



INNOVATIVE SKILLS FOR
BENEFIT COMPANIES

Benefit Corporation Desk research of the Partner Countries

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DEFINITIONS:

A **Benefit Corporation (BC)** is a for-profit corporation that commits to create a material positive impact on society and the environment from the business and operations of the corporation. Like a traditional corporation, it pursues profit for the benefit of its shareholders, but a benefit corporation must also report on how it pursues a positive social environmental impact.

A B Corp certified company strives to strike a balance between profit and purpose, putting environmental and social obligations at the forefront of its operations. B Corporations are dedicated to using business as a force for good, guaranteeing that they are actively helping the world and everyone who live on it through sustainable business practices and environmental awareness.

B Corps are companies that have been recognized by the non-profit B Lab to meet social and environmental performance, accountability, and transparency standards. The B Corp certification assesses a company as a whole, making it easier to distinguish between good businesses and good marketing. There are over 1,300 B Corps in 42 countries now, resulting in a global movement epitomized by enterprises like Etsy and Patagonia. B Corps are made up of two parts: a certification and a legal entity.

IMPORTANT TO NOTE:

- In Lithuania there are no companies legally defined as Benefit Corporations. But a lot of similarities can be found between Benefit Corporations and Socially Responsible Companies (SRCs) that are common in Lithuania. Therefore, in this Desk Research we will be focusing on SRCs.
- Only ten corporations in Ireland have been designated as B-Corps. However, Socially Responsible Companies (SRCs), are popular in Ireland, and these business models have a lot in common. As a result, we shall address these in our Desk Research.
- In Spain there is no company legally defined as Benefit Corporations. There was a law proposal in the congress but still no approved.

Socially Responsible Companies (SRC) use their position and resources for something more than pleasing their shareholders and increasing their bottom line. They operate on a business model that focuses on social change, sharing its success with their local and global communities.

A Social Enterprise is an enterprise whose objective is to achieve a social, societal or environmental impact, rather than maximising profit for its owners or shareholders. It pursues its objectives by trading on an ongoing basis through the provision of goods and/or services, and by reinvesting surpluses into achieving social objectives. It is governed in a fully accountable and transparent manner. These characteristics make social enterprises different from enterprises that operate for private profit. But they also sometimes make it difficult for social enterprises to access the type of supports that are available to other enterprises to improve their business models.

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HOW THE BCs COULD BECOME KEY PLAYERS IN BUSINESS ARENA TO ACHIEVE THE GOALS OF SUSTAINABLE DEVELOPMENT AND SOCIAL INCLUSION

1. THE MACROECONOMIC SCENARIO OF BCs. UNDERSTANDING OF THE BCs AS AN ELEMENT OF INTERSECTION BETWEEN FOR-PROFIT AND NON-PROFIT SECTOR

1.1. How familiar is Italy, Lithuania, Spain, Ireland and Portugal with the Benefit Corporation concept?

A Benefit Corporation is a legal instrument that creates a solid basis for long-term mission alignment and shared value creation. It therefore allows the mission to be protected in the event of capital increases and leadership changes, creates greater flexibility in assessing sales potential, and maintains the mission even in the event of generational change or stock exchange listing. This is not about Social Enterprises or an evolution of the non-profit sector, but a positive transformation of the dominant for-profit business models to make them more adapted to the challenges and opportunities of 21st century markets.

With the 2016 Stability Law, a new regulation was introduced into Italys' legal system. That aimed at encouraging the spread of companies, known as Benefit Companies (BCs), which combine the purpose of profit with the aim of improving the environmental and social context in which they operate. This is a positive novelty that places Italy in a leading position in the vanguard in the European debate on the integration of social aims in the business model of companies.

Since January 2016 Italy has introduced, first in Europe and first in the world outside the USA (where the legal form of Benefit Corporation, equivalent to the Italian Benefit Company, was introduced in 2010 and now exists in 33 States), the Benefit Corporation to allow entrepreneurs, managers, shareholders and investors to protect the company's mission and distinguish themselves on the market from all other corporate forms through a virtuous and innovative legal form.

Since 2006, a global movement of companies, the certified B Corp, has promoted the introduction of a substantial change in the essence of companies, namely in the statute and corporate purpose.

The purpose of this law in Italy is to promote the establishment and the growth of Benefit Corporations which, in carrying out their economic activities shall pursue, in addition to the aim of distributing profits, one or more aims of common benefit, and operate in a responsible, sustainable and transparent manner vis-à-vis individuals, communities, territories and the environment, cultural and social heritage, entities and associations as well as other stakeholders.

The purposes under above shall be specifically identified within the Benefit Corporation's corporate purpose and shall be pursued through an administration finalized at balancing the interest of the shareholders and the interest of those that may be impacted by the company's business activity. The

purposes under the previous paragraph above may be pursued by any of the entities subject to the provisions of Book V, Title V and VI, of the Civil Code, in compliance with the relevant applicable provisions.

In Portugal, the Benefit Corporation concept exists, but one cannot say it's widely spread. As far as is known, there are two or three dozen companies considered as B Corp. They include pharmaceutical, wine producers, agricultural or fashion businesses, but also lawyer or consulting agencies. These companies got the B Corp label by applying to the B LAB Organization. A lot more companies fulfil the conditions and purposes of similar concepts: Social Responsibility Companies and Environmental Responsibility Companies.

Through consulting some official government information, it is possible to conclude that there is a political understanding in what concerns the needs of Portugal, regarding industry and business modernization and considering its' place in Europe. In that matter, Portugal is implementing several measures, following UN, OECD and EU recommendations and regulations.

Despite a narrower impact on society and environment, there are also similar concepts in Portugal such as "circular economy". The concept of "social responsibility company " or "Responsible Business Conduct" depending on where the theory originates is, in fact, very similar to the Benefit Corporations concept. They all aim for one same global purpose: sustainability through economic, environment and social progress. It focuses on four main issues: Human Rights, Fundamental Rights at Work, Environmental Protection and Corruption Prevention. Therefore, all that follows will take in consideration this concept of proximity.

In Ireland, there is little understanding of the Benefit Corporation concept, and only ten companies have registered as B corps. Coopman Search and Selection, Cully & Sully, Ella's Kitchen Patagonia, Danone Dairy Ireland, Innocent Drinks, and UrbanVolt are among them. In Spain only a few companies are involved in the B-Corp initiative. These businesses had to demonstrate that they meet the B Corporation's stringent standards of responsibility, transparency, and social and environmental performance.

