

This issue of our review hosts a “virtual” symposium entirely dedicated to which is probably the most relevant novelty in Italian corporate law in the last years – the benefit corporation, introduced at the end of 2015 and making Italy the first jurisdiction- as far as we know- providing a benefit corporation legislation outside the U.S.

While the practical relevance of the new institution is still to be seen, it seems clear that the benefit corporation, as designed by the Italian legislator, has a very relevant impact on Italian corporate law, not only in terms of the institution in itself, but also in the wider perspective, casting new light on fundamental questions like the concept of corporate interest, the theory of the corporation, and the CSR debate.

The symposium benefits from contributions by some of the most prominent Italian scholars and experts in corporate law and CSR, namely Carlo Angelici, Francesco Denozza and Alessandra Stabilini, Giorgio Marasà, Serenella Rossi, Mario Stella Richter jr, and Andrea Zoppini, and covers those that appear to be, at the current stage of the debate, the main theoretical issues raised by the new law.

Carlo Angelici puts the benefit corporation in a historical perspective, showing how corporate law has progressively detached itself from the idea of the corporation as an institution naturally aimed at producing profits for its shareholders to become a neutral organizational form for economic activities, and asks himself whether the benefit corporation is consistent with this evolution or rather represents the attempt of the legislator to define the realm of for profit corporations on the one hand – all corporations but the benefit – and the benefit corporation on the other, becoming the corporate form dedicated to (also) non for profit objectives. He also touches on the question of directors’ liability and shareholders’ and stakeholders’ standing in this context.

Francesco Denozza and Alessandra Stabilini try a systematic collocation of the benefit corporation within what they call investor capitalism and argue that the consolidated lens of the agency theory becomes a poor device to describe the corporation in this context. They consider the benefit corporation in the context of the CSR debate and take the position that rather than solving a shareholders-stakeholders conflict, the benefit corporation is better seen as an instrument for investors to reveal and order their preferences regarding CSR and the pursuit of non for profit objectives.

Giorgio Marasà offers a quite different perspective, from the starting point that the policy objective of the law – as declared by the same – is to foster and incentivize the creation and development of benefit corporations. In this context, he argues, it makes little sense to force a clear distinction between the benefit corporation and the general for-profit corporation and that the two should rather be seen as two points on a continuous line where the corporate form and non profit objectives are all but incompatible.

A different view is offered by Serenella Rossi, who underlines the novelty of the benefit corporation as a tool for a multi-stakeholder approach to corporate law that might prove as a significant step forward in the current legal framework; she also points out, however, that the law leaves a wide discretionary power to shareholders regarding how to articulate the benefit objective and therefore if and how to make the benefit corporation and its management accountable toward stakeholders.

Mario Stella Richter focuses on two of the most relevant questions raised by the new legislation: what really distinguishes a benefit corporation from a non-benefit corporation (the common benefit objective? The balance between shareholders' and other stakeholders' interest? Both?) and where should the boundaries be set; and whether the transformation of a non-benefit into a benefit corporation should qualify as a legal cause of withdrawal for dissenting shareholders – a very critical issue in the practical usage of the benefit form.

Andrea Zoppini concludes the symposium with a dubitative and thoughtful discussion on the distinctive nature of the benefit corporation and points out the many difficulties of giving a coherent collocation of the new institution within the wider framework of corporate law.