

Green finance: key-words, semantics and regulatory sources in EU

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The system of community regulatory sources: from the Green Deal to Green (Social) Transition

- **Green Deal:** growth planning (goals) to transform Europe into a modern, resource-efficient and competitive economy.
- **Green Transition:** strategy/time to make Europe climate neutral by 2050
- «**Know-how**»: support from the European Commission to the Member States (DG REFORM)
- «**What to do**»: tools to be deployed

European semantics: a different glossary for «production system» and «financial system»

- These are **not legal notions**, but **meanings** related to the topics (now "Green Deal", then we will see "Green Fin"). They can be different.



“CO2 Key”

- **Just transition** means *support for the countries and sectors most impacted by the transition*
- **Sustainable Development** means *enable the planet to respond to the needs of present and future generations (energy, transport and mobility, circular economy)*

Regulatory sources of the “new production system”

- The transition to **sustainable products**: EU Commission proposes an extension of the **Ecodesign Directive** also to **non-energy related products** and to create **digital product passports**, with the aim of sharing all relevant information along the “**product life cycle**”.
- (**Directive 2009/125 / EC** established a framework for placing on the market and free circulation of energy-related products with regard to their eco-design in order to increase their energy efficiency and environmental protection).
- Further objectives: to **combat planned obsolescence**, improve the durability and repairability of products and strengthen consumer rights with the “**right to repair**”.

Role of «financial system» in Green Deal: the Green Fin

- **ATTENTION:** Banks/financial companies play a fundamental role because they represent the **transmission channel of public/private credit**, necessary for the transition and the **collector of private savings**, necessary to activate this **virtuous circle**.
- They are not only a "go-between", but yet they **themselves are the recipients of EU regulations**. *They also must be "green"!* Therefore, **their production and distribution processes must be investigated**.
- **Trade Unions targets:** to enhance scrutiny of collective bargaining "**AD EXTRA**" (on economic-social bank action) and "**AB INFRA**" (on organizational/distribution bank model)

European semantics: what means «sustainability» in Green Fin

Distrust (vs. “CO2”) and **bad neutrality of banks** (vs. “good neutrality”), because *banks must not be neutral*



- **Sustainable finance** means that EU is working to integrate sustainability considerations into the regulatory framework and to introduce specific rules for "sustainable finance". The objective is to **strengthen investor confidence**, also by overcoming the current limits of the scores used for the sustainability analysis (ESG ratings), in particular as regards the **completeness** and **quality of information** and the heterogeneity of the methodologies used for their elaboration.

A “fil rouge” unites the initiatives of the EU

European regulation on **sustainable/green finance** is developing along **three lines**:

- A common classification system for sustainable economic activities, the '**EU taxonomy**', to establish a **common language** and a **clear definition** of which activities are considered sustainable.
- The revision of the Directive on the reporting of *non-financial information* (**NFRD**) and the Regulation on the information on sustainability in the financial services sector (Sustainable Finance Disclosure Regulation, **SFDR**): to **strengthen the reliability and comparability of information**.
- To **provide investors with complete information on investment opportunities and risks** is also pursued through the rules for specific sustainable financial products (“green bonds”, etc.)

Regulatory sources on Green Fin

- The **Taxonomy Regulation (EU 2020/852)** introduces a system of **classification of sustainable economic activities** with the aim of overcoming the absence of shared definitions and thus promoting transparency and comparability, by investors, of information on sustainable investments.
- **Which informations relating to sustainability should companies make public?** The European Directive on the reporting of non-financial information (**Directive 2014/95 / EU, NFRD**) defines the obligation for large companies to **communicate environmental, social and personnel information**. Informations has **double significance: financial** (=impact of climate change on the company) and **environmental / social** (=impact of the company on the climate)
- **From the trade union perspective**, a point of interest is the **internal climate**: the **quality of industrial relations** and the perceived **collective well-being** (stress, satisfaction, etc.)

How NFRD is becoming CSRD (and SFDR): provisional agreement (2022, June) between Parliament, Council and Commission

- The **NFRD** Directive is under review: **on 21 April 2021**, the European Commission published a **proposal** for the Corporate **Sustainability** Reporting Directive (**CSRD**) which, **in addition** to broadening the perimeter of companies subject to non-financial reporting requirements to **all companies listed on regulatory markets**, introduces the obligation of **more detailed information** and its **control by external parties** and requires companies to **digitize the information** reported in order to make it more usable. **Deadline: 2024** for companies already subject to NFRD; **2025** for other large corporations, **2026** for listed SMEs.
- From **March 2021**, transparency obligations became operational (European **Regulation 2019/2088**, Sustainable Finance Disclosure Regulation, **SFDR**) on the **policies adopted to integrate sustainability risks, including climate risks, into their investment decision-making processes and their consultancy.**

SFRD + MIFID II

- **(AB INFRA)** Each operator must communicate **on the website how it** integrates sustainability risks into investment decision-making processes, as well as communicating any negative effects of investment decisions on sustainability factors.
- **(AD EXTRA)** Furthermore, **for all financial products offered on the market**, operators are obliged to disclose information on how sustainability risks are taken into account in investment decisions and what consequences they could have on returns. **This information must be included in the pre-contractual information.**

SFRD, MIFID II against «greenwashing»?

SFDR also imposes an obligation on financial operators who want to classify their products as "**sustainable**" to provide even **more detailed information**.

