

BENEFIT CORPORATIONS AND REFORMED CLASS ACTION IN ITALY: A THRILLING INTERACTION

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Abstract

Recently, the Italian legislator has realised two substantial regulatory interventions that are destined to produce significant impacts on corporate governance structures, drawing consequently the scholars' attention: we refer, on one side, to the introduction of benefit corporations (the so-called "società benefit") in 2015¹ and, on the other side, to the reform of the class action tool in 2019.² Both regulatory interventions provide a number of important innovations.

Indeed, the benefit corporations, while carrying out an economic activity and in addition to the purpose of gaining profits, are designed to pursue one or more purposes of common benefit and operate in responsible, sustainable and transparent manner towards people, communities, territories and environment, cultural and social assets and activities, institutions, associations and other stakeholders. It is clear that the pursuit of one or more benefit purposes has to be balanced by the directors with the profit purpose, that still represents the main aim of the corporation (which is not a "no profit" corporation), and the outcomes of this balancing activity could potentially affect the interests of the shareholders or of the stakeholders, depending on who of those

¹ Benefit corporations have been introduced in Italy by Law December 28, 2015, n. 208. Many scholars have investigated the newly legal institute in the aftermath of the reform: see, in particular, Calagna (2016); Corso (2016); Gallarati (2018); Guida (2018); Lenzi (2016); Siclari (2016); Stanzione (2018); Ventura (2016).

² The Italian reform of the class action has been enacted by Law April 12, 2019, n. 31 and will enter into force on April 19, 2020. Within the first scholars that have discussed on the main news of the reform, see, in particular, Consolo (2019); Pisapia (2019).

could argue to have been disadvantaged at the end: therefore, the possibility for the stakeholders to be granted with a direct legal action against the benefit corporation directors, based on a non-fulfilled benefit purpose claim, is the main issue to be investigated in the context of the benefit corporations.³

The above issue is strictly interrelated with the reform of the class action, which took place on April 2019 and that is going to enter into force on April 2020.

Indeed, the new class action tool is designed to be available to all those who make claims for damages in relation to the infringement of "homogeneous individual rights" (as could be those pertaining to the stakeholders of a benefit corporation) and is not only reserved to consumers, like in the previous regulation.

The above said innovation, together with the extension of the objective scope of the action, may contribute to render the class action the most popular tool to be employed to support the claims of the stakeholders in the context of benefit corporations.

Therefore, the effective right for the stakeholders to sue directly the benefit corporation directors and the related recourse to the reformed class action tool (also considering the opportunities arising from the reform innovations) will be the target of the investigation we hope to develop through the paper to be presented at the International Conference in Naples.

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³ See broadly on this Stanzone (2018).