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# The International Handbook of Social Enterprise Law

## Benefit Corporations and Other Purpose-Driven Companies

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# Social Enterprises and Benefit Corporations in Italy


**Livia Ventura**

## Contents



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## 1 An Introduction to the Italian Benefit Corporation

The new capitalist paradigm embodied by the benefit corporation movement is not something completely new for Italy; on the contrary, it is deeply rooted in a traditional Italian line of economic thought—the so-called civil economy[1]—based on the civic humanism of the thirteenth and fourteenth centuries and developed through the Italian Enlightenment philosophy in the eighteenth century by both the Milanese[2] and Neapolitan[3] schools.[4]

Furthermore, the Italian entrepreneurial environment has experienced business models close to that of the benefit corporation long before its birth. Among many, examples are the stakeholder approach of the Olivetti group carried out from 1943 to 1960[5] or the humanistic enterprise business model of Brunello Cucinelli's luxury fashion brand funded in 1978.[6]

It is therefore not surprising that Italy has been the first country in the world to adopt the US benefit corporation model (so-called *società benefit*), which it transplanted into its legal system at the end of 2015, effective since January 1, 2016.

The legal transplant[7] was preceded by the development of the B Corp certification movement, sponsored by B Lab. *Nativa s.r.l.*, a sustainability consultancy company, [8] has been, since February 2013, the first certified B Corp in Italy (and, together with

[1] In a nutshell, we can say that the civil economy places well-being, virtue, and the common good alongside economic goals like market share, increased productivity, and competitiveness.

[2] Among Milanese scholars: Pietro Verri, Cesare Beccaria, Gian Domenico Romagnosi, Carlo Cattaneo.

[3] Among Neapolitan scholars: Gianbattista Vico and Antonio Genovesi. In particular, it is interesting to highlight that the first university chair in economics in the world was established at the University of Naples in 1753. It was entitled "Chair in Civil Economy" and the first holder of that chair was Antonio Genovesi, see Zamagni (2018), p. 52.

[4] On this issue, see the modern fathers of the "civil economy" school: Bruni and Zamagni (2007); Bruni (2009); Zamagni (2013); Bruni and Zamagni (2015).

[5] The stakeholders' involvement in firm management and the creation of a strong company-community relationship has already been experienced by some enlightened entrepreneurs, such as Adriano Olivetti, the CEO of the Olivetti group from 1943 to 1960; see, e.g., Sciarelli and Tani (2015), pp. 19–36.

[6] In 1978 Brunello Cucinelli started his activity as a cashmere producer. Today, Brunello Cucinelli S.p.A. is a publicly traded enterprise and a leading manufacturer of luxury fashion apparel. The Italian headquarters of the company is the small town of Solomeo, the fourteenth-century hamlet outside Perugia. The company's founder has striven to create an enterprise that follows principles of what he calls "humanistic capitalism" based on the pursuit of growth and profitability in a "gracious way", with particular attention to human resources development. See, e.g., La Rocca (2014), pp. 9–34.

[7] On this issue, Ventura (2016), pp. 1134–1167.

[8] Nativa, as the licensee of The Natural Step for Italy, incorporates and applies the innovation methodologies of The Natural Step, an international nonprofit organization and a benchmark in the research and implementation of sustainability strategies since 1989. Nativa is an advisor to investment funds and a cofounder and strategic partner of NextEP, the first Italian Sustainable Investment platform.

other four companies,[9] the first to register as a *società benefit* on February 26, 2016). Since then, it has become the country partner of B Lab in Italy and has been a key actor in introducing the benefit corporation law. [10]

*Società benefit* (SB) were introduced in Italy with the 2016 "Stability Law",[11] which incorporated the parliamentary initiative bill on "*Disposizioni per la diffusione di società che perseguono il duplice scopo di lucro e di beneficio comune*".[12]

## 2 The Benefit Corporation Phenomenon in Italy: Some Data

Data show that at the beginning of 2022, in Italy, there were over 120 certified B Corps. [13] As for the number of *società benefit*, it is not possible to have complete information, given that, according to law, it is not mandatory to use the denomination *società benefit* or the abbreviation SB next to the company name registered with the Italian Company's Register Office, and there is not a special section in the register exclusively dedicated to *società benefit*. However, as of September 30, 2021, there were 1344 *società benefit* registered with such name in the national Company's Register. [14]

Studies carried out between 2019 and 2021 reveal that as far as their organizational structure is concerned, the majority of SB are organized as *società a responsabilità limitata* (i.e., limited liability company). [15] Among the *società benefit* registered in the national Company's Register as of September 2021, over 9% were

[9]Together with Nativa, the other companies that acquired the legal status of *società benefit* at the beginning of 2016, soon after the introduction of the Italian benefit corporation law, were D-Orbit (a space security company), Dermophisiologique (a company in the cosmetic industry), Croqqer.it (a marketplace for the exchange of local working services), and Mailwork (a platform of services regarding sustainable building redevelopment and renovation).

[10]Nativa (through its founders, Paolo Di Cesare and Eric Ezechieli) took part in the working group (which I also had the opportunity to participate in) set up and led by Senator Mauro Del Barba, who, in April 2015, filed a bill (A.S. No. 1882/2015) with the Italian Senate of the Republic aimed at introducing the *società benefit* in Italy.

[11]Law No. 208 of December 28, 2015 (G.U. 30.12.2015), "*Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (Legge di Stabilità* 2016)" art. 1, paragraphs 376–384.

[12]Literally "Provisions for the diffusion of companies that serve the dual purpose of profit and public benefit", bill A.S. No. 1882/2015, communicated to the Presidency of the Italian Senate of the Republic on April 17, 2015.

[13]Data provided by B Lab Europe, available at https://bcorporation.eu/about-b-lab/country-partner/italy. According to the website, in Italy there are 124 certified B Corps as of January 2022 (accessed on January 10, 2022).

[14]See Balestra, Caruso (2022). A partial list of the Italian *società benefit* can be found at http://www.societabenefit.net/elenco-delle-societa-benefit/.

[15]See Bellavite Pellegrini et al. (2020b), p. 8; Balestra and Caruso (2022).

*società per azioni* (i.e., corporation), while about 87% were *società a responsabilità limitata*. [16] The others were cooperative companies or organizational forms that can be placed under the partnership category.

Among the existing *società benefit*, as of January 2022, 84 were also certified B Corps. [17] It is necessary to highlight that, like in the United States, not all certified B Corps are *società benefit* and vice versa. On the one hand, there are SB that are not certified B Corps because Italian law does not require *società benefit* to be also certified by B Lab. It only requires the assessment of the company's impact through the use of any third-party standard available on the market (B Lab's Benefit Impact Assessment is only one of the available standards). On the other hand, according to B Lab's internal regulation, Italian certified B Corps shall adopt the legal status of *società benefit* within a few years (two or three) from their certification to maintain the certification itself.[18]

Data from 2019 and 2021 also show that most *società benefit* are small-medium enterprises, [19] privately owned, and located in northern and central Italy. [20] As for the business sector, SB mainly operate in three macro-sectors: wholesale/retail trade, manufacturing, and service sectors. [21]

[16] Information elaborated from data proposed by Balestra and Caruso (2022).

