

Consultation on a Renewed Sustainable Finance Strategy

Position paper elaborated by Assobenefit

AssoBenefit is a 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: "*contributing 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 the consultation launched by the European Commission on a Renewed Sustainable Finance Strategy to present its point of view and ask the Commission to consider the Benefit Company model as a possible accelerator of the transition to a more sustainable economy in Europe.

1. The Benefit Companies in the Italian Legal System

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. According to Article 2247 of the Italian Civil Code, with a company contract, two or more people 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.). Their primary objective 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 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) aligns with the purpose of delivering common benefit for companies that qualify as Benefit Companies 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), 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. The 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. The Benefit Companies and the EU Sustainable Finance framework

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 which comes next in the Commission agenda to support the different actions set out in the EU Green Deal. Notwithstanding the limited geographical area where the Benefit Company model can be implemented (only Italy in Europe as of today), it is worth noticing that the principles underpinning the “common benefit” pursued by Benefit Companies¹ 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 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 Renewed Sustainable Finance Strategy Initiative.

By way of example, the recourse to the Benefit company model should be visible to investors and facilitate sustainable investment decisions. In other words, the ‘added value’ of investing in a Benefit Company should be mirrored in the financial framework applicable to sustainable investments. 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 sustainable investments.

¹ See par. 2 of this position paper.

b. SMEs to catalyze sustainable investments

Benefit Companies in Italy are mainly SMEs.

SMEs in the EU are enterprises with fewer than 250 employees. Currently in EU more than 21,400,000 out of 22,234,000 are SMEs. They are the backbone of business within EU. In addition, in many cases high growth enterprises are SMEs. According to Annual report on European SMEs 2018-2019, SMEs accounted for 99.8% of all enterprises in the EU-28 non-financial business sector (NFBS), generating 56.4% of NFBS value added and 66.6% of NFBS employment. Overall, the NFBS represented 54.5% of EU-28 GDP and 61.4% of total EU-28 employment².

The Taxonomy Regulation, one of the key elements of the EU Renewed Sustainable Finance Strategy, will be directly applicable only to enterprises subject to the Non-Financial Reporting Directive, which leaves outside its scope of application the vast number of SMEs.

AssoBenefit is of the view that the Commission should consider ways to involve SMEs in a non-financial reporting framework, in a proportionate manner. In more general terms, AssoBenefit considers that SMEs should be able to attract sustainable investments just like larger companies under the Renewed Sustainable Finance Strategy; SMEs should be able to fully retrieve all the positive effects of the newly established tool to climate transition which is the Taxonomy Regulation.

c. Including sustainable objective among incentives of management

Managers play a crucial role in defining strategies and objectives of companies. In general, managers are expected to get both short-term and long-term bonuses in addition to salary. In general, these bonuses are based on economic and financial performance only.

Assobenefit is of the view that non-financial objectives have to be included into the reward scheme of firms. Including sustainable targets into the reward scheme could lead the focus and the strategy of managers much more towards a sustainable transition.

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.

² Data from EUROSTAT and from Annual Report on European SMEs 2018/2019.