MARIANA TEOTÓNIO PINTO GARDETE VICENTE

SUSTAINABLE FINANCE AND ITS SUSTAINABLE FUTURE: A HOLISTIC APPROACH

Dissertation to obtain a Master's Degree in Law, in the specialty of Law and Management

Supervisor:
Claire Bright, Professor of the NOVA School of Law

March 2023

SUSTAINABLE FINANCE AND ITS SUSTAINABLE FUTURE: A HOLISTIC APPROACH

March
2023

Anti Plagiarism Statement

I, Mariana Teotónio Pinto Gardete Vicente, hereby declare that the work I present is my own work and that all my citations are correctly referenced and acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.

Para o meu Pai

Acknowledgements
I would like to extend my deepest thanks and gratitude to Professor Claire Bright, as well as the NOVA Centre for Business, Human Rights and the Environment for the guidance, support, and knowledge they have provided me with during this process.
I would like to show my greatest appreciation for my mother, my father, and my aunt Filipa for their unwavering love and support.
Ana Carolina and Mónica, for your encouragement and love, thank you.
Tiago, to you, thank you will never be enough.

"There can be no Plan B, because there is no Planet B."
Former United Nations Secretary-General, Ban Ki-moon

Quoting

This dissertation follows the quoting provisions of Portuguese Norms 405-1 and 405-4 of the Portuguese Quality Institute. Throughout this work all relevant references are identified in the footnotes, in full when referenced for the first time and in abbreviated for after that, in the following format: AUTHOR, Abbreviated title…, page. All references are listed in full in the bibliography.

The body of this dissertation, including spaces and notes, occupies a total of 155.270 characters.

Abstract

Sustainable finance is being motivated by a combination of factors, including both legislative and market forces.

On the one hand, the development of sustainable finance is being spurred by legislation, such as the EU Sustainable Finance Action Plan and the Sustainable Finance Disclosure Regulation (SFDR). These initiatives set out clear objectives and measures for promoting sustainable investment and require financial market participants to disclose information about the sustainability of their investments.

On the other hand, the development of sustainable finance is also being driven by market forces, such as the growing demand for sustainable investment products and the increasing recognition of the potential risks and opportunities associated with sustainability. Investors are increasingly looking for ways to align their investments with their values and to support the transition to a more sustainable economy.

Overall, the development of sustainable finance is being driven by both legislation and market forces.

One key factor is the growing recognition of the potential risks and opportunities associated with sustainability. As awareness of issues like climate change and environmental degradation increases, investors are becoming more aware of the potential impacts of their investments on sustainability. At the same time, there is also growing recognition of the potential risks and opportunities associated with sustainability, as governments and businesses begin to implement policies and strategies to support the transition to a low-carbon economy.

As a result of these factors, investors are increasingly looking for ways to align their investments with their values and to support the transition to a more sustainable economy. This is leading to growing demand for sustainable investment products and services, such as green bonds and other instruments that support the transition to a low-carbon economy.

Another key factor driving the development of sustainable finance is the increasing availability of information and data on sustainability. As more data becomes available on the environmental, social, and governance (ESG) performance of companies and other economic actors, investors are better able to assess the sustainability of their investments and make more informed decisions. This is also leading to the development of new benchmarks and indices that consider ESG factors, providing investors with additional tools for assessing the sustainability of their investments.

Overall, the development of sustainable finance is being driven by a combination of factors, including both legislation and market forces. As more data and tools become available to support sustainable investment, the demand for sustainable finance is likely to continue to grow.

Resumo

As finanças sustentáveis estão a ser motivadas por uma panóplia de fatores, entre os quais estão as forças de mercado e os impulsos legislativos.

Por um lado, o desenvolvimento é impulsionado por legislação, como o Plano de Ação da União Europeia para as Finanças Sustentáveis e o Regulamento de Divulgação de Finanças Sustentáveis. Estas iniciativas estabelecem objetivos e medidas claras para promover o investimento sustentável e exigem que os participantes do mercado financeiro divulguem informações sobre a sustentabilidade dos seus investimentos.

Por outro lado, o desenvolvimento das finanças sustentáveis está também a ser impulsionado pelas forças do mercado, tais como a crescente procura de produtos de investimento sustentáveis e o crescente reconhecimento dos potenciais riscos e oportunidades associados à sustentabilidade. Os investidores estão cada vez mais à procura de formas de alinhar os seus investimentos com os seus valores e de apoiar a transição para uma economia mais sustentável.

Globalmente, o desenvolvimento das finanças sustentáveis está a ser impulsionado tanto pela legislação como pelas forças de mercado.

Um factor-chave é o reconhecimento crescente dos riscos e oportunidades potenciais associados à sustentabilidade. medida que aumenta a consciência de questões como as alterações climáticas e a degradação ambiental, os investidores estão a tornar-se mais conscientes dos potenciais impactos dos seus investimentos na sustentabilidade.

Ao mesmo tempo, há também um reconhecimento crescente dos potenciais riscos e oportunidades associados à sustentabilidade, à medida que governos e empresas começam a implementar políticas e estratégias para apoiar a transição para uma economia de baixo carbono.

Em resultado destes fatores, os investidores procuram cada vez mais formas de alinhar os seus investimentos com os seus valores e de apoiar a transição para uma economia mais sustentável. Isto está a levar a uma procura crescente de produtos e serviços de investimento sustentáveis, tais como obrigações verdes e outros instrumentos que apoiam a transição para uma economia com baixo teor de carbono.

Outro fator fundamental para o desenvolvimento de finanças sustentáveis é a crescente disponibilidade de informação e dados sobre sustentabilidade. medida que mais dados se tornam disponíveis sobre o desempenho ambiental, social e de governança (ESG) das empresas e outros agentes económicos, os investidores estão mais aptos a avaliar a sustentabilidade dos seus investimentos e a tomar decisões mais informadas.

Isto está também a conduzir ao desenvolvimento de novas referências e índices que consideram os fatores dos ESG, proporcionando aos investidores ferramentas adicionais para avaliar a sustentabilidade dos seus investimentos.

Globalmente, o desenvolvimento do financiamento sustentável está a ser impulsionado por uma combinação de fatores, incluindo tanto a legislação como as forças de mercado. e à medida que mais dados e ferramentas se tornam

disponíveis para apoiar o investimento sustentável, é provável que a procura de financiamento sustentável continue a crescer.

1. Introduction

The European Union has long been a leader in the push for sustainability in finance. Sustainable finance is the practice of incorporating environmental, social, and governance (ESG) considerations into financial decision-making. This means considering not only the potential financial risks and opportunities associated with a given investment, but also its potential impact on the environment and society.[1]

It is of the utmost importance for this work to firstly attempt to define sustainable finance. To this day, there is not an "off-the-shelf" quick and easy definition for sustainable finance that is used across institutions and economic sectors of society, but rather an adaptable and flexible definition which is construed accordingly to the motivations of the organisations which are defining it.

The European Commission proposes the following definition: "*Sustainable finance refers to the process of taking* ***environmental, social and governance (ESG) considerations*** *into account when making investment decisions in the financial sector, leading to more long-term investments in sustainable economic activities and projects.* ***Environmental considerations*** *might include climate change mitigation and adaptation, as well as the environment more broadly, for instance the preservation of biodiversity, pollution prevention and the circular economy.* ***Social considerations*** *could refer to issues of inequality, inclusiveness, labour relations, investment in human capital and communities, as well as human rights issues. The* ***governance*** *of public and private institutions – including management structures, employee relations and executive remuneration – plays a fundamental role in ensuring the inclusion of social and environmental considerations in the decision-making process*."[2]

[1] EUROPEAN SECURITIES AND MARKETS AUTHORITY, *Sustainable Finance*, available at: https://www.esma.europa.eu/esmas-activities/sustainable-finance (28.12.2022)
[2] EUROPEAN COMMISSION, *Overview of Sustainable Finance, What is Sustainable Finance?,* available at: https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en (28.12.2022)

The definition proposed by the European Commission adopts, in itself, the idea of a flexible definition which assumes different molds depending on which considerations are being regarded. So, we can infer that sustainable finance practices will look different through an environmental lens, a social lens or a governance lens. We begin to get a sense of the challenge surrounding the widespread of sustainable finance once we understand that the concept itself is not crystallised yet.

The goal of sustainable finance is to support the transition to a low-carbon, sustainable economy by redirecting capital towards investments that are environmentally and socially responsible.[3] This can include investments in renewable energy, sustainable financial instruments, sustainable agriculture, and other activities that support sustainable development.

Sustainable finance is increasingly being recognized as a necessary component of the financial system, as traditional financial practices and systems are often not aligned with the transition to a sustainable economy.

In response, there has been a growing movement to integrate sustainability considerations into financial decision-making, including through the development of new regulations, guidelines, and reporting frameworks.[4]

Sustainable finance can benefit both investors and the broader economy. For investors, it can provide access to new investment opportunities and help to manage potential risks associated with unsustainable practices. For the economy, sustainable finance can help to drive innovation, support the development of new technologies, and create jobs in emerging industries.

---

[3] FERRIE, Daniel / APOSTOLA, Aikaterini, EUROPEAN COMMISSION, *Commission puts forward new strategy to make the EU's financial system more sustainable and proposes new European Green Bond standard*, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3405 (28.12.2022)

[4] MIGLIORELLI, MARCO, *What do We Mean by Sustainable Finance? Assessing existing frameworks and policy risks*, in *Sustainability* 13, no. 2: 975, 2021, available at: https://doi.org/10.3390/su13020975

Overall, sustainable finance represents an important shift in the way the financial system operates and has the potential to play a key role in supporting the transition to a sustainable economy.

In recent years, there has been a growing recognition that traditional financial practices and systems must be overhauled in order to align themselves with the transition to a low-carbon, sustainable economy. This relates to the “E” element of ESG – Environmental, Social and Governance. Environmental concerns and actions are only one of the elements of the concept of sustainability that ESG aims at.

The EU has made significant strides in this area, including through the adoption of the Sustainable Finance Disclosure Regulation (SFDR) in 2019. [5]This regulation requires financial market participants to disclose how they integrate sustainability risks into their investment decision-making processes, and to provide clear information to investors about the sustainability features of their products.

Additionally, the EU has established the Technical Expert Group on Sustainable Finance (TEG), which is tasked with providing recommendations on the integration of sustainability into the financial system. The TEG has developed a taxonomy that defines what constitutes a sustainable economic activity and has also proposed a set of voluntary guidelines for investors on how to integrate sustainability considerations into their investment processes.

However, there is still much work to be done in order to fully align the financial system with the transition to a sustainable economy. This includes further developing the regulatory framework for sustainable finance, as well as increasing awareness and understanding among investors and other stakeholders.

The research questions which are approached in this dissertation range what the applicability of existing legislation to financial institutions is, regarding

[5] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R2088 (01.01.2023)

sustainability guidelines, how sustainable finance is being motivated or rather motivating the lawmaker in prompting legislation, and lastly, how the new consumer mentality – the conscious investor – regarding reputation, ESG metrics and sustainability affect the behaviour of financial institutions and the lawmaker.

The research methodology used to answer the questions in the previous paragraphs was mainly focused on literature review, by a thorough and meticulous analysis of current publications on the topic researched.

2. Legislative and Regulatory Background on Sustainable Finance

The European Union has been a leader in the push for sustainability in finance, with a range of initiatives aimed at integrating ESG considerations into financial decision-making. This has included the development of a regulatory and legislative framework for sustainable finance, which is designed to support the transition to a low-carbon, sustainable economy. [6]

The European Union has been a pioneer in launching ambitious climate plans, and the European Commission's Sustainable Finance Action Plan[7] gives the financial sector a paramount role in the green transition – giving it responsibility for bringing supply and demand for green capital together. This Sustainable Finance Action Plan follows the context of the launch of the European Green Deal, which was launched on the 11th of December 2019 by the European Comission, as well. [8]

---

[6] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 3 and 4. (01.01.2023)

[7] See the Green Deal presented by the European Commission on 10 December 2019 (COM (2019) 640 final) and the proposal dated 4 March 2020 for a 'European Climate Law' (COM(2020) 80 final), amended on 17 September 2020 to include a revised EU emission reduction target of at least 55% by 2030 (COM(2020) 563 final). The Sustainable Finance Action Plan was launched by the previous European Commission on 8 March 2018 (COM (2018) 97 final); for the present position, available at: https://ec.europa.eu/info/ business-economy-euro/banking-and-finance/sustainable-finance_nl. (01.01.2023)

[8] SZTARICSKAI, TIBOR, Switch2Green, "The EU Action Plan on Financing Sustainable Growth", available at: https://www.switchtogreen.eu/the-eu-action-plan-on-financing-sustainable-growth/ (02.02.2023)

The European Green Deal was hard evidence that the European Union had made a commitment to tackling climate and environmental challenges, along with elaborating a new growth strategy for the European Union as a whole. The European Green Deal encompasses a broad shift for the European Union society as a whole, aiming to transition into a fairer, prosperous society where there is no net emission of greenhouse gases by 2050 and economic prosperity is detached from resource use. [9] The European Green Deal was a tool chosen to enact the strategy of the Commission to implement the United Nation's 2030 Agenda and the United Nation's Sustainable Development Goals[10].

Before delving into the Commission's Sustainable Finance Action Plan, there's one note to be made. In the last quarter of 2016, the Commission appointed an expert group on Sustainable Finance and in the end of January 2018, the expert group published its final report on how to build the sustainable finance strategy for the European Union.[11] The report pointed out that sustainable finance is about two imperatives: [12]

(i) Improving the contribution of finance to sustainable and inclusive growth by funding society's long-term needs; and,
(ii) Strengthening financial stability by incorporating environmental, social and governance factors into investment decision making.

The Commission's Sustainable Finance Action Plan aims to: [13]

(i) Reorient capital flow towards sustainable investment in order to achieve sustainable and inclusive growth;

[9] United Nations, General Assembly, Resolution 70/1 adopted by the United Nations General Assembly on 25 September 2015, available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf (02.01.2023)
[10] United Nation's Sustainable Development Goals, available at: https://www.switchtogreen.eu/the-eu-action-plan-on-financing-sustainable-growth/ (02.02.2023)
[11] European Commission, Communication from Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM/2019/640 final, December 11, 2019, paragraph 2.2.1.
[12] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "The European Commission's Sustainable Finance Action Plan", in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 20 and 21. (01.01.2023)
[13] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018) (01.01.2023)

(ii) Manage financial risks stemming from climate change, resource depletion, environmental degradation, and social issues; and,

(iii) Foster transparency and long-termism in financial and economic activity. [14]

As part of the Sustainable Finance Action Plan, several Regulations have been put forward by the European Parliament and of the Council. An analysis of these Regulations is imperative to conclude regarding what their applicability is to financial institutions and market players, and then move forward to regarding the paradigm shift in the European Union.