[17] Information elaborated from data provided by B Lab Europe, available at https://bcorporation.eu/about-b-lab/country-partner/italy.

[18] For further information about the relationship between *società benefit* and Certified B Corps in Italy see the Italian official *società benefit* website at http://www.societabenefit.net/domande-piu-frequenti/.

[19] However, among Italian SB, it should be mentioned Eni gas e luce S.p.A, a wholly-owned subsidiary of Eni S.p.A. (a major player in the global oil and gas sector) that sells gas and electricity to households and businesses, which acquired the status of SB in July 2021. Some other relevant SB are: (*i*) Chiesi Farmaceutici S.p.A., an international research-oriented pharmaceutical group that in 2019 become a *società benefit* and the largest global pharmaceutical group to be awarded the B Corp Certification; (*ii*) Aboca S.p.A., a company leader in therapeutic innovation based on natural molecular complexes, which become a *società benefit* in 2018 and received the B Corp certification in 2019; (*iii*) Davines S.p.A., a family-owned, international hair care brand distributed in 70 countries that achieved the B Corp certification in 2016 and acquired the *società benefit* status in 2019; (*iv*) D-Orbit S.p.A., the first aerospace company in the world to receive the B Corp certification in 2014, and among the first firms to acquire the status of *società benefit* in 2016; (*v*) Alessi S.p.A., a leading internationally renowned Italian Design Factories founded in 1921 that acquired the B Corp certification in 2017 and has become SB in 2020; (*vi*) illycaffè S.p.A., founded in 1933 in Trieste, which produces and sells worldwide coffee, has become a SB in 2020 and received the B Corp certification in 2021; (*vii*) Euro Company s.r.l., founded in 1979 and based near Ravenna, produces, selects and markets nuts and dried fruits, has become SB in 2018 and a certified B Corp in 2019.

[20] See Bellavite Pellegrini et al. (2020b), p. 9; Balestra and Caruso (2022).

[21] Bellavite Pellegrini et al. (2020a), p. 49; Bellavite Pellegrini and Seracini (2020), p. 71; Balestra and Caruso (2022).

It is worth mentioning that the status of *società benefit* has been acquired also by certain peculiar companies, such as companies with mixed public-private ownership [22] and companies overseen by public independent authorities, like the Italian Stock Exchange Supervisory Authority [23] and the Italian Insurance Supervisory Authority. [24]

Since its establishment, the SB movement in Italy has continued to grow. In December 2018, a representative association for the Italian *società benefit*, so-called *Assobenefit*, has been founded with the purpose of disseminating information on the "for benefit" model and fostering the birth of *società benefit* or the transformation of already existing firms into this business model.[25]

## 3 The Background of the Legal Transplant

The Italian system was traditionally based on the dichotomy between (*i*) for-profit entities (or "business entities"), business organizational forms with profit-making purposes provided in Book V, Title V, of the Civil Code, and (*ii*) nonprofit entities, characterized by ideal or altruistic purposes, such as foundations and associations, provided in Book I, Title II, of the Civil Code. In addition, the Civil Code, Book V, Title VI, provides for cooperative companies, which are characterized by a "mutual benefit purpose," that is, achieving exchanges of mutual aid between the members and the company. [26]

The fundamental distinction between for-profit and nonprofit entities has been partially overcome with the emergence of the Italian social enterprise movement. [27]

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[22] Farmacie Comunali Firenze (Farmacie Fiorentine A.Fa.M. S.p.A.) has been the first mixed public-private company in Europe and the first pharmaceutical network in the world to acquire the *società benefit* status in 2018, as well as the certification as a B Corp in 2019.

[23] Redo Sgr, an asset management company specialized in social housing, has been the first asset management company authorized by the Italian Stock Exchange Supervisory Authority (CONSOB) to acquire the status of *società benefit*.

[24] Assimoco S.p.A. has been the first insurance group to acquire the B Corp certification in 2018 and authorized by the Italian Insurance Supervisory Authority (IVASS) to acquire the status of *società benefit* in 2019.

[25] For more information, see the *Assobenefit* website available at: http://www.assobenefit.org/.

[26] The mutual purpose consists of directly providing goods, services, or job opportunities to members of the organization under better economic conditions than those available in the market. For a detailed description of the Italian organizational forms system, see Pernazza (2017).

[27] Several definitions of social enterprise exist, characterized by different approaches to the phenomenon. For example, it is worth mentioning that Europe and the United States have different approaches toward social enterprises. In Europe, the social enterprise is considered an alternative to traditional charities, while the United States embraced a broader view, including profit-oriented businesses organizations engaged in socially beneficial activities, hybrid dual-purpose businesses (mediating profit goals with social objectives), and nonprofit organizations engaged in mission-supporting commercial activity. On this issue see Katz and Page (2010), p. 59; Esposito (2013),

The starting point in that direction dates back to the 1990s, when the law recognized the existence of the so-called *cooperative sociali* (social cooperatives). [28] Social cooperatives essentially provide *a)* social services, such as healthcare and educational services, or *b)* work integration (i.e., the performance of any activity with the aim of providing employment for disadvantaged people).

Later on, in 2006, the so-called *impresa sociale* (literally "social enterprise"[29]) was introduced. [30] In Italy, the legal status of the "social enterprise" can be acquired by all eligible organizations, regardless of their structure (business organizations, cooperatives, nonprofit entities). To be eligible as a "social enterprise," an organization must be privately owned, have a social purpose, comply with the nondistribution constraint, [31] and make publicly available its financial statements and social report on the fulfillment of its social mission.

A "social enterprise" must perform an "entrepreneurial activity" (i.e., the activity must be productive, professional, economic, and organized [32]), but its business has to be of social utility (i.e., working in the sectors of welfare, health, education, training, research, culture, environmental protection, and social tourism or helping the integration into the workplace of underprivileged or disabled people, regardless of the sector of activity). Moreover, "social enterprises" were originally characterized by strict limitations on the remuneration of workers and managers and by a strong nonprofit purpose, meaning that the net profit deriving from their activity could not be distributed (directly or indirectly) among its members and owners.

