licence	Key Features
1	Prader Willi Syndrome Association Ireland	1	✓	✓	Fully regulated; classic Group 1 CLG
2	Socent CLG	2	✓	✗	Charitable CLG; voluntary asset-lock provisions
3	Mountaineering Ireland	1	✗	✓	Not a charity; covered by s.1180 licensing
4	Dublin Buddhist Centre (Triratna)	1	✓	✓	Religious CLG; dual compliance framework
5	Sensational Kids CLG	2	✓	✗	Charitable CLG with strong constraints

(Source: Author’s compilation, based on the CORE company registry, the charitable register, and organizational documents.)

These examples collectively illustrate the institutional diversity within the CLG form and how legal, charitable, and policy mechanisms intersect to create different levels of asset-lock protection. Notably, Group 1 CLGs such as Prader Willi Syndrome Association and Dublin Buddhist Centre benefit from both ministerial license and charitable status, providing the strongest legal and normative safeguards against asset diversion. Mountaineering Ireland, although not a charity, remains a Group 1 entity because of its Section 1180 license, demonstrating that legal protection under company law can exist independently of charitable registration.

Group 2 CLGs, such as Socent and Sensational Kids, operate without statutory licensing but are registered as charities and subject to the regulatory oversight of the Charities Regulator. In these cases, while the asset lock is not immutable under the 2014 Companies Act, it is reinforced by charitable regulation and internal constitutional commitments. This indicates that Group 2 CLGs – when properly governed – may have de facto protections similar to those required for Group 1 entities.

These selected examples highlight the practical importance and internal diversity of CLG-based social enterprises in Ireland. They also show that neither statutory form nor charitable status alone guarantees the

<sup>15</sup> Note: This sample includes only Group 1 and Group 2 CLGs. Group 3 CLGs – defined by the absence of both statutory and charitable constraints – were not empirically represented among the selected cases. However, the risks and governance implications associated with such entities are discussed in detail in subsequent sections.

enforceability of the asset lock. Instead, the specific arrangement of licensing, constitutional design, and regulatory oversight determines each entity's vulnerability or resilience.

Having established a structured classification of CLGs and identified their respective legal foundations for asset-lock protection, the subsequent section examines the potential erosion of these protections when a CLG ceases to operate as a social enterprise. Special attention is given to the legal uncertainty that arises from voluntary or strategic changes to a company's mission and the conditions under which asset dedication may be maintained, bypassed, or invalidated.

## 2.2 Vulnerability of the asset lock: exit from social enterprise status and legal uncertainty<sup>16</sup>

The modification of a CLG's objectives presents a significant challenge to maintaining its social-enterprise status and asset-lock protection. This process requires a special resolution<sup>17</sup> approved by a minimum of 75% of member votes,<sup>18</sup> with mandatory notification requirements to both debenture holders<sup>19</sup> and the Registrar.<sup>20</sup> The notification process must mirror the one provided to the CLG's members, ensuring a minimum ten-day notice period.<sup>21</sup> Notably, if at least 15% of members or debenture holders petition the court seeking cancellation of the resolution concerning the alteration of the company's objects, the alteration remains ineffective unless judicially ratified.<sup>22</sup> Moreover, a CLG must formally notify the Registrar upon such an application to the court.<sup>23</sup>

Three potential outcomes may arise from this procedural framework. First, if the decision to amend the company's objectives is not approved, the CLG must continue to follow its original mission, thereby maintaining the rule of asset lock. Second, once the special resolution is passed and if no opposing parties petition the court to annul it, it becomes unlikely that

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<sup>16</sup> Rosemary Teele Langford, "Purpose-Based Governance: New Paradigm," *University of New South Wales Law Journal* 43, no. 3 (2020): 954.

<sup>17</sup> Companies Act 2014 (Ireland), s. 1184(1).

<sup>18</sup> Companies Act 2014 (Ireland), s. 191(3).

<sup>19</sup> Companies Act 2014 (Ireland), s. 1185(3).

<sup>20</sup> Companies Act 2014 (Ireland), s. 1185(6).

<sup>21</sup> Companies Act 2014 (Ireland), s. 1185(3).

<sup>22</sup> Companies Act 2014 (Ireland), s. 1184(2)(3).

<sup>23</sup> Companies Act 2014 (Ireland), s. 1185(7).

the rule of asset lock will be protected for Groups 2 and 3 CLGs, unless the amended purpose fits within the “social objectives” outlined – though not exhaustively defined – in Ireland’s national social-enterprise policies.

In contrast, the situation for Group 1 CLGs is structurally and legally distinct, as any amendment to their constitutional objects must comply with the statutory regime set out in Section 1180(1)(a) of the Companies Act 2014. Non-compliance constitutes a Category 3 offense.<sup>24</sup> While the national policy’s definition of “social objectives” remains programmatic and non-exhaustive, the statutory formulation in Section 1180(1)(a) – listing purposes such as charity, education, art, and science – offers a meaningful point of reference, as these categories frequently mirror the objectives pursued by policy-recognized social enterprises.

Therefore, when the amended objectives of a Group 1 CLG still fall under Section 1180(1)(a) and can be reasonably regarded as aligned with national “social objectives,” the asset lock remains legally enforceable and protected by law. This dual alignment – both statutory and policy-based – is unique to Group 1 and makes its asset lock significantly more resilient. In contrast, Group 2 and Group 3 CLGs are not bound by Section 1180(1)(a) and do not need to maintain legally enforceable social purposes, so any deviation from policy-defined social objectives would immediately weaken their asset lock.

Crucially, the asset lock across all CLG groups becomes vulnerable when the company’s purpose no longer aligns with the national social-enterprise policy’s concept or scope of “social objectives.” However, what distinguishes Group 1 is that its amended purposes must satisfy not only the open-ended “social objectives” requirement under national policy but also the more formal, statutorily defined categories in Section 1180(1)(a) – a dual threshold that increases legal enforceability.

The fact that three quarters of the members consented to pass this resolution in the CLGs of the second and third groups implies a possible decline in the pro-social inclination of these members or a weakening of their commitment to the social purpose. The lack of dissenters seeking judicial intervention suggests that fewer than 15% of CLG members continue to uphold the social mission. Likewise, a comparable proportion applies to the debenture holders, who were once regarded as social investors but no longer fall within the category of patient-capital investors at this juncture. These indicators suggest that, notwithstanding the potential existence of pro-social members or external social investors in the third group of CLGs,

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<sup>24</sup> Companies Act 2014 (Ireland), s. 1180(7).

their numerical representation remains insufficient to meet the requisite threshold to influence corporate resolutions or to affect decisions potentially divergent from the social mission.