The legislation introduced that will be the object of analysis under this dissertation are the following:

(i) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a Framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (hereinafter, the "Taxonomy Regulation);[15]

(ii) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (hereinafter, the "SFDR Regulation");[16]

(iii) Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards the European Union's climate transition benchmarks, Paris Agreement benchmarks aligned and

---

[14] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "The European Commission's Sustainable Finance Action Plan", in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 21. (01.01.2023)

[15] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a Framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020R0852 (01.01.2023)

[16] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R2088 (02.01.2023)

sustainability-related disclosures for benchmarks (hereinafter, the "Low Carbon Benchmark Regulation");[17]

(iv) Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (hereinafter, the "CSRD")[18] and,

(v) Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (hereinafter, the "CSDD Proposal").[19]

These regulations, as well as the CSRD Proposal, undertake different challenges and have differentiated scopes of application. These pieces of legislation are intertwined within one another, but now it is relevant to analyse each of them individually in order to understand their purpose within the Sustainable Finance Action Plan.

2.1. The Taxonomy Regulation and the Minimum Safeguards

The Taxonomy Regulation entered into force on the 12th of July 2020, post publishing on the 22nd of June 2020. The big innovation created by this Regulation was a new set of uniform criteria which determine whether an economic activity is to be considered environmentally sustainable.[20] This is of paramount importance because it directly aids and encourages the redirecting of investment towards

[17] Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards the European Union's climate transition benchmarks, Paris Agreement benchmarks aligned and sustainability-related disclosures for benchmarks, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R2089 (02.02.2023)

[18] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0189 (02.02.203)

[19] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071

[20] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "E.U. Classification System", in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 2.3., 2021, p. 28. (02.01.2023)

sustainable projects and activities, creating security for investors from currently practices such as greenwashing. [21]

Greenwashing is defined as "behaviour or activities that make people believe that a company is doing more to protect the environment than it really is"[22], and it has become common practice in the last few years[23] due to the popularity growth of ESG. Companies and market players have since then tried to spin their companies' practices into "green" ones in order to attract investors and convince stakeholders. This alone has made it quite complex for stakeholders and conscious investors to be able to identify which claims are reliable and which claims are not.

The objectives put forward by the Taxonomy Regulation are the following:[24]

1. Climate change mitigation[25];
2. Climate change adaptation[26];
3. The sustainable use and protection of water and marine resources[27];
4. The transition to a circular economy[28];
5. Pollution prevention and control[29];

---

[21] https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en
[22] Cambridge Dictionary, Greenwashing, available at: https://dictionary.cambridge.org/dictionary/english/greenwashing (02.02.2023)
[23] POWELL, ROBIN, "Greenwashing: How widespread is it?", TEBI, September 2021, available at: https://www.evidenceinvestor.com/greenwashing-how-widespread-is-it/
[24] EUROPEAN COMMISSION, "EU Taxonomy for Sustainable Activities , available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en (02.02.2023)
[25] 'Climate change mitigation' means the process of holding the increase in the global average temperature to well below 2ºC and pursuing efforts to limit it to 1,5º C above pre-industrial levels, as laid down in the Paris Agreement
[26] 'Climate change adaptation' means the process of adjustment to actual and expected climate change and its impacts
[27] An economic activity shall qualify as contributing substantially to the sustainable use and protection of water and marine resources where that activity either contributes substantially to achieving the good status of bodies of water, including bodies of surface water and groundwater or to preventing the deterioration of bodies of water that already have good status, or contributes substantially to achieving the good environmental status of marine waters or to preventing the deterioration of marine waters that are already in good environmental status
[28] The transition to a circular economy entails approaches that may lead to lower rates of extraction and use of natural resources. This in turn leads to improved resource efficiency and the promotion of sustainable materials management
[29] Pollution Prevention means eliminating or reducing the amount and toxicity of potentially harmful substances at their sources, prior to generation, treatment, off-site recycling or disposal

6. The protection and restoration of biodiversity and ecosystems[30].

The Taxonomy Regulation is highly adaptable, in the sense that it's not a "one-size-fits-all" regulation. Different means can be required for an activity to be categorized as making a substantial contribution to each of the objectives listed above. For this reason, the Taxonomy Regulation is developed and substantiated through delegated acts, which are means for the Commission to list the environmentally sustainable activities through technical criterial. The Commission is empowered by the Taxonomy Regulation to adopt these delegated and implementing acts in order to specify how competent authorities and market players shall comply with the obligations the Taxonomy Regulation Proposes. [31]

The first delegated act was the Climate Delegated Act[32], published on the 9th of December 2021, and it versed on the sustainable activities for climate change mitigation and adaptation objective. This first delegated act was applicable from the 1st of January 2022 onwards, and shortly after came the Complementary Climate Delegated Act[33] which included in a very limited manner, specific nuclear and gas energy activities in the list of activities covered by the Climate Delegated Act. Between the publishing of these two Delegated Acts, on the 10th of December 2021, the Disclosures Delegated Act was published to supplement Article 8 of the

---

[30] An economic activity can contribute substantially to the environmental objective of the protection and restoration of biodiversity and ecosystems, in several ways, including by protecting, conserving or restoring biodiversity and ecosystems, and thereby enhancing ecosystem services. Such services are grouped into four categories, namely provisioning services, such as the provisioning of food and water; regulating services, such as the control of climate and disease; supporting services, such as nutrient cycles and oxygen production; and cultural services, such as providing spiritual and recreational benefits

[31] EUROPEAN COMMISSION, "Implementing and delegated acts – Taxonomy Regulation", available at: https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation_en (02.02.2023)

[32] Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R2139

[33] Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (Text with EEA relevance), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R1214 (03.01.2023)

Taxonomy Regulation, specifying the contents and presentation of information to be disclosed by undertakings subject to Article 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities and addressing the methodology to comply with the obligation to disclose. [34]

The Taxonomy Regulation establishes a taxonomy – a common language – of sustainable economic activities for each of the six objectives named above, which (i) contribute significantly to reach at least one of the objectives, (ii) without harming significantly any other of the five objectives, (iii) while meeting minimum social and governance safeguards.

The Taxonomy Regulation also innovated regarding transparency requirements, calling for transparency regarding the proportion of investments in environmentally sustainable economic activities for financial products, in the scope of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, the SFDR Regulation.[35]

Article 1

Subject matter and scope

1. This Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable.

2. This Regulation applies to:

(a) measures adopted by Member States or by the Union that set out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable;

(b) financial market participants that make available financial products;

[34] EUROPEAN COMMISSION, *Implementing and delegated acts – Taxonomy Regulation*, available at: https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation_en (03.01.2023)

[35] https://securities.cib.bnpparibas/sustainable-finance-action-plan-regulation-memo/#scope-sustainable-finance-action-plan

(c) undertakings which are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement pursuant to Article 19a or Article 29a of Directive 2013/34/EU of the European Parliament and of the Council (68), respectively.

Article 1 of the Taxonomy Regulation establishes its scope. Under this Article, companies subject to non-financial reporting are under the scope of the Taxonomy Regulation and based on the current rules, large companies which are listed must disclose to which extent their activities meet the criteria proposed in the Regulation. Companies that employ over 500 people during a certain financial year are considered large companies. [36]

However, small and medium enterprises, which make up for a large slice of the enterprises in the European Union, may also adhere to the Taxonomy Regulation on a voluntary basis to explain to investors and stakeholders how their activities align with the criteria laid out by Taxonomy.[37]

Once again, if approved, the CSRD Directive would come to require all large companies to disclose what their sustainability impact is starting as soon as January 2026.

A sustainable economic activity, under the Taxonomy Regulation, must meet minimum social and governance safeguards. The EU Platform on Sustainable Finance posted its final report on the functioning of these minimum safeguards, which ensure that companies which engage in sustainable activities are meeting standards when it comes to human rights, labour right, taxation, fair competition, among others. The minimum safeguards originated on recommendations that were made to ensure that investments and activities that could be labelled as Taxonomy-aligned did not violate certain governance standards and social norms. They are, essentially, a safety net for preventing certain companies or activities that invest

[36] EUROPEAN COMMISSION, EU taxonomy for sustainable activities, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en (03.03.2023)
[37] EUROPEAN COMMISSION, EU taxonomy for sustainable activities, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en (03.03.2023)

in sustainability through an environmental lens, for example, but completely overlook and violate human rights.

These minimum safeguards have garnered so much attention and importance, firstly due to the fact that one of the three criteria for economic activities to be considered environmentally sustainable is that they are carried out in compliance with the minimum safeguards. There's four core topics that are used to assess minimum safeguards performance, which are:

1. Human rights,
2. Bribery and corruption,
3. Taxation,
4. Fair competition.

Article 18

Minimum safeguards

1. The minimum safeguards referred to in point (c) of Article 3 shall be procedures implemented by an undertaking that is carrying out an economic activity to ensure the alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.

2. When implementing the procedures referred to in paragraph 1 of this Article, undertakings shall adhere to the principle of 'do no significant harm' referred to in point (17) of Article 2 of Regulation (EU) 2019/2088.

According to Article 18 of the Taxonomy Regulation, transcribed above, the minimum safeguards were construed not in an isolated way, but rather built holistically and following guidance from other competent bodies, following the principles laid out in the OECD Guidelines for Multinational Enterprises[38], the UN

[38] https://www.oecd.org/corporate/mne/

Guiding Principles on Business and Human Rights[39], the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work[40] and the International Bill of Human Rights[41].

Due diligence processes are the heart of minimum safeguards, referred to in Article 18 stating that minimum safeguards “shall be procedures implemented by an undertaking”. Human rights due diligence is notably the only minimum safeguard to be enshrined in the law, and according to the Final Report on Minimum Safeguards, “*with the further reference in TR Article 18 to the UNGP and OECD guidelines for MNE, the Article points to standards which provide a clear definition of what an adequate due diligence process for human rights consists of.*”[42]

Human rights due diligence is the process by which businesses identify, prevent, mitigate and account for their potential or actual adverse impacts on human rights. The European Union defines human rights due diligence as a "continuous process of identifying, preventing, mitigating and accounting for how a company addresses its human rights impacts."[43]

It involves assessing risks, taking steps to prevent and address negative impacts, and communicating in a transparent manner about what measures are taken. This definition reflects the EU's commitment to the United Nations Guiding Principles on Business and Human Rights, which outline the responsibilities of businesses to respect human rights and the role of states in ensuring that these responsibilities are met. [44]

---

[39] https://unglobalcompact.org/library/2
[40] https://www.ilo.org/declaration/lang--en/index.htm
[41] https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights#:~:text=The%20International%20Bill%20of%20Human%20Rights%20is%20a%20powerful%20statement,agree%20to%20abide%20by%20them.
[42] Final Report on Minimum Safeguards, p. 32, available at: https://finance.ec.europa.eu/system/files/2022-10/221011-sustainable-finance-platform-finance-report-minimum-safeguards_en.pdf (03.01.2023)
[43] Final Report on Minimum Safeguards, p. 32, available at: https://finance.ec.europa.eu/system/files/2022-10/221011-sustainable-finance-platform-finance-report-minimum-safeguards_en.pdf (03.01.2023)
[44] European Union, EU Action Plan on Human Rights and Democracy for 2020-2024. 2020. Available at: https://ec.europa.eu/info/publications/201206-eu-action-plan-human-rights-democracy-2020-2024_en

There are two key expectations for companies under the standards which provide a clear definition of what an adequate due diligence process for human rights is:

(i) Undertakings should respect human rights, avoid infringing on human rights and address adverse human rights violations with which they are involved (United Nations Guiding Principle 11[45]);

(ii) To do what is set out in (i), undertakings should establish a human rights due diligence process to be able to continuously identify, prevent, mitigate, track and account for actual and potential adverse impacts on human rights in their own operations, supply chains and other business relationships (United Nations Guiding Principle 15)[46];

It is important to understand that sustainability is not only about environmental, climate-change concerns, but rather an all-encompassing, holistic concept which entails a wide array of rights – and at the core of sustainability, are human rights and the ability of undertakings and economic activities to ultimately respect and protect them.

Therefore, it is of the utmost importance to reference that the Taxonomy Regulation has made it clear regarding what it means to be Taxonomy-aligned, and human rights are front and centre.

---

[45] The UN Working Group on Business and Human Rights, The United Nations Guiding Principles on Business and Human Rights: an Introduction, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

[46] The UN Working Group on Business and Human Rights, The United Nations Guiding Principles on Business and Human Rights: an Introduction, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

	EU CSRD companies are considered non-compliant if *one of the two* criteria apply:
Human Rights	1. The company has not established an adequate human rights due diligence (HRDD) process as outlined in the UN Guiding Principles (UNGPs) and OECD Guidelines for Multinational Enterprises (MNEs). 2. There are signals that the company did not adequately implement human rights due diligence and/or did abuse human rights. These are: 1. The company has been finally found in breach of labour law or human rights. 2. OECD or Business and Human Rights Resource Centre (BHRRC) indicators signal that the company does not engage with stakeholders.
Corruption	1.The company has no anti-corruption processes in place. 2. The company or its senior management, including the senior management of its subsidiaries, has been finally convicted in court of corruption.
Taxation	1. The company does not treat tax governance and compliance as important elements of oversight, and there are no adequate tax risk management strategies and processes in place. 2. The company or its subsidiaries have been finally found to have violated tax laws.
Fair Competition	1. The company does not promote employee awareness of the importance of compliance with all applicable competition laws and regulations. 2. The company or its senior management, including the senior management of its subsidiaries, has been finally convicted of violating competition laws.

