FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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

Domenico Iodice
Scientific Director of the Project - FIRST CISL

"Financing the Green Transition. Transnational collective bargaining and the role of EWCs in supporting European bank; shift towards environmental and social responsibility. Focus on new job profiles and P&Ms re-skilling"

Paris, 2022/10/11

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)

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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)

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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.

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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.)

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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.)

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

How NFRD is becoming CSRD (and SFRD): 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**, transparence 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**.

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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.

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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**

FIRST CISL
Federazione Italiana Reti dei Servizi del Terziario
C.A.FIRST

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**