The strict areas in which a "social enterprise" could operate and the nondistribution constraint (together with the other drawbacks of the 2006 statute, such as the absence of any tax benefits and difficulty in raising finances), were partially amended by the Italian legislator through the "Third Sector Reform" of 2017. [33] The reform expanded the possible activities of a "social enterprise." It provides the possibility of generally pursuing (mainly and permanently) civic, solidarity, or social utility objectives (including microcredit, social housing, fair trade, social farming, or employing in its activity at least 30% of disadvantaged or disabled workers) and allowed the distribution, though to a limited extent, of its net profits and surpluses to the members. [34]

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p. 646; Kerlin (2006), pp. 247–263; Fici (2020). On the development of the Italian social enterprise movement see Borzaga et al. (2017); Poledrini (2018), pp. 1–19.

[28] Law No. 381 of November 8, 1991.

[29] In Italy, the reference to "social enterprise" has a specific meaning, i.e., an entity that, according to the law, can be structured as a for-profit entity, even though it pursues a nonprofit purpose.

[30] Legislative Decree No. 115 of March 24, 2006.

[31] See Hansmann (1980), p. 835 ff.; Hansmann (1981), p. 501 ff.; Ponzanelli (1991), pp. 469–470; Ponzanelli (1995), pp. 200–201.

[32] See art. 2082 of the Italian Civil Code (hereinafter ICC).

[33] Legislative Decree No. 112 of July 3, 2017.

[34] According to art. 3, Legislative Decree No. 112 of July 3, 2017, a social enterprise is now allowed to allocate an amount less than 50% of its net profits (after deducting possible losses) to: (*i*) free capital increase or distribution to shareholders, within a certain limits (the limit of the variation of an

The introduction of the "social enterprise" status allowed for the first time the use of for-profit organizational forms (provided in Book V of the Civil Code) for social utility purposes. However, it is important to stress that Italian "social enterprises," notwithstanding the nondistribution constraint amendment of 2017, remain firmly rooted in the nonprofit area, i.e., the "third sector."

This represents the most important difference between the Italian "social enterprise" and the *sociatà benefit*, the latter being included in the for-profit area and new "fourth sector" of the economy, in which boundaries between public, private, and nonprofit sectors are blurred and enterprises integrate social and environmental purposes with the business method.[35]

## 4 The Italian *Società Benefit*

### *4.1 Sources and Legislation Features*

The legal transplant of the benefit corporation into the Italian system was not the result of a long academic and political debate, considering that the provisions regulating *società benefit* were included in the 2016 "Stability Law" (a law aimed at regulating the country's economic policy through public finance and budgetary measures) approved at the end of 2015, when the debate was completely focused of the national economic policy rather than on the introduction of the new hybrid form.[36]

Before discussing the content of the Italian statute, it should be observed that the introduction of the *società benefit* seems to be in line with other provisions introduced into the Italian system in recent years. Among them are (*i*) the abovementioned introduction in 2006 of "social enterprises," subsequently reformed in 2017; (*ii*) the 2015 amendment of the Corporate Governance Code related to listed companies promoted by *Borsa Italiana* (the Italian Stock Exchange Supervisory Authority), which included references to the creation of value in the medium- and long-term periods, [37] further amended in 2020 by introducing an explicit reference to

index that measures annually the prices for families of workers and employees as calculated by the Italian Statistic Agency), if the social enterprise is incorporated as one of the business organizational forms provided by Book V of the Civil Code; (*ii*) regardless of the legal form of the social enterprise, to free contribution in favour of organizations of the third sector (other than social enterprises) aimed at pursuing specific projects with social utility.

[35] On the fourth sector see, among others, Kelley (2009), pp. 340–342; Gaffney (2012), pp. 329–332; Esposito (2013), pp. 645–648; Yockey (2015), p. 772.

[36] See De Donno (2018), p. 11.

[37] In particular, see the 2015 Corporate Governance Code, paragraphs 1.P.2. ("The directors act and make decisions with full knowledge of the facts and autonomously pursuing and placing priority on the objective of creating value for the shareholders over a medium-long term period.") and 1.C.1. ("The Board of Directors shall: . . . b) define the risk profile, both as to nature and level of risks, in a

sustainability; [38] and (*iii*) the transposal of Directive 2014/95/EU, as regards the disclosure of nonfinancial and diversity information by certain large undertakings and groups, [39] and Directive (UE) 2017/828, as regards the encouragement of long-term shareholder engagement. [40]

The Italian benefit corporation law is inspired by both the US Model Benefit Corporation Legislation (Model Act) and the Delaware Public Benefit Corporation Act, but it features some novelties. In particular, Italian law attempts to overcome a critical issue of the US model, [41] the one of controls on the actual pursuit of the public benefit.

The law does not create a new type of company in addition to those provided for in the Italian Civil Code (ICC) (in Book V, Titles V and VI), but rather, it outlines a new legal framework where the double purpose of profit and public benefit (i.e., *beneficio commune*) lies in the company's purpose clause, in the company's governance system, and in disclosure requirements.

In the Italian system, as opposed to the Model Act or major US benefit corporation state laws, *società benefit* is a governance model and a status available to all existing for-profit organizational forms[42] (i.e., partnerships, limited liability

manner consistent with the issuer's strategic objectives, taking into account any risk that may affect the sustainability of the issuer's business in a medium-long term perspective").

[38]The increasing attention towards sustainability has been confirmed by the New Corporate Governance Code approved by *Borsa Italiana* on January 2020, applicable to companies listed on the *Mercato Telematico Azionario* (MTA) managed by *Borsa Italiana* itself. The new features of the Code follow four fundamental guidelines: sustainability, engagement, proportionality, and simplification. With reference to the former, the New Code aims to encourage listed companies to adopt strategies that are increasingly oriented towards the sustainability of their business activities. According to the Code, the board of directors' priority task is to pursue the "sustainable success" of the company, defined as "the objective that guides the actions of the board of directors and that consists of creating long-term value for the benefit of the shareholders, taking into account the interests of other stakeholders relevant to the company". The board of directors is responsible for integrating sustainability objectives into the business plan, the internal control and risk management system, as well as the remuneration policies.

[39]Legislative Decree No. 254 of December 30, 2016. It is worth mentioning that, according to the Italian law, the nonfinancial disclosure requirements are mandatorily applicable only to a limited number of companies, i.e., "public interest entities," defined as Italian companies categorized as (i) issuers of securities traded on Italian or European regulated markets; (ii) banks; (iii) insurance companies; or (iv) reinsurance companies; and exceeding (on an individual or consolidated basis) certain thresholds at the end of the relevant fiscal year (such as 500 employees, and total net asset value of € 20,000,000, or total net revenues from sales and services of € 40,000,000). Other entities may voluntarily opt into the disclosure regime.

[40]Legislative Decree No. 49 of May 10, 2019.

[41]See White (2015), pp. 344–346.