Figure 1 - Summary of criteria for alignment with the minimum safeguards for EU Companies in scope of the CSRD Regulation (RAY, DAVID / GAMSJAGER, LEA, EU Taxonomy Minimum Safeguards: What are they and why do they matter? 12.10.2022, available at: https://www.nordea.com/en/news/eu-taxonomy-minimum-safeguards-what-are-they-and-why-do-they-matter (03.03.2023))

	Non-CSRD companies are considered non-compliant if *one of the two* criteria apply:
Human Rights	1. The company has not implemented an adequate HRDD which follows the six steps of the UNGPs. As audit/assurance of these disclosures will be voluntary, an additional check on implementation is necessary. To do this, investors might consider data resources such as the World Benchmark Alliance (WBA) for an assessment. 2. There are signals that the company did not adequately implement HRDD and/or did abuse human rights. These are: 1. The company has been finally found in breach of labour law or human rights. 2. OECD or Business and Human Rights Resource Centre (BHRRC) indicators signal that the company does not engage with stakeholders.
Corruption	1. The company has no anti-corruption processes in place. 2. The company or its senior management, including the senior management of its subsidiaries, has been finally convicted in court of corruption.
Taxation	1.The company does not treat tax governance and compliance as important elements of oversight, and there are no adequate tax risk management strategies and processes in place. 2. The company or its subsidiaries have been finally found in violation of tax laws.
Fair Competition	1. The company does not promote employee awareness of the importance of compliance with all applicable competition laws and regulations. 2. The company or its senior management, including the senior management of its subsidiaries, has been finally found in violation of competition laws.

Figure 2- Summary of criteria for alignment with the minimum safeguards for non-EU Companies and EU companies until the CSRD Regulation is fully implemented (RAY, DAVID / GAMSJAGER, LEA, EU Taxonomy Minimum Safeguards: What are they and why do they matter? 12.10.2022, available at: https://www.nordea.com/en/news/eu-taxonomy-minimum-safeguards-what-are-they-and-why-do-they-matter (03.03.2023))

2.2. The Sustainable Finance Disclosure Regulation

The purpose of the Sustainable Finance Disclosure Regulation was adopted by the European Parliament and Council on November 27th of 2019 and came into effect on the March 10th of 2021.

The purpose of the Sustainable Finance Disclosure Regulation is to introduce consistency and clarity on how institutional investors, insurance companies, insurance intermediaries, pension funds and other players which provide investment and insurance advisory, should be integrating environmental, social and governance factors in their processes.[47] It is directed at financial market participants[48], financial advisers[49] and it applies both at an entity level and product level.

It provides rules on the transparency that these market participants must apply with respect to the integration of sustainability risks in their activities or with respect to the financial products that have sustainable investments as targets, including the lowering of carbon emissions.[50] It distinguishes between disclosures regarding sustainability risks and sustainability factors[51], and it also distinguishes between regular financial products, financial products that promote environmental and social characteristics and financial products that have sustainable investment as their final objective.[52]

The Action Plan on Sustainable Finance aims to redirect capital flow towards sustainable investment, manage financial risk that stems from climate change, social issues and environmental degradation and foster transparency and

---

[47] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 42 and 43. (01.01.2023)

[48] As defined in article 2(1) of the SFDR

[49] As defined in article 2(11) of the SFDR. This includes financial market participants providing investment or insurance advice, as well as (e.g.) insurance intermediaries providing advice regarding insurance based investment products (IBIPs)

[50] Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341, COM(2018) 354 final (24 May 2018).

[51] This means an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment (article 2(2) SFDR)

[52] This means environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters (article 2(24) SFDR)

long-termism in financial and economic activity. [53] The SFDR Regulation aims to close the gap between the previous regulatory disclosure rules and fiduciary duties that the European Union financial services sector has been subjected to for many years and these new sustainability-related disclosure rules and fiduciary duties.[54]

Once again, delegated acts are called to action. These delegated acts play the important role of providing more detailed guidance on how the regulation is to be implemented. On the 24th of March 2022, the European Supervisory Authorities published a statement on the interpretation of the SFDR Regulation, and on the 6th of April of the same year, the European Commission adopted the regulatory technical standards for financial market participants and financial advisors disclosing ESG and non-ESG information under the Regulation[55].

Article 1

Subject matter

This Regulation lays down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.

---

[53] European Commission, Action Plan: Financing Sustainable Growth, COM(2018) 97 final (8 March 2018), p. 3.

[54] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector [2019] OJ EU L 317/1, as amended by Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 [2020] OJ EU L 198/13. References to Articles of Regulation (EU) 2019/2088 which did not result in amendments of the Sustainable Finance Disclosure Regulation itself, will be referred to as the 'Taxonomy regulation'. A consolidated version of the Sustainable Finance Disclosure Regulation is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri= CELEX%3A02019R2088-20200712.

[55] Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports

Article 1 of the SFDR Regulation puts forward the scope of the Regulation, stating who it applies to. And the two "lucky" ones are financial market participants and financial advisers.

Financial market participants are defined as:

(i) Insurance undertakings which make available insurance-based investment products (IBIPs);[56]

(ii) Investment firms and credit institutions providing individual portfolio management;[57]

(iii) Managers of collective investment schemes;[58] and,

(iv) Several entities involved in pension products.[59]

Financial advisers are defined as:

(i) Insurance intermediaries and insurance undertakings providing insurance advice with regard to IBIPs;[60]

(ii) Investment firms and credit institutions providing investment advice; and,[61]

(iii) Managers of collective investment schemes providing investment advice.[62]

Under Articles 2(22) and 3(1) of the SFDR Regulation, new sustainability disclosure obligations are established at the entity level. Financial market

---

[56] Art. 2(1) (a) read in conjunction with Art. 2(2) and Art. 2(3) SFDR.
[57] Art. 2(1) (b) (investment firms as defined in Art. 2(5)) and (j) (credit institutions), both read in conjunction with Art. 2(6) SFDR
[58] Art. 2(1) (e) (alternative investment fund managers (AIFMs), as defined in Art. 2(4)) (g) (managers of venture capital funds, EuVECA) (h) (managers of social entrepreneurship funds, EuSEF) and (i) (a management company of an undertaking for collective investment in transferable securities, UCITS management companies, as defined in Art. 2(10)) SFDR
[59] Art. 2(1) (c) (institutions for occupational retirement provision (IORPs), as defined in Art. 2(7)) (d) (manufacturers of pension products as defined in Art. 2(8)) and (f) (providers of pan-European Personal Pension Products (PEPPs), as defined in Art. 2(9)) SFDR
[60] Art. 2(11) (a) and (b) SFDR.
[61] Art. 2(11) (c) and (d) (credit institutions and investment firms as defined in Art. 2(5) providing investment advice as defined in Art. 2(16)) SFDR
[62] Art. 2(11) (e) and (f) (alternative investment fund managers (AIFMs) as defined in Art. 2(4) and UCITS management companies as defined in Art. 2(10) providing investment advice as defined in Art. 2(16)) SFDR.

participants and financial advisers must publish information about how they integrate sustainability risks in their investment decision-making process/in their investment or insurance advice on their website. Financial market participants are also obliged to publish their due diligence policies for adverse impacts of their investment decisions on sustainability factors.

Regarding product-level disclosures, Articles 6, 8 and 9 offer us an insight as to what they are. Firstly, financial market participants and financial advisers must now offer pre-contractual disclosures around the integration of sustainability risks and main adverse impacts. There must also be periodic reporting for all products regarding the main adverse impacts on sustainability factors and additional sustainability disclosure can be found in Articles 8 and 9 of the SFDR concerning the extent to which these social and environmental characteristics are met.

This regulation aims for a big impact regarding greenwashing, which has been discussed, and the overstatement of green credentials in order to attract investment. During the investment and advisory process, the SFDR Regulation puts the focus on environmental, social and governance risks. There is a clear focus on legitimising green credentials and preserving investor value through this push in environmental, social and governance factors disclosure.[63]

2.3. The Low Carbon Benchmark Regulation

The European Commission published on the 24th of May 2018 a proposal for a Regulation amending Regulation (EU) 2016/1011 on low-carbon benchmarks and positive-carbon impact benchmarks, which has subsequently resulted in the adoption, on 27 November 2019, of a Regulation[64] amending the EU Benchmarks Regulation[65] as regards the European Union climate transition benchmarks,

[63] JENNINGS, MIKE, A Guide to the EU Sustainable Finance Disclosure Regulation for Financial Institutions, available at: https://www.anthesisgroup.com/a-guide-to-the-eu-sustainable-finance-disclosure-regulation/#product
[64] (EU) 2019/2089
[65] (EU) 2016/1011

European Union Paris-aligned benchmarks, and sustainability-related disclosures for benchmarks.

These rules create a new category of benchmarks, which are comprised of:

(i) the low-carbon benchmark or 'decarbonised' version of standard indices;

(ii) the positive-carbon impact benchmark.

This regulation aims to create a new standard for the market, allowing companies to better share information about their carbon footprint and on the carbon footprint of their investment portfolios for investors and stakeholders. There is an underlying premise of 'decarbonising' under these benchmarks, in order to align with the objective of the Paris Agreement to limit global warming.[66]

According to Recital (12) of the Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks, "*divergent approaches to benchmark methodologies result in the fragmentation of the internal market because it is not clear to users of benchmarks whether a particular low-carbon index is (...) aligned to the objectives of the Paris Agreement or merely a benchmark that aims to lower the carbon footprint of a standard investment portfolio.(...)*"[67]

The scope of application of the Low Carbon Benchmark Regulation is put forward under Article 2 of Regulation 2016/1011 of the European Parliament and of the Council of 8 June 2011.

[66] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 86. (01.01.2023)

[67] Recital (12) of the Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R2089

Article 2[68]

Scope

1. This Regulation applies to the provision of benchmarks, the contribution of input data to a benchmark and the use of a benchmark within the Union.

2. This Regulation shall not apply to:

(a) a central bank;

(b) a public authority, where it contributes data to, provides, or has control over the provision of, benchmarks for public policy purposes, including measures of employment, economic activity, and inflation;

(c) a central counterparty (CCP), where it provides reference prices or settlement prices used for CCP risk-management purposes and settlement;

(d) the provision of a single reference price for any financial instrument listed in Section C of Annex I to Directive 2014/65/EU;

(e) the press, other media and journalists where they merely publish or refer to a benchmark as part of their journalistic activities with no control over the provision of that benchmark;

(f) a natural or legal person that grants or promises to grant credit in the course of that person's trade, business or profession, only insofar as that person publishes or makes available to the public that person's own variable or fixed borrowing rates set by internal decisions and applicable only to financial contracts entered into by that person or by a company within the same group with their respective clients;

(g) a commodity benchmark based on submissions from contributors the majority of which are non-supervised entities and in respect of which both of the following conditions apply:

---

[68] Consolidated text: Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (Text with EEA relevance)

(i) the benchmark is referenced by financial instruments for which a request for admission to trading has been made on only one trading venue, as defined in point (24) of Article 4(1) of Directive 2014/65/EU, or which are traded on only one such trading venue;

(ii) the total notional value of financial instruments referencing the benchmark does not exceed EUR 100 million;

(h) an index provider in respect of an index provided by said provider where that index provider is unaware and could not reasonably have been aware that that index is used for the purposes referred to in point (3) of Article 3(1);

(i) a spot foreign exchange benchmark which has been designated by the Commission in accordance with Article 18a(1).

Essentially, the Low Carbon Benchmarks Regulation applies to benchmark administrators who provide, maintain or administer a European Union Climate Transition Benchmark and/or a European Union Paris-Aligned Benchmark. It essentially defines these two new voluntary standards for benchmarks on a decarbonisation trajectory.

The regulation also introduced new transparency requirements on consideration of environmental, social and governance factors by benchmarks.

The novelty of the Regulation was that it introduced two new categories of benchmarks:

(i) European Union climate transition benchmark, and
(ii) European Union Paris-aligned benchmark.

The regulation stipulates that the administrator of an EU Climate transition benchmark, when selecting and weighing underlying assets, needs to take into account companies that have as an objective the lowering of their carbon emissions towards alignment with the Paris Agreement objectives. This benchmark must be an index, as defined by the BMR Regulation, that is determined on the basis of the value of the underlying assets which must be selected or excluded that the resulting benchmark portfolio is on a

decarbonisation trajectory; and is construed in accordance to the with the minimum standards that are put forward in delegated acts.

And how are the companies' assets selected, weighed, or excluded according to the regulation? These companies must disclose their carbon emission reduction targets, they disclose their reduction in carbon emission (mother company and relevant subsidiaries), they must disclose annual information on their progress and that their activities which relate to the assets in question do not harm other environmental, social and governance objectives.

Regarding the European Union Paris-Aligned Benchmark, this should be in line with the objectives of the Paris Agreement[69] at an index level. This benchmark must also be an index (as defined by the BMR Regulation) and must be regularly determined on the basis of the value of its underlying assets as well. These assets must be selected or excluded in a way that the resulting benchmark carbon emissions of the portfolio are aligned with the objectives of the Paris Agreement. They must also be construed according to delegated acts and the activities which relate to the underlying assets must not harm other environmental, social and governance objectives.[70]

The Low Carbon Benchmarks Regulation also amended the Benchmarks Regulation in order to introduce a requirement for administrators to publish details on how their benchmarks' methodologies reflect environmental, social and governance factors, or if they don't reflect them.[71]

There have been three delegated acts so far, that were adopted on the 17th of July 2020, and which are the following:[72]

---

[69] The Paris Agreement is an international treaty on climate change, and it aims to limit global warming to well below 2ºC above pre-industrial levels and pursue efforts to limit the temperature increase to 1,5º C, recognizing that this would significantly reduce the risks and impacts of climate change. Paris Agreement's objetives include: limiting global warming, mitigating greenhouse gas emissions, adaptation to climate change, providing support and transparency on reporting.

[70] MCDERMOTT, BRIAN, ET. AL., "Low carbon benchmarks", A&L Goodboy, available at: https://www.algoodbody.com/images/uploads/services/Asset-Management/Low_carbon_benchmarks.pdf

[71] MCDERMOTT, BRIAN, ET. AL., "Low carbon benchmarks", A&L Goodboy, available at: https://www.algoodbody.com/images/uploads/services/Asset-Management/Low_carbon_benchmarks.pdf

[72] MCDERMOTT, BRIAN, ET. AL., "Low carbon benchmarks", A&L Goodboy, available at: https://www.algoodbody.com/images/uploads/services/Asset-Management/Low_carbon_benchmarks.pdf

(i) On the minimum content of the explanation on how Environmental, Social and Governance factors are reflected in the methodology;

(ii) On the minimum standards for both types of benchmarks;

(iii) On the explanation in the benchmark statement of how Environmental, Social and Governance factors are reflected in each benchmark or family of benchmarks.