Article 6 requires to declare **whether sustainability risks are included** in their investment choices, and to explain to their clients **how** an environmental, social or governance event **could impact** on the value of the investment. The regulation identifies **two types of "sustainable" financial products**:

- "*financial products that promote environmental and / or social characteristics*" (described in **Article 8**), i.e. products that promote, inter alia, environmental or social characteristics, or a combination thereof, provided that the enterprises in which the investments are made comply with good governance practices ("**light green**");
- "*financial products that target sustainable investments*" (described in **Article 9**) ("**hard green**", for example, **green bonds**: additional **Regulation EU 2019/2089**. We need **EUGBS**, too).

Obligation to assess all ‘sustainability risks’ (regulatory sources: 21 April 2021)

- **Sustainability preferences** - Delegated Regulation (EU) 2021/1253 amending Delegated Regulation (EU) 2017/565
- **Sustainability risks** - The Delegated Regulation (EU) 2021/1255 amending the Delegated Regulation (EU) no. 231/2013
- **Governance and sustainability risks** - The Delegated Regulation (EU) 2021/1256 which intervenes on the Delegated Regulation (EU) 2015/35 within the governance of **insurance companies**
- **Sustainability preferences for insurance products** - The Delegated Regulation (EU) 2021/1257 amending delegated regulations (EU) 2017/2358 and (EU) 2017/2359
- **Sustainability governance** - The Delegated Directive (EU) 2021/1269 amending the delegated directive (EU) 2017/593 regarding the integration of sustainability factors into product governance obligations

Legal truth or factual truth? the new principle of the so-called "double materiality"

- The European Directive affirms the principle of "**double materiality**": **in order to be really material** (meaning significant), and therefore necessarily be included in the sustainability report, **information must be relevant** to the company from an economic/financial point of view or for the socio-environmental context of reference with regard to ESG factors. In this sense, a distinction is made between "**financial materiality**" and "**impact materiality**" which are **both equally important** for European sustainability reporting.
- Intangible. The Directive introduces an absolute novelty: the obligation to **report intangibles** (internally generated) that do not appear in the balance sheet of the companies.
- The Directive provides that the review of the sustainability report is carried out by a "**statutory auditor**", also providing for the possibility of a specific certification ("*Reporting must be certified by an accredited independent auditor or certifier* »).

Sensitive information from a trade union point of view

- Companies will have to publish the **information necessary** to understand the company's impacts on sustainability factors and understand how sustainability factors affect the company's development, performance and commercial position. *Inter alia*:
- **Social factors.** Equal opportunities for all, including gender equality and equal pay for equal work, training and skills development, and the employment and inclusion of people with disabilities.
- **Working conditions**, including safe employment, wages, **social dialogue**, **collective bargaining** and **employee involvement**, work-life balance, and a safe and healthy work environment.
- **Governance Factors.** Equal opportunities, training and skills development, and employment and **inclusion of people with disabilities**.
- The **role of the company's administrative, management and supervisory bodies** also with regard to sustainability factors and **their composition (trade unionist insider?)**

The «combined provisions» of other Directives

- **Transparency Directive (2019/1152)**: introduces **new disclosure obligations at the time of hiring and during the course of the relationship**. A failure to comply with the disclosure obligations entails not only the **specific sanctions** provided for by the Directive but also the violation of the rules of the **NFRD** (company that does not report non-financial information in a complete or truthful way) and violates the **CSRD** (does not respect the principle of “double materiality”).
- The worker has the **right to access, directly or through trade unions**, the data and to request further information on the information obligations listed.

Due Diligence Directive (proposed reform of Directive 2019/1937 on whistleblowing): the heart of Green Deal

- The reform represents a potential revolution: **mandatory rules**, a new vision of doing business, **human rights** and the **environment** at the center of the action. The risks on the environment and human rights will have to be mapped; **prevent negative impacts** and define **remedial measures**; making businesses legally accountable and ensuring access to justice.
- The proposal goes beyond the current regulatory texts, as it envisages not only an obligation to provide information (disclosure), but also the obligation for large and very large companies to **adopt concrete measures in order to guarantee the sustainability** of the business.

The duty of active supervision

- The supervisory duty imposed on companies refers to the negative effects - real and potential - of their activities on the protection of human rights, working conditions and the environment and **extends to the activities of their subsidiaries and to transactions** related to the “value chain” of their products and services
- Companies must implement, at least, the following 5 measures (**article 4** of the Directive): **1.** adopt an internal code of conduct **2.** correctly and promptly define any occurrences and future risks **3.** implement the necessary measures to mitigate the impact and prevent futures **4.** establish a effective reporting procedure **5.** verify the effectiveness of the measures implemented and **make the results** of this verification **public**.
- The prevention and mitigation of negative impacts will be achieved through **action plans (time schedule)**.
- The action plans will be developed by the company **in consultation with interested parties (Trade Union, if interested!), with contractual guarantees**

Role of whistleblowing

- **Individuals** (natural or legal persons, **trade unions** or associations) must be enabled to lodge a complaint with the companies concerned if they believe that there is a current or potential risk of violation of the provisions. **Complainants will have the right to obtain an adequate and reasoned response** to their complaints and **to meet company representatives**.
- Each EU Member State will designate a body/person in charge of monitoring the correct application of the new provisions of the Directive and the imposition of any **sanctions**
- **This is a new way for collective bargaining and for the involvement of workers in the management and control of companies**