According to new global research published by the Worldwide Independent Network of Market Research (WIN). In its annual WIN World Survey, the views of 33,236 in 39 countries, including Ireland, were canvassed. According to the Irish leg of the research less than 2 in 5 have heard about CSR before while awareness levels are higher among higher social grades (49%), but lower than average amongst lower social grades (29%).

According to the research Ireland sits significantly lower (-10%) than the global average of 48%. The research also shows that 72% believe it is important to be aware of socially responsible behavior of the companies/brands they are a customer of, with 45% thinking it is extremely important. Meanwhile, over half (53%) claim to be influenced on purchase decisions by the socially responsible behaviors of companies, with more than 1 in 3 (36%) saying that it influences their decisions very much. The impact is significantly higher amongst 18–34-year-olds (61%).

In Lithuania and in Spain, there is not much knowledge about the Benefit Corporation as such, but knowledge about the similar entity – Socially Responsible Companies (SRCs) – is quite high. People in Lithuania and in Spain value goods and services from Companies that declare their social responsibility

and value those companies themselves. Majority of companies try to advertise themselves as (and hopefully be) socially responsible because that helps them get advantage in the eyes of customers. Other than in Lithuania and Spain, in Ireland the understanding of SRCs is quite low.

1.2. To what extent do profit-making organizations tend to implement activities related to the common good in Italy, Lithuania, Spain, Ireland and Portugal?

The Benefit Companies voluntarily pursue, in the exercise of the business activity, in addition to the purpose of profit, also one or more purposes of common benefit. In general, by common benefit, we mean the pursuit of one or more positive effects (which can also be achieved by reducing the negative effects) on people, communities, territories and the environment, cultural and social assets and activities, bodies and associations and other stakeholders. The Benefit Companies pursue these purposes of common benefit in a responsible, sustainable and transparent way and their management requires managers to balance the interest of the shareholders and the interest of the community.

In Italy, by law BCs must appoint a management person who is responsible for the impact of the company and undertake to report their activities in a transparent and complete manner through an annual impact report, which describes both the actions carried out and the plans and commitments for the future.

With the measures introduced by the 2016 Stability Law, Italy is the first European state to have recognized a legal status of its own for companies that also use profit as a tool for the creation of social value. This discipline transforms the concept of Corporate Social Responsibility by making it tangible and measurable and represents an opportunity to evolve the corporate culture from acting responsibly in order to avoid incurring penalties, to acting sustainably in order to foster the company's development by striking a balance between different interests.

In Lithuania, as many as 9 out of 10 largest companies claim they are investing in sustainability and are committed to doing so in the future. However, the results of the „TOP100 Business Sustainability Survey” reveal that although the implementation and development of sustainability principles are considered to be a key aspect for the future of business, only a quarter of companies have dedicated specialists working in this field, and only one in five companies publish sustainability reports.

Over the past few years, more Irish companies have been making their stand on specific issues surrounding social and environmental problems. These range from finance to hospitality, but the ultimate goal remains the same; an attempt to improve the lives of others or the impact they have on the environment around them. In Ireland, 90% of companies consider environmental, social, and governance (ESG) in their operational decision-making process, whilst 93% have a dedicated sustainability lead within the firm – of which 66% are at the executive level.

Most of the biggest companies in Spain, quoted in the stock exchange in IBEX 35 index have to develop Sustainability plan entitled ESG report (Environmental Social and Governance plan), compulsory for companies over 250 workers, in which all the companies have to detail all the activities they undertake for promoting sustainability and good governance.

In Portugal there are several companies that, through social responsibility and environmental responsibility certification processes, have procedures established with the aim of contributing to a better society. Examples of these procedures are the identification and classification of existing environmental risks and defined actions to reduce or eliminate the possibility of their occurrence as well as their impact. The companies define the processes and procedures that structure the Environmental Management System and define work instructions for specific activities (for example, for waste separation). As far as social responsibility is concerned, companies trace their actions in an ethical and transparent management. To do so, they need to involve issues such as quality of life and well-being of the company's internal public, the relationship with stakeholders, and the reduction of negative impacts on the community and the environment.

In Portugal there were, in 2021, 1309 companies certified by ISO14001 (environmental responsibility). In that same year, there were 95 companies certified by SA8000. There are also some organizations that have their management system recognized by the EFQM model, which implies that they have concerns and practices of social and environmental responsibility.

1.3. Could you compare situation of before 3-5 years ago and now – how did the understanding of Benefit Corporations changed in Italy, Lithuania, Spain, Ireland and Portugal?

Corporate social responsibility was discussed in Lithuania more than a couple of decades ago, but at that time the idea did not receive much support from business. Also, for a while, it was more a formality “for the eyes” than a real action to affirm corporate social responsibility. At present, the situation has changed dramatically.

Now, much more than a few decades ago, consumers want to see the concrete results of those claims. In other words, society already wants accountability. In a broad sense, it can also be linked to the growth of society itself, the change in values and generations, when we, as consumers, are already concerned about, for example, whether this sweater is made from recycled plastic bottles, the conditions in which the animals which products we use were raised, was any child labor used in the production of electronics we buy and so on. This kind of pressure is felt, and it forces organizations to think and act strategically to build sustainable and responsible businesses.

Social responsibility in Lithuania has evolved significantly over the last decade. From a desire to be fashionable or to treat social responsibility as support for charities, they have moved to a level of maturity that allows social responsibility to be understood as an integral part of business value creation, focusing on the company's greatest impact and key stakeholder expectations.

16 years have passed since the emergence of the Sustainable Business Association of Lithuania. During that time, the business environment has changed, and so has the business itself. Socially responsible activities have become a part of the strategies of many Lithuanian companies.

As Lithuania as a Country matures, its' economy, with more and more inspiring foreign examples, it is natural that in the long run we have reached a point where not only what we do but how we become important. Social responsibility is important in many respects: research conducted both in Lithuania and around the world shows that every year it becomes more and more important for us to associate with brands that profess values close to us and are active members of the community.

Although social responsibility has long been understood as a series of separate initiatives, it is not hard to see that lately business is paying more and more attention to sustainability. A sustainable approach to society, business management and the environment offers solutions to all of today's greatest challenges. Protecting nature, promoting equality, upholding human rights, sustainable and transparent business management are all cornerstones.