In another scenario, if the special resolution is passed and opponents apply to the court to have it canceled, the court may decide to cancel or confirm all or part of these alterations.<sup>25</sup> Should the court confirm such a resolution, the asset lock of the social enterprise will lose its protective effect. However, if it revokes this resolution, this rule will remain protected. In addition, the court may, at its discretion, adjourn the proceedings to facilitate arrangements whereby the company purchases the interests of dissenting members, and may issue such directions and orders as deemed expedient to facilitate those arrangements.<sup>26</sup>

However, dissenting members usually represent strong supporters of the social goals, and gaining their support – although it may be minor in a CLG whose members as guarantors typically contribute only €1 – has little practical importance.<sup>27</sup> Although purchasing such interests involves minimal financial outlay, this approach appears unfair given these members' alignment with the company's societal goals. More importantly, it does not maintain the asset lock. However, since such an arrangement likely requires court approval, acquiring the interest of dissenting members might be regarded as favorable if the court's approval process includes safeguarding the asset-lock mechanism, which could influence members seeking organizational change. On the other hand, it would not constitute an appropriate method, despite the legal provisions that permit it.

Section 1180 of the 2014 Companies Act is a critically important provision in safeguarding the asset-lock for social enterprises structured as CLGs, particularly regarding Group 1 CLGs. Regarding Groups 2 and 3, the protection of this mechanism during modifications to the company's original mission relies exclusively on two essential factors: first, whether the amended objectives align with the definition of "social objectives" outlined in national policy; and second, the proportion of pro-social members and debenture holders within the organization. Although the registrar participates in this process, it appears to act merely as a notified party to which information is communicated and from which the necessary documentation is obtained.

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<sup>25</sup> Companies Act 2014 (Ireland), s. 1184(6)(a).

<sup>26</sup> Companies Act 2014 (Ireland), s. 1184(6)(b).

<sup>27</sup> O'Shaughnessy, *Social Enterprises in Europe: Ireland*.

It is also important to note that Groups 1 and 2 CLGs with charitable status exist in the dual identities of both a company and a charity,<sup>28</sup> while many of them simultaneously operate as social enterprises.<sup>29, 30</sup> For organizations occupying such triple roles, their objectives are of paramount importance. If they intend to change the company's charitable purposes, they must, beyond securing Charities Regulator's consent,<sup>31</sup> amend the company's purposes in accordance with relevant company law provisions. Where the Charities Regulator approves such a change, it may be inferred that the amended objectives remain within the statutory scope of "charitable purpose" – maintaining public-benefit orientation, albeit with altered content – thereby potentially preserving asset-lock protections. Without the Charities Regulator's agreement, the intention to modify objectives persists. However, this will no longer satisfy the requirements of the Charity Test,<sup>32</sup> and the CLG may be at risk of losing its charitable status when the Charities Regulator becomes aware of the change (as all charities must complete the Compliance Record Form every year, and the Regulator may request it at any time).<sup>33</sup>

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<sup>28</sup> Charities Regulator, *Charities Governance Code; Charities Act 2009* (Ireland), s. 3(1); Oonagh Breen and Philip A. Smith, *Law of Charities in Ireland* (Dublin: Bloomsbury Professional, 2019), pp. 249–340.

<sup>29</sup> Department of Rural and Community Development, *Social Enterprises in Ireland – A Baseline Data Collection Exercise 2023*, 16. In Ireland, social enterprises in practice run under various legal types, the most common of which is the CLG (77%), with the vast majority (88%) of social enterprises registered as charities.

<sup>30</sup> For CLGs with charitable status (Groups 1 and 2), these entities qualify as social enterprises if their charitable goals fall within the scope of the social objectives as outlined in Irish national social enterprise policy. Without such alignment, they are classified merely as CLGs with charitable status. That is why the word "many" is used in this sentence.

<sup>31</sup> Citizens Information Board, 'Charities Regulation in Ireland' (Relate: The Journal of Developments in Social Services, Policy and Legislation in Ireland, vol 45, issue 5, May 2018) [https://www.citizensinformationboard.ie/downloads/relate/Relate\\_2018\\_05.pdf](https://www.citizensinformationboard.ie/downloads/relate/Relate_2018_05.pdf) accessed 26 July 2024.

<sup>32</sup> Charities Regulator, *What is a Charity?* rev 001 (2022), 5 <https://www.charitiesregulator.ie/media/eqvh32ky/what-is-a-charity-rev-001.pdf> accessed 8 July 2024.

<sup>33</sup> This scenario of awaiting the Charities Regulator to discover that a CLG with charitable status is not operating in accordance with the regulations for charities is also, in effect, one of the situations in which involuntary loss of charitable status occurs. However, revoking charitable status does not necessarily mean the CLG is not a social enterprise. In other words, the fact that many CLGs operate as social enterprises that possess charitable status is distinct from those CLGs that lack such status or have forfeited their charitable status and consequently are no longer classified as social enterprises. Thus, the subsequent subsection addressing CLG's loss of charitable status will not be reiterated.



## 2.3 Constitutional amendments and structural fragility of the asset lock

Building on the previous analysis, which showed that changes to a CLG's stated objects could threaten its social-enterprise status and asset-lock protection, this section explores the constitutional aspects of such risks. While it remains uncertain whether constitutional changes to a CLG functioning as a social enterprise prevent it from continuing in that role, it is reasonable to infer that altering key statutory clauses significantly affects asset-lock protections. Additionally, because changes to company objects inevitably require corresponding updates to the memorandum and articles of association,<sup>34</sup> such constitutional amendments may prevent the CLG from maintaining its social-enterprise status.

For analytical purposes, this section proceeds on the assumption that charitable objects – where properly framed – fall within the scope of “social objectives” as defined by national policy. This position draws on comparative practice, notably UK CICs, which explicitly recognize charitable purposes as qualifying social objectives.

Against this background, the subsections below provide a structured typology of constitutional vulnerabilities across different CLG categories, focusing on the interplay among amendability, regulatory oversight, and the robustness of the asset-lock mechanism.

### 2.3.1 Group 1 CLGs: statutory restrictions on constitutional amendments

CLGs that operate as social enterprises and seek exemption from including the designation “Company Limited by Guarantee” or *Guideachta Faoi Theorainn Ráthaíochta* in their registered name fall within Group 1 CLGs. Pursuant to Section 1180(1)(b) of the Companies Act 2014, their constitutions must incorporate mandatory provisions requiring that profits (if any) be applied solely to furthering the company's objects, that no distributions be made to members, and that remaining assets upon winding up be transferred to another company with similar objectives. These provisions are

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<sup>34</sup> Department of Jobs, Enterprise and Innovation (now Department of Enterprise, Trade and Employment), *Explanatory Memorandum to the Companies Act 2014* (2014), p. 44, <https://enterprise.gov.ie/en/publications/publication-files/explanatory-memorandum-to-companies-act-2014.pdf>, accessed 6 June 2024.

not subject to amendment,<sup>35</sup> and any breach may constitute a Category 3 offense.<sup>36, 37</sup>

If a CLG maintains its objects but contravenes provisions outlined in its articles of association – for example, when it conducts business outside the scope of its stated objectives, misallocated profits or other forms of income for purposes not aligned with its goals, or distributes profits to its members inappropriately<sup>38</sup> – the registrar may direct in writing that the company be instructed to change its name accordingly. Failure to comply constitutes a Category 3 offense,<sup>39</sup> reinforcing the asset-lock safeguard through criminal sanctions and indirect reputational enforcement.