[42]In particular, in the Italian system, we can identify two groups of for-profit companies. Firstly, there are organizational forms similar to Anglo-Saxon partnerships (so-called *società di persone*), such as *società semplice* ("informal partnerships," art. 2251 ff. ICC), *società in nome collettivo* ("general partnerships," art. 2292 ff. ICC), and *società in accomandita semplice* ("limited partnership," art. 2312 ff. ICC), which are all characterized by the absence of distinction between the assets of the partnership and those of its partners and the joint and several liability of the members for

companies, corporations) and cooperative companies[43] provided by the Civil Code, not just to corporations. [44]

Like in the United States, the Italian statute regulates only SB's main features, such as the entity's purpose, the directors' fiduciary duties, the disclosure requirements, and the control mechanisms, while the existing company law applies in matters not expressly regulated.[45]

## *4.2 Definitions and Purpose*

With regard to the purpose, the Italian law resumes the provisions of Delaware: SB are characterized by a dual-purpose clause, combining the production of profits and the pursuit of both a "General" and (one or more) "Specific" public benefits.[46]

*Società benefit* shall pursue, in addition to the profit-making purpose, one or more public benefit purposes (i.e., the Specific public benefit) and operate in a responsible, sustainable, and transparent manner vis-à-vis several categories indicated in a not exhaustive definition, such as individuals, communities, territories and the environment, cultural and social heritage, entities and associations as well as other stakeholders (i.e., the General public benefit).[47] The law provides broad definitions and does not clearly indicate how these different interests should be prioritized, giving directors a large degree of flexibility in this respect.

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partnership debts, aside from exceptions defined by law (e.g., for limited partners in a limited partnership). In the second group (so-called "*società di capitali*"), there are organizational forms characterized by juridical personality, the distinction between the assets of the corporation and those of its members, and the limited liability of the company's members, such as "*società per azioni*" ("corporation"/"joined stock company", art. 2325 ff. ICC), "*società a responsabilità limitata*" ("limited liability company", art. 2462 ff. ICC), "*società in accomandita per azioni*" ("limited partnerships by shares", art. 2452 ff. ICC).

[43] The so-called "*società cooperativa*" (art. 2511 ff. ICC) is an organizational form which, differently to the for-profit companies, is primary called upon to satisfy the common needs of the members. Cooperatives pursue a "mutual purpose" ("*scopo mutualistico*") and have limits in the distribution of profits. There are several forms of cooperatives and not all the cooperatives forms can acquire the SB status, e.g., it seems that the so-called "*cooperative sociali*" ("social cooperatives") cannot acquire the SB status.

[44] It must be said that a few states in the US extended the application of the "for-benefit" model to the limited liability company (LLC), e.g., Delaware introduced the "statutory public benefit limited liability company" in 2018.

[45] Law No. 208 of December 28, 2015, art. 1, paragraphs 377.

[46] Consequently, a company characterized only by responsible, sustainable, and transparent conduct toward all stakeholders (i.e., pursuing only the general public benefit) could not correctly qualify as a *società benefit*, and vice versa, a company in which the "common benefit" purpose is explicit but the business activity is not conducted in a responsible, sustainable, and transparent manner could not properly qualify as a *società benefit*.

[47] Law No. 208 of December 28, 2015, art. 1, paragraphs 376.

With regard to the general public benefit, the law also describes the scope of the general reference to "stakeholders," defining them as "the individuals or groups of individuals directly or indirectly involved in, or affected by, the activities of the benefit company, being, *inter alios*: workers, clients, suppliers, lenders, creditors, public administration and civil society."[48] The definition is very general and is not a "closed definition," and it permits identifying stakeholders different from those listed by law.

As for the specific public benefit, a *società benefit* shall identify, in its company purpose clause, the particular public benefit aim/s that the company intends to pursue.[49] *Beneficio comune* (public benefit) is also defined by law in a broad manner[50] as the pursuit of one or more positive effects or the reduction of negative effects with respect to one or more categories of stakeholders, such as the ones listed above.[51]

The public benefit purpose (both specific and general) can be considered as a complementary but equal purpose with respect to that of the company itself (i.e., profit-making purpose or mutual purpose). Consequently, from a theoretical standpoint, it is possible to affirm that the introduction of *società benefit* into the Italian system ends the rigid dichotomy that exists, in a functional perspective, between for-profit entities (as a model for speculative associationism, characterized by the selfish distribution of economic results) and nonprofit entities (as a model for other associations pursuing ideal or altruistic purposes, characterized by the unselfish distribution of economic results).

## *4.3 Formation*

Both newly established companies and already existing companies can acquire the status of *società benefit*. A new SB shall be incorporated in accordance with the applicable company law and *società benefit* statute. An existing company may become a *società benefit* by amending its articles of incorporation and by-laws (so that they contain the double-purpose clause: for profit and for benefit) in compliance with the relevant provisions applicable to each organizational form provided by the Italian Civil Code.[52]

The law does not explicitly address dissenters' rights with regard to shareholders who oppose the transition to or from the SB status. However, the amendment of the articles of incorporation and by-laws requires a special majority vote to protect the minority shareholders in the case of fundamental changes to the entity's purpose

[48] Law No. 208 of December 28, 2015, art. 1, paragraphs 378, letter b).

[49] Law No. 208 of December 28, 2015, art. 1, paragraphs 379.

[50] Law No. 208 of December 28, 2015, art. 1, paragraphs 378, letter a).

[51] Law No. 208 of December 28, 2015, art. 1, paragraphs 376 and 378, letter b).

[52] In compliance with arts. 2252, 2300, 2436, and 2480 ICC.

clause, such as the introduction of or deletion of the SB mission. Such amendment shall also be made public by filing it with the competent Company's Register Office in compliance with the applicable Civil Code provisions.

Regarding the amendment of the articles of incorporation and by-laws to acquire an SB status, a fundamental question under Italian law is the eventual application of the exit right granted to minority shareholders, especially in joint stock companies (S.p.A.) and limited liability companies (s.r.l.).[53]

According to Italian company law, minority shareholders have the right to withdraw from the company in a wide range of circumstances, all grounded on the disagreement of the minority with the resolutions passed by the majority shareholders. In case they decide to exercise their cash exit rights, [54] the company has the duty to repurchase the shares of the withdrawing shareholders.

In particular, shareholders of joint stock companies and limited liability companies are entitled to exercise their exit rights whenever a resolution that changes the business purpose clause of the company is adopted. In order to exercise their withdrawal right, the amendment must result in a significant or substantial change in the company's activity, which is reflected—according to scholars—in the investment risk. [55]

Thus, in the case of the introduction or deletion of the SB status, the amendment to the entity's purpose clause may, in practice, take a very different stance and may result or not in a change that can be considered relevant for the exercise of the withdrawal right. The relevance of the amendment depends on the activity already pursued by the company and the changes produced adding the public benefit purpose. The evaluations must be carried out on a case-by-case basis. However, it is worth remembering that minority shareholders are generally protected by the abovementioned special majority vote required for the approval of the amendments to the articles of incorporation and by-laws. [56]

Finally, to mirror the change in the purpose clause, the law provides that *società benefit* can choose to add, along with the company name and company type, the words "Società Benefit" or the abbreviation SB and use such denomination in its official document and communications to third parties.[57]

[53] Respectively regulated by art. 1437, paragraph 1(a) and 2473, paragraph 1, ICC.

