

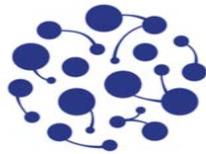


**Purpose-driven companies:
legal framework and case
studies**

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Esela – The legal network for social impact



esela
The legal network
for social impact

In 2013, EU Commission launched a social enterprise mapping study across all EU Countries (<https://esela.eu/legal-concept-maps>)

This research led to the creation of esela - The legal network for social impact (2015) - whose scope has expanded to include:

- impact investing
- social procurement
- not for profits
- co-operatives and mutuals
- profit with purpose businesses of all sizes

More recently, esela developed **The Guidance Note: Legal and Regulatory Framework** for the **Better Entrepreneurship Policy Tool**, in collaboration with **OECD** and **EU Commission** (<https://www.betterentrepreneurship.eu/en/node/52?q=/printpdf/52>)

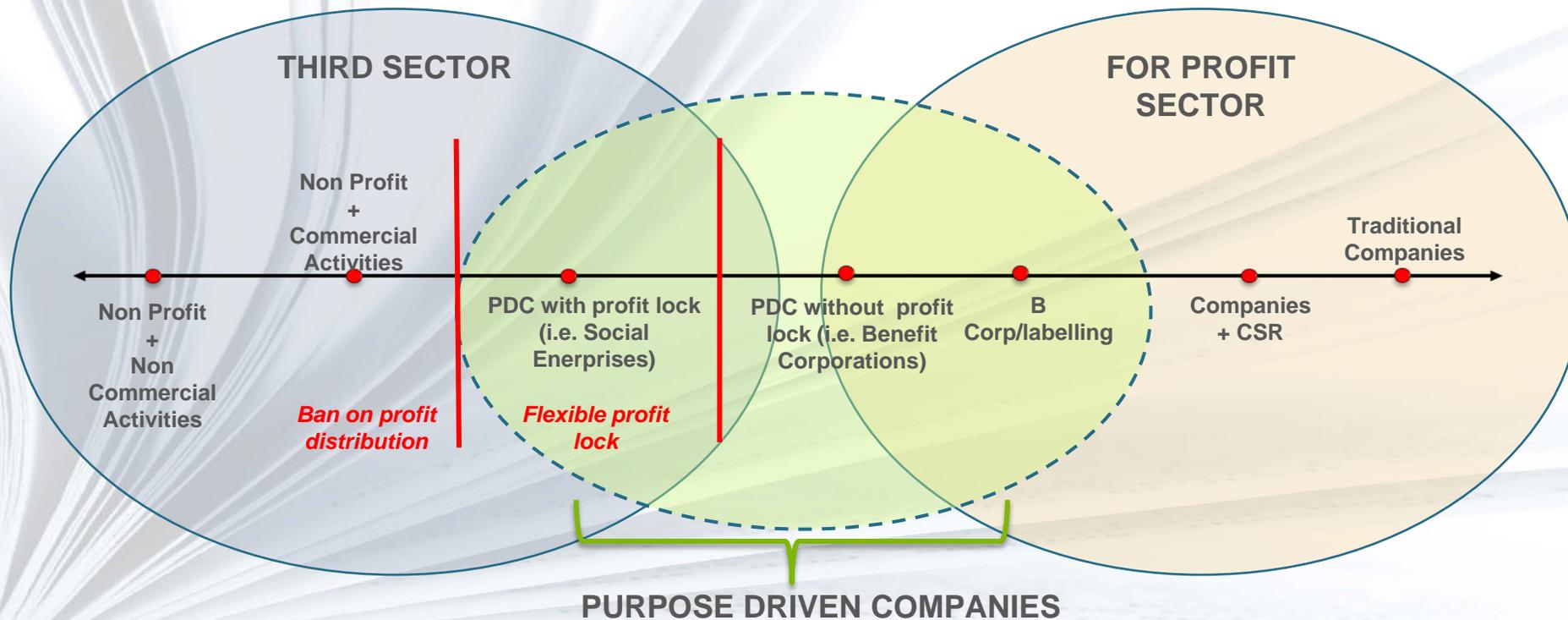


Purpose-driven companies: UNDP research project

- As there are several purpose-driven models for companies and there is not a homogeneous legal framework across the world, investigating what **legal forms** are used in the different jurisdictions **to carry out both economic activity and social and environmental purposes** is a matter of interest.
- Esela has been asked to contribute to the **international research project “Creating a public policy roadmap for purpose-driven companies”**.
- **The report**, which is **not yet released**, has been initiated by the American Secretariat (SEGIB) and the United Nations Development Program (UNDP) in an attempt to underline differences and draw up a recommendation on the **legal framework for purpose-driven companies** in continental Europe; **publication is expected by fall 2020**
- **The information shared in this presentation comes from practical experience and legal assistance provided to hybrid legal entities across the EU.**

A growing global phenomenon

"We are in a new era. For-profit businesses are tackling social and environmental issues, non-profits are developing sustainable business models, and governments are forging market-based approaches to service delivery. Out of this blurring of traditional boundaries, a different model of enterprise is emerging, driven by entrepreneurs who are motivated by social aims" E.Sabeti, *The For Benefit Enterprise*, Harvard Business Review, 2011



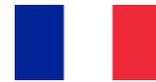
Purpose-driven companies: an overview

1. **Purpose-driven companies with full or partial profit-lock** (rooted within the third sector)
2. **Purpose-driven companies without profit-lock** (influenced by United States legislation on Benefit Corporation).
3. **“De facto purpose-driven companies”** (hybrid constructions and private certification schemes, without specific company form or label).