These statutory restrictions create a high level of constitutional rigidity, offering Group 1 CLGs the strongest legal protection for asset-lock continuity. However, the legal framework becomes more complex when these CLGs also possess charitable status. In such cases, proposed amendments to the company's primary object fall under an additional layer of scrutiny by the Charities Regulator.

This regulatory requirement is reflected in the General Scheme of the Charities (Amendment) Bill 2022 (Head 8), which proposes aligning Section 40 of the 2009 Charities Act with Section 39 by introducing mandatory prior approval for amendments to a charity's main object.<sup>40</sup> While the legislative rationale lies in protecting charitable purposes, concerns have been raised about potential administrative burdens and disproportionate delays if all constitutional changes – irrespective of materiality – were to require regulatory consent.<sup>41</sup>

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<sup>35</sup> Companies Act 2014 (Ireland), s. 1180(4).

<sup>36</sup> Companies Act 2014 (Ireland), s. 1180(7)(a).

<sup>37</sup> Whilst the Companies Act 2014 provides for a change of purpose for such CLGs (section 1184), where an alteration of the company's purpose will give rise to a change in the content of its constitution, this may include the critical clauses that may qualify the CLG applying for without have the certain words in its name, what is interesting is that it also provides for the unchangeability of these clause in the constitution of such CLGs and specifies the risk of criminal liability that may follow from the change; this seems to be a bit contradictory. Looking at the legislative intent alone, though, it is likely that the latter provision is to protect the assets of the CLG from being used for purposes other than the objectives of promoting commerce, art, science, education, religion, charity, etc.

<sup>38</sup> Companies Act 2014 (Ireland), s. 1180(5).

<sup>39</sup> Companies Act 2014 (Ireland), s. 1180(7)(b).

<sup>40</sup> Department of Rural and Community Development, *General Scheme – Charities (Amendment) Bill 2022: Explanatory Note* (2022), pp. 27–32.

<sup>41</sup> Oonagh B. Breen and Philip Smith, *The Charities (Amendment) Bill 2022 – A Commentary on the General Scheme of Bill* (Dublin: Carmichael Ireland, 21 June 2022), pp. 3–4.

Although the proposed provisions have not yet come into effect – Sections 39 and 40 of the 2009 act remain uncommenced pursuant to S.I. No. 10 of 2025<sup>42</sup> – there is growing evidence that regulatory expectations are evolving in anticipation of formal statutory reform. The Charities Regulator’s current guidance indicates that certain categories of amendments, particularly those affecting charitable objects, income and property clauses, or winding-up provisions, are already expected to be submitted for prior review.<sup>43</sup> This anticipatory regulatory practice reflects an implicit convergence between policy objectives and supervisory discretion, which, although not yet codified, functionally constrains exit-based dilution of the asset-lock mechanism.

Consequently, Group 1 CLGs with charitable status now operate within a dual-compliance framework: they are subject not only to the rigid statutory constraints of the Companies Act but also to increasingly anticipatory forms of regulatory supervision under charity law. This compound effect enhances the legal durability of the asset lock but also limits organizational flexibility, particularly where strategic reorientation or mission redefinition is contemplated.

### 2.3.2 Group 2 CLGs: constitutional amendments and the limits of voluntary protection

Unlike Group 1, Group 2 CLGs are not subject to legal prohibitions on changing asset-lock clauses but may voluntarily include similar restrictions in their constitutional documents. However, if a Group 2 CLG – which may or may not be charitable – adopts an object clause that goes beyond “social objectives,” its three principal asset-lock clauses are likely to be amended as well. When such changes indicate a move away from the company’s original

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<sup>42</sup> Department of Rural and Community Development, *Charities (Amendment) Act 2024 – Commencement Order 2025* (SI 10/2025, 27 January 2025), p. 2, <https://assets.gov.ie/static/documents/si-no-10-of-2025-charities-amendment-act-2024-commencement-order-2025.pdf>, accessed 8 June 2025.

<sup>43</sup> Charities Regulator, “Updating Your Constitution or Charitable Purposes,” <https://www.charitiesregulator.ie/en/information-for-charities/updating-the-register-of-charities/updating-your-constitution-or-charitable-purposes>, accessed 26 April 2025; Arthur Cox, “Charities Law Update: Key Changes in the New Act,” 2024, <https://www.arthurcox.com/knowledge/charities-law-update-key-changes-in-the-new-act>; The Wheel, *Charities Amendment Act 2024: A Summary for Trustees* (2024), <https://www.wheel.ie/sites/default/files/media/file-uploads/2024-12/charities-amendment-act-2024.pdf>.

social mission, the fundamental purpose of the asset-lock is compromised, and its enforceability is weakened.

When a Group 2 CLG qualifies as a charity, proposed amendments to its primary objects fall under the same evolving regulatory framework discussed in Subsection 2.3.1. Although the relevant statutory provisions remain unimplemented, regulatory guidance suggests that changes to core clauses – especially those affecting public benefit – are increasingly subject to prior review. This regulatory layer thus indirectly strengthens the asset lock by limiting the organization's flexibility in redefining its purpose.

In contrast, for non-charitable Group 2 CLGs, no legal mechanism prevents such amendments beyond the procedural requirements of the Companies Act. In these cases, the asset lock relies on internal governance practices and voluntary compliance with adopted restrictions. The balance of power between pro-social members and other stakeholders, including financial investors, will significantly shape whether the asset-lock mechanism continues to be upheld in practice. These mechanisms remain structurally vulnerable to change in the absence of external enforcement or statutory protection.

### 2.3.3 Group 3 CLGs: absence of binding mechanisms and maximum vulnerability

The situation is even more precarious for Group 3 CLGs. These entities typically lack both statutory obligations under Section 1180 and any constitutionally embedded asset-lock provisions. They are under no binding restrictions against amending their constitutions, including the removal of non-distribution clauses or asset-transfer obligations upon dissolution. Such amendments may be passed by special resolutions without legal restrictions, provided they comply with the procedural requirements under the Companies Act.