[54] Exit rights can be exercised by sending a notice to the company through registered mail within 15 days after the publication in the Companies' Register of the resolution approved at the special meeting of shareholders.

[55] Piscitello (2016), p. 2502; Di Cataldo (2007), p. 227. See also Assonime, Circolare No. 19, July 20, 2016, p. 15, available at http://www.societabenefit.net/wp-content/uploads/2017/02/Assonime-Benefit-Corporation.pdf.

[56] On the issue see Siclari (2019), pp. 80–95.

[57] Law No. 208 of December 28, 2015, art. 1, paragraphs 379, third sentence.

### 4.4 Accountability and Governance Structure

The direct consequence of the inclusion of a public benefit purpose in the corporate purpose clause is the alteration of the governance structure and the powers, duties, and responsibilities of the directors.

With regard to directors' duties and responsibilities, Italian law draws its inspiration from the Delaware statute. In fact, it requires the directors to manage the company in a responsible, sustainable, and transparent manner (i.e., pursuing the general public benefit), balancing the (*i*) interests of the shareholders, (*ii*) the interests of other stakeholders (like those materially affected by the company's conduct), and (*iii*) the pursuit of the specific public benefit, or public benefits, identified in its articles of incorporation and by-laws.[58] Thus, directors have great discretion in achieving a higher purpose than simply maximizing shareholder value.

Failure to comply with this balancing obligation may be deemed a breach of the duties imposed on directors by law and the by-laws, with the consequent application of the relevant provisions on directors' liability provided by the Italian Civil Code for each organizational form.[59] Only the company itself and the shareholders (through a derivative action) have standing to bring suits alleging the breach of directors' duties and the failure to pursue public benefit in case of damages (e.g. reputational damages).

The law does not explicitly provide for (nor denies) any kind of duty or additional liability of directors vis-à-vis third parties benefiting from the public benefit. Thus, directors are generally protected from claims made by the beneficiaries of the public benefit that have no standing to sue both the company and its directors for failing to pursue the company's social mission. The only exception is represented by the doubtful (and difficult) possibility of bringing an action pursuant to articles 2395 (for corporations) and 2476, paragraph 6 (for limited liability companies), of the Italian Civil Code.[60] These articles provide for the right of third parties to bring a liability action against directors in the event they suffered damages as a direct result of the directors' misconduct.

The Italian statute, like the one of Delaware and unlike the Model Act, does not provide for any limitation or exoneration from personal liability on the part of *società benefit*'s directors and does not exclude the possibility of bringing claims for monetary damages against them. A personal action against directors is the central private enforcement tool offered to shareholders against directors' failure to comply with their duties of conduct and the duty to pursue a public benefit.

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[58] Law No. 208 of December 28, 2015, art. 1, paragraphs 377, first sentence and 380, first sentence.

[59] Law No. 208 of December 28, 2015, art. 1, paragraphs 381.

[60] According to the Italian Civil Code, third parties have the right, under art. 2395 ICC, to bring a liability action against directors of a joint stock company (*società per azioni*), but the damage they alleged must have directly affected their assets. The same remedy is recognized under art. 2476, paragraph 6 ICC, for third parties that suffered damages as a direct result of the misconduct of directors of a limited liability company (*società a responsabilità limitata*).

From the organizational perspective, a *società benefit* shall identify one or more individuals to be appointed as "impact manager/s," with the specific task of pursuing the public benefit.[61] The choice of the impact manager is left to the board of directors that has wide discretion in the selection. He/she can be a director, an officer, or another person working within the company, but the function can also be outsourced.

The law, unlike the Model Act, does not regulate in detail the role of the impact manager but more generally refers to "individuals ... with the role and tasks for pursuing the common benefit." The impact manager may assist directors in their activities or check whether the company's activities are consistent with its social and environmental objectives. However, the appointment of the impact manager and his/her eventual liability does not exonerate directors and auditors from their duties and responsibilities.[62]

## 4.5 Transparency Requirements and Control Systems

To create greater accountability and transparency, companies adopting the "for-benefit" model are required to publicly report on their social and environmental performance so that customers, workers, investors, and policy makers can assess the company's impact.

In regulating the transparency requirements and the control system, the Italian law does not simply transplant the US provisions but introduces new elements.

In accordance with the Model Act, Italian law requires *società benefit* to produce and publish on their website (if existing)[63] an annual benefit report[64] detailing their pursuit of the public benefit.[65] Moreover, the company's impact and the pursuit of the public benefit must be assessed using a third-party standard.[66]

In particular, the annual benefit report shall include the following:[67]

[61] Law No. 208 of December 28, 2015, art. 1, paragraphs 380, second sentence.

[62] Assonime, Circolare No. 19, July 20, 2016, available at http://www.societabenefit.net/wp-content/uploads/2017/02/Assonime-Benefit-Corporation.pdf, pp. 23–24.

[63] Law No. 208 of December 28, 2015, art. 1, paragraphs 383.

[64] The law does not provide a specific indication, but it can be assumed that the annual benefit report must be prepared by the company's directors (who are also in charge of drawing up the annual financial statements according to art. 2423 ICC), also with the collaboration of the impact manager. The benefit report should not be considered an integral part of the annual financial statements but an autonomous document, which is not subject to approval at the general shareholders' meeting.

[65] Law No. 208 of December 28, 2015, art. 1, paragraphs 382.

[66] Law No. 208 of December 28, 2015, art. 1, paragraphs 382, letter b).

[67] Law No. 208 of December 28, 2015, art. 1, paragraphs 382.

(a) the description of the specific objectives and actions implemented by the directors to pursue the public benefit purposes, and the possible mitigating circumstances, which have prevented or slowed up their achievement;
(b) the evaluation, through the chosen third-party standard, of the impact generated by the company in the areas of corporate governance, workers, other stakeholders, and environment;[68]
(c) a specific section containing the description of the new objectives that the *società benefit* intends to pursue in the following fiscal year.