The legal framework in Europe is not homogenous

With profit lock

- Social and Solidarity-based Companies (ESS-companies)
- Solidarity-based Companies with a Social Utility (ESUS-companies)
- Collective Interest Cooperative Company (SCIC)



Without profit lock

- mission-driven company (Société à mission)

With profit lock

- Social Enterprise
- Social Cooperative
- Innovative Start-ups with Social Vocation



Without profit lock

- Società Benefit

With profit lock

- Société d'Impact Sociétal (SIS)



With profit lock

- Social enterprise



With profit lock

- Cooperative Company recognized as social enterprise



National label

- Finnish Social Enterprise Mark



Hybrid Constructions

- Steward ownership models



Global label

- B Corp



1) Purpose-driven companies with total or partial profit lock

Characteristics

Most labels can only be obtained if the company:

1. integrate “purpose” in the bylaws
2. Pursue activities of general utility (some legal orders provide a limited list of sectors)
3. file an annual report to provide information related to the activities of general utility
4. comply with mandatory regulation concerning the governance of the company (i.e. multi-stakeholder approach; restriction on voting power; the remuneration of Directors)

Profit lock mechanism :

- cap the amount of profit that can be distributed with a fixed percentage (i.e. 50 % - **FRA, ESS-label**)
** profit lock can be provided for specific class of shares (i.e. shares of impact – **LUX, SIS**)
- cap the amount that can be distributed to one shareholder by a fixed yield rate (i.e. of 6% **BEL, Cooperative Company**) calculated on the amount of capital that is paid in by the shareholder.
- both mechanisms above mentioned can be used (**ITA, Social Enterprise**)
- invest the remaining surplus in a specific development fund or in the social purpose of the company.
- provide an asset lock in case of mid-stream changes (e.g. revoking the legal status) or liquidation.

2) Purpose-driven companies without profit lock

Characteristics

France and Italy have a specific legal status for purpose-driven companies without profit lock which is largely inspired by the United States Benefit Corporations.

- The company must add a social or environmental purpose in its bylaws
- There is no limitation on the distribution of profits
- An annual report must be published in order to be transparent regarding the purpose
- The French regulation on "***Société à mission***" requires every company to install a mission committee ("comité de mission") whose main purpose is to verify whether the Board of Directors and the Company have duly executed the mission of the company. As such, the mission committee acts as an instrument of private enforcement in the event of non-compliance by the Board of Directors.
- The Italian "***Società Benefit***" requires to establish in its bylaws how directors should balance profit maximisation and pursuing the common benefit of the company. Since shareholders can demand compliance from the directors of the company, this legal requirement can be an instrument of private enforcement.

3) “De facto purpose-driven companies”

“De facto purpose-driven companies” pursue the “purpose” without a specific company form or legal status for purpose-driven companies.

Hybrid constructions

- NPO participating as a shareholder in the company (i.e. **BEL**)
- hybrid constructions through foundations (i.e. **GER**)
- Tandem structures such as a non-profit company with trading activities or associations with for-profit subsidiaries (i.e. **FRA**)

Private certification schemes

- B Corporation Certification is a private label that is founded and granted by private non-profit organisation B Lab to guarantee the positive impact and generating value of the company through the creation of benefits for the community, if complying with the B Impact Assessment. (**Global**)
- Finnish Social Enterprise Mark, stating that the company is engaged in responsible business activities (**FIN**)

Hybrid constructions: Steward Ownership model

The CARL ZEISS Single Foundation ownership

The Carl Zeiss Foundation is the sole shareholder of Carl Zeiss AG. This special ownership structure ensures stability and enables the company to work towards **long-term prospects**. The Foundation **Statute prohibits the sale of shares** through, for instance, an initial public offering. For that reason, the company's shares are not listed on any stock exchange.

- The foundation administration is responsible for appointing members of the foundation council.

They determine how subsidies for research and education are to be allocated and are responsible for any changes to the foundation's constitution.

- The foundation council is responsible for attending to the foundation's economic interests as the sole shareholder of both Carl Zeiss AG and Schott AG. The council also represents the voting rights of the foundation.
- The management advisory board consults on the selection of foundation council members, the allocation of subsidies, and changes to the foundation's constitution.



Purpose driven companies and Impact Investing

Since purpose-driven companies pursue and measure social and environmental purposes, can be the natural target for impact investors.

➤ *Impact Investing*

“Investments made into companies or organizations with the intent to contribute to measurable positive social and environmental impact alongside financial returns”

Intentionality: the explicit willingness to incorporate in the business model the search for a solution to a community problem and the generation of a positive social impact is the first requisite of an “impact organization”. The actors who financially invest in the organization must also be ready to lose a portion of the economic result in favor of the social result.

Measurability: the organization capacity to be accountable of the proposed social solution in quantitative and qualitative terms is a necessary requisite.

Additionality: to generate a positive social impact the organization must take action in fields where market mechanism fail or only partially work.