The absence of legally entrenched clauses places Group 3 CLGs in the weakest structural position regarding asset-lock continuity. No statutory constraint prevents the redirection of profits or assets, nor is there any requirement to preserve a specific social mission. Where internal consensus changes, the organization may legally reorient its objectives and redistribute assets without encountering regulatory obstacles.

If a Group 3 CLG has charitable status, its capacity to amend its objects remains subject, at least nominally, to the general oversight functions of the Charities Regulator. As discussed in Section 2.2.3.1, while the proposed

statutory amendments requiring prior approval have not yet been implemented, current regulatory guidance indicates an expectation of *ex ante* review for amendments affecting charitable purposes. In this respect, charity law may operate as a residual safeguard, albeit contingent on the charity's willingness to submit changes for review and the Charities Regulator's administrative discretion.

Conversely, for non-charitable Group 3 CLGs, the absence of both statutory restrictions and constitutional protections renders the asset-lock mechanism legally unenforceable and practically unstable. Any internal limitation on profit distribution or asset retention is a matter of voluntary practice rather than legal obligation. This creates a situation of maximum vulnerability: the asset lock can be diluted or eliminated at any time, subject only to internal voting thresholds. In effect, these entities exist in a state of minimum compliance and maximum flexibility, with no external mechanism to ensure alignment with social-enterprise principles.

#### 2.3.4 Comparative outcomes of constitutional amendments across CLG types

Having analyzed the constitutional structure and amendment limits of each CLG category, this subsection compares how such amendments influence asset-lock protections in practice. The effect of constitutional change is neither consistent nor binary: it depends on the statutory framework, the type of amendment, and the presence or absence of additional regulatory safeguards. The following discussion highlights key resilience patterns and the erosion or removal of asset-lock mechanisms across the CLG typology.

Group 1 CLGs occupy the most legally insulated position. As noted earlier, the Companies Act 2014 requires that their constitutions include unchangeable clauses concerning the application of profits, the prohibition on distribution to members, and the transfer of remaining assets to similar organizations upon dissolution. These provisions are prohibited from being amended, and attempting to change them constitutes a criminal offense. Consequently, Group 1 CLGs are structurally incapable of weakening their asset-lock safeguards through constitutional change, regardless of internal consensus or strategic intent. Their legal architecture preserves asset locks by design rather than discretion.

Group 2 CLGs, by contrast, are legally permitted to amend their constitutions – including asset-lock provisions – subject only to the general procedural requirements under company law. A common situation in this

context involves minor updates to profit-distribution clauses – such as authorizing limited member participation in surpluses. Although these provisions may appear inconsistent with traditional interpretations of the non-distribution principle, they do not necessarily conflict with the Irish national-policy definition of a social enterprise, which requires that “fully or primarily” surpluses be reinvested to achieve social objectives. Furthermore, since the 2014 Companies Act does not prohibit CLGs from distributing surpluses to members – unless explicitly restricted by the constitution – such amendments remain legally valid. When these changes do not formally breach the organization’s non-distribution clause, the entity may still qualify as a social enterprise under a policy-based interpretation. Nonetheless, such revisions may lead to functional drift toward the Group 3 model, as part of the surpluses is no longer fully directed towards promoting social objectives. In these cases, altering the constitution results in mission dilution, both in substance and in perception.

Within the Irish legal framework, Group 2 CLGs may also include internal mechanisms that allow limited or exceptional surplus distributions, provided these align with the organization’s broader social goals and do not weaken the core asset-lock provisions. The impact of such arrangements depends primarily on the frequency and scale of distributions. The organization may still reasonably qualify as a social enterprise under current policies when surplus allocations are small and occasional. However, if such distributions are frequent or substantial, the asset-lock instrument is weakened – both symbolically and legally. This vulnerability characterizes Group 2 CLGs, whose asset protection relies on internal governance and remains susceptible to alteration under company law.

Group 3 CLGs occupy the most precarious position, often lacking statutory protection and constitutional entrenchment of asset-lock provisions. When CLGs expand their objects beyond recognized social objectives, they must cease to qualify as social enterprises. Their asset-lock protections disappear with the change in purpose. Alternatively, they may retain their original objects but modify other structural clauses – such as profit-application or asset-transfer provisions. In these cases, if surplus funds continue to support social goals and the asset-transfer clause is maintained, CLG may still operate as a social enterprise.

However, if either of the two foundational clauses – the non-distribution clause or the asset-dedication clause – is significantly altered, the organization may no longer credibly claim to be mission-locked. It then functions as

a CLG without the essential characteristics of a social enterprise, regardless of its legal structure.

As discussed earlier, if any of these entities also holds charitable status, additional regulatory oversight may apply under the Charities Act 2009 and related practices. These mechanisms, discussed in Subsections 2.3.1 to 2.3.3, provide either additional or fallback protection for asset locks and do not require repetition here.

2.3.5 Legal scenarios of voluntary exit from social enterprise status

To systematically illustrate how CLGs may cease to qualify as social enterprises through constitutional modification, this section identifies seven representative legal scenarios. These are grouped thematically into three domains of vulnerability: (i) deviation from recognized “social objectives” through object-clause amendments; (ii) dilution of financial dedication through surplus application or distribution; and (iii) erosion of structural safeguards, including winding-up and charitable clauses. This typology provides a practical framework for assessing the legal thresholds at which asset-lock mechanisms fail across CLG groups.

Table 2.3.5: Scenarios of CLGs voluntarily ceasing to be social enterprises

No.	Scenario: Relevant Constitutional Clause Change	Group 1 CLG	Group 2 CLG	Group 3 CLG
1	Amendment of the CLG’s objects clause: new object within “social objectives”	✓	✓	✓
2	Amendment of the CLG’s objects clause: new object beyond recognized “social objectives”	✗	✗	✗
3	Income or surplus not applied exclusively to further the company’s stated objectives	✗	✗	✗
4	Distribution of profits to members	✗	⚡	⚡
5	Asset transfer clause upon winding up not directed to similar-purpose entity	✗	✗	✗
6	Amendment to charitable object clause with regulatory consent and remaining within social objectives	✓	✓	✓
7	Amendment to charitable object clause without consent or departing from “social objectives”	✗	⚡	⚡

✓ = Would continue to be a social enterprise  
✗ = Would cease to be a social enterprise  
⚡ = Qualification uncertain; contingent on interpretation and regulatory context  
[Source: Author’s compilation.]



Scenarios 1 and 2 address changes to the CLG's purpose. As long as the revised objectives remain within the accepted range of "social objectives," the legal basis for social-enterprise status – and the asset-lock mechanism – remains valid. However, when amendments introduce commercial or private goals outside this range, all CLG types consistently fail to meet the definitional criteria.