The third-party standard used must comply with the requirements listed by the law. It must be comprehensive (in that it assesses the impact of the business and its operations aimed at pursuing the public benefit on all the possible stakeholders), independent (developed by an entity not controlled by, or affiliated to, the *società benefit*), credible (developed by a subject that both has access to the necessary expertise and uses a balanced scientific and multistakeholder approach), and transparent (in that information about the criteria used, the process and persons developing or supervising those criteria, and the sources of financial support for the organization developing them are made publicly available).[69]

Italian law goes beyond the US model in that, on the one side, it requires the annual benefit report to be attached to the company's annual financial statements (and filed with the Company's Register Office),[70] with all the legal consequences and sanctions this entails in the event of a failure to deposit.[71]

On the other, differently from the United States (where there is no public enforcement on benefits corporations' activities), Italian law overcomes the private enforcement system, based on the company's action or the shareholders' derivative suits and the eventual reactions of consumers and the market to greenwashing, establishing a system of public enforcement. It gives the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato* (AGCM)) the power to apply the regulation on misleading advertising and misleading business practices[72] to sanction companies that, using the SB's legal form or the name *società benefit* or the abbreviation SB, repeatedly and without good cause do not pursue the public benefits provided for in their by-laws.[73]

[68] Law No. 208 of December 28, 2015, Annex 5.

[69] Law No. 208 of December 28, 2015, Annex 4.

[70] Law No. 208 of December 28, 2015, art. 1, paragraphs 382.

[71] Failure in preparing and filing the annual report together with the financial statements could result in the application of existing sanctions provided by art. 2630 ICC (i.e., financial penalties).

[72] See Legislative Decree No. 145 of August 2, 2007; and Legislative Decree No. 206 of September 6, 2005, (*Codice del consumo*), Part II, Title III, in particular art. 20 and 21–23.

[73] See Law No. 208 of December 28, 2015, art. 1, paragraph 384; and the introduction to the Parliamentary initiative bill A.S. No. 1882/2015 on "*Disposizioni per la diffusione di società che perseguono il duplice scopo di lucro e di beneficio comune*", p. 4.

In the performance of its supervisory activities, the AGCM, endowed with inspection, inhibitory, and sanctioning powers, may initiate ex officio, as well as at the request of interested individuals or organizations, an administrative proceeding aimed at investigating any violations by a *società benefit.*[74]

The supervisory activity of an independent authority should contribute to the strengthening of the protection of stakeholders, which lack direct action against the company, and building a brand—the one of *società benefit*—characterized by greater guarantees of reliability for investors, consumers, and policy makers.

### *4.6 Specific Tax Treatment*

With regard to tax treatment, in Italy, there are no specific tax advantages associated with the use of the "for-benefit" model.[75] *Società benefit* are subject to ordinary income tax rules provided by the Income Tax Code (TUIR) [76] for each business organizational form.

## 5 Reactions to the Legal Transplant

The *società benefit* statute has been subject to subsequent interpretations and debates on whether it was truly necessary and appropriate to introduce this new hybrid form into the Italian system.

In the opinion of some scholars, existing for-profit and nonprofit entities were sufficient for the development of the fourth sector and there was no need for *società benefit*, given that for-profit organizational forms were already allowed [77]—in

[74] The AGCM procedure is regulated by the Resolution of the Authority No. n. 25411 of April 1, 2015, on "*Approvazione del regolamento sulle procedure istruttorie in materia di pubblicità ingannevole e comparativa, pratiche commerciali scorrette, violazione dei diritti dei consumatori nei contratti, violazione del divieto di discriminazioni e clausole vessatorie*".

[75] There is a debate among scholars over the possible reduction (according to already existing statutory and case law) of the company's taxable income with regard to all costs related to the pursuit of the public benefits provided for in the by-laws, in accordance with the so-called inherence principle of corporate income tax. See Setti (2016), pp. 2303–2305; Cordeiro Guerra and Lenzi (2021), pp. 307–321.

[76] *Testo Unico delle Imposte sui Redditi* (TUIR), Presidential Decree No. 917 of December 22, 1986.

[77] Some Italian scholars supported the idea that business entities can be used not only for profit-making purposes but for the realization of any lawful purpose, among them Santini (1973), pp. 151–173; Carrabba (1994), pp. 111–115; Di Sabato (2004), p. 45.

practice—to pursue nonprofit purposes (e.g., through CRS programs and philanthropy) and, thus, would have been allowed to pursue public benefit purposes.

Other scholars [78] highlighted that, based on Civil Code provisions and especially article 2247,[79] the Italian system (like the French system before the reform of 2019 [80] and unlike the German, Swiss, or US ones) expressly and tightly links the use of business entity structures (provided by Book V, Title V, of the Code) with the pursuit of an economic activity and a profit-making purpose. Hence, according to a systematic interpretation of the Civil Code, business entities cannot be used for the pursuit of nonprofit purposes (except marginally) unless the law explicitly allows for it, as happens with social enterprises (since 2006) or *società benefit* (since 2016).

Accepting the latter interpretation, the legal transplant seems to have been necessary, given that the Italian Civil Code did not explicitly allow the use of business entities for hybrid purposes pursued by triple bottom-line [81] oriented companies. Moreover, regardless of the different interpretations of the Civil Code, the *società benefit* statute provides legal certainty by eliminating the risk of rejection by the Company's Register Office of the articles of incorporation and by-laws of dual-purpose companies. [82]

The *Società benefit* model also provides other advantages for entrepreneurs willing to pursue a social and environmental mission. The first is that the *società benefit* statute allows the safeguarding of the so-called *fidelity to the mission* following a change of control.[83] The second, is the increased flexibility through

[78] Among the scholars who support the idea that business entities cannot be used for nonprofit purposes, unless explicitly provided by the law, see Marasà (1984), pp. 413–418; Ferri (1987), pp. 23 ff.; Marasà (1994), pp. 194–197; Marasà (1995), pp. 193–195.

[79] Pursuant to article 2247 ICC a company is formed by an agreement (*contratto di società*) by which "*two or more persons confer goods or services for the mutual performance of an economic activity with the purpose of sharing the profits*".

[80] Law No. 2019-486 of May 22, 2019, art. 169, amended the Civil Code (artt. 1833 and 1835) and the Commercial Code (e.g., artt. L. 210-10, L. 210-11, L. 225-35, and L. 225-64) to allow a for-profit company to incorporate social and environmental objectives (a public interest purpose) into the corporate objects. In particular, with regard to the general provisions regulating company agreements, the reform introduced a new paragraph to article 1833 of the Civil Code, providing that the company must be managed taking into consideration the social and environmental issues connected to its activity; consequently, shareholders and directors must comply with them in the management of the company.

[81] See Elkington (1997); Fisk (2010); Slaper and Hall (2011), pp. 4–8.

[82] In this regard, it is interesting to recall the Nativa case. In 2012, Eric Ezechieli and Paolo Di Cesare, the cofounders of Nativa s.r.l., decided to incorporate their company consistently with the benefit corporation legal model, which at the time existed only in a few states in the United States. The two entrepreneurs decided to include a reference to the "happiness" of their members and workers in the company purpose clause. When the article of association was presented to the Milan Chamber of Commerce for filing with the Company's Register Office, it was rejected several times because the concept of "happiness" was not accepted as a proper purpose for a limited liability company (i.e., a profit-making entity).

