



To be or not to be: Belgian corporate specialists question the use of the social purpose company as an adequate legal status for social business

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Belgium is rethinking its Company Code as well as the law on non-profit organisations. The Belgian Centre on Company Law is proposing to abolish the social purpose company. This article outlines the arguments pro and contra the proposals made by the Centre, according to Marleen Deneff, Belgian expert on social business.

The 'making of' a European level playing field for for-profit corporations in Belgium?

Recently, the Belgian Centre on Company Law ('BCC') has been examining the possibilities of a global update of the Belgian Company Code. In a European context, the 'light vehicle' competition puts pressure on the general requirements for incorporation, capital structure, internal and external organisation of for-profit corporate entities. In order to participate at a European level, Belgian academics in corporate law have proposed a global reform of the Company Code. The outline was presented before the Belgian Parliament on 6 October 2015 to test the waters (and the appetite) for such a reform. No legislative initiatives have followed so far.

Aiming for a single Code for Corporations and Associations?

In addition to a global reform of Company Law, the BCC's proposal also suggests combining the Law on Non-Profit Organisations ('NPOs') of 27 June 1921 and the legal framework of non-profit associations and foundations into one renewed Code for Corporations and Associations, currently still separated.

One major point of the reform would be to abolish the limitations on economic activities for NPOs (i.e. commercial, trade or market activities) which are still applicable to NPOs under current legal standards.

Regardless of the question whether this isolated initiative in corporate legislation could be implemented without amendments to other legislation (for example, on tax status, volunteers, subsidies, state aid or competition law), it seems that the BCC considers the not-for-profit legal forms with unlimited economic activities to be the only formula for “social enterprise”...

No room for a company with social purpose?

According to the logic of the BCC, the uplift of the limitations on economic activities for NPOs would be sufficient to support the development of social enterprises and should be accompanied by abolishing the social purpose company status (“vennootschap met een sociaal oogmerk” or “société à finalité sociale”, in short ‘SPC’). In the traditional approach to business models in Belgium, this would imply that there is no need and thus no room for a legal status combining social impact with financial impact.

In addition to NPOs with trading activities, the BCC considers the cooperative company to be a sufficient alternative for social enterprises: as a for-profit corporation, a cooperative company can obtain a specific label as a “recognized cooperation” when certain conditions on limitations of voting power and profit distribution are met.

The foregoing does not represent the opinion of the sector concerned. The BCC has not consulted federations of employers in and networks of the Third sector regarding these proposals. Recently intermediaries in the social profit sector (such as VERSO, de Verenigde Verenigingen, Sociare...) have organised themselves and started debates on the proposals.

Times are changing!

The above proposals seem to indicate that the BCC still maintains a classic corporate mindset which does not take into account the new developments worldwide on social enterprise and “business as a force for good”.

And yet, new financing techniques such as social impact bonds, social impact funds, EUsEF-labels, etc. have been around for a while in Belgium, which seem to indicate that more and more investors, including institutional ones, are looking for a “double impact”-key in investment. These investors are not necessarily interested in “window dressing” as the most cynic corporate comments sometimes state, but rather in holding businesses accountable (in particular via their yearly report) to provide reliable scores or KPI's on financial impact and social impact.

Moreover, in a Belgian context, classic NPOs are setting up partnerships with investors in order to solve societal challenges which federal or regional governments, under pressure by budget cuts and other issues, can no longer provide. The SPC is appreciated as a legal status that builds bridges between social entrepreneurs and capital investors. For these pioneers, teaming up is the new mantra, and the SPC is the legal Riksjā leading both parties to benefit from the best of both worlds.

The request by more and more consumers to consider the limitations of planet, people and profit in the way multinationals and SME's do business, leads to new innovative legal thinking: the global B Corp movement is at the basis of this search for appropriate legal forms and statuses for companies with a “triple bottom line”.

It seems rather ironic that the BCC is proposing to completely abolish the SPC, one of the first hybrid legal statuses in Europe, while the rest of Europe is creating new hybrid legal forms and statuses to structure B Corps and social enterprises. Rather than killing this darling, the BCC should reconsider the SPC status by benchmarking its legal features with the initiatives taken in 2015 by parliaments in Luxembourg (Société d'Impact Sociétal), Italy (Società Benefit), France (Entreprise de l'ESS)... Only then will Belgium be able to participate on a level playing field for entrepreneurs in Europe aiming to combine financial and social impact.

Let's overcome traditional dichotomies between for-profit and non-profit and team up on a European level to create appropriate legal structures for social entrepreneurs!

Resources

http://www.bcv-cds.be/files/bcv_nota_minister_justitie_nl_20151002.pdf; Chamber, Parliamentary Documents 2015-2016, nr. 1500/001; X, Social Enterprise: Mapping Legal Forms and Statutes Across Europe, <http://esela.eu/maps/>

About the author

Marleen Deneff, partner at Curia and law professor at the KU Leuven-campus Brussels, contributes to the debates organized by social profit federations and networks in Belgium to determine the preferred future legal structures for “social business”. As a board member of ESELA, she can keep in touch with her colleagues in the network to follow-up on the evolutions elsewhere in Europe.