Scenarios 3 to 5 concern financial provisions essential for the asset-lock function. Misusing income (Scenario 3) or removing the non-distribution clause (Scenario 4) removes the requirement to reinvest surpluses, while altering the winding-up clause (Scenario 5) risks exposing remaining assets to private appropriation. Group 1 CLGs are legally prohibited from making these changes; Group 2 CLGs may implement them unless protected by charitable status or regulatory oversight; and Group 3 CLGs may lack formal restrictions under company law, although those with charitable status could still be subject to oversight by the Charities Regulator.

Scenarios 6 and 7 concern modifications to charitable clauses, especially for CLGs with charitable status. When amendments are made with regulatory approval and focus on public benefit, the nature of the social enterprise may be maintained. However, unauthorized or purpose-changing amendments risk the loss of charitable status and the removal of asset locks. Groups 2 and 3, without regulatory enforcement, enter a grey area of potential qualification.

Taken together, the scenarios above reveal the varying vulnerability of asset-lock mechanisms across different Irish CLG types. While Group 1 CLGs benefit from statutory protection, Groups 2 and 3 remain at risk of erosion through voluntary amendments or regulatory inaction. The enforceability of social objectives thus cannot rely solely on legal form. Instead, it depends on the complex interaction among statutory design, constitutional resilience, and the practical actions of organizational actors. This analysis highlights the need for a more integrated legal-policy approach to ensure the sustainability of mission commitments in social-enterprise governance.

In summary, Section 2 has shown that the Irish CLG structure accommodates considerable institutional diversity regarding asset-lock protection. By establishing a tripartite classification – statutory (Group 1), voluntary (Group 2), and residual (Group 3) – this section explains how organizational form, constitutional rigidity, and regulatory involvement interact to shape the durability of social-purpose commitments. While Group 1 CLGs benefit from formal legal protections and statutory safeguards, Groups 2 and 3 depend more on internal governance mechanisms and, in some cases,

charitable status as additional protections. Notably, although the statutory provisions requiring prior regulatory approval for amending charitable purposes have not yet been implemented, evolving regulatory practices already provide anticipatory oversight in many cases. Therefore, charitable registration offers a soft-law constraint that may partially reinforce the asset-lock instrument in Group 2 CLGs. However, in the absence of statutory or charitable safeguards – as may be the case for Group 3 CLGs – asset locks remain structurally vulnerable and legally unenforceable.

These findings reveal that asset dedication in Irish social enterprises is influenced more by governance design and regulatory interpretation than by statutory certainty. In the absence of a unified legal form or harmonized enforcement, constitutional amendments – especially those altering objects, distribution rules, or dissolution clauses – serve as key points of vulnerability. This legal uncertainty is particularly impactful during organizational lifecycle transitions. The following sections build on this doctrinal foundation to examine how such risks emerge at the critical stage: the transfer or dissipation of assets upon conversion and merger.

### **3. Luxembourgish SIS-SCOP model: doctrinal ambiguity and the fragility of asset lock mechanisms**

Luxembourg's 2016 SIS law governing entities accredited as SISs contains no explicit provision regarding the voluntary relinquishment of ministerial accreditation by entities previously approved as SISs.<sup>44</sup> While such a withdrawal may be inferred from the general principle of entrepreneurial autonomy, the process remains legally ambiguous and unregulated. Theoretically, entities may renounce their SIS status by passing a special resolution and submitting a corresponding request to the MTEESS. Upon ministerial approval, SIS status is forfeited.<sup>45</sup> However, this procedure is not officially codified, and there is no authoritative clarification. Therefore, the legal framework for voluntary de-accreditation remains underdeveloped and unclear in its normative implications.

The only interpretive guidance currently available derives from a non-binding informational guide co-issued by Union luxembourgeoise de l'économie sociale et solidaire (ULESS) and the MTEESS (SIS Guide 2016). This

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<sup>44</sup> Doc. Parl. No. 6831/04, *Avis du Conseil d'État*, 11–12 (Luxembourg).

<sup>45</sup> ULESS and MTEESS, *Guide SIS* (2016).

document identifies three statutory modifications requiring ministerial approval – changes to purpose, performance indicators, and the distribution between impact and performance shares – but it lacks legal force. Although it implies that significant amendments might trigger a de facto withdrawal of SIS status, the absence of a formalized legal mechanism undermines regulatory coherence and legal certainty.

More critically, the theoretical possibility of voluntary withdrawal highlights a more profound structural vulnerability within the governance of SIS entities, particularly those established as SCOPs. The legal capacity to adopt a special resolution to abandon SIS status – requiring a two-thirds majority in SCOPs/SAs and a three-quarters majority in SARLs<sup>46</sup> – implies that a shift in control from pro-social to profit-oriented members is not merely possible but legally permissible.<sup>47</sup> The approval of such a resolution would materialize only in situations in which impact shareholders or socially driven members have lost their supermajority status, thereby signaling a realignment of priorities away from the social mission.<sup>48</sup>

This dynamic is especially troubling in the context of SIS-SCOPs, which are typically presumed to embody the principles of participatory and solidaristic governance. Yet Luxembourg law grants SCOPs significant latitude in structuring internal voting rights. The SCOP statutes may, for example, assign multiple votes to certain members, adopt proportional voting based on shareholding, or create hybrid or exclusionary voting schemes. In the absence of specific provisions, all members are presumed to hold equal voting rights.<sup>49</sup> Nonetheless, this statutory flexibility allows for a configuration that departs materially from the cooperative ideal of democratic governance, weakening the internal safeguards traditionally functioning

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<sup>46</sup> *Loi modifiée du 10 août 1915 concernant les sociétés commerciales* (Luxembourg), Articles 450-3(2) and 710-26(1).

<sup>47</sup> *Doc. Parl. No. 6831/09, Projet de loi relative à la société d'impact sociétal (SIS)*, 11: “le texte reste entièrement muet quant à la possibilité d’une SIS de renoncer de plein gré à l’agrément ministériel, par exemple dans le cas où une ‘SIS à 100 pourcent’ désire s’ouvrir à du capital de rendement et ne voit par conséquent plus aucun avantage à maintenir l’agrément en tant que SIS.”

<sup>48</sup> This could also be the hidden reason that it is unlikely the MTEESS would reject the application in such circumstances. Indeed, the decision to do so would be unhelpful to the pursuit and realization of the purposes contained in the SIS statute; rather, it may be better to stop the loss promptly.

<sup>49</sup> Alain Steichen, *Précis de droit des sociétés*, 6th ed. (Luxembourg: Éditions Saint-Paul, 2018), pp. 551–62.

as the first line of defense for asset locks. In essence, the doctrinal commitment to cooperative democracy has been diluted through legal design.