2.4. The Corporate Sustainability Reporting Directive

The European Commission presented the CSRD proposal on the 21st of April 2021 as part of the Sustainable Finance Agenda of the European Union and the European Green Deal. Fast forward to the 28th of November 2022, there was a press release from the Council of the European Union stating "Council gives final green light to corporate sustainability reporting directive"[73].

On the 5th of January 2023, the CSRD entered into force.

This Directive, as its own name indicated, serves as the main reporting obligation which is associated with the Corporate Sustainability Due Diligence Proposal, the CSDD, which we will dive into in the next sub-chapter. It updated and expanded the existing scope of the Non-Financial Reporting Directive[74], making it so that approximately 50 000 companies in total are subject to corporate sustainability reporting (non-financial reporting). This sample is comprised of all listed or non-listed large companies and listed small and medium enterprises.

Large companies are those who meet two of the following three criteria: more than 250 employees, turnover superior to 40 million euros, and/or total assets valued at over 20 million euros.[75] Regarding small and medium listed companies,

[73] European Council, Council of the European Union, Council gives final green light to corporate sustainability reporting directive, available at: https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/ (05.02.2023)

[74] European Union (EU) Directive on Non-Financial Reporting (2014/95/EU)

[75] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive

these are included in a "phasing-in period", getting an extra 3 years to comply with the requirements of the CSRD, until January 2026. Even though the CSRD in a European Union directive, it also applies to Non-EU companies which have a presence in the community's market and economy.

The obligations in the CSRD are twofold: it not only requires companies to report on the impact of their corporate activities on the environment and society, but it also imposes an obligation to have. So we may say that it impact inwards and outwards, seeing as some businesses have only analysed the risks that climate change poses to them, and haven't taken into account what their role is in changing the climate.

What innovation did the CSRD bring to previous reporting duties and obligations? Companies are now called on to report on matters such as diversity on company boards, anti-corrupt and bribery, human rights protection, social responsibility and environmental protection. These are new topic-specific disclosures which are very much aligned with the objectives of the European Green Deal and of the Sustainable Finance Action Plan.

The European Commission stated that "*Reports often omit information that investors and other stakeholders think is important. Reported information can be hard to compare from company to company, and users of the information are often unsure whether they can trust it.*"[76] and this encapsulates the reason why there was a need to review the Non-Financial Reporting Directive.

The European Financial Reporting Advisory Group is the one mandated to develop these new sustainability-reporting standards. They have published technical recommendations and a roadmap in order to guide the application of the CSRD.

There is a thin line which guides us through the analysis of all of these regulations and directives, which is sustainable finance initiatives. And the role of

2013/34/EU, as regards corporate sustainability reporting, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464

[76] European Commission, Questions and Answers: Corporate Sustainability Reporting Directive proposal, available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1806

the CSRD is of great importance against the background of sustainable finance. This directive is meant to ensure that there is alignment between the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation.[77]

The Sustainable Finance Disclosure Regulation complements corporate disclosure obligations by creating a reporting framework for financial products and financial entities. The Non-Financial Reporting Directive now aims to deliver a comprehensive reporting framework with qualitative and quantitative information to assess companies' sustainability impacts and risks. These initiatives are the tools that make Taxonomy[78] possible. The CSRD, hand in hand with the Taxonomy Regulation, is one of the powerful drivers of the Sustainable Finance Action Plan.[79]

The CSRD attempts to reduce the complexity and the duplication potential of reporting requirements among companies in the European Union.

Article 8[80]

Transparency of undertakings in non-financial statements

1. Any undertaking which is subject to an obligation to publish non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU shall include in its non-financial statement or consolidated non-financial statement information on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9 of this Regulation.

2. In particular, non-financial undertakings shall disclose the following:

(a) the proportion of their turnover derived from products or services associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9; and

[77] Assent, "What is the EU Non-Financial Reporting Directive?", available at: https://www.assent.com/resources/knowledge-article/what-is-the-eu-non-financial-reporting-directive/
[78] Taxonomy in the sense of the taxonomy-aligned activities that guide market participants in their investment decisions.
[79] ESG Enterprise, "SFDR, NFRD and CSRD: Guidance on EU Taxonomy", available at: https://www.esgenterprise.com/esg-reporting/eu-taxonomy-sfdr-nfrd-csrd/
[80] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020R0852

(b) the proportion of their capital expenditure and the proportion of their operating expenditure related to assets or processes associated with economic activities that qualify as environmentally sustainable under Articles 3 and 9.

3. If an undertaking publishes non-financial information pursuant to Article 19a or Article 29a of Directive 2013/34/EU in a separate report in accordance with Article 19a(4) or Article 29a(4) of that Directive, the information referred to in paragraphs 1 and 2 of this Article shall be published in that separate report.

4. The Commission shall adopt a delegated act in accordance with Article 23 to supplement paragraphs 1 and 2 of this Article to specify the content and presentation of the information to be disclosed pursuant to those paragraphs, including the methodology to be used in order to comply with them, taking into account the specificities of both financial and non-financial undertakings and the technical screening criteria established pursuant to this Regulation. The Commission shall adopt that delegated act by 1 June 2021.

Article 8 of the Taxonomy Regulation, transcribed above, requires companies that are within the scope of the NFRD and the companies that are no under the scope of the CSRD to report on the extent to which their economic actities are sustainable. The CSRD, in its engagement with the Taxonomy Regulation, develops on the "do-no-significant harm" criteria and "substantial contribution" to the objectives proposed by the Taxonomy Regulation.[81]

The main objective of the CSRD is to "*end greenwashing, strengthen the EU's social market economy and lay the groundwork for sustainability reporting standards at a global level*"[82].

[81] European Commission, Questions and Answers: Corporate Sustainability Reporting Directive proposal, available at: https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1806

[82] European Parliament, Press Release, "Sustainable economy: Parliament adopts new reporting rules for multinationals", available at: https://www.europarl.europa.eu/news/en/press-room/20221107IPR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals

2.5. The CSDDD Proposal

The Corporate Sustainability Due Diligence Directive Proposal, proposed on April 21st of 2021, plays a very important role in this delicate ecosystem created by the European Green Deal and the Sustainable Finance Action Plan.

It is a proposed European Union directive which enacts the purpose of introducing mandatory due diligence requirements on companies, regarding human rights and the environment, not only in their activities but also in their supply chain.

The CSDDD Proposal, in its explanatory memorandum, while writing about the reasons for and objectives of the proposal, proposes that the "*Directive will:*

(1) improve corporate governance practices to better integrate risk management and mitigation processes of human rights and environmental risks and impacts, including those stemming from value chains, into corporate strategies;

(2) avoid fragmentation of due diligence requirements in the single market and create legal certainty for businesses and stakeholders as regards expected behaviour and liability;

(3)increase corporate accountability for adverse impacts, and ensure coherence for companies regarding obligations under existing and proposed EU initiatives on responsible business conduct;

(4) improve access to remedies for those affected by adverse human rights and environmental impacts of corporate behaviour;

(5) being a horizontal instrument focusing on business processes, applying also to the value chain, this Directive will complement other measures in force or proposed, which directly address some specific sustainability challenges or apply in some specific sectors, mostly within the Union."[83]

[83] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071

The CSDDD Proposal aims to establish a comprehensive legal framework that mandates companies to undertake corporate due diligence processes and measures throughout their supply chain – in order to identify, prevent and mitigate negative and potential adverse impacts on people, human rights and the environment.[84]

Before getting to the proposed scope of the CSDDD, it's paramount to look over what its key features are. It wants to establish mandatory due diligence, meaning that all companies that fall under its scope will be required to act and have processes to identify, prevent and mitigate risks and potential or actual impacts caused directly or indirectly by their activities and in their supply chains.

There are consequences established for companies that fail to comply with the due diligence obligation, which is a big step in ensuring that the CSDDD has the intended impact. So not only will there be legal liability for those who do not comply, but there will also be another type of liability which is the accountability that their stakeholders have over them for any negative impacts.[85]

Once again, for the sake of coherence, the CSDDD is meant to support the European Union's transition to a green economy which is climate-neutral, as per the European Green Deal and in alignment with the United Nations Sustainable Development Goals.

It ensures this greater accountability and transparency, and it does so based on a very important premise, which is: businesses have a responsibility to respect human rights and the environment, and they have a responsibility to take proactive steps in order to identify, prevent, mitigate and address potential and actual negative impacts of their activities.[86]

The United Nation's Guiding Principle on Business and Human Rights are paramount to understanding the core of this due diligence duty. These principles

[84] Hohnen, Peter, "The Corporate Sustainability Due Diligence Directive: The journey so far" in Frontiers in Sustainable Development, Chapter 3, p. 26., available at: https://doi.org/10.3389/frsus.2021.665161
[85] OLTRAMARE, CATHERINE, ET. AL., "The Corporate Sustainability Due Diligence Directive: a Human Rights Perspective, Chapter 13, Page 10, available at: https://doi.org/10.33390/su13105561
[86]European Commission, Just and Sustainable Economy: Companies to respect human rights and environment in global value chains, available at:
https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

were developed by Professor John Ruggie, reason why they are also referred to as the "Ruggie Principles". Professor John Ruggie served as the United Nation's Secretary-General's Special Representative on Business and Human Rights from 2005 to 2011. These principles were a result of six years of consultation and research that involved multiple stakeholders, from governments to civil society, academia and the business community.

The United Nations Guiding Principles were developed in response to a growing concern about the impact of business activities on human rights, particularly, in the case of multinational companies operating in developing countries. These principles aim to provide a global standard for the prevention and the addressing of adverse human rights impacts of business activities.[87]

The three pillars of the United Nations Guiding Principles are:

1. The state duty to protect human rights, which prompts governments to create and enforce laws that make sure businesses respect human rights;
2. The corporate duty to respect human rights, which prompts businesses to identify, prevent and mitigate adverse human rights impacts of their activities and activities of related parties;
3. The right to remedy for victims of human rights violations and abuses.

The United Nations Guiding Principles on Business and Human Rights recognize the role of companies as organs of society which perform specialized functions, required to comply with applicable laws and respect human rights.[88]

Business are to avoid infringing human rights and should address any negative impacts that their activities may cause on society, namely on human rights.

The United Nations Guiding Principles are an important framework for businesses to integrate human rights into their operations and to ensure that they

[87] United Nations, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework", p. 11 and 12, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
[88] United Nations, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework", p. 6 and 7, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

have processes to make sure they are not complicit in human rights violations. This, because even though they are not legally binding, they have been widely endorsed by governments, businesses, and civil society organisations around the globe. They also play a key role in influencing the development of international standards regarding business and human rights, such as the OECD Guidelines for Multinational Enterprises and the United Nations Global Compact.

		LARGE EU LIMITED LIABILITY COMPANIES	NON-EU COMPANIES	SMALL AND MEDIUM ENTERPRISES
GROUP 1	*500+ employees and more than €150 million of turnover**	+/- 9,400 companies	+/- 2,600 companies	Micro companies and small and medium enterprises (SMEs) are not directly concerned by the proposed rules. However, the proposal provides supporting measures for SMEs, which could be indirectly affected.
GROUP 2	*250+ employees and more than €40 million of turnover*, operating in defined high impact sectors such as textiles, agriculture, extraction of minerals. The rules will apply to this group 2 years later than to group 1.*	+/- 3,400 companies	+/- 1,400 companies	

**Worldwide turnover for EU companies, and EU-wide turnover for non-EU companies*

Figure 3 - "Which companies will the new EU rules apply to?" in Factsheet for the Just and Sustainable Economy, European Commission, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

Above is a figure showing the companies which fall under the proposed scope of the CSDDD, and they are split into two groups. They are split into two groups, once again, because of an attempt to have a “phasing-in” period of the CSDDD. For Group two, the rules will only take effect two years later than for Group one companies. Small and medium enterprises are not contemplated directly in the scope of the proposed CSDDD. [89]

In addition to establishing an obligation to conduct due diligence, the CSDDD also requires companies to put in place measures to prevent, mitigate, and address potential negative impacts. This includes developing and implementing

[89] SMITH-ROBERTS, ASHLEY, LEVIN Sources, Everything you need to know about the EU CSDD & EU CSRD, available at: https://www.levinsources.com/knowledge-centre/insights/eu-csdd-eu-csrd-mining

policies and procedures to manage sustainability risks, as well as providing training and support for employees on sustainable business practices.

In addition to the requirements outlined above, the CSDDD also includes provisions for reporting and disclosure. This includes the requirement for large companies to disclose the results of their due diligence processes, as well as any measures they have put in place to prevent, mitigate, and address potential negative impacts.

The CSDDD also requires companies to engage with stakeholders, including workers, communities, and civil society organizations, on their sustainability practices. This is intended to promote dialogue and collaboration between companies and their stakeholders, and to ensure that the voices of those most impacted by the company's activities are heard.[90]

Additionally, the CSDDD includes provisions for enforcement and accountability. This includes the establishment of a mechanism for monitoring and enforcing compliance with the directive, as well as the establishment of a public registry to provide transparency on companies' sustainability practices.[91]

There are a number of Member States, such as France and the Netherlands[92], that are ahead of the legislative initiative of the European Union and that have already enacted legislation specifically on human rights due diligence. The CSDDD proposal safeguards this, not overriding any national provisions which are stricter than the ones it proposes.[93]

Overall, the CSDDD represents a significant development in the area of sustainable finance in the European Union. By requiring large companies to

---

[90] Bodewig, C., & Roovers, S. (2021). Mandatory human rights and environmental due diligence: A critical assessment of the proposed EU directive. Journal of Cleaner Production, 306, 127300. https://doi.org/10.1016/j.jclepro.2021.127300

[91] Waelbroeck, D., & Smith, T. (2021). Corporate Sustainability Due Diligence Directive - Key Features and Implications. Mayer Brown. https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2021/06/corporate-sustainability-due-diligence-directive.pdf

[92] Littler, "Dutch and French Legislatures Introduce New Human Rights Due Diligence Reporting Requirements", available: https://www.littler.com/publication-press/publication/dutch-and-french-legislatures-introduce-new-human-rights-due-diligence

[93] European Commission, Just and Sustainable Economy: Companies to respect human rights and environment in global value chains, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

conduct due diligence on their environmental and social impacts, and to put in place measures to prevent, mitigate, and address potential negative impacts, the directive is intended to promote greater accountability and transparency in the business sector. This, in turn, is intended to support the transition to a sustainable economy.[94]

2.6. Synergies of the Sustainable Finance Action Plan

As demonstrated in the last chapters, the Sustainable Finance Action Plan, meant to support the transition to a more sustainable and low-carbon economy in the European Union. The whole of the Sustainable Finance Action Plan is based on the recognition that the financial sector has an important role to play in supporting the transition to a more sustainable economy.