[83] Following a change of control in the company, the new majority shareholders can decide to terminate the original social mission and to pursue only the for-profit purpose, which is the only

which directors can pursue social and environmental objectives due to the decay of the shareholder wealth maximization paradigm as a parameter they have to consider in their decisions (even though in Italy the shareholder primacy doctrine does not have the same impact it has in the Anglo-American corporate model) to avoid claims for breach of their duties. [84]

Furthermore, as mentioned above, *società benefit* do not have tax incentives, but they can have a reputational advantage in the eyes of third parties (e.g., clients, suppliers, investors, and other stakeholders). Thus, the real advantage is the possibility of making use of such qualification within the market, which currently is increasingly oriented toward sustainability. [85]

Finally, the introduction of a well-known and recognized international hybrid entity model, such as the benefit corporation model, may play an important role for Italian companies. It can give them access to a rapidly growing fourth sector in a global market perspective and can enhance the credibility and branding of companies choosing to adopt it.

## 6 Further Legislative Evolution

After the legal transplant of 2015, the Italian legal system continued to support the SB model.

At the international level, Italy played an important role in the OSCE Parliamentary Assembly Annual Session of July 2019, dedicated to "Advancing Sustainable Development to Promote Security: The Role of Parliaments." The Italian delegation indeed proposed the inclusion of two amendments in the "Luxembourg Declaration" issued during the Annual Session. [86]

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corporate purpose provided in the articles of incorporation and by-laws of an ordinary business entity. In the case of *società benefit*, the public benefit purpose is integrated into the articles of association and by-laws and is protected by supermajorities provided for in the amendment of such documents.

[84] On the shareholder wealth maximization theory in the Italian legal system see, among others, Jaeger (2000), p. 798 ff.; Ferrarini (2002), pp. 476–477; Costi (2010), p. 193; Montalenti (2010), pp. 84, 98–100. For a historical and comparative perspective on the issue see Jaeger (1964); Guaccero (2007). On the relationship between corporate governance systems and company's interest Stella Richter (2010), pp. 454–462.

[85] See e.g., the BlackRock Investment Institute, *Sustainability: The future of investing*, February 2019, showing how assets in dedicated sustainable investing strategies have grown at a rapid pace in recent years; Reints (2019); Whelan and Kronthal-Sacco (2019).

[86] In July 2019, the OCSE (Organization for Security and Co-operation in Europe) Parliamentary Assembly's Annual Session in Luxembourg adopted the Luxembourg Declaration (the Luxembourg Declaration and Resolutions, adopted by the OSCE Parliamentary Assembly at the Twenty-Eighth Annual Session, Luxembourg July 4–8, 2019), containing recommendations to national governments, parliaments and the international community in the fields of political affairs, security, economics, environment, human rights, and humanitarian questions. The document emphasizes the

The first amendment calls on parliaments and governments of Organization for Security and Co-operation in Europe (OSCE) states to take action through the adoption of new statutes that encourage and facilitate a responsible, sustainable, and transparent corporate behavior, "promoting laws to set up and foster companies that pursue—alongside profits—one or several goals with social or environmental benefits." [87] Hence, the amendment encourages the adoption of hybrid models for businesses, such as the benefit corporation model.

The second amendment is aimed at promoting impact assessments for companies operating in the environment, social, and government sectors, as well as the creation and use of metrics correlated to the Sustainable Development Goals. [88]

At the national level, the Italian legislator is taking action to support the development of *società benefit* through the economic leverage of public procurement and temporary incentives for their creation.

In December 2019, the Parliament amended the Italian public procurement law (i.e., the "Public Contract Code") [89]—applicable to public works, supply, and service contracts and concessions—introducing new reward criteria based on the positive impact of the company, to be used in the evaluation of tenders. [90]

In attributing such reward, contracting authorities must now take into account, together with the "legality rating" [91] and "company rating," [92] the positive impact—assessed with the use of a third-party standard—generated by the tendering company

commitment of OSCE members to implementing the United Nations 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals, as well as the necessity to ratify the 2015 Paris Agreement on climate change.

[87] Luxembourg Declaration and Resolutions, adopted by the OSCE Parliamentary Assembly at the Twenty-Eighth Annual Session, Luxembourg July 4–8, 2019, paragraph 80.

[88] Luxembourg Declaration and Resolutions, adopted by the OSCE Parliamentary Assembly at the Twenty-Eighth Annual Session, Luxembourg July 4–8, 2019, paragraph 81.

[89] The public procurement legislation applicable in Italy is mainly laid down by Legislative Decree No. 50, April 18, 2016, so-called "Public Contract Code" ("*Codice dei contratti pubblici*"), as amended. The regulatory framework includes secondary sources, such as ministerial decrees and guidelines issued by the National Anti-Corruption Authority (ANAC).

[90] See the amendment to art. 49, contained in Law No. 157 of December 19, 2019, titled "*Conversione in legge, con modificazioni, del decreto-legge 26 ottobre 2019, n. 124, recante disposizioni urgenti in materia fiscale e per esigenze indifferibili*", which amended articles 83, paragraph 10, and 95, paragraph 13 of Legislative Decree No. 50, April 18, 2016.

[91] The Italian Competition Authority (AGCM) is in charge of the "legality rating" system, which indicates the ethical value of the company and enhances its reputation. The legality rating contributes to the determination of the "company rating" and not vice versa (see art. 213 of Legislative Decree No. 50, April 18, 2016).

[92] ANAC (the National Anti-Corruption Authority) is in charge of the "company rating" system, which is an indicator of the conduct that the company has had in the context of public contracts (taking into account the previous behavior of the company with regard to failure to use the preliminary aid; mandatory reporting of extortion and bribery requests; compliance with deadlines and costs during the execution of contracts, as well as with the incidence and outcomes of disputes, both when participating in tender procedures and during the execution of the contract), see art. 83, paragraph 10, of Legislative Decree No. 50, April 18, 2016.

in the areas of corporate governance, workers, other stakeholders, and the environment. The amendment to the public procurement law explicitly recalls the legal requirements provided by the *società benefit* statute for the annual benefit report,[93] but the reward can be achieved by all companies producing such a report on their impact, regardless of their status as *società benefit*. The National Anti-Corruption Authority (ANAC) is in charge of defining the evaluation criteria for assessing the impact generated by the company within the framework of the public procurement procedures.[94] However, it has not yet issued the appropriate guidelines and is in the public consultation process. [95]

As for incentives, among the measures offered to support the economy during the COVID-19 emergency, in July 2020, special temporary incentives (up to the end of 2021) were provided to strengthen the *società benefit* movement. A tax credit, equal to 50% of the costs related to the establishment of a *società benefit* or to the acquisition of an SB status, has been provided. Moreover, up to three million euros fund for the promotion of the "for-benefit" model in the national territory has been created at the Ministry for Economic Development.[96]

## 7 Final Remarks on the Italian System from a Comparative Law Perspective

A few years after their introduction, *società benefit* seem to be widely accepted, and the movement, as highlighted at the beginning of this chapter, continues to grow. The Italian community is one of the world's fastest-growing "for benefit" communities. As of September 2021, in Italy, there were more than 120 certified B Corps and 1344 *società benefit*. It is worth stressing that 31% of such *società benefit* were established between April and September 2021, notwithstanding the economic downturn caused by the pandemic, [97] meaning that the *società benefit* is still perceived by entrepreneurs as a resilient organizational structure suited to the needs of these uncertain times.