Once SIS accreditation is relinquished, the entity reverts to its original commercial form – SCOP – and, crucially, the statutory protections governing the asset-lock cease to apply. This creates a legal void in which assets formerly dedicated to social purposes may be redirected toward private interests. While social norms and reputational considerations may theoretically constrain this outcome, the legal regime offers no substantive impediment to such a reallocation.

An informal response to this regulatory gap is suggested in the minutes of the Commission du Travail, de l'Emploi et de la Sécurité sociale (Committee on Labour, Employment and Social Security), which proposes that SIS entities composed entirely of impact shares, upon voluntarily relinquishing their accreditation, should be dissolved and liquidated, with residual assets distributed through a controlled process to prevent embezzlement or private appropriation.<sup>50</sup> However, while normatively commendable, this mechanism lacks any binding legal force. The 2016 law does not explicitly provide for such dissolution nor articulate the conditions under which voluntary de-accreditation would necessarily result in liquidation.<sup>51</sup> This legislative silence undermines the predictability and enforceability of the asset-lock mechanism.

The opacity of SIS regulation further compounds the risks associated with this gap. According to the Ministry, information on voluntary and involuntary SIS withdrawals is confidential, making it impossible to assess how the system functions in practice. While available data suggest that most SIS entities (70 out of 86)<sup>52</sup> are composed entirely of impact shares –

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<sup>50</sup> Chambre des Députés, Session ordinaire 2015–2016, TS/JW PV. TESS 19, *Commission du Travail, de l'Emploi et de la Sécurité sociale*, Procès-verbal de la réunion du 15 juin 2016, <https://wdocs-pub.chd.lu/docs/exped/122/640/162319.pdf>, accessed 29 August 2024.

<sup>51</sup> Doc. Parl. No. 6831/09, *Rapport de la Commission du Travail, de l'Emploi et de la Sécurité Sociale*; Doc. Parl. No. 6831/04, *Avis du Conseil d'État*, <https://www.chd.lu/fr/dossier/6831>, accessed 29 August 2024.

<sup>52</sup> Administration des contributions directes, *Relevé des sociétés d'impact sociétal (SIS) agréées par le Ministère du Travail (MTE)* [https://impotsdirects.public.lu/fr/az/l/libera\\_dons/sis.html](https://impotsdirects.public.lu/fr/az/l/libera_dons/sis.html) accessed 29 August 2024. As of 16 July 2024, the list notes 66 accredited SIS and 4 withdrawn. According to this document, the four enterprises whose SIS status has been withdrawn are: 106 Conseil S.à r.l.-S, Altis Progress S.à r.l., Curiel S.à r.l., and Net to Bureau S.à r.l. However, based on records from *Mémorial B*, only Curiel S.à r.l. appears explicitly as having its SIS status removed by ministerial decision. Further verification through the *Registre de Commerce et des Sociétés* (RCS) shows that: Netto Bureau S.à r.l. S.I.S. is closed in bankruptcy (*en faillite clôturée*); Altis Progress S.à r.l. is in bankruptcy (*en faillite*); and both

thereby making voluntary withdrawal less likely – this empirical fact does not negate structural risk. Instead, it masks the latent vulnerabilities embedded in the legal design.

Unless and until Luxembourg law is amended to extend asset-lock protections beyond the period of SIS accreditation, or to condition de-accreditation upon mandatory asset redirection to public-benefit purposes, the risk of private capture remains a significant concern. This is particularly problematic given that the SIS framework was conceived to embed social purpose into the governance structures of commercial entities. The existing legislative framework, by failing to bind SCOPs – arguably the most socially oriented among commercial entities – to a durable asset-lock safeguard, undermines both the coherence and credibility of the SIS regime as a whole.

#### 4. Italian SE model: divergent pathways of asset locks in social cooperatives and non-social cooperatives with SE status<sup>53</sup>

The Italian regulatory framework governing social enterprises, particularly social cooperatives, presents a significant divergence in applying the asset-lock mechanism. While social cooperatives, by virtue of their statutory classification, are *ex lege* social enterprises, it remains contentious whether they may voluntarily relinquish their social-enterprise status. As of 20 July 2017, it is clear that social cooperatives cannot voluntarily exist outside the social-enterprise framework, a position widely accepted in the scholarship.<sup>54</sup> However, no consensus exists on whether these entities may voluntarily lose their status as social enterprises. Scholars present two conflicting views: one holds that social cooperatives, as social enterprises

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Curiel S.à r.l. S.I.S.S. and 106 Conseil S.à r.l. have been struck off (*radiée*). See [https://www.lbr.lu/mjracs/jsp/DisplayConsultDocumentsActionNotSecured.action?time=1721819292936&-FROM\\_BREADCRUMB=true&CURRENT\\_TIMESTAMP\\_ID=1721819283782](https://www.lbr.lu/mjracs/jsp/DisplayConsultDocumentsActionNotSecured.action?time=1721819292936&-FROM_BREADCRUMB=true&CURRENT_TIMESTAMP_ID=1721819283782) accessed 29 August 2024. On this basis, while the exact number of SIS withdrawals formally made by the Ministry remains unclear, publicly available evidence suggests the figure does not exceed four.

<sup>53</sup> Non-social cooperatives with social enterprise status (*cooperative non sociali con qualifica di impresa sociale*, or CONSIS) are cooperatives that do not qualify as social cooperatives under Law No. 381/1991 but have voluntarily acquired social enterprise status under Legislative Decree No. 112/2017: see Emanuele Cusa, “Frammenti di disciplina delle cooperative con la qualifica di impresa sociale,” *Le Nuove Leggi Civili Commentate* 44, no. 2 (2021): 267, 268.

<sup>54</sup> Consiglio Nazionale del Notariato (CNN), *Studio n. 205-2018/I, Le cooperative sociali come imprese sociali di diritto*, 2; Antonio Fici, “Le cooperative sociali tra RUNTS e legislazione cooperativa,” *Terzo settore, non profit e cooperative* 1 (2021): 40–61.

by law, cannot shed this status voluntarily;<sup>55</sup> while the other asserts that social cooperatives can forfeit both their social-cooperative and social-enterprise status.<sup>56</sup>

The central issue in the debate surrounding social cooperatives is their legal autonomy to relinquish their social-enterprises status voluntarily. It is widely acknowledged that social cooperatives are granted de jure social-enterprise status by the legislator, with accompanying obligations. However, these obligations may not align with the general interests that initially justified their introduction. Some argue that these obligations, particularly those outlined in Article 9(2), should not apply to social cooperatives.<sup>57</sup> Yet the MLPS has taken a contrary stance, affirming that social cooperatives are legally bound to adhere to these obligations.<sup>58</sup> This divergence reflects differing interpretations of what constitutes a “reward” versus a “burden” within the context of social-enterprise status.