The objectives of the Action Plan are to promote sustainable investment, integrate sustainability into financial decision-making, improve transparency and fight greenwashing, improve disclosure for investors and stakeholders, support the development of sustainable products in the European Union market, and establish Taxonomy.

The Taxonomy Regulation, the SFDR, the Low Carbon Benchmark Regulation, the CSRD and the CSDDD proposal all work together, each of them an essential and indispensable piece of the "*machina*" to create a more sustainable financial system in the European Union. Together, they create a coherent framework that makes the objectives of the Action Plan possible, seeing as each Regulation reinforces and supports the objectives of the others.[95]

One example of this is the fact that the Taxonomy Regulation is a key component of the Sustainable Finance Action Plan, but by itself it's insufficient to

---

[94] Waelbroeck, D., & Smith, T. (2021). Corporate Sustainability Due Diligence Directive - Key Features and Implications. Mayer Brown, available at: https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2021/06/corporate-sustainability-due-diligence-directive.pdf

[95] Green Finance Platform, The European Commission's Action Plan on Finance Sustainable Growth, available at: https://www.greenfinanceplatform.org/policies-and-regulations/european-commissions-action-plan-financing-sustainable-growth

complete the goal of aiding investors and stakeholders in their investment decisions. The SFDR complements the Taxonomy Regulation, and together they are quite efficient at informing the investor on how to assess the sustainability of their investments.

3. Environmental, Social and Governance: A passing trend or a new pillar of the world's economy?

Environmental, social, and governance (hereinafter, "ESG") considerations have become increasingly important in the world of finance in recent years. Some argue that ESG is simply a passing trend, while others believe that it represents a fundamental shift in the way the global economy operates.

The question on whether ESG is a passing trend or is here to stay stems from it being a relatively new concept, being firstly attributed to a 2004 Global Compact Report that reported on the fact that more than 20 global financial institutions stated that addressing ESG issues was important to the management of companies.[96]

ESG frameworks are a "*set of standards for a company's behaviour used by socially conscious investors to screen potential investors*"[97] and they serve the purpose of aiding stakeholders and market participants to understand how a company or organization manages their opportunities and risks regarding to environmental, social and governance criteria.[98] ESG is more than green criteria or environmental concerns, for it takes a holistic approach to sustainability as a whole that does not solely focus on environmental sustainability. Rather, it

[96] The Global Compact, "Who cares wins: connecting financial markets to a changing world", available at: https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf
[97] Investopedia, "What is ESG Investing?", available at: https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp
[98] CÂMARA, PAULO, "The Palgrave Handbook of ESG and Corporate Governance, Chapter 1, The Systemic Interaction Between Corporate Governance and ESG, 2022.

approaches sustainability from three different points of view: environmental, social and governance.[99]

The environmental aspect of ESG focuses mainly on what the company's impact on the environment is – positive and negative – meaning it takes into account the company's carbon footprint, use of resources and how they manage waste and pollution.

The social aspect encompasses what the company's attitude and behaviour is towards the community they are inserted in, meaning, their employees, customers, suppliers, stakeholders. You have the inner aspect of the S and the outer aspect of the S, much like the actual shape of the letter – and this means that both of these dimensions are taken into account for ESG metrics. The inner aspect of the S relates to how the company manages its internal relationships whilst the outer aspect relates to how the company manages and interacts with its stakeholders and community.[100]

But ESG is not necessarily something new, despite the term only having been coined in the early 2000's. ESG is the product of a seed that has been planted long before, and that's what this chapter aims to defend.[101]

An example of a practice similar to ESG is Socially Responsible Investment (SRI), which focuses on the impact of companies on specific areas of interest. SRI typically employs a negative screening approach to exclude companies engaged in activities that investors find undesirable, such as those involved in alcohol, tobacco, gambling, guns, or with patterns of human rights abuses. SRI also seeks to invest in companies with activities in social justice or environmental solutions. Unlike ESG, SRI focuses more on the decision not to invest rather than proactively selecting investments.102

---

[99] Corporate Finance Institute, ESG (Environmental, Social and Governance), available at: https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/
[100] Corporate Finance Institute, ESG (Environmental, Social and Governance), available at: https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/
[101] Bakshi, S. (2022, August 30). Op-ed: ESG is not a new thing. CNBC. https://www.cnbc.com/2022/08/30/op-ed-esg-is-not-a-new-thing.html
102 Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 2. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7

South Africa's divestment strategy is a case study of using divestment as an instrument for social change. The antiapartheid movement began in the 1960s, aiming to bring attention to Western companies operating in South Africa and exerting pressure on them to exit the country.[103]

In 1977, the Reverend Doctor Leon Sullivan drafted a code of conduct for ethical operations in South Africa, later expanded as the 14 Environmental, Social, and Governance (ESG) Investing Sullivan Principles, which specified basic human rights. The principles, which later expanded, specified what we would now consider to be basic human rights, including: non-segregation of the races in all eating, comfort, and work facilities, equal and fair employment practices, equal pay for all employees doing equal or comparable work, initiation of and development of training programs for all, working to eliminate laws and customs that impede social, economic, and political justice, among others.[104]

Today, these principles may seem like a basic notion for human rights policy for any modern company, but at the time, they were in direct conflict with the policies and laws of the South African government and would make it impossible for companies to operate there. The Sullivan Principles, along with pressure from institutional investors to divest holdings in companies operating in South Africa, were significant in the movement to end apartheid.[105]

These guidelines conflicted with the policies and laws of the South African government, making it impossible for companies to operate there. However, Sullivan, who was a board member of General Motors, gave weight to the guidelines, and support from the United Nations led to many shareholder resolutions calling for exiting South Africa and pressure on institutional investors to divest holdings in companies active there. By the late 1980s, 155 US universities had divested holdings of such companies from their endowments' portfolios, and

[103] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 2. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[104] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 2. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[105] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 2. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7

States, counties, and cities across America had also divested shares of companies in South Africa from their pension funds. Although some argue that divestment may harm the people its proponents seek to help, progress to end apartheid in South Africa was negligible, and divestment, along with sanctions, boycotts, and internal resistance, is given much of the credit for ending this policy.[106]

The case study of the Sullivan Principles in South Africa is of extreme relevance for us to understand how policies that impact the economy have to potential to make a change, and how these principles ended up being the seed for ESG practices as we know them today.[107]

SRI and ESG practices do have much in common regarding their underlying values and principles, however they materialize in different ways of acting.

Regarding the evolution of ESG, we can go back to the 1980's in order to begin understanding where the concept stems from. Environmental, Health and Safety practices (hereinafter, "EHS practices) came first, around the 1980's.[108] They were processes that companies implemented to understand and manage their impact on the environment and protect the health of their employees and the general public. And how did Environmental, Health and Safety practices pave the way for ESG? Firstly, EHS practices recognised that there could be financial implication attached to a company's impact on the environment and on people – which is something that ESG also recognises as certain that non-compliance with ESG metrics may mean reputational damages and even fines for the company in question.[109]

Second, EHS practices also recognise the premise that a company's actions and impacts can have broad implications for the community and society they are in. ESG also builds on this foundation, but expands its focus beyond just the

[106] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 2. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[107] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 2. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[108] Corporate Finance Institute, ESG (Environmental, Social and Governance), available at: https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/
[109] CDC, Environmental Health Services, EH Practice, available at: https://www.cdc.gov/nceh/ehs/eh-practice/index.html

environment, health, and safety to look at sustainability through a more holistic lens.[110]

In the 1990's, EHS Practices evolved into what was known as Corporate Sustainability, and this happened in the following of management teams that wanted to go beyond the legal requirements for reducing the environmental impact of their companies. Corporate Sustainability was a "phase" in the evolution of ESG, however, it ended up leaving behind a negative connotation and becoming known as the beginning of greenwashing. At the time, many companies "jumped on the bandwagon" and overstated their efforts and environmental impact reduction. [111]

In the early 2000's, another "mutation" took place. The corporate sustainability movement breached out into thinking of how companies should (and if they should, at all) respond to social issues rather than just environmental issues. There were two main components of Corporate Social Responsibility, and they were corporate philanthropy and employee volunteerism (*voluntariado de competências*). This was a movement characterised by being reactive, meaning that when social and environmental causes/issues stuck out, companies would react by taking action.[112]

After Corporate Social Responsibility, by the late 2010's, ESG emerged as a renewed, proactive movement, which is what we know today.

3.1. Theories of the Firm

ESG investing is about allocating resources to firms that pursue ESG objectives or to motivate them to do so. However, there is some disagreement regarding the extent to which firms should take on non-financial objectives. Milton Friedman's famous paper "The social responsibility of business is to increase its

[110] CDC, Environmental Health Services, EH Practice, available at: https://www.cdc.gov/nceh/ehs/eh-practice/index.html
[111] Corporate Finance Institute, ESG (Environmental, Social and Governance), available at: https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/
[112] Corporate Finance Institute, ESG (Environmental, Social and Governance), available at: https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/

profits" (1970)[113] has been a major influence on the purpose of a company. Corporate directors, executives and fund managers mostly still agree with Friedman's opinion. Nonetheless, after fifty years, many people think that this is not a complete response. In this sub-chapter, we will discuss Friedman's paper and examine other opinions.

Friedman takes issue with the idea of "social responsibilities" of businesses, because he claims that inanimate things like corporations cannot be held accountable in this way. It's the people involved in the corporation - the proprietors or executives - that have responsibilities, and those responsibilities are to do their job according to the wishes of the owners. This could be simply making as much money as possible while still following the law and ethical standards. He also acknowledges that some businesses, such as hospitals, may have additional goals to provide a certain level of service. The bottom line is that the managers should be responsible to the owners of the corporation.[114]

Employees are allowed to use their own resources, both financially and temporally, to contribute to philanthropic or social activities, however, it is not their place to take from the company in order to fund these activities. This would be taking away from the shareholders or customers, as there would be an increase in prices in order to cover the costs. It is therefore the responsibility of the shareholders and customers to use their own funds for any causes they deem necessary. Another aspect to consider is whether corporate charity could act as a substitute for personal donations.[115]

Friedman asserted that corporate executives are there to serve the interests of the people who own the company. If the executive decides to pursue social goals, then they are, in effect, acting as a public servant without having been elected, nominated, or approved. This raises the questions of how to know how

[113] Friedman, M. (1970). The social responsibility of business is to increase its profits. The New York Times Magazine, 13(9), 32-33, 122, 124.
[114] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[115] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7

much to spend and how to spend it in order to accomplish a social goal. It also poses the inquiry of how to decide who should bear the costs of the endeavour, with the employees, shareholders, and customers all needing to be taken into account. Many who encourage corporate social activism only do so if the cause aligns with their values and beliefs.[116] Ultimately, they are not endorsing corporate social responsibility in general, but instead favouring the specific causes that they deem worthy.[117]

Friedman then delved into the argument that legislative and political procedures usually take too much time to handle immediate social issues. According to him, this claim is wrong in its core as those who advocate it have not convinced a majority of the population to accept their point of view.[118]He also included the action of activist stockholders who try to impose their objectives, even though they have not been supported by the majority of the shareholders. This is not something that is confined to the 1970s, for example, there are current discussions between large institutional investors and gunmakers about firearm production, sales and safety.[119]

In March 2018, American Outdoor Brands Corporation posted the following on their company website: "*We do not believe that our stockholders associate the criminal use of a firearm with the company that manufactures it. We do believe, however, that there would be far greater reputational and financial risk to our company if we were to manufacture and market products containing features that consumers of our products do not desire, or if we were to take political positions with which consumers of our products do not agree*."[120] This is a good example of the paragraph above.

