Building Social Business in Europe

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'Building social business' ranks high on the current agenda of economic policy. At least since *Muhammad Yunus*, winner of the Nobel Peace Prize, published a book under this title in 2010, the concept of social entrepreneurship has been attracting ever greater interest from politicians and lawmakers at national and international level. In US corporate law, for instance, legislation introducing so-called benefit corporations has already been enacted in twenty-seven states. Within the international G8 framework, the UK presidency established a Social Impact Investment Taskforce, which recently issued a comprehensive report entitled 'Impact Investment: The Invisible Heart of Markets'. This broad political movement corresponds with the current trend towards a sustainable economy, and it is supported by important academic voices. For example, the influential economist *Robert J. Shiller* – also a Nobel Prize Laureate, but in Economic Sciences – argues that we need to reclaim finance for the common good. His book 'Finance and the Good Society' was widely received as a provocative call for reinventing finance as a force to create a positive impact on society and the environment.

The core idea of social entrepreneurship consists in reconciling profit and purpose. Driven by respective preferences of consumers and investors, socially and environmentally conscious behaviour of a company is not necessarily detrimental to its corporate profits, but may well increase them. Reciprocally, the perspective of making profits may raise the motivation of investors, workers, and managers to contribute to the common good. By this reconcilement of profit and purpose, social companies differ from conventional business organizations in terms of the sole (or at least primary) orientation towards making corporate profits. Yet social companies also contrast with traditional charitable organizations, for the latter are characterized by their non-profit nature and typical distribution constraint. Finally, social companies differ from the public sector, too – even though the latter plays a key role in the protection and promotion of the economic and social well-being of citizens in the modern welfare state. Public and private institutions are fundamentally dissimilar in many respects. Mainly due to fiscal constraints, however, politicians throughout the world are cutting back on state welfare provision, and social entrepreneurship is widely regarded as an alternative means to encourage people to create a positive impact on society and the environment. Hence, social enterprises are emerging as a 'fourth sector' of the economy, uniquely committed to simultaneously earning profits for shareholders and creating social and environmental benefits for the common good.

While the aforementioned G8 report calls for a suitable legal framework for social enterprises, the European Union has already taken some steps in that direction. Back in 2011, the European Commission launched a comprehensive strategy for Corporate Social Responsibility, complemented by a Social Business Initiative aiming at 'creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation'. To date, these efforts have mainly resulted in two separate legal instruments. Firstly, the recent 'Directive on the disclosure of non-financial and diversity information' requires certain large companies to disclose in their management reports information on policies, risks and outcomes regarding environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their boards of directors. Secondly, the regulation on European Social Entrepreneurship Funds has introduced a new label – 'EuSEF' – allowing fund managers to market their funds across the whole of Europe, on the condition that they meet certain uniform requirements, in particular a high percentage of investments in social businesses. Additionally, fund disclosure shall ensure that investors are provided with clear and effective information on their investments. In short, both legal instruments aim at helping investors to identify social-investment opportunities, be they in large public companies committing themselves to ethical standards, or in funds with a focus on investing in social businesses.

A third element, however, is still missing. The European Union neither provides for nor mandates Member States to provide specific corporate vehicles for social entrepreneurship. So far, there is no European equivalent to the benefit corporations available in the US. There is not even any relevant political discussion in this area, despite some impressive advances in legal scholarship. Yet a suitable company law framework is arguably not only the key prerequisite to facilitate social investment, but equally important

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for consumers with a preference for socially responsible companies. By providing investors and consumers with a means to easily identify social entrepreneurs, the introduction of a new legal form – a 'European Social Company' – would concurrently constitute an important competitive advantage for the latter. In that sense, European Social Company legislation would represent not just another step, but indeed a crucial centrepiece of a suitable legal framework for social entrepreneurship in Europe.