In April 2021 in Italy there were 926 BCs, almost double compared to a year earlier (511 as of March 31, 2020 - source Infocamere). The numbers achieved by the Benefit Companies in Italy are so significant as to highlight the doubling year on year, but a careful analysis of the history, starting from 2016, shows that growth represents a constant . A year later there were 200 realities throughout the peninsula, thanks to a second wave, the result of an important awareness campaign.

Ireland has a long tradition of social responsibility. Long before the term was coined, businesses were looking out for their staff and the communities in which they were located. The Guinness family, over the centuries, funded medical facilities, provided community housing and opened public spaces in Dublin. It was altruistic, but it wasn't just altruism – they knew well that a contented, happy and more simply, a well-fed and healthy staff boosted productivity.

There was a multiplicity of motivation – all of it advancing the common good. And today, that sense of giving back and acting in the common good still pervades: small businesses around the country support local clubs and charities and, through that, strengthen the communities that their businesses, and the jobs they sustain, rely on.

The 2003-2005 review of Ireland's implementation of its 1997 Sustainable Development Strategy contained a goal to "encourage and support the adoption of socially and environmentally responsible attitudes and practices by enterprises." In particular, it encouraged businesses to demonstrate "sound social and environmental performance" in order to maintain a company's corporate reputation and market position.

Notwithstanding their important role in the delivery of services to individuals and communities, social enterprises in Ireland had clearly not yet reached their full potential for a number of reasons at that time, including the absence of a clear policy framework to support their development. A lack of understanding of what social enterprises were, and what they did, had also contributed to a general lack of awareness of social enterprises in Ireland and has made it difficult to collect reliable data on their social and economic impact.

There were many calls for support from the Government for the development of social enterprise over the subsequent decade. A 2013 Forfás report on the potential of, and opportunities for, social

enterprise in Ireland identified, as a prerequisite for growth, the need for a coherent Government policy to be developed, with appropriate institutional oversight and co-ordination.

In July 2017, the Government assigned policy responsibility for social enterprise to the newly established Department of Rural and Community Development. The strategic objectives of the Department included the advancement of the economic and social development of both rural and urban communities, and enabling communities disadvantaged by location or social issues to reach their full potential.

The assignment of responsibility for social enterprise to the Department of Rural and Community Development provided an unprecedented opportunity for policy on social enterprise to be developed in a coordinated and integrated way alongside the Strategy to Support the Community and Voluntary Sectors in Ireland, and the National Volunteering Strategy.

Social enterprise started to gain recognition as a component of the overall entrepreneurship ecosystem and this ambition was reflected in the Government's Future Jobs Ireland strategy. Through the National Social Enterprise Policy for Ireland, the Government's objective focused on creating an enabling environment for social enterprise in Ireland to grow and contribute to Ireland's social and economic progress.

The Policy set out a new series of commitments on the part of the Government for the development of social enterprise over the period 2019-2022. These commitments will be delivered in partnership with social enterprise stakeholders to support a strong and vibrant social enterprise ecosystem in Ireland. Collectively, they will represent a clear pathway for the development of the social enterprise model and will be a key first step on the journey to more effectively supporting social enterprises in Ireland and maximizing their social, societal and environmental impact.

The situation in Spain in the last 3-5 years in relation to today is the same as the In Spain there is no specific legislation for Benefit Companies, because this concept of company is not yet defined by law in our country. The difference as above mentioned is the necessity of elaborating a ESG report for companies over 250 workers, but for small and medium enterprises the situation has not changed.

In Portugal, in the recent years companies have been increasing their environmental concerns and their social responsibility. This fact is proven by the increasing number of companies that have obtained the certifications indicated in the previous answer.

For example, in relation to ISO14001, in 2018 there were 1174 certified companies and in 2021, 1309, that is, an increase of about 12%. This fact relates to the need that companies have felt in establishing a good reputation, positive attention from society, a saving of resources through greater operational efficiency, attracting and retaining talent, and inspiring innovation.

On the other hand, a corporate social responsibility policy aligned with the values and aspirations of stakeholders has a positive impact on companies, such as loss of customers, business partners or damaged reputation, as the latest studies indicate.

2. THE LEGAL FRAMEWORK OF ITALY, LITHUANIA, SPAIN, IRELAND AND PORTUGAL AND THE EVOLUTION FOR THE RECOGNITION OF THE BC

2.1. Are there any specific laws in regards of a Benefit Corporation?

The Benefit Corporation concept is introduced into legal framework of Italy, and it is not introduced other covered Countries – Lithuania, Ireland, Spain and Portugal. So specific BC laws are applied only in Italy. In other Countries companies can become BCs by a certification process implemented by B Lab (B Lab is the nonprofit network transforming the global economy to benefit all people, communities, and the planet) or act as a similar entity Socially Responsible Company.

The process of implementing and promoting a National Law in Italy started in 2014, the Italian certified B Corp have promoted a political and legal project coordinated by Sen. Mauro Del Barba, first signatory of the Bill on Benefit Companies, filed in April 2015. The Italian legislation on Benefit Corporation was developed by an international team of lawyers, entrepreneurs and other stakeholders in harmony with the discipline of the Benefit Corporation existing in the USA and currently also introduced in Colombia (2018), Puerto Rico (2018), Ecuador (2019), Canada - British Columbia (2019), Peru (2020) and Rwanda (2021). The draft law on Benefit Companies was then merged into the 2016 Stability Law. The regulation of the benefit companies is contained in Law 208 of 28/12/2015 (2016 Stability Law) Art.1, Commi 376-384 and is entered into force as of January 1, 2016.

Outlines of a regulatory framework in Italy in which the twin aims of profit and common benefit are reflected in the corporate purpose, corporate governance and enforcement. The new rules provide that:

1. the purposes of common benefit pursued are stated in the articles of association of the company's object;
2. the company be managed in so as to balance the interest of shareholders with the interest of those on whom the company's activities may have an impact;
3. the person to whom the tasks and functions aimed at pursuing the common benefit are assigned is identified within the company organisation;
4. the objectives pursued and achieved are reported annually through an assessment of the impact of the activity. With the aim of attributing effectiveness to the discipline, to close the system the law finally provides that the failure to concretely pursue the declared common benefit purposes entails the application of the provisions on misleading advertising and those of the consumer code on unfair commercial practices.