---

[116] Friedman, M. (1970). The social responsibility of business is to increase its profits. The New York Times Magazine, 13(9), 32-33, 122, 124.
[117] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[118] Friedman, M. (1970). The social responsibility of business is to increase its profits. The New York Times Magazine, 13(9), 32-33, 122, 124.
[119] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[120] https://www.reuters.com/article/us-usa-guns-americanoutdoor-idUKKCN1GJ0AI

Although Friedman's opinions are widely shared, attention has been drawn to opposing viewpoints. The modern corporation, according to some authors, is as much a political adaptation as it is an economic or technological structure. There were views that the company had corporate obligations to a larger group of constituents, before the concept of the corporation as a nexus of contracts between shareholders and board members emerged in the 1970s. Stakeholders are now understood to be a much larger group than just shareholders or board members, but rather the public at large.[121]

The foundation of Friedman's theory is an idealistic conviction in the inherent worth of individual freedom of choice and democratic governing principles.[122] As a subversion of these principles, he rejects the imposition of fictitious "social responsibility". Even in present day, while there is greater awareness of social issues, many are still holding this position as their own.[123]

In "Companies Should Maximize Shareholder Welfare Not Market Value"[124], Oliver Hart and Luigi Zingales defend that the nature of investment does not only hold one dimension, the once concerned with shareholder returns. Clearly, financial returns are paramount but people also have social and ethical concerns that go beyond assessing the performance of a company. Friedman argues that money-making activities must be kept apart from charitable endeavours that might be supported by them.[125] Yet, this argument for separation makes the erroneous assumption that a person can achieve the same influence and impact as a targeted corporate activity could, which is not always true. [126]

[121] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3, p. 32. . Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[122] Friedman, M. (1970). The social responsibility of business is to increase its profits. The New York Times Magazine, 13(9), 32-33, 122, 124.
[123] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3, p. 32. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7
[124] Journal of Law, Finance, and Accounting, 2017, 2: 247–274 Companies Should Maximize Shareholder Welfare Not Market Value Oliver Hart1 and Luigi Zingales2∗
[125] Journal of Law, Finance, and Accounting, 2017, 2: 247–274 Companies Should Maximize Shareholder Welfare Not Market Value Oliver Hart1 and Luigi Zingales2∗
[126] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3, p. 33. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7

Hart and Zingales defend that people are susceptible to the damaging consequences of externalities which may be caused by particular business operations, and by taking actions to reduce these externalities, companies could boost welfare.[127] These authors contend that earning money and engaging in morally upright behaviour frequently go hand in hand. They refute Friedman's theory, because according to it, individuals would have to have scalable projects which would mirror the exact opposite of bad business practices. It would be a paradox.[128]

Lynn Stout, a legal scholar, advocated for a view of corporate purpose that went beyond Friedman's. In her book, "The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public", she argued that the idea of putting profit-only first was harmful to society and to the economy. Stout argued for a balanced approach to corporate purpose that takes into account the interests of all stakeholders, and that prioritizing the wellbeing of stakeholders was more likely to lead to a successful long-term future.[129] Stout believed that companies held a responsibility to promote the welfare of all their stakeholders, and that this would be in the best interest of the company and of society.[130]

We have analysed some of the theories of the firm which compete among themselves. Nowadays, there is growing recognition in the financial and economical market in the European Union of theories that go against Friedman's, and that accept and defends that companies do have a responsibility to take into account the general welfare of society, and must act accordingly, "doing their part" and taking advantage of the impact and scale they can achieve to contribute to the wellbeing of their stakeholders and of society as a whole.[131]

---

[127] Journal of Law, Finance, and Accounting, 2017, 2: 247–274 Companies Should Maximize Shareholder Welfare Not Market Value Oliver Hart1 and Luigi Zingales2∗

[128] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3, p. 34. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7

[129] Stout, Lynn. Why We Need to Rethink Capitalist. Harvard Business Review, May-June 2012.

[130] Stout, Lynn, (2012) The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public.

[131] Spremann, K., & Uhr, C. (2020). Environmental, Social, and Governance (ESG) Investing. Chapter 3. Academic Press. https://doi.org/10.1016/B978-0-12-818692-3.00003-7

From a long-term view, it reasons with us that ESG factors do have an impact in the success of a company. A company that has a purpose, a culture and takes ownership of its responsibility to respond to broader societal challenges is more likely to survive in a volatile, uncertain, complex and ambiguous[132] world. These companies will be able to create long-term shareholder value, which should be the objective.

3.2. Sustainable Financial Products

We may now conclude that sustainable financial practices predate the development of the financial market. It is significant to highlight that no mandatory or binding legislative or regulatory instruments mandate the establishment of such financial products. There is, presently, no law, executive order or legislative instrument that mandates certain participants in the financial market use green, social or sustainability related financing.[133]

The practice has emerged as a result of the voluntary actions of financial market participants, such as issuers, borrowers, investors and financing institutions, to support sustainable growth, whether in accordance with the United Nations' Sustainable Development Goals or for other reasons. It has become obvious that the benefits of consistency in terminology and norms would grow as the financial markets started developing these solutions for sustainable finance.[134]

Numerous market and industry organisations have taken on this duty and published their own guidelines and framework on the best ways to use language and other standards in transactions that involve sustainable finance products or practices.

[132] Bennett, Nate, & Lemoine James, G., (2014) What VUCA Really Means for You, Strategic Planning, Harvard Business Review, available at: https://hbr.org/2014/01/what-vuca-really-means-for-you
[133] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 332. (01.01.2023)
[134] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter I, 2021, p. 332. (01.01.2023)

The Climate Bonds Initiative is an international not-for-profit organisation[135], which has created the Climate Bonds Standard and established a Certification Scheme which is based on its own Taxonomy for Climate Bonds, a system created like a belling scheme for bonds and other financial instruments, similar to *FairTrade,* for bonds and loans that are compliant with a 2-degree Celsius limit in the Paris Agreement.[136]

The International Capital Markets Association is a trade association for the global capital markets industry[137], published three sets of relevant principles: Green Bond Principles, Social Bond Principles and Sustainability Standards – and this was also an attempt to unify the use of terminology in the capital markets. Financial institutions have agreed to abide by the Equator Principles, a set of guidelines issued by the Equator Principles Association, for project financing, corporate loans and project-related bridge loans. These principles state that financial institutions are committed to identifying and evaluating environmental and social risks in projects as a result of their membership in the Equator Principles Association. These standards aim to set a minimum threshold for due diligence and monitoring in order to support responsible risk management in decision-making.[138]

In recent years, we have witnessed a boom in the introduction of a number of financial products that are marketed as green, social, sustainability-linked, ESG-linked, climate change related, among others. The differences between these products, as well as the nomenclature used, is not always immediately apparent. Due to this, investors and regulators have accused financial market participants of greenwashing their financial products.[139]

---

[135] https://www.climatebonds.net/
[136] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10.1, 2021, p. 332. (01.01.2023)
[137] https://www.icmagroup.org/
[138] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10.1, 2021, p. 332. (01.01.2023)
[139] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10.2.1 and 10.2.2, 2021, p. 332. (01.01.2023)

The financial market generally distinguishes between:

(a) Financial products that are dedicated to types of projects with ESG signature (Better known to be green bonds, blue bonds and social bonds), and

(b) Financial products that are intended to support the issuers/borrowers of their products in their ESG ambitions (better known to be sustainability-linked or ESG-linked bonds or loans).

Participants in the financial market initiated the practice of using sustainable financial products on a voluntary basis in order to support sustainable growth. We can therefore state that, in the case of sustainable financial products, practice preceded legislation and regulation of the topic.[140]

Market practices arose voluntarily, to respond to a demand felt from in the market –consumers and investors were growing increasingly aware of the impact their capital could have, if put to the right use and that is how the first green bond was issued, all the way back in 2008.[141]

Sustainable finance practices developed and market practices became identifiable due to the efforts of industry associations such as LMA and IMCMA which provided principles and guideline frameworks to help push market players in their ESG ambitions. The European Union legislator is using current market practices as inspiration and seeks to keep pushing the transition towards green finance by elevating market practices and guidelines to legal requirements. Sustainable finance practices are, effectively, prompting legislation and prompting action on behalf on the lawmaker, in order to regulate and help smooth the functioning of the already existent sustainable finance market. [142]

---

[140] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10, 2021, p. 329 and forward. (01.01.2023)

[141] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10, 2021, p. 339 and forward. (01.01.2023)

[142] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10, 2021, p. 339 and forward. (01.01.2023)

3.3. Green bonds, Blue bonds and Social Bonds: ESG Bonds Galore

The first green bond was issued by the World Bank in November of 2008143. This is considered the blueprint for sustainable investing in financial markets and nowadays this model is being applied to bonds that raise capital for all the 17 Sustainable Development Goals[144].

A bond is a form of debt security issued by a company or government to raise capital. A bond is essentially an "I Owe You", seeing as the bondholder provides funds to the issuer and the issuer promises to pay the bondholder that amount back, plus interest by a set date. As a fixed income asset, bonds play an important role in the global financial system, seeing as it is a source of capital which is relatively low risk.

ESG bonds are a type of financial instrument that aims to help investors achieve social and environmental outcomes, while earning a financial return. The proceeds of ESG bonds are used to finance project that intend to have a positive impact, whether it is environmental or social.[145] We will be focusing on three types of ESG bonds: green bonds, blue bonds and social bonds.

Green bonds are a type of bond specifically designed to fund projects and investments that generate environmental or climate-related benefits. The proceeds from green bonds are used for projects that are related to renewable energy, energy efficiency, sustainable waste management and other initiatives that promote environmental sustainability. Green bonds are typically issued by companies and governments, and often backed by a third-party assurance that the proceeds will be used for the intended environmental purposes. Green bonds are the most

---

[143] The World Bank, From Evolution to Revolution: 10 Years of Green Bonds, available at: https://www.worldbank.org/en/news/feature/2018/11/27/from-evolution-to-revolution-10-years-of-green-bonds

[144] Ramiah, Vikash, & Gregoriou N., Greg, Handbook of Environmental and Sustainable Finance, 2016, https://doi.org/10.1016/C2014-0-05175-1

[145] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10.2.2, 2021, p. 339. (01.01.2023)

established part of the ESG bond market[146], and are also known as climate bonds – they play an important role in our analysis, for the European Union is the leader in the issuance of green bonds, accounting for 40 percent of the global market, with the European Investment Bank being the single largest issuer of green bonds worldwide.

In the International Finance Corporation's Green and Social Bonds Impact Report, we can see that in 2022 alone over 1 billion USD were committed across 23 projects in 9 different sectors: circular economy, green banking, green building, solar energy, transport, waste recycling, waste management, water supply and wind energy.[147] These investments are expected to reduce greenhouse gas emissions by 2 million metric tons of CO2, expected to produce 4,403,570 megawatt hours of renewable energy, expected to save 4,045,000 kilowatt hours of energy annually and expected to build 300 megawatts in renewable energy capacity.[148]

There has been significant effort from the European lawmaker towards the reality of green bonds – and from this effort came the European Green Bond Standard (hereinafter, "EGBS"). The EGBS is the first European financing tool incorporating the European Taxonomy.[149] This is a voluntary standard, which provides both public, private, EU and non-EU organisations with an opportunity to demonstrate their commitment to sustainable investing.[150]

By issuing green bonds with the EGBS label, these organisations can ensure that the funds raised are used to finance projects that will have positive

---

[146] EISENEGGER, MARIO, "Green Bonds, Blue Bonds, ESG Bonds Galore – a beginner's guide for fixed income investors, 2021, available at: https://bondvigilantes.com/blog/2021/02/green-bonds-blue-bonds-esg-bonds-galore-a-beginners-guide-for-fixed-income-investors/

[147] International Finance Corporation's Green and Social Bonds Impact Report – Financial Year 2022, available at: https://www.ifc.org/wps/wcm/connect/a9cdc25e-b114-4d6a-9e4a-e61ae6f5cd0f/IFC_GreenSocialBondReport_Final.pdf?MOD=AJPERES&CVID=onzERP1

[148] International Finance Corporation's Green and Social Bonds Impact Report – Financial Year 2022, available at: https://www.ifc.org/wps/wcm/connect/a9cdc25e-b114-4d6a-9e4a-

[149] European Roundtable on Climate Change and Sustainable Transition, The EU Green Bond Standard – state of play, available at: https://ercst.org/scaling-up-and-trading-co2-storage-units-csus-under-article-6-of-the-paris-agreement-potential-challenges-enablers-governance-and-mechanisms-2/

[150] European Roundtable on Climate Change and Sustainable Transition, The EU Green Bond Standard – state of play, available at: https://ercst.org/scaling-up-and-trading-co2-storage-units-csus-under-article-6-of-the-paris-agreement-potential-challenges-enablers-governance-and-mechanisms-2/

environmental impacts. The EGBS has been developed to ensure that the funds raised through green bonds are used to finance climate-friendly projects that are in line with the European Commission's long-term goals.[151]

The standard requires that funds raised through green bonds should at least 80% allocated to projects that meet the criteria defined by the EGBS. The criteria include:[152]

(i) Projects must be in line with European Commission policy goals related to climate change, such as those set out in the European Green Deal.

(ii) Projects must have measurable, verifiable, and transparent outcomes in terms of greenhouse gas reductions or other positive environmental impacts.

(iii) Projects must be managed and reported in a responsible manner.

The EGBS has been approved and is now in the process of being implemented across Europe. It is an important first step towards making green finance more accessible and the criteria set out by the EGBS will help to ensure that investments in green projects are being made responsibly and with the aim of achieving the European Commission's long-term goals.[153]

The impact of green bonds in the European Union is significant. Not only do they help finance projects that reduce emissions and address climate change, but they also provide financial incentive for companies to invest in financial products that are beneficial to the environment. Moreover, green bonds provide a way to mobilise private capital to invest in projects that promote environmental sustainability, all while diversifying the economy and helping the market to build resilience to climate change.

---

[151] European Commission, European Green Bond Standard Q&A, 2021, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard_en

[152] European Commission, European Green Bond Standard Factsheet, 2021, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard_en

[153] European Roundtable on Climate Change and Sustainable Transition, The EU Green Bond Standard – state of play, available at: https://ercst.org/scaling-up-and-trading-co2-storage-units-csus-under-article-6-of-the-paris-agreement-potential-challenges-enablers-governance-and-mechanisms-2/

Blue bonds are a type of bond specifically designed to fund projects and investments that promote conservation and the sustainable use of marine and coastal resources. Blue bonds are novel, when compared to green bonds, which are quite established. The proceeds from blue bonds are typically used for projects related to marine protected areas, sustainable fisheries, ecosystem restoration, and other initiatives that promote environmental sustainability in the oceans and coastal areas.

Blue bonds are designed to be issued by governments and companies, as well, and also backed by third-party assurance regarding the use of the proceeds toward the intended environmental purposes. The Seychelles have issued a world-first sovereign blue bond, a 10-year bond to finance ocean protection projects and aid the country's fisheries sectors. The coupon associated with this bond is of 6.5%, which is quite high[154]. The one-of-a-kind bond issued by the Seychelles raised 15 million USD from international investors, with the aid and assistance of the World Bank[155].

Social bonds are a type of bond which is designed to fund projects and investments that promote social inclusion and economic development. The proceeds of these bonds are typically used for projects related to education, healthcare, poverty alleviation, employment and other initiatives that promote economic and social development.

Social bonds are a relatively new financial instrument in the European Union. However, the advantages they present are numerous. They offer a way to bring much needed capital to areas that truly need it, while at the same time providing investors with an attractive way to contribute to impactful social projects and getting paid for it. Social bonds can help to create an overall more cohesive social structure in the European Union, by funding projects that promote equality

---

[154] The World Bank, Press Release "Seychelles launches World's First Sovereign Blue Bond", 2018, available at:https://www.worldbank.org/en/news/press-release/2018/10/29/seychelles-launches-worlds-first-sovereign-blue-bond
[155] The World Bank, Press Release "Seychelles launches World's First Sovereign Blue Bond", 2018, available at:https://www.worldbank.org/en/news/press-release/2018/10/29/seychelles-launches-worlds-first-sovereign-blue-bond

and reduce poverty, they can contribute to the realization of many of the Sustainable Development Goals of the United Nations. This, in the end, will not only benefit citizens and society as a whole, but also the economy and market.

