

November 2020

Call for contribution on Competition policy supporting the Green Deal

Assobenefit's contribution to the debate

AssoBenefit is a type of non-profit association established under Italian law in December 2018. The purpose of the Association is, pursuant to Article 3 of its Articles of Association: "*to contribute to the affirmation of a new economic model of sustainable development in Italy based on the constitutive principles of the Benefit Companies*". [Please visit www.assobenefit.org]

AssoBenefit appreciates the opportunity offered by DG COMP to express its view on how competition policy can best complement regulation to support the achievement of the Green Deal objectives.

More specifically, as input to the debate on how State aid control and environmental and climate policies work together and how they could do that even better, AssoBenefit suggests focusing, among other things, on sustainable corporate governance. Companies that are governed by corporate rules mandating the pursuit of environmental and sustainability objectives and with an aligned business strategy should be granted more state aid or state aid on easier terms.

AssoBenefit supports the recourse to sustainable corporate governance in Europe and is committed to provide feed-back in the on-going consultation on the matter to support the different actions set out in the EU Green Deal. AssoBenefit asks the Commission to consider the Benefit Company model as an accelerator of the transition to a more sustainable economy in Italy and would welcome the opportunity to participate in the conference to be held by the Commission at the beginning of 2021.

1. What is a Benefit Company (Società Benefit)?

The Benefit Company model builds on the features and support received in the U.S. by the Benefit Corporations movement. As of today, Italy is the only country in the EU where the model has been transposed into national law. AssoBenefit is therefore committed to contribute to the debate on sustainable corporate governance currently on-going. Benefit companies are a new legal form of business, introduced in Italy by law no. 208 (paragraphs 376 to 383 and annexes 4 - 5), which entered into force on 1 January 2016.

The traditional type of company is governed by the provisions of Article 2247 of the Italian Civil Code (c.c.). According to Article 2247 c.c. two or more people, by means of a company contract, confer goods or services for the joint exercise of an economic activity in order to divide the profits. This purpose is the only one contemplated by law for the companies referred to in Chapter V, titles V and VI of the Italian Civil Code (Srl, SpA, cooperatives etc.). In fact, the primary objective of shareholders is the maximization of profits, which is also the dominant criterion in their internal decision-making processes.

A Benefit Company is a traditional company with modified obligations that commit management and shareholders to higher standards of purpose, responsibility and transparency. The Benefit Company therefore does not constitute a new company type, additional and alternative to those already recognized in the Italian legal system, but more properly it represents a "qualification" that all types of companies under Italian law can acquire. The cardinal feature of the Benefit Company is the dualism of the purpose: the purpose of dividing profits (or the mutualistic purpose for cooperatives) is combined with the purpose of delivering common benefit for companies that qualify as Benefit Companies (Società Benefit) under Italian Law, in an effort at balancing both objectives by the company's management.

In a nutshell, the law governing Benefit Companies establishes that: a) the purposes of common benefit pursued must be indicated in the Statutes of the corporate; b) the company must be managed by balancing the interest of shareholders with that of stakeholders impacted by the business; c) a responsible person ensuring that the common benefit is pursued by the company is appointed; d) failure to comply with the aforementioned obligations may constitute a breach of the duties imposed on administrators by the law or by the Statutes and imply administrators' liability; and e) an obligation to report on annual basis on the common benefit, including the description of the specific objectives, the methods and actions put in place to achieve the common benefit or the causes that led to the impediment and/or slowdown, evaluation of the impact generated (using external evaluation standards), and description of the new objectives to be pursued in the following year. Finally, the law

governing Benefit Companies also attributes a specific role to the Italian Competition and Market Authority for the supervision of Benefit Companies that do not pursue the common benefit, which may be found liable of misleading consumers and taking advantage of wrong commercial practices.

2. What is Common Benefit pursued by Benefit Companies?

By common benefit it is meant the pursuit of one or more positive effects (also achievable by reducing the negative effects) on people, communities, territories and the environment, cultural and social goods and activities, entities and associations, and other stakeholders. Benefit Companies are obliged to consider the impact of the company's activities on society and the environment in order to create long-term sustainable value for all stakeholders.

In addition, the Benefit Company protects the mission in case of entry of new investors, changes of leadership and generational changes. At present, Benefit Companies do not enjoy economic or fiscal incentives so in addition to representing a value for society, they do not cause burdens for taxpayers.

3. Why more aid (or aid on easier terms) should be granted to Benefit Companies under state aid control?

In spite of the limited geographical area where the Benefit Company model can be implemented (only Italy in Europe as of today), it is worth noting that the principles underpinning the “common benefit” pursued by Benefit Companies reflect in substance the drivers used under the Taxonomy Regulation to claim Taxonomy alignment, i.e. to a) substantially contribute to one of six environmental objectives, b) not significantly harm any other, and c) comply with minimum safeguards.

Benefit Companies and sustainable corporate governance generally therefore have the potential to fast-track the transition to sustainability of EU economy, by their own legal commitments and corporate responsibility.

a. The Common Benefit of Benefit Companies is aligned to Environmental Impact



AssoBenefit asks the Commission to consider that, because the Benefit Company's objectives are mandated by its legal model and governance structure, and the achievement of those objectives are validated by independent review, the model provides an excellent 'off the shelf' solution for those companies to contribute to the pursuit of environmental objectives under the different actions of the Green Deal. In fact, businesses that take up legal duties and commitments under the Benefit Company model are contributing in an innovative and enforceable manner to the common objective of sustainable growth.

Additionally, and as mentioned above, the law on Benefit Companies protects the mission of the company against any change of leadership that might endanger the "common benefit" pursued. As a matter of fact, the specific legal requirements thereof facilitate by themselves long-termism in business strategies.

4. The Benefit Company and the COVID-19 crisis: a paradigm shift?

The COVID-19 crisis is showing many of the weaknesses and drawbacks of a social and economic paradigm focused on maximizing profits in the short term. The lack of long-term strategies and the downplaying of the occurrence of systemic risks has made companies vulnerable to many of the adverse effects of the crisis; at the same time, the failure to consider the multiple interests at stake in corporate strategies may exacerbate social impact of this as well other crisis in Europe. Benefit Companies are the expression of a shift in paradigm and represent an evolution of the concept of the company that is viewed as an entity creating shared value.

AssoBenefit supports the dissemination of the Benefit Company model, not only to fast-track the transition to a sustainable EU economy, but also as an expression of a new social and economic paradigm that recovery from the crisis may stimulate.

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