In light of this, it becomes evident that the status of social cooperatives as social enterprises is not a matter of voluntary choice but one imposed by legislative mandate. Social cooperatives have no legal right to opt into or out of this status. The absence of an option to apply for social-enterprise status means that the question of “voluntarily choosing” to lose this status does not arise. Instead, the imposition of social-enterprise status by the legislator creates a fixed legal identity for social cooperatives, reinforcing the notion that these entities cannot freely relinquish their social-enterprise status without substantial legal implications.<sup>59</sup>

This complexity is further reflected in the asset-lock mechanism, which plays a pivotal role in the regulatory framework for social enterprises. For social cooperatives, classified ex lege as social enterprises, the asset lock

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<sup>55</sup> Fici, “Le cooperative sociali tra RUNTS e legislazione cooperativa,” 40–61; Giuseppe AM Trimarchi, *Terzo Settore e “Imprese Sociali”: La Disciplina delle Operazioni Straordinarie* (2019) 455; Annapaola Coletta, *Le operazioni straordinarie di trasformazione, fusione e scissione coinvolgenti enti aventi qualifica di impresa sociale* (2021), p. 106.

<sup>56</sup> Cusa, “Frammenti di disciplina,” pp. 290–292. It is argued that social cooperatives can at any time renounce their status as social cooperatives by revising their statutes and, thus, as social enterprises... at the same time, however, the rules on the transfer of assets in Article 12(5), of the social enterprise law in such cases do not apply to social cooperatives and non-social cooperatives with social enterprise status (or CONSIS).

<sup>57</sup> Fici, “Le cooperative sociali tra RUNTS e legislazione cooperativa,” pp. 40–61.

<sup>58</sup> Ministero del Lavoro e delle Politiche Sociali (MLPS), *Nota n. 2491/2018*.

<sup>59</sup> This highlights a critical tension: while social cooperatives are bound by a rigid legal framework that dictates their social enterprise status, they are also confronted with obligations that may not always align with their operational realities, raising questions about the balance between the intended benefits and the burdens imposed by such a classification.



is inherently embedded within their legal identity without requiring the formal qualification process mandated for other entities. This *ex lege* classification assumes that social cooperatives governed by Law No. 381/1991 inherently fulfill the general interests underpinning the social-enterprise regime.<sup>60</sup> Consequently, the asset lock operates as an immutable legal obligation, ensuring the perpetual protection of assets designated for social purposes, regardless of internal statutory changes. This provision emphasizes the rigid nature of the asset-lock mechanism as a governance structure for social cooperatives, designed to safeguard assets dedicated to fulfilling their social mission.

In contrast, CONSIG is subject to a more flexible regulatory regime. These cooperatives can both enter and exit the social-enterprise framework at will, and the asset-lock mechanism in such cases is conditional and reversible. Upon voluntary renunciation of social-enterprise status, Article 12(5) of Legislative Decree No. 112/2017 provides that any residual assets must be allocated either to TSEs established and operating for at least three years, or to the *fondo per la promozione e lo sviluppo delle imprese sociali* (Fund for the Promotion and Development of Social Enterprises, or FPDSE). However, a key exception allows CONSIG to channel assets into *fondi mutualistici per la promozione e lo sviluppo della cooperazione* (mutual funds for the promotion and development of cooperation).<sup>61</sup> This provision effectively transforms the asset-lock regime from a structure designed to protect social goals into one that facilitates sector-specific reinvestment. In this regard, the original intent of the asset lock – to preserve assets for the

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<sup>60</sup> CNN, *Studio n. 91-2018/I – L'impresa sociale nel sistema della riforma del Terzo settore* (18 May 2018), 22; Antonio Fici, “La función social de las cooperativas: notas de derecho comparado,” *REVESCO. Revista de estudios cooperativos* 117 (2015): 77, 84. It is argued that “a social enterprise is an economic activity of social utility or community benefit carried out on a not-for-profit basis for purposes of common or general interest ... If this concept is adopted, there is no doubt that social cooperatives fall into this category.”

<sup>61</sup> *Codice Civile*, art. 2545-undecies (1). However, the legal framework becomes significantly more ambiguous in the case of non-social cooperatives that voluntarily acquire social enterprise status. While art. 12(5) of Legislative Decree No. 112/2017 sets out asset-redirection obligations upon voluntary exit, its applicability to cooperatives is doctrinally contested. The controversy arises from the clause “salvo quanto specificamente previsto in tema di società cooperative,” which creates a carve-out based on cooperative law, permitting residual assets to be allocated to mutual funds rather than to public-interest destinations. This structural tension between cooperative legislation and social enterprise regulation weakens the uniformity of the asset-lock regime and introduces interpretive uncertainty at the point of status loss.



general interest – is diluted by the flexibility afforded to these cooperatives in reallocating assets according to their own strategic priorities.

This divergence exposes a structural limitation in the regulatory efficacy of the asset-lock. Rather than acting as a durable constraint on asset appropriation, the asset lock in voluntary affiliations becomes a contingent mechanism, subject to the legal form and internal statutes of the entity. While the asset-lock symbolically affirms the primacy of social objectives, its practical application functions more as an *ex post* corrective instrument than as a robust, enduring constraint. Its conditional nature weakens its protective function, particularly when cooperatives exercise their autonomy to exit the social-enterprise regime and reallocate assets in line with their own sector-specific logic.<sup>62</sup>

A deeper examination of the normative hierarchies within the Italian legal framework reveals additional tensions. The descending legal order in this domain comprises: (1) the special law on social enterprises (Legislative Decree No. 112/2017), (2) the Third Sector Code (Legislative Decree No. 117/2017), and (3) the general law on cooperatives, including Article 111 of the Royal Decree No. 318 of 30 March 1942.<sup>63</sup> This composite framework creates interpretive tensions, particularly when the objectives of social-enterprise legislation – specifically ensuring general interests through a rigid asset-lock safeguard – conflict with the principles of

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<sup>62</sup> This conditional nature of the asset lock in voluntary affiliations remains evident for several reasons. First, while assets must be devolved to mutual funds upon the renunciation of social enterprise status, this obligation arises only when a cooperative voluntarily exits the social-enterprise framework. The obligation to redirect assets is thus contingent on the cooperative's decision to cease operating as a social enterprise, rather than being an inherent and immutable legal requirement. This mechanism applies particularly to non-social cooperatives with social-enterprise status, which may voluntarily acquire and renounce social-enterprise status under Legislative Decree No. 112/2017. In contrast, social cooperatives are bound by the *ex lege* social-enterprise framework and are generally considered unable to voluntarily relinquish their status, though statutory amendments in practice may result in loss of social-cooperative identity and consequent cessation of *ex lege* social-enterprise status. Second, voluntary exit permits reallocating resources according to sector-specific logic; mutual funds serve the cooperative sector and may not align with the original public-interest intent of the social-enterprise framework. Third, cooperatives' internal statutes continue to influence asset management, indicating residual discretion over asset use within legal limits. Finally, unlike social cooperatives, which are presumed permanently bound by the asset lock, non-social cooperatives with social-enterprise status retain autonomy over asset allocation post-exit, underscoring the conditional and contingent nature of the asset-lock regime in voluntary affiliations. See Legislative Decree No. 112/2017, art. 12(5); *Codice Civile*, art. 2545-undecies (1).