As it was mentioned, the Benefit Corporation concept is not introduced into the legal framework in nor Lithuania or Ireland and Spain. However, if a Company located in these Countries want to become a BC, it can contact B Lab which can certificate a company as a Benefit Corporation. According to B Lab, companies must demonstrate high social and environmental performance, make legal commitments by changing their corporate governance structure and exhibit transparency in order to receive the certification. Assessment for verification pay a submission fee of €250. Certification fees are then paid annually, calculated based on the company's total revenue and starting from €1,000 per year. B Lab also mentions the legal requirements a company must agree to in order to become a B-Corp.

Companies are not required to change their company's constitution and other documents as a condition to B Corporation certification. As part of the certification, companies would be agreeing to the following, per the contract for certification:

1. to the extent permissible under the region's law, to consider the impact of its decisions not only on shareholders, but also on its employees, customers, suppliers, the community, and the environment;
2. to use reasonable endeavors to support B Lab's efforts to determine an effective legal mechanism to promote directors' consideration of the matters in item 1;
3. in the event that such a legal mechanism is established in this region, take such steps as are necessary to avail itself of such mechanism; and
4. in the event of a change of control of it, including a public offering, it will recertify within 90 days of the effective date of the change of control.

In Ireland a Company Limited by Guarantee ("CLG") is the most common corporate legal form for organizations that do not exist for private profit, and therefore for social enterprises. A CLG does not have a share capital like most limited companies. Rather, its members each guarantee to contribute a fixed amount of money to the assets of the CLG if the CLG is wound up, which is to be used towards the payment of the debts and liabilities of the CLG. Typically, this would be a nominal sum, such as €1. The constitution of a CLG is in two parts, one of which, the "memorandum of association", contains an objects clause which outlines the permitted activity of the CLG. The objects clause of a social enterprise that has been incorporated as a CLG will generally include a reference to the enterprise's main social aim or aims.

In the Countries that don't have BC concept embedded in their legal framework, they can choose to act according to the existing laws on SRCs. Between the legislative developments of the CSR in Spain among the *Effective Equality Between Women and Men Organic Act, 2007*, which contemplates in title VIII, the voluntary performance of actions of social responsibility in terms of equality, including the promotion of the presence balance of women and men on the boards of directors of mercantile societies. As well, *Sustainable Economy Act, 2011/2*, includes three references to promote corporate social responsibility:

- article 27, about principles of good corporate government and adequate risk management in relation to executive compensation;
- article 35, on sustainability in the management of public companies;
- article 39, on the promotion of the corporate social responsibility.

The thirtieth final provision of the *Sustainable Economy Act* establishes also that regulations will develop the conditions for the dissemination of information on the use of social, environmental and good governance in the investment policy of pension funds.

In order to respond this legislation, in 2001 the Spanish Strategy for Corporate Social Responsibility was drawn up. Where it is established —among other actions— give publicity of the social responsibility polices of public and private entities.

Furthermore in the Spanish legislation can be found the *Social Economy Act, 2011/5*, which defines as such all those entities that comply the following guiding principles:

- Primacy of people and the social purpose over capital, which is specified in autonomous and transparent, democratic and participatory management, which leads to prioritizing decision-making more based on people and their contributions of work and services provided to the entity or depending on the corporate purpose, than in relation to its contributions to the share capital.
- Application of the results obtained from the economic activity mainly based on the work provided and service or activity carried out by the partners or by their members and, where appropriate, to the corporate purpose of the entity.
- Promotion of internal solidarity and solidarity with society that favors the commitment to local development, equal opportunities between men and women, social cohesion, the insertion of people at risk of social exclusion, the generation of stable employment and quality, reconciling personal, family and work life and sustainability.
- Independence from public powers.

Even if it is not strictly a matter law, it should be note that the B Corp certification in Spain is aimed at all types of for-profit organizations (including cooperatives).

The labour code (law 7/2009, February 12) in Portugal protects company employees and, to some extent, forces companies to comply with requirements related to their social and environmental responsibility. On the other hand, there are specific laws of mandatory compliance, especially regarding environmental issues, such as the Environment Framework Law (Law 19/2014, of April 14, from which the other pieces of legislation related to this issue arise.

At the same time, there are standards that are voluntary for companies to apply and adopt, such as ISO14001 for the environment, SA8000 for social responsibility, ISO26000 for social responsibility, and the benchmark for recognition by EFQM.

The SA8000 provides for adaptation to national legislation and compliance with its nine requirements: Child Labour, Forced or Compulsory Labour, Health and Safety, Freedom of Association and the Right to Collective Bargaining, Discrimination, Disciplinary Practices, Working Hours, Remuneration, Management System. The ISO14000 family refers to environmental responsibility issues.

2.2. Is it beneficial for an organization to be a Benefit Corporation in Italy, Lithuania, Spain, Ireland and Portugal?

Since this is not a new type of company and since no derogation from ordinary regime, these rules flank and supplement those provided for by the code (or by special laws) for the chosen type of company, with some additional obligations. On the other hand, the rules do not provide any form of fiscal or other incentive for the constitution of such companies. The obligation to manage the company by balancing the interests of shareholders with those of other stakeholders lies at the heart of the Benefit Company

regulation. This provision broadens the directors' discretion and circumscribes their responsibility, making them immune from action by shareholders for having considered social and environmental profiles, in addition to profit maximization, in their strategic choices.

The need to reconcile different interests is not, in fact, an absolute novelty, since it is already provided for in the regulation of corporate groups, where management must be oriented towards a prudent balance between the interests of the company exercising management and coordination and those of the companies subject to it; as well as in the context of companies that manage public services and subject to specific service obligations, where the interest in capital remuneration must be reconciled with the protection of public purposes.

The self-assessment of the impact generated through recognized standards, the enforcement publicistic enforcement and the absence of benefits contribute, finally, to the effective creation of a market segment in which to place companies that actually intend to invest in an innovative project.

The establishment or transformation of a classic company into a Benefit Company: it has no impact on the underlying corporate form (the company, while becoming a Benefit Company, still remains S.r.l., S.p.A., etc.), it has no impact on the tax treatment reserved for it.