Considering the substance of the legal transplant, the Italian "for benefit" model, which is the first benefit corporation model adapted by a civil law system, is a mix between the Model Act and the Delaware law but is characterized by some peculiar features. In particular, the major innovations, compared to the United States, are the scope of the legislation and the control system.

[93] See Law No. 208 of December 28, 2015, art. 1, paragraphs 382, letter b) and Annex 5.

[94] Art. 83, paragraph 10, of Legislative Decree No. 50, April 18, 2016.

[95] ANAC, Documento di consultazione "Linee Guida recanti "Istituzione del rating di impresa e delle relative premialità"", in www.anticorruzione.it, 11 maggio 2018.

[96] See Law No. 77 of July 17, 2020, art. 38-ter, and Law No. 106 of July 23, 2021.

[97] Balestra and Caruso (2022) stress this aspect.

With regard to the first, the *società benefit* status can be acquired by any existing for-profit and cooperative organizational form provided by the Civil Code. This approach has been followed by other civil law countries, such as Colombia,[98] Ecuador,[99] and Perù,[100] which between 2018 and 2020 introduced the *Sociedades de Beneficio e Interés Colectivo*" (BICs), as well as France, which in 2019 introduced the hybrid model of *entreprise à mission*. [101] In those systems, too, like in the Italian one, the hybrid status (BIC or *entreprise à mission*) can be adopted by any for-profit organizational form provided by law.

As for the second innovation, the Italian system has provided for a public enforcement mechanism through the attribution of supervisory powers on *società benefit*'s behavior to the Italian Competition Authority. Colombia, Ecuador, Perù, and France also decided to set up public enforcement systems, which differ from each other.

In Colombia, the oversight of BICs is assigned to the *Superintendencia de Sociedades*, an administrative body that maintains a public list of third-party standards to measure BIC companies' impact and oversees their compliance with the law. In Ecuador, supervisory powers over BIC companies have been assigned to the *Superintendencia de Compañías, Valores y Seguros*, which may sanction those companies that do not pursue public benefit purposes or violate the rules aimed at regulating BIC companies. In France, the public prosecutor, or any interested person (all the stakeholders of the company), can start a claim for the removal of the *entreprise à mission* status in the case of violations of the applicable regulation or in case the social and environmental objectives are not respected.[102]

The Peruvian system, which seems to be the one most influenced by the Italian model, assigned supervisory powers over BICs to the *Superintendencia Nacional de los Registros Públicos* and the national competition authority (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*), which has the power, like in Italy, to sanction those companies that, by improperly using their status, carry out acts that can be traced back to misleading advertising or other practices that are contrary to free competition and consumer protection.

From this brief analysis, although based on the few civil law systems that have so far regulated benefit corporations (to which must be added British Columbia and Rwanda [103]), it is possible to identify a convergence between civil law countries and to affirm that they have embraced some peculiarities of the Italian model.

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[98] Law No. 1901, of June 8, 2018.

[99] See the Resolution of the *Superintendencia de Compañías, Valores y Seguros* No. SCVS-INC-DNCDN-2019-0021, of December 6, 2019, and the so-called "*Ley Orgánica de Emprendimiento e Innovación*", approved by the *Asamblea Nacional* on January 7, 2020 and published in the *Registro Oficial Suplemento* No. 151, of February 28, 2020.

[100] The Bill No. 2533/2017-CR, so-called *Ley de Sociedades de Beneficio e Interés Colectivo*, has been approved on October 23, 2020 by the *Congreso de la República*.

[101] Law No. 2019-486 of May 22, 2019, art. 169.

[102] French Commercial Code, art. L. 210-11.

[103] Other countries have so far regulated benefit corporations. Among them, Rwanda, originally a civil law legal system but now considered a hybrid system that combines principles from both the

Finally, it is worth noting that the path followed by the Italian system seems to be consistent with the recent European Union initiative aimed at a more comprehensive protection of stakeholders' interests in for-profit entities. From the early 2000s onward, the European Union developed its Corporate Social Responsibility Strategy,[104] while in recent years, the protection of stakeholders' interests has been integrated into company law and financial market regulation, as in the case of the Directive on nonfinancial reporting of 2014 [105] (soon to be replaced by the Corporate Sustainability Reporting Directive[106]) and the Directive on long-term shareholder engagement of 2017.[107] Moreover, a directive on sustainable corporate governance[108] and supply chain due diligence[109] is currently under consideration.[110] It would be interesting to see whether in the near future it will be possible to envisage a uniform model for purpose-driven companies at the European level.

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civil and common law systems, and British Columbia – Canada – a common law legal system. Rwanda passed, at the beginning of 2021, the benefit corporation legislation, introducing the so-called "community benefit company", see Chapter XIII 'Community Benefit Company', Arts. 269-273 of Law N° 007/2021, of 5 February 2021 (Official Gazette n° 04 *ter* of 08/02/2021). British Columbia regulated "benefit company" between 2019 and 2020, see The Business Corporations Amendment Act (No. 2) 2019 (Bill M209) that introduced benefit companies in the Business Corporations Act (see Chapter 57, Part 2.3, §§ 51.991-51.995), which received the Royal Assent on 16 May 2019 and entered into force on 30 June 2020. In both countries, the legislation mainly follows the US model.

[104] See e.g. the Green Paper, Promoting a European framework for Corporate Social Responsibility, 18.7.2001, COM(2001) 366; the Commission Communication of 15 May 2001 on "A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development", COM(2001) 264; the Commission Communication of 13 December 2005 on the review of the Sustainable Development Strategy – A platform for action, COM(2005) 658; the Commission Communication of 25 October 2011 on "A renewed EU strategy 2011-14 for Corporate Social Responsibility", COM(2011) 681.

[105] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of nonfinancial and diversity information by certain large undertakings and groups.

[106] See the recent Proposal for a Directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC, and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, of 21 April 2021, COM(2021) 189, 2021/0104 (COD).

[107] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

[108] Final Report "Study on directors' duties and sustainable corporate governance", published on July 29, 2020, https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en.

[109] Final Report "Study on due diligence requirements through the supply chain", published on February 20, 2020, https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en; and European Parliament resolution P9_TA(2021)0073 of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL).

[110] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, of 23 February 2022, COM(2022) 71, 2022/0051 (COD).

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