<sup>63</sup> CNN, *Studio n. 205-2018/I*, 6.

cooperative law, which prioritizes member autonomy and sectoral development. When CONSIS exercises its right to exit, the regulatory focus shifts toward a broader, less targeted logic of mutuality, thereby subordinating the asset lock's intended protective function.

The practical consequences of this regulatory flexibility are far-reaching. CONSIS may justify its exit from the social-enterprise framework on the grounds of financial distress or changes in leadership, and upon exit, the reallocation of residual assets to cooperative development funds can often support ventures that diverge from the original social purpose.<sup>64</sup> As a result, assets initially earmarked for general interests may be redirected into a cooperative ecosystem that lacks explicit social commitments, thereby undermining the missions of social enterprises.

In essence, the Italian regulatory framework delineates two distinct trajectories for the asset-lock instrument: one that is intrinsic and immutable for social cooperatives and one that is conditional and reversible for CONSIS. This bifurcation raises an important doctrinal question: should the asset lock be viewed as an inherent attribute of an entity's legal identity or as a contingent consequence of an elective status? The Italian model, particularly with regard to social cooperatives, supports the former approach, ensuring robust protection of social assets. This contrasts starkly with models such as Luxembourg's SIS-SCOP, where de-accreditation introduces uncertainty regarding asset protection.

Ultimately, the Italian framework exposes an intrinsic tension between legal form and normative substance. While the asset-lock functions effectively within the rigid framework of *ex lege* social enterprise status, it proves vulnerable under the elective dynamics governing CONSIS. This divergence undermines the internal coherence of the social-enterprise regime and raises profound questions about the efficacy of legal mechanisms designed to secure and perpetuate the social purpose within hybrid organizational forms. The Italian case thus provides a critical lens through

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<sup>64</sup> An illustrative case is a non-social cooperative with social-enterprise status in Italy – initially focused on delivering social services to marginalized communities – that exited the social-enterprise regime after experiencing financial distress and leadership changes aimed at reducing regulatory burdens. Upon exit, the cooperative redirected its residual assets to a mutual fund for cooperative development, pursuant to *Codice Civile*, art. 2545-undecies. (1). While this allocation preserved the assets within the cooperative sector, the funds were no longer specifically tied to the enterprise's original social objectives. As a result, resources were diverted from the cooperative's initial mission, demonstrating mission drift through dilution of its commitment to serve marginalized groups. See *Codice Civile*, art. 2545-undecies (1).

which to examine the broader challenges of maintaining social objectives in the face of organizational flexibility.

## **5. Comparative assessment: asset-lock resilience after voluntary exit from social enterprise status**

This article has examined the resilience of the asset-lock mechanism through the lens of voluntary exit from social-enterprise status, arguing that asset dedication must be understood not as a static feature of organizational law but as a temporal and structural commitment tested at the moment of departure. Across the UK, Ireland, Luxembourg, and Italy, the analysis demonstrates that the credibility of social-enterprise regulation turns less on the nominal existence of an asset lock safeguard than on the legal architecture governing its irreversibility.

Three overarching findings emerge.

First, form-constitutive regimes, most clearly illustrated by the UK CIC and the Italian social cooperative, embed asset dedication within the legal identity of the entity, restricting exit and rendering mission drift structurally implausible. In these systems, social commitment is upheld by statutory entrenchment, regulator veto power, and the mandatory transfer of residual assets to mission-aligned bodies. Asset dedication thus functions as a hard governance constraint rather than a discretionary rule.

Second, where social-enterprise identity is not grounded in legal form but in organizational choice, asset dedication is structurally more vulnerable. Ireland exemplifies a policy-recognized, governance-dependent model: there is no statutory social-enterprise status, and the CLG merely operates as a vehicle through which social-enterprise commitments are voluntarily embedded. Luxembourg offers a different but equally fragile configuration. Although SIS status is formally granted by ministerial accreditation, the legislative silence on voluntary de-accreditation, the absence of statutory post-exit asset-redirection rules, and the discretionary nature of supervisory practice create a regime in which accumulated social assets may, in practice, be exposed to private appropriation once SIS identity is relinquished. The statutory flexibility afforded to SCOP voting structures further weakens internal mission-preservation safeguards. In both jurisdictions, where legal irreversibility is not guaranteed and supervision operates primarily through soft administrative guidance, the asset-lock

becomes contingent, uncertain, and vulnerable to mission dilution once member incentives shift.

Third, Italy illustrates the consequences of dual normative hierarchies within the same legal order. Social cooperatives, as *ex lege* social enterprises, cannot voluntarily exit the regime; the asset lock is permanent and integral to legal identity. By contrast, CONSIS may renounce that status. While residual assets are ordinarily redirected to mission-bound entities, a statutory exception permits the transfer to cooperative mutual funds, reallocating dedicated assets into the cooperative ecosystem rather than the general interest. This mechanism preserves mutualistic capital continuity but partially weakens the universality of general-interest protection, revealing a model in which cooperative normative logic can supersede social-enterprise dedication at the point of exit.

Taken together, these findings show that hybrid enterprise law constitutes a distinct regulatory field, defined by whether mission commitments survive organizational reorientation. Entry rules may signal purpose, but exit rules determine credibility. A social enterprise proves its social character not when it enters the regime but when it seeks to leave it.

Effective legal design, therefore, requires mandatory residual-asset dedication, constitutional entrenchment of core purposes, and regulatory gatekeeping at exit, particularly in voluntary-status systems. Absent such protections, hybrid forms risk enabling private or sectoral reappropriation of collectively generated value, thereby weakening the legitimacy of social-enterprise frameworks.

As hybrid forms proliferate, lawmakers must look beyond formation architecture and focus on preserving the irreversibility and enforceability of social commitments across the organizational lifecycle. Exit remains the doctrinal locus at which the social mission becomes either a binding social obligation or a disposable aspiration. Ensuring the persistence of asset dedication, once pledged, is therefore central to the structural integrity and future evolution of social-enterprise law.

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