Related to the tax treatment, it should be emphasized that, although there are no specific tax incentives for BCs in Italy (this is because the legislator wanted to avoid that the "virtuous" model of Benefit Companies could be exploited to the realization of tax advantages), the 'article 38-ter of the D.L. n. 34/2020, the so-called "Rilancio" decree, had provided for an important tax relief for those who had decided to convert the bylaws of their company into the Benefit Company model.

In particular, the article of the former mentioned decree had provided for a tax credit in the amount of 50% of the costs incurred for the transformation and / or establishment up to 31 December 2020 in a Benefit Company.

The Legislative Decree 183/2020, the so-called "Milleproroghe" decree, then provided for an extension of 6 months, establishing a new deadline for the costs incurred up to 30 June 2021 and a simultaneous use in compensation also for 2022.

Recently, however, in Italy a form of incentive has been promoted. With the Director's Decree of 4 May 2022, the terms and procedures for submitting applications for access to the contribution provided for in Article 38-ter of Decree-Law No. 34 of 19 May 2020 in favor of Benefit Companies were established.

In order to support the strengthening of the system of Benefit Companies throughout the country, Decree-Law No. 34 of 19 May 2020 provided for the granting, on a de minimis basis, of a tax credit to the extent of 50 per cent of the incorporation or transformation costs incurred by benefit companies (Article 38-ter, paragraph 1).

There are no financial benefits, financial discounts for Socially Responsible Companies in Lithuania. Benefits from being a SRC comes from the positive attitude and loyalty of customers and profit as a consequence.

If a company proves its' social responsibility, it can apply for the **National Responsible Business Award**. The National Responsible Business Award is an initiative of State institutions in Lithuania and has been running since 2008. It aims to increase awareness of the benefits of corporate social responsibility for business, State and citizens, and also to encourage the country's companies to implement the principles of social responsibility in their activities. This competition promotes friendly competition between companies, not by profit, but by increasing their social responsibility. Getting this award and having its' label next to the company's name counts as some sort of legal certificate and is good for marketing as customers value companies that implement activities for common good.

There are also no financial benefits, or financial discounts for socially responsible companies in Ireland too. However, these organizations can apply for awards, such as The Chambers Ireland Corporate Social Responsibility Awards, which was established in 2004 to recognize the work being carried out by companies to improve the lives of their employees and to enhance the civic environment in which they operate. Benefits include the business impact of an enhanced corporate reputation and consequent brand loyalty.

Additionally, companies with strong CSR frameworks tend to attract and retain talent. Graduates are more aspirational than ever and they are looking for workplaces that fit in with their values. Younger generations are saying they are interested in certain causes and will select employers based on what they are doing on them. It also allows companies to tell the company story in a way that connects them to their current and prospective employees. It shows people in a meaningful way what that company values.

Once companies are B Corp certified, they enjoy many benefits that come with certification. Certified companies use their certification seal to lead movements, build relationships, attract talent, improve their impact, amplify the voice of others, and protect their mission. Having B Corp accreditation unlocks membership to an exclusive community and that is certainly part of the appeal; It's not just something that you can buy off the shelf.

Since there is no concept of BCs in Spain, there are also no measures that benefit this type of company. There are tax advantages for social economy companies, especially in corporation or local taxes (benefits and exceptions).

Regarding public procurement, Public Sector Contracts Act, 2017, combines the economic dimension that has been characterizing the model of public procurement, with the social, environmental, integrating and comprehensive dimension imposed by the European Union, reinforcing the social and inclusive dimension of public procurement.

In this sense, the Law expressly speaks of including in public contracts considerations of social, environmental, innovation and development type. These considerations may be included both when designing the award criteria and when establishing the criteria qualitative to assess the best value for money, the solvency criteria, or the special execution conditions. However, its introduction is conditional on are related to the object of the contract to be concluded, are not directly or indirectly discriminatory, are compatible with Community law and are indicated in the advertisement bidding and in the specifications.

Additionally, the Corporate Social Responsibility Observatory in Spain has created the "CSR Seal" as a way of identifying socially responsible companies through the use of it in their corporate image, services and products. The authorization to use the seal is granted by the Observatory after verifying that the company carries out Corporate Social Responsibility activities in the strict sense and taking into account international parameters.

In the last fifteen or twenty years, Portugal has grown considerably and has reached an important place in Europe and the rest of the world, which goes beyond its small geographical size and economy. At the same time, entrepreneurs became more educated and aware of their responsibility. A great number of companies placed in Portugal, national or multinational, aim for a global market, so they must play by the same rules as other foreign companies. Being Social Responsible or having a Responsible Company Conduct can bring important benefits.

Social Responsibility means:

- Attraction and retention of qualified human capital in the organization, while promoting their motivation and increasing their productivity;
- Attraction and retention of clients, partners, suppliers, and investors that want to collaborate with the social cause;
- Resilience for risk management and crisis scenarios;
- Generation of a competitive differential in the organization;
- Promotion of a more positive image of the organization;
- Reduction of eventual natural resource scarcity scenarios, with positive impacts on both the supply chain and the organization itself;
- Promotion of positive impacts on society and creation of opportunities for people impacted by the organization's actions.

3. THE POTENTIAL DEVELOPMENT OF BCs UNDER ITALY, LITHUANIA, SPAIN, IRELAND AND PORTUGALS' LEGISLATION

3.1. Are there any upcoming laws that would regulate activity of a Benefit Corporation?

A strong driver for the transformation and success of benefit companies comes from the government (thanks also to the NRP) with a tax credit that can write off the start-up or transformation costs of benefit companies. That is the case in Italy. With the Director's Decree of 4 May 2022, the terms and procedures for submitting applications for access to the contribution provided for in Article 38-ter of Decree-Law No. 34 of 19 May 2020 in favor of benefit companies were established. In order to support the strengthening of the system of benefit companies throughout Italy, Decree-Law No. 34 of 19 May 2020 provided for the granting, on a de minimis basis, of a tax credit to the extent of 50 per cent of the incorporation or transformation costs incurred by benefit companies (Article 38-ter, paragraph 1).

Starting on 19 May and until 15 June 2022, companies in Italy that set up or transform into benefit companies during 2020 and 2021 will be able to apply for the tax credit made available by the Ministry of Economic Development. Starting in 2020, the state has granted benefit companies a tax credit of 50 per cent to write off the start-up expenses of the company or the transformation of a pre-existing company. The expenses must be incurred between 19 July 2020 and the end of 2021, with a limit of EUR 10,000.