In 2019, sustainable debt issued worldwide hit a record of 465 billion USD[156]. Sustainable debt issuance has been on the rise due to various factors, among which are the increasing investor demand for sustainable investments and growing focus on ESG considerations.

This increase has contributed to the European Union's Sustainable Finance Action Plan and European Green Deal by reorienting capital flows towards sustainable investments and providing a framework for sustainable finance.[157] The Action Plan outlines ten reforms in three areas: reorienting capital flows towards sustainable investments, creating a level playing field for sustainable investments and improving transparency and long-term orientation in financial markets.[158] Sustainable finance refers to the process of taking ESG considerations into account when making investment decisions in order to achieve sustainable and inclusive outcomes. The new strategy for financing the transition to a sustainable economy proposes action in a number of areas, including extending the EU taxonomy and standards for sustainable finance.[159]

The growth in sustainable debt issuance has been driven by a variety of factors, including regulatory changes, public sector support, and investors' increasing preference for ESG investments. The important fact here is that is it growing, and exponentially.

---

[156] BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, "Sustainable Finance in Europe: Setting the Scene, in *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, Chapter 10.2.2, 2021, p. 339. (01.01.2023)

[157] Principles for Responsible Investment, Explaining the EU Action Plan for Financing Sustainable Growth, available at: https://www.unpri.org/sustainable-financial-system/explaining-the-eu-action-plan-for-financing-sustainable-growth/3000.article

[158] EUROPEAN COMMISSION, Overview of Sustainable Finance, available at: https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en

[159] Environmental Finance, Sustainable Bonds Insights 2021, available at: https://www.environmental-finance.com/assets/files/research/sustainable-bonds-insight-2021.pdf

3.4. Investor incentives

There are several investor incentives for investors who choose to invest their capital in sustainable investments and sustainable financial products in the European Union. These incentives are obviously necessary, in order to make green, blue and social bonds more attractive to investors.

Regulatory drivers are one of the incentives for investors, as analysed in Chapter 2. The European Union's Sustainable Finance Action Plan encompasses many legal acts which mandate that investment firms, financial institutions and financial advisors integrate and disclose how they integrate sustainability factors and risks into their investment decisions. It is also an incentive to investors to know that their investment choices are contributing to the attainment of the goals set out in The European Green Deal and the Sustainable Finance Action Plan.[160]

Tax breaks are also offered by some Member-States of the European Union, such as tax credits or deductions for investments made in green bonds (renewable energies and energy efficiency), for example. These tax incentives can be designed in a variety of ways, such as reducing or eliminating capital gains taxes and offering tax credits for investments in green, blue and social bonds.

In addition, some countries already offer tax deductions for donations made to organizations that are working towards green, blue and social initiatives.

We believe that the more impactful investor incentives, at the current stage of development of the ESG bonds market, are risk mitigation, competitive advantage, and long-term returns. Once ESG bonds are the object of deeper and more complex regulation, we can expect to see benefits attached to them at the European Union level. However, for now, since regulation is not homogeneous yet, it it of great importance to analyse and value indirect[161] benefits attached to the use and preference for these bonds.

---

[160] Principles for Responsible Investment, Explaining the EU Action Plan for Financing Sustainable Growth, available at: https://www.unpri.org/sustainable-financial-system/explaining-the-eu-action-plan-for-financing-sustainable-growth/3000.article

[161] By indirect benefits, it is meant non-fungible or non-monetary. Benefits that can't be monetized.

ESG bonds offer attractive long-term returns while simultaneously providing a range of additional benefits, including reduced exposure to risk (physical risk and regulatory risk), increased diversification, and competitive advantage.

As an investment, ESG bonds reduce exposure to business, financial, and legal risk. Companies that issue ESG bonds are held to higher standards in terms of environmental protection, human rights, and data protection, which reduces the chances of being subject to lawsuits, fines, and other liabilities. Additionally, ESG bond portfolios are more diversified due to the wide range of sectors and countries in which the bonds are available.[162]

The competitive advantage of ESG bonds is twofold. Firstly, companies that invest in ESG are often seen as more socially responsible, which can help to improve brand image and attract new customers. Secondly, ESG investments can open up access to new markets and reduce the cost of capital, as the bonds are more attractive to socially conscious investors.[163]

Finally, ESG bonds tend to offer higher long-term returns than conventional bonds. This is because ESG bonds are generally issued by companies with better financial health, which reduces the risk of default. Additionally, ESG bonds often come with higher-than-average interest rates, making them an attractive option for investors looking for a steady stream of income.[164]

Overall, the EU is increasingly recognizing the importance of sustainable investments and is taking steps to encourage their growth. As a result, there are a growing number of incentives and opportunities for investors who prioritize sustainability in their investment strategies.

---

162 SHRIBER, TODD, Investopedia, “ESG and Bonds: It’s a Match”, available at: https://www.investopedia.com/news/esg-and-bonds-its-match/

163 ROGERS, JEAN, Raconteur, “How ESG is shaping the economy of tomorrow, available at: https://www.raconteur.net/sponsored/how-esg-is-shaping-the-economy-of-tomorrow/

164 SHRIBER, TODD, Investopedia, “ESG and Bonds: It’s a Match”, available at: https://www.investopedia.com/news/esg-and-bonds-its-match/

4. A paradigm shift: The conscious investor

The European Union's Sustainable Finance Action Plan, the European Green Deal and other sustainable finance initiatives analysed in the previous chapters have been absolutely instrumental in shifting investor mentality away from a "profit-centric" perspective and taking steps towards becoming the conscious investor that engages in ESG investing, which prioritises causes and socially responsible companies which focus on environmental, social and governance issues.

We can infer from our previous analysis that sustainable finance practices were not an artificial creation of the lawmaker or of financial institutions, but rather a concept birthed from the will of investors to redirect their capital flow and investment to more sustainable initiatives that align with their values and the causes they wish to contribute to. The conscious investor is concerned with the sustainability and the impact of what they are investing in, and this trend is being driven by financial market players, institutional and private investors who are keen to make a difference.[165]

There are many types of sustainable investment, and we have so far focused on ESG investing, ESG investing and Socially Responsible investing. Ethical investing, impact investing, venture philanthropy and values-based investing are among other streams of sustainable investment which we did not focus on, but that share the same *ethos* among one another.[166]

The shift from profit-centered investors to ESG investors who are conscious of their investment decisions is a noteworthy trend in the investment landscape. This shift has been driven by a combination of factors such as increased transparency of ESG performance, the availability of green

[165] https://lande.finance/blog/who-is-the-sustainable-conscious-investor
[166] https://lande.finance/blog/who-is-the-sustainable-conscious-investor

investments, the introduction of ESG scoring, and the availability of green tax incentives.

The introduction of the EU's Sustainable Finance Action Plan and other initiatives has been a key driver of the shift from profit-centered to ESG-centered investments. Through the Action Plan, investors are now able to make more informed decisions about their investments, as they are able to assess a company's performance according to its ESG criteria. Furthermore, the increased transparency of ESG performance has enabled investors to make more sustainable and responsible investments, as they are now able to identify companies that adhere to the highest ESG standards.

The increased availability of green investments has also been an important factor in the shift to ESG-focused investing. The range of green investments has grown significantly in recent years, as the EU has made it a priority to make green investments more accessible. This has enabled investors to make investments that have a positive impact on the environment, such as investments in renewable energy projects.[167]

The introduction of ESG scoring has also been crucial in the shift to ESG-focused investing. With ESG scoring, investors are able to measure the performance of companies according to their ESG criteria and thus are able to make more informed and sustainable investment decisions.[168]

Finally, the availability of green tax incentives has been a key driver of the shift to ESG-focused investing. By providing tax incentives for green investments, governments are able to encourage more investors to invest in sustainable projects. As a result, more investors are being incentivized to

---

[167] WU, JENNIFER, J.P.Morgan Asset Management, ESG Outlook 2022: The Future of ESG Investing, available at: https://am.jpmorgan.com/dk/en/asset-management/liq/investment-themes/sustainable-investing/future-of-esg-investing/

[168] CURRY, BENJAMIN, Forbes, Environmental, Social and Governance: What is ESG investing?, available at: https://www.forbes.com/advisor/investing/esg-investing/

make more informed and sustainable investments, thereby contributing to the development of the conscious investor.

5. Conclusion

The applicability of existing law regarding sustainable finance to financial institutions and investors is still far too limited for us to be able to infer that it is very effective or decisive in the enormous changes we have recently witnessed in the financial market in the European Union. Even though steps are most definitely being taken in that direction, the scope of the directives and regulations we have analysed still falls short of the mark set by the objectives of the European Green Deal and in the Sustainable Finance Action plan.

On the one hand, the market is demanding and growing ever more accepting of businesses' responsibility to abide by more sustainable guidelines, demanding new financial instruments for the market which allow investors (both private and institutional) to invest in a conscious, impactful and responsible manner. On the other hand, the regulatory and legislative framework is still too incohesive to create the security that an emerging market like sustainable finance needs.

Sustainable finance has enormous potential to be a catalyst of change to a greener, sustainable future. This transition needs to happen, and it will be transversal across industries – however, financing has a special role here because it is part of every industry. The financial sector is the one who channels capital, who enables financing activities and because of this, it has potential to be a changemaker.

Sustainable finance needs to be scaled up, in order to make it the norm in the financial market. However, there are many factors that are stopping

the scale up of sustainable finance. Among them, we consider that one of the most dangerous factors is greenwashing.

Greenwashing creates huge uncertainty and a lot more work on behalf of investors and asset managers, that have their hard work cut out for them.[169] For example, if we're talking about green bonds, they would need to ensure that the bond proceeds are earmarked for green projects, assess the risks of these projects and if they truly are green, measure and report the impact that is expected of the projects. There are more underlying concerns, as well. The investor would need to check the issuer's credentials, and whether they are exposed to any risks, have operations which may negatively impact the environment.[170]

Ravi Menon, managing director of the Monetary Authority of Singapore delivered a very important speech at the Financial Times Investing for Good Asia Digital Conference, on September 8th 2021. In this speech, he speaks of the 3 "D's" to solve this problem: data, definition and disclosure. He defends that, to make sustainable finance work in an effective way, there are three steps:[171]

(i) Improving the quality, availability and comparability of data;
(ii) Developing compatible definitions or taxonomies for green and transition activities; and,
(iii) Implementing a consistent set of global standards for disclosures and reporting.

Sustainable finance practices did not depend on political or legislative measures to emerge and establish themselves in the financial market

[169] MENON, RAVI, What we need to do to make green finance work, available at: https://www.bis.org/review/r210909d.pdf
[170] MENON, RAVI, What we need to do to make green finance work, available at: https://www.bis.org/review/r210909d.pdf
[171] MENON, RAVI, What we need to do to make green finance work, available at: https://www.bis.org/review/r210909d.pdf

globally. However, we believe that they will need them in order to reach their full potential and become effective means to further and allow the economic transition towards sustainability. The market is calling for legal certainty, for accountability regarding greenwashing, for more robust measures which stimulate the sustainable finance market, rather than create confusion and uncertainty around it.

The conscious investor, fruit of the new consumer mentality that is sweeping across markets globally, ever more concerned with sustainability, social causes, diversity, inclusion, will benefit from a more robust legislative initiative to guide and reassure them that this is the right way to go regarding their investments. Consumers are now quick to disapprove of companies' policies, taking on the role of judges and juries, more and more aware each day of what the impacts and repercussions of what the companies' actions, inactions and policies are regarding issues that speak to them. The conscious investor adopts the same ethos and will make the choice between investing and not investing more dependent on the sustainability and impact of the investment rather than based off of what his pay ticket and receivables will be.

We believe that if more robust legislation was to be enacted at the European Union level, sustainable finance practices would thrive and the economy would prosper, all while a positive environmental or social impact is created.

The Earth has a deadline. Let's use sustainable finance to make it a lifeline.[172]

[172] MENON, RAVI, What we need to do to make green finance work, available at: https://www.bis.org/review/r210909d.pdf

Bibliography

ASSENT, "What is the EU Non-Financial Reporting Directive?", in *Assent*, 2022, available at: https://www.assent.com/resources/knowledge-article/what-is-the-eu-non-financial-reporting-directive/

BENNETT, NATE / LEMOINE JAMES, G., "What VUCA Really Means for You, Strategic Planning, in *Harvard Business Review*, 2014, available at: https://hbr.org/2014/01/what-vuca-really-means-for-you

BROCK, THOMAS, "What is ESG Investing?", in *Investopedia*, 2022, available at: https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp (15.02.2023)

BUSCH, DANNY / FERRARINI, GUIDO / GRUNEWALD, SERAINA, *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, 1st Edition, Palgrave Macmillan, 2021

BNP PARIBAS, "Your Guide to the European Commission's Sustainable Finance Action Plan", in *BNP Paribas*, 2022, available at: https://securities.cib.bnpparibas/sustainable-finance-action-plan-regulation-memo/#scope-sustainable-finance-action-plan

CÂMARA, PAULO (et. al), *The Palgrave Handbook of ESG and Corporate Governance*, 1st edition, Palgrave Macmillan, 2022

CAMBRIDGE DICTIONARY, "Greenwashing", in *Cambridge Dictionary*, 2023, available at: https://dictionary.cambridge.org/dictionary/english/greenwashing

CENTERS FOR DISEASE CONTROL AND PREVENTION, "EH Practice: Build Capacity to Use Data to Address Environmental Hazards and Improve Service", in *CDC*, 2022, available at: https://www.cdc.gov/nceh/ehs/eh-practice/index.html

CONGIU, MICHAEL (et.al), "Dutch and French Legislatures Introduce New Human Rights Due Diligence Reporting Requirements", in *Littler*, 2017, available at: https://www.littler.com/publication-press/publication/dutch-and-french-legislatures-introduce-new-human-rights-due-diligence

CURRY, BENJAMIN, "Environmental, Social and Governance: What is ESG Investing?", in *Forbes*, 2022, available at: https://www.forbes.com/advisor/investing/esg-investing/ (04.02.2023)