On the other hand, there are no publicly available knowledge that any legal regulations would be considered regarding the Benefit Corporations in Lithuania or in Ireland at this moment. As for Socially Responsible Companies, at present, there are no clear criteria in Lithuania for comparing corporate responsibility of companies. Therefore, in order to ensure proper evaluation of the results of corporate social responsibility by using objective indicators and to improve the availability of corporate social responsibility data, one of the goals is to create a **Business Sustainability and Responsibility Index in Lithuania**. This would help measure progress in the field of corporate social responsibility.

As for Ireland, new rules requiring Irish companies to publish information on their policies in relation to gender diversity, corruption and the environment, including the risk they pose to human rights through their supply chains, come into force in 2017. The EU regulations governing non-financial reporting, which apply to listed firms with more than 500 staff, are aimed at increasing transparency for customers and clients.

In Spain, on 18th October, 2013, a bill sponsored by the Catalan Parliamentary

Group, *Convergència i Unió*, on support for the activities of social entrepreneurs was presented to the House of Representatives, which focused its content on the creation of a unique legal distinction for those companies carried out by social entrepreneurs, proposing the aforementioned text as the name of the new legal form, the **General Interest Limited Liability Company (SLIG)**, under the following definition: "They will be companies whose corporate purpose is to develop an economic activity with the aim of reducing or transforming a specific social need; provide products and services available to vulnerable individuals or groups; promote economic opportunities for collective individuals at risk of social exclusion,

preserve and improve the environment” (Proposal for a law to support the activities of social entrepreneurs).

On the other hand, in this moment, B Corp Spain is promoting Companies with Purpose initiative, a petition to demand from the Spanish Government a law that recognizes inclusive and sustainable companies. In this case, this entity demands the creation of a legal figure, the **Common Benefit and Interest Companies (SBIC)**, which promotes and legally recognizes those companies that voluntarily seek to obtain, in the exercise of their business activity, a social benefit and/or environmental, in addition to an economic benefit.

Given the current specific legislation on these issues in Portugal, coupled with the growing concerns of Portuguese citizens with these themes, we believe this is an opportunity to create legislation and standards that regulate the activity around what is recommended in the Benefit Corporation model, in order to create requirements and induce good practices in terms of environmental responsibility and social responsibility.

3.2. What changes are needed in regards of legal aspects for the BCs in Italy, Lithuania, Spain, Ireland and Portugal?

Change (as well as creation) is not an easy and fast way. Passing legislation often requires a multi-year effort.

The process that provides for measures in support of Benefit Societies (tax credit for transformation costs) in Italy are now complete with the publication of the Directorial Decree of 4 May 2022, which establishes the terms and procedures for submitting applications for access to the contribution in favor of Benefit Societies.

The law initially envisaged the tax credit for the costs of transformation into a Benefit Corporation for 2020, starting from its approval in July, a measure that was then extended again for the whole of 2021, again at the instigation of our association. As part of the so-called Decree Aiuti (Decree-Law No. 50/2022), converted, with amendments, into Law No. 91 of 15 July 2022, the tax credit was extended to the entire year 2022, proving how the Government, Parliament and the Public Administration continue to consider the transformation of Benefit Societies as strategic, providing incentives for it.

It must be said that, while it is true that the measure was conceived and proposed as a one-off with a mainly symbolic value, we believe it is worth reflecting on how to relaunch it for the future. In this sense, Assobenefit will continue the discussion at the working table with the Inland Revenue on the deductibility/inconsistency of costs for a Benefit Company that has a dual purpose.

In Lithuania as there is no legal framework regarding BCs, there’s not much to change – only to create. If Lithuanian government would decide to pass Benefit Corporation Legislation and pass a bill in Lithuanian legislature to create this new legal entity, at least 3 steps would be needed to be taken:

Step 1: Create a Legislative Working Group Creating a new legal entity that significantly alters the legal landscape for every business law attorney can be incredibly difficult. So it's important to put together a working group of passionate and diverse individuals to help move the legislation forward. The ideal membership for a legislative working group would include:

- Business law attorney(s). Attorneys can provide assistance with early drafting guidance, and advocate for the legislation within the state's bar association. Earning the bar association's support—or at least their neutrality—can make life much easier.
- Passionate entrepreneurs. Entrepreneurs can help make the business case for the benefit corporation statute. These entrepreneurs should be comfortable stating that their company plans to incorporate as a benefit corporation when the entity is available.
- Current or former lawmaker(s), and/ or lobbyist(s). These individuals will have years of political relationships and institutional knowledge. They will be your sherpas as you navigate the process of getting the legislation passed, which tends to have more to do with politics and personalities than it will with policy. Notably, many law firms and the Bar associations have in-house lobbyists.
- A benevolent benefactor/client. A business or foundation may be willing to retain a law firm and/or lobbying group to help get the legislation passed in order to secure benefit corporation status.
- Graduate students. There will no doubt be a significant amount of research, report/legislative drafting, and administrative labor required to keep the working group's efforts moving forward efficiently. Students assisting the working group as interns/externs can be invaluable to its efforts.

Between regular meetings, stakeholder engagement, and coalition building, the responsibilities of leading the working group can be significant. Before engaging with outside groups or individuals, the task force should come to an early consensus on the legislation's framework.

Step 2: Engage Businesses, Entrepreneurs, and other Interested Stakeholders, get support and signatures from both startups and established businesses. Socially Responsible Companies could be a great starting point of this step. Support from state and local nonprofits, as well as chamber of commerce associations, is also critical. Traditional business groups with deep relationships in the state, including trade organizations, bar associations, and chambers of commerce, can also be ready allies. It's a good idea to identify the drivers of these initiatives, as there may be opportunities to consolidate and streamline efforts to achieve similar objectives. To the extent possible, it is important to ensure that none of the aforementioned groups are blindsided when the Benefit Corporation bill is introduced. While getting the support of these groups is ideal, a neutral position is generally sufficient.

Step 3: Identify a legislative champion in each caucus in the legislature. This step is vital to getting the bill through the committee process. These champions will lobby their fellow members behind closed doors and act as issue experts in caucus meetings. Briefing the leadership in each caucus is also crucial. Caucus leaders will have significant (if not final) say in whether the bill moves forward or dies.