EISENEGGER, MARIO, "Green Bonds, Blue Bonds, ESG Bonds Galore – a beginner's guide for fixed income investors", in *Bond Vigilantes*, 2021, available at: https://bondvigilantes.com/blog/2021/02/green-bonds-blue-bonds-esg-bonds-galore-a-beginners-guide-for-fixed-income-investors/

EUROPEAN COMMISSION, "Overview of Sustainable Finance", in *European Commission*, 2022, available at: https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en (09.02.2023)

EUROPEAN COMMISSION, "European Green Bond Standard Q&A"", in *European Commission*, 2021, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard_en (09.02.2023)

EUROPEAN COMMISSION, "European Green Bond Standard Factsheet", in *European Commission*, 2021, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard_en (09.02.2023)

EUROPEAN COMMISSION, "Just and Sustainable Economy: Companies to respect human rights and environment in global value chains", in *European Commission*, 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

EUROPEAN COMMISSION, "Questions and Answers: Corporate Sustainability Reporting Directive Proposal", in E*uropean Commission*, 2021, available at: ttps://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1806

EUROPEAN COMMISSION, "Action Plan: Financing Sustainable Growth", in E*uropean Commission*, 2018, available at: https://www.switchtogreen.eu/the-eu-action-plan-on-financing-sustainable-growth/

EUROPEAN COMMISSION, "Implemented and Delegated Acts – Taxonomy Regulation", in E*uropean Commission*, 2022, available at: https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation_en

EUROPEAN COMMISSION, "Communication from Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions", in E*uropean Commission*, 2019, available at: https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF

EUROPEAN COMMISSION, "EU Taxonomy for Sustainable Activities", in E*uropean Commission*, 2022, available at: https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en

EUROPEAN COUNCIL, "Council gives final green light to corporate sustainability reporting directive", in E*uropean Council*, 2022, available at: https://www.consilium.europa.eu/en/press/press-releases/2022/11/28/council-gives-final-green-light-to-corporate-sustainability-reporting-directive/

EUROPEAN PARLIAMENT, "Sustainable Economy. Parliament Adopts new Reporting Rules for Multinationals", in E*uropean Parliament*, 2022, available at: https://www.europarl.europa.eu/news/en/press-room/20221107IPR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals

EUROPEAN SECURITIES AND MARKETS AUTHORITY, Sustainable Finance, 2022, available at: https://www.esma.europa.eu/esmas-activities/sustainable-finance

ESG ENTERPRISE, “SFDR, NFRD, and CSRD: Guidance on EU Taxonomy”, in *ESG Enterprise*, 2022, available at: https://www.esgenterprise.com/esg-reporting/eu-taxonomy-sfdr-nfrd-csrd/

FERRIE, DANIEL / APOSTOLA, AIKATERINI, “Commission puts forward new strategy to make the EU’s financial system more sustainable and proposes new European Green Bond standard”, in *European Commission*, 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3405 (28.12.2022)

FRIEDMAN, MILTON, “The Social Responsibility of business is to increase its profits”, in *New York Times Magazine*, 1970, available at: https://www.researchgate.net/publication/226350304_The_Social_Responsibility_of_Business_Is_To_Increase_Its_Profits

GREEN FINANCE PLATFORM, “The European Commission’s Action Plan on Financing Sustainable Growth”, in *Green Finance Platform*, 2022, available at: https://www.greenfinanceplatform.org/policies-and-regulations/european-commissions-action-plan-financing-sustainable-growth

HART, OLIVER / ZINGALES, LUIGI, “Companies Should Maximize Shareholder Welfare Not Market Value”, in *Journal of Law, Finance and Accounting,* 2017, available at: https://scholar.harvard.edu/files/hart/files/108.00000022-hart-vol2no2-jlfa-0022_002.pdf

HILL, JOHN (et.al), *Environmental, Social and Governance (ESG) Investing*, 1st Edition, Academic Press, 2020

INTERNATIONAL LABOUR ORGANIZATION, "ILO Declaration on Fundamental Principles and Rights at Work", in *ILO*, 2022 amendment, available at: https://www.ilo.org/declaration/lang--en/index.htm

JENNINGS, MIKE, "A Guide to the EU Sustainable Finance Disclosure Regulation for Financial Institutions", in *Anthesis Group*, 2022, available at: https://www.anthesisgroup.com/a-guide-to-the-eu-sustainable-finance-disclosure-regulation/#product (09.02.2023)

LANDE FINANCE, "Who is the Sustainable Conscious Investor?", in *Lande Finance*, 2022, available at: https://lande.finance/lv/blog/who-is-the-sustainable-conscious-investor-3 (15.02.2023)

LESTER, AHREN (et.al), "Sustainable Bonds Insight 2021, Environmental Finance", in *Environmental Finance*, 2021, available at: https://www.environmental-finance.com/assets/files/research/sustainable-bonds-insight-2021.pdf (05.02.2023)

MARCU, ANDREI / IMBAULT, OLIVIER / CZYCZERSKI, BARTEK / BONFIGLIO, ELENA, "The EU Green Bond Standard – state of play. What is in it for transition?, in ERCST, 2022, available at: https://ercst.org/scaling-up-and-trading-co2-storage-units-csus-under-article-6-of-the-paris-agreement-potential-challenges-enablers-governance-and-mechanisms-2/

MCDERMOTT, BRIAN (et.al), "Low Carbon Benchmarks", in *A&L Goodboy*, 2022, available at: https://www.algoodbody.com/images/uploads/services/Asset-Management/Low_carbon_benchmarks.pdf

MENON, RAVI, “What we need to do to make green finance work”, in *Bank for International Settlements*, 2021, available at: https://www.bis.org/review/r210909d.pdf (10.02.2023)

MIGLIORELLI, MARCO, “What do We Mean by Sustainable Finance? Assessing Existing Frameworks and Policy Risks”, in *MDPI*, 2021, available at: https://www.mdpi.com/2071-1050/13/2/975

OECD, “Guidelines for multinational enterprises”, in *OECD*, 2011, available at: http://mneguidelines.oecd.org/guidelines/

PETERDY, KYLE, “ESG (Environmental Social and Governance)”, in *Corporate Finance Institute*, 2023, available at: https://corporatefinanceinstitute.com/resources/esg/esg-environmental-social-governance/

PRESS RELEASE, “Seychelles launches World’s First Sovereign Blue Bond” in *The World Bank*, 2018, available at: https://www.worldbank.org/en/news/press-release/2018/10/29/seychelles-launches-worlds-first-sovereign-blue-bond

PRINCIPLES FOR RESPONSIBLE INVESTMENT, “Principles for Responsible Investment, Explaining the EU Action Plan for Financing Sustainable Growth”, in *PRI*, 2021, available at: https://www.unpri.org/sustainable-financial-system/explaining-the-eu-action-plan-for-financing-sustainable-growth/3000.article (09.02.2023)

POWELL, ROBIN, “Greenwashing: How widespread is it?”, in *TEBI*, 2021, available at: https://www.evidenceinvestor.com/greenwashing-how-widespread-is-it/ (10.02.2023)

REICHELT, HEIKE, "From Evolution to Revolution: 10 Years of Green Bonds", in *The World Bank*, 2018, available at: https://www.worldbank.org/en/news/feature/2018/11/27/from-evolution-to-revolution-10-years-of-green-bonds

ROGERS, JEAN, "How ESG is shaping the economy of tomorrow", in *Raconteur*, 2022, available at: https://www.raconteur.net/sponsored/how-esg-is-shaping-the-economy-of-tomorrow/ (13.02.2023)

SAADE, JAVIER, "Op-ed: ESG is not a new thing", in *CNBC*, 2022, available at: https://www.cnbc.com/2022/08/30/op-ed-esg-is-not-a-new-thing.html

SHRIBER, TODD, "ESG and Bonds: It's a Match", in *Investopedia*, 2022, available at: https://www.investopedia.com/news/esg-and-bonds-its-match/ (15.02.2023)

SMITH-ROBERTS, ASHLEY, "Everything you need to know about the EU CSDD & EU CSDDD", in *Levin Sources*, 2022, available at: https://www.levinsources.com/knowledge-centre/insights/eu-csdd-eu-csrd-mining

STOUT, LYNN, "Why We Need to Rethink Capitalism", in *Harvard Business Review*, June 2012, available at: https://hbr.org/2008/11/time-to-rethink-capitalism

STOUT, LYNN, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations and the Public*, 1st Edition, Berrett Keohler Publications, 2012

SUSTAINABLE FINANCE PLATFORM , Final Report on Minimum Safeguards, in Sustainable Finance Platform, 2022, available at: https://finance.ec.europa.eu/system/files/2022-10/221011-sustainable-finance-platform-finance-report-minimum-safeguards_en.pdf

SZTARICSKAI, TIBOR, "The EU Action Plan on Financing Sustainable Growth", in *Switch2Green*, 2022, available at: https://www.switchtogreen.eu/the-eu-action-plan-on-financing-sustainable-growth/

THE GLOBAL COMPACT, "Who Cares Wins: Connecting Financial Markets to a Changing World", in *The Global Compact*, 2004, available at: https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf

UNITED NATIONS GENERAL ASSEMBLY, "Resolution adopted by the General Assembly on 25 September 2015", in *United Nations*, 2015, available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf

UNITED NATIONS WORKING GROUP ON BUSINESS AND HUMAN RIGHTS, "The United Nations Guiding Principles on Business and Human Rights: an Introduction", in *OHCHR*, 2021, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

UNITED NATIONS WORKING GROUP ON BUSINESS AND HUMAN RIGHTS, "International Bill of Human Rights", in *OHCHR*, 2022, available at: https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights#:~:text=The%20International%20Bill%20of%20Human%20Rights%20is%20a%20powerful%20statement,agree%20to%20abide%20by%20them

VIKASH, RAMIAH / GREGORIOU, N. GREG, *Handbook of Environmental and Sustainable Finance*, 1st Edition, Academic Press, 2016

WAELBROECK, DANIEL / SMITH, T., "Corporate Sustainability Due Diligence Directive – Key Features and Implications", in *Mayer Brown*, 2021, available at: https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2021/06/corporate-sustainability-due-diligence-directive.pdf

WORLD BANK GROUP, "International Finance Corporation's Green and Social Bonds Impact Report – Financial Year 2022", in *International Finance Corporation*, 2022, available at: https://www.ifc.org/wps/wcm/connect/a9cdc25e-b114-4d6a-9e4a-

WU, JENNIFER, "ESG Outlook 2022: The Future of ESG Investing", in *J.P. Morgan Asset Management*, 2022, available at: https://am.jpmorgan.com/dk/en/asset-management/liq/investment-themes/sustainable-investing/future-of-esg-investing/ (10.02.2023)

Legislation

European Union, *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups*, 2014, available at: https://eur- lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095 (01.01.2023).

European Union, *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final)*, 2022, available at: https://eur-lex.europa.eu/legal- content/EN/TXT/?uri=CELEX%3A52022PC0071 (01.01.2023)

European Union, *Regulation 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector,* 2019*,* available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R2088 (01.01.2023)

European Union, *Regulation 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a Framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088*, 2020, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020R0852 (01.01.2023)

European Union, *Regulation 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards*

the European Union's climate transition benchmarks, Paris Agreement benchmarks aligned and sustainability-related disclosures for benchmarks, 2019, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R2089 (02.02.2023)

European Union, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, 2013, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0189 (02.02.2023)

European Union, *Proposal for a Regulation of the European Parliament and of the Council on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/2341, COM(2018) 354 final*, 2018, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0354 (02.02.2023)

European Union, *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088,* 2020, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020R0852 (05.01.2023)

European Union, *Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*, 2022, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464 (05.01.2023)

European Union, *Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU)*

No 596/2014, 2016, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011 (05.01.2023)

European Union, *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups,* 2014, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0095 (10.01.2023)

European Union, *Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports,* 2022, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.196.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A196%3ATOC (07.01.2023)

European Union, *COMMISSION DELEGATED REGULATION (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities,* 2022, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1214 (07.01.2023)

OECD, *Guidelines for Multinational Enterprises*, OECD, 2011, available at: http://mneguidelines.oecd.org/guidelines/ (08.06.2022).

United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 2011, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (15.06.2022).

United Nations, *Sustainable Development Goals*, available at: https://sdgs.un.org/goals (12.02.2023)

Figures

Figure 1 - Summary of criteria for alignment with the minimum safeguards for EU Companies in scope of the CSRD Regulation (RAY, DAVID / GAMSJAGER, LEA, EU Taxonomy Minimum Safeguards: What are they and why do they matter? 12.10.2022, available at: https://www.nordea.com/en/news/eu-taxonomy-minimum-safeguards-what-are-they-and-why-do-they-matter (03.03.2023)) 28
Figure 2- Summary of criteria for alignment with the minimum safeguards for non-EU Companies and EU companies until the CSRD Regulation is fully implemented (RAY, DAVID / GAMSJAGER, LEA, EU Taxonomy Minimum Safeguards: What are they and why do they matter? 12.10.2022, available at: https://www.nordea.com/en/news/eu-taxonomy-minimum-safeguards-what-are-they-and-why-do-they-matter (03.03.2023)) 28
Figure 3 - "Which companies will the new EU rules apply to?" in Factsheet for the Just and Sustainable Economy, European Commission, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145 44

Index

1. Introduction……………………………………………………………..14
2. Legislative and Regulatory Background on Sustainable Finance…...…..17

2.1. The Taxonomy Regulation and the Minimum Safeguards…..……....20
2.2. The Sustainable Finance Disclosure Regulation……….………...…29
2.3. The Low Carbon Benchmark Regulation…………….….………..32
2.4. The Corporate Sustainability Reporting Directive……….…….……37
2.5. The CSDDD Proposal……………………………….….………41
2.6. Synergies of the Sustainable Finance Action Plan…………….……46
3. Environmental, Social and Governance: A passing trend or a new pillar or the world's economy?...47
3.1. Theories of the Firm…………………………………………………51
3.2. Sustainable Financial Products………………………………………56
3.3. Green bonds, blue bonds and Social Bonds: ESG Bonds Galore……69
3.4. Investor Incentives…………………………………………………...64
4. A paradigm shift: The conscious investor…………………………….……66
5. Conclusion……………..…………………………………………….…...68

Bibliography………...……………………………………………………...69