Similar situation can be seen in Ireland, where are currently no laws which are specific to B Corps in Ireland. In the US, B Corps lobbied for legislation to secure their existence and, as a result, benefit corporations have been successfully rolled out as a company type in many states. Oftentimes the

introduction has been welcomed unanimously by both sides of the aisle. Like Community Interest Companies, B Corps could possibly be introduced into Ireland. They would make it easier not only for social enterprises to form and have legal standing but also for businesses to provide a sustainable social good as well as create profits. That could be done, but you'd need political support, a desire for change, as well as a critical mass, in order to implement and regulate it properly.

After that, you'd have to have the Company Legislation Review Group, which is an independent board, write white papers and go through a lengthy process before it becomes law. This is not an overnight process, The Company Law Review, was the single most significant piece of legislation to go through this procedure and it took 20 years to accomplish this. So, you would have to have a critical enough mass to push these changes through for benefit corporations to become recognized in Irish law. Goals and plans would need to be designed around the development and introduction of B Corps in Ireland; a sub committee may be required.

As proposed in 2013 or at this moment (by B Corp Spain) it would be necessary to modify the *Capital Companies Act, 2010* to introduce the legal form of SLIG or SBIC. Moreover, it would be interesting to tackle certain aspects in this new legal figure:

- Social object. The social impact must prevail over the economic one, making clear that the social enterprise is created with the sole purpose of causing social impact, and a written commitment must be acquired for this purpose, which must be established by its statutes
- Distribution of dividends. A fixed percentage of the profit after taxes must be established to achieve the social impact, and the rest may be distributed in the form of dividends.
- Incentives and subsidies. Reduction of the corporate tax rate, establishing a tax table applicable to this type of company given its special characteristics; establishment of deductions in the Income Tax who invest in social enterprises, establishing limits and duration of the same; application of a reduced VAT on purchases made by the company for the activity, among others.

In Portugal there are already organizations and companies, such as "Associação Zero" certified by this model, that is, it can be said that it is not necessary to create new legislation for this.

However, it will be possible to create similar models, as long as the trademark rights that the B Corp may have in the country are not disrespected. In conclusion, a similar system can be created in our country, applying the principles that the original B Corp system incorporates, but organized and implemented in an innovative way that distances itself from the trademark rights of the BC.

The B Corp movement had its start in Portugal in 2015 sponsored by IES. The B Corp community in Portugal already involves more than 40 entities that interact and meet regularly in order to exchange experiences and learn, together, how they can significantly contribute to a better world. The largest Portuguese B Corps are Hovione, Symington Family Estates and Abreu Advogados.

4. THE FEATURES OF BC: THE OUTCOMES-BASED APPROACH TO ASSESS THE IMPACTS OF ENVIRONMENTAL AND SOCIAL ACTION

4.1. What are the advantages and disadvantages of being a Benefit Corporation?

When the company indicates in its articles of association the purpose it pursues and meets the legal requirements, it may include the words "Benefit Company" or the abbreviation "BC" in its name, and may use this name in securities issued, in documentation and in communication to third parties. The recognition of this status enables the company to place itself on the market and let third parties know that it pursues, alongside its profit-making purpose, additional socially useful purposes, with clear and legally recognized information.

The purpose of the new rules (implemented in Italy), therefore, is not to create a new type of company, but rather to supplement the already existing company regulations with rules that allow: the company to bind over time the original values that inspire the company's business the company; the directors to allocate resources and activities to pursue the further purposes indicated in the articles of association; to the market, to enjoy truthful and transparent disclosure of the company's commitment to combine the company's objectives of profit and growth of the company with respect for the social and environmental context in which it operates.

The form of benefit corporation offers legal protection to balance financial and non-financial interests when making decisions, even in the face of a sales hypothesis, or for publicly traded companies.

To try to summarize, being a BC (or in some cases SRC) has many of both advantages and disadvantages. Here are some of the **ADVANTAGES**:

Social responsibility helps to grow the company's image. Employee branding or the image of the employer becomes one of the determining motives when choosing a job in specific companies. Just as a company evaluates applicants - their experience, values, social interests, at the same time applicants evaluate companies choosing those that, in addition to good working conditions, have a higher culture, stronger working principles, demonstrate social responsibility. In the long run, a strong image helps companies withstand crises, create greater customer satisfaction, and has a greater impact on their ratings and purchases of services or products. It builds better relationships with suppliers, partners, grows the company's credibility curve, and brings more positive media attention. Being a socially responsible company can help you to build a reputation as a responsible business, which can, in turn, lead to competitive advantage. Suppliers and customers are more likely to work with and choose a company who has demonstrated a commitment to improving society. It is a great way to differentiate your brand and build customer loyalty with those who connect with your chosen cause. People feel good about engaging with organizations that help the community. Improving reputation, trust in the brand and a corresponding increase in sales. Having a business strategy aligned with the 2030 Agenda that is reflected being a BC will increase trust in the brand and increase sales. In this sense, 64% of Spanish consumers take sustainability into account in their purchases. For this reason, being a BC will not only improve the company's reputation abroad, but also that of its internal stakeholders, such as workers, who will see that the company's purpose places importance on contributing to achieving a society and a better world.

Loyal employees and customers. The Benefit Company assures future talents that the company is legally committed to pursuing a mission of positive impact. More and more people choose to work for or buy from Socially Responsible Companies. This also creates long-term business success: it attracts good professionals who find meaning in their work, as well as loyal customers who feel a sense of community with the brand's mission. Another trend can also be seen: it is from brands that society expects fundamental social change to solve problems around the world - an indicator that puts business far ahead of politicians. The recent pandemic has become a good example: a united business, both in Lithuania and in many other countries, has become one of the key driving forces in the search for solutions.

Employee productivity. When we talk about social responsibility, we are also talking about higher employee satisfaction, their involvement in the activities of the organization. Studies say employees involved are up to 20% more productive.

Cooperation between BCs. Company can join other iconic, reputable companies recognized for the benefit they create for society (e.g. Patagonia in California), and be at the forefront of a growing movement. By participating in international projects implementing social responsibility programs, businesses can obtain information and knowledge from global organizations about development processes and practical aspirations in the world, which will help them to operate successfully in a competitive environment. Belonging to groups that unite organizations with common goals helps to shape practical solutions to the challenges of globalization and sustainable development. Alliances with companies. Even though the current regulation does not regulate the BCs, it is consistent to think that, by being prepared in this matter, the doors will open for us when establishing links and accessing companies that do. These evaluate their suppliers by the same criteria that are required of them, in order to achieve their own objectives through them. Consequently, this translates into a better position when contracting with large companies.

Transforms companies into societal actors and mechanisms for positive intervention in society. Becoming a BC helps to define the Purpose of organizations and integrate social and environmental responsibility concerns into that purpose, and thus interact and transform society in a sustainable way. Society expects fundamental social change to solve problems around the world - an indicator that puts business far ahead of politicians. The recent pandemic has become a good example: a united business, both in many countries, has become one of the key driving forces in the search for solutions.

Risk management. Social responsibility helps to improve risk management in the company and to prepare advance action plans for possible emergencies. In addition, it is logical to think that, if the Public Administration ensures sustainability, so will investors and financial entities. Therefore, a company that has these measures will also have an easier time applying for new financing.

Improve relationships. As well as building customer loyalty, socially responsible organizations can improve relationships with many other stakeholders. Socially responsible companies can also provide a great opportunity to form relationships with local media, who are likely to cover your stories and generate positive coverage for the positive efforts you make in the local community.

Preparation for the new Environmental, Social and Governance (ESG) regulations. Although companies, at this time, are not required to prepare their reports on corporate sustainability, one can

imagine that it is just a matter of time and the rapid progress we are seeing in ESG matters may soon oblige them to do so. Therefore, companies that already have ESG reports will find it easier to adapt to the new regulations.

Advantages when awarding contracts with the Public Administration. In accordance with the provisions of Law 9/2017, of November 8, on Public Sector Contracts (In Spain), environmental or social aspects are included as criteria for the award of contracts to companies with the Public Administration. In this sense, companies that have measures to reduce the level of greenhouse gas emissions, energy saving and efficiency measures, the implementation of a gender equality plan or the application of ethical and responsibility criteria will have advantages.

Help cost savings. In accordance with the provisions of the CEPYME Guide (Spain), 67% of companies that implement sustainable strategies generate energy savings, which translates into cost savings. In addition, the benefit company can improve accounts as well. The tax legislation currently in force in Italian law only offers a tax benefit when setting up a benefit company or transforming a company that already exists in this form.

However, there can be **DISADVANTAGES**. It can lead to some negative outcomes if you view it as a way to generate more income, rather than offer genuine support. Some bad corporate social responsibility examples include:

Greenwashing. This is where you feign interest in social responsibility to improve your bottom line, rather than support socially aware ideas. Authenticity is the right approach to take—be genuine and transparent in your efforts.

Losing interest in your projects. Social responsibility is a long-term commitment, and you mustn't lose interest in your ideas over time. This can reflect badly on your organization—it can come across as your interest was in positive PR.

Forming a Benefit Corporation (in Lithuania, Ireland) is not possible. It would take a long time and be quite expensive for a company in Lithuania or Ireland to become a BC.

Cost of becoming a BC. The costs of incorporation or transformation include notary and registration costs in the register of companies as well as expenses related to professional assistance and consultancy incurred and directly intended for the establishment or transformation into a benefit company. Also, when a company is already a BC it still must be recertified every two years which costs money as well.

4.2. What is the influence of a Benefit corporations on economy in Italy, Lithuania, Spain, Ireland and Portugal?

The legitimate economic goal of companies to obtain the highest possible profit must go hand in hand with the preservation of the environment for this and future generations, as well as with social responsibility.

The operation of companies that takes environmental concerns into consideration will reflect on the competitiveness of those same companies, and therefore improve the country's economic indicators. For example, the value of what is put into landfills is enormous and that, with the proliferation of Benefit Corporations, these and other environmental practices, this value can be recovered and will have benefits for the country's economy.

In recent years, a broad debate has developed on how to assert a new business concept, in which social progress is integrated into the economic development process of companies. This debate stems from the intuition that tempering the logic of profit, balancing the interests of shareholders with those of other stakeholders, is not a constraint for companies, but an opportunity for differentiation and growth.

Every company, in the exercise of its activity, produces an impact on the territory in which it operates, on the environment, and on society in general. At the same time, a company's strategic choices are influenced by its socio-environmental context. This interdependence highlights how acting with greater attention to interests other than the exclusive interests of shareholders can enable a company to gain efficiency, increase productivity and expand markets.

Caring for the working conditions of employees, the financial health of suppliers, technological innovation, the use of renewable energy, and dialogue with local communities are just some of the factors that allow the company to increase its profitability in the long term and the well-being of the community. With the new rules, there is a change in the configuration of social interest for those companies that intend to take common benefit as their corporate objective. Benefit companies may, in fact, expressly pursue two objectives: profit and common benefit, with the consequent emergence of new tasks and responsibilities on the part of the directors. Ideal aims enter the process by binding the directors to precise corporate policy choices based on the balancing of different interests.

The indication of purposes of common benefit in the corporate purpose makes it possible to crystallize the objectives pursued in the exercise of the economic activity by making immanent to the enterprise the commitment of realizing the common benefit, irrespective of the events affecting the shareholders and the management.

BCs and SRCs have a positive impact on economic growth. By engaging in the practice of social responsibility, companies carry out ethical activities, appropriate environmental protection, ensure good working conditions, fulfill contractual obligations, can find new business partners and increase sales.

If society is socially successful, it also facilitates business development. Sometimes the short-term costs associated with social activities can be high, but in the long run they can increase profits by creating a favorable image in the eyes of the local consumer community. Socially responsible companies improve the lives of local communities and reduce the need for state involvement.

The business case for Corporate Social Responsibility is undeniable – the drivers for companies to act ethically and with integrity are now crucial for their reputations when dealing with informed employees, consumers, communities, investors and other stakeholders. The direct benefits of CSR are many, and it is shown to drive innovation, foster trust and transparency, boost long-term profitability,

ensure competitiveness, and engage the workforce. Responsible business is an approach and business mind-set that is here to stay, and leading Irish businesses wish to be leaders in sustainability practice.

Socially Responsible Companies also do their part in raising awareness about environmental, social, health, gender equality and so on issues to the society in all Countries. This helps consumers to be more aware of those issues and engage in finding solutions to the problems.

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