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ISSUES ON FINANCIAL MARKET REGULATION, BUSINESS DEVELOPMENT AND GOVERNMENT'S POLICIES ON GLOBALIZATION

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Mission

The "Law and Economics Yearly Review" is an academic journal to promote a legal and economic debate. It is published twice annually (Part I and Part II), by the Fondazione Gerardo Capriglione Onlus (an organization aimed to promote and develop the research activity on financial regulation) in association with Queen Mary University of London. The journal faces questions about development issues and other several matters related to the international context, originated by globalization. Delays in political actions, limits of certain Government's policies, business development constraints and the "sovereign debt crisis" are some aims of our studies. The global financial and economic crisis is analysed in its controversial perspectives; the same approach qualifies the research of possible remedies to override this period of progressive capitalism's turbulences and to promote a sustainable retrieval.

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STRIKING A BALANCE BETWEEN PROFIT, PEOPLE WELFARE, AND ECOSYSTEM HEALTH IN THE TRANSITION TOWARDS A SUSTAINABLE FINANCIAL SYSTEM

Mirella Pellegrini * – Antonio Davola ** – Nunzio Casalino *** – Peter Bednar ****

ABSTRACT: *As the attainment of sustainability goals arises as a pivotal – and desirable – format in the development of financial markets the role of the State in favouring this process becomes multifaceted and complex to decipher. In order to promote a favourable environment for sustainable investments, public powers are required to act as policymakers (by establishing a clear regulatory framework), active players (e.g., by issuing sustainable debt) and supervisors (monitoring the respect of CSR rules by companies) at the same time; this, also considering that the introduction of sustainability-related policies is susceptible to greatly vary in its approach and meanings. Corporate welfare projects and improving also the organisational culture could improve the managerial decisions and allow workers to be involved in this needed revolution. People management strategies are also becoming fundamental to allow a sustainable organisation of working environments and adequately valorising workers. A similar discussion has been identified in relation to the need for greater transparency in business operations and practices. All these aspects call for a major coordination effort, both at EU and at Member States level to reach an alignment of*

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The present article is the result of a common intellectual effort of all the Authors, who contributed equally to the research. In particular, Mirella Pellegrini contributed mostly to Sections 1, 2 and 3, Nunzio Casalino contributed mostly to Sections 4 and 5, Peter Bednar contributed mostly to Section 6 and Antonio Davola contributed mostly to Sections 7, 8 and 9.

public and private interests in sustainability while, at the same time, preserving the proper functioning and traditional role of financial markets. Consequently, the document explores the different strategies that could be implemented to – directly or indirectly – reconcile private actors' traditional profit-seeking orientation with the promotion of wider interest related to global wellbeing.

SUMMARY: 1. Preliminary Considerations – 2. Financial Markets and Sustainable Development – 3. Sustainable Finance and Corporate Governance – 4. Corporate Social Responsibility and Organisational Well-Being – 5. Sustainable Approaches for Improving the Working Environment and Employer Branding – 6. Systemic Sustainability as a Structural Concept in Corporate Governance – 7. Sustainable Finance and Socially Responsible Investments – 8. Of Promise and Perils of the Sustainable Transition: Greenwashing in Financial Markets – 9. Towards a Multi-Faceted Role of the State in Promoting the Sustainable Transition of Financial Markets.

1. In the aftermath of the 2007 financial crisis – and considering its impact of market's foundational structures – it has been widely acknowledged that the development of financial markets is a major determinant for the functioning of advanced economic environments, also in consideration of the pivotal role played by technological developments in a profoundly globalized world.[1]

Financialization – that is, the growing influence of financial markets, of their institutions and operators, on social structures – of markets is a structural element characterizing the shift from industrial to financial capitalism in the contemporary society;[2] consequently all those phenomena, that are related to the failure of financial markets, are nowadays potentially able to exercise an influence that goes beyond their traditional scope.

In such a framework, the goals related to financial stability (*in primis* al long as EU Member States are concerned) are increasingly connected to the development of

[1] A. GENNARO, *Unione Europea e capitalismo "responsabile": spunti di riflessione,* in Riflessioni sul futuro dell'Europa, edited by A. Gennaro and R. Masera, Canterano, Roma, 2020, 31.
[2] T. LAGOARDE-SEGOT, *Financialization: towards a new research agenda*, in *International Review of Financial Analysis*, 2016.

social phenomena: on the one hand, financial stability has an indirect impact on the Real Economy; on the other hand, individuals and social groups are influenced by it in seeking welfare.[3]

With regards to the first aspect, the creation of an institutional and regulatory framework, that can promote the stability and the transparency of economic and financial relations is regarded as an essential basis for the efficient allocation of economic resources, as well as for the creation and redistribution of income:[4] stability and transparency operate as conditioning factors for economic agents' decision-making and have a direct impact on their risk perception. As such, they have an impact on the collection of savings, on the allocation of economic resources amongst public and private operators, and on credits' cost and supply, therefore interacting with the traditional modes of operativity of banking institutions.[5]

On the basis of these considerations, it could already be inferred those financial markets are essential in order to pursue – besides their traditional allocative function – social-distributive goals, and this aspect is particularly relevant in the definition of the relevant regulatory framework and in operating choices related to the financial markets' institutional design.

Yet, this new characterization of the role of financial markets is further supported by inspecting the modes of interface between markets and essential features of contemporary society, namely sustainability and digitalization.[6]

If, on the one hand, the essential goals pursued by companies – and, therefore, the determinant for the allocation of economic resources – can still be found in the creation of economic value, it is nowadays acknowledged that any entrepreneurial process shall take into account concomitant (not conflicting)

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[3] See P. DE GRAUWE, *Economics of the Monetary Union*, OUP, 1996, 241.

[4] J. GREENWOOD, and J. BOYAN, *Financial Development, Growth, and the Distribution of Income*, in *Journal of Political Economy* 98, no. 5, 1990, 1076–1107.

[5] BANK OF ITALY, *Financial Stability Report,* 1, 2021, https://www.bancaditalia.it/pubblicazioni/rapporto-stabilita/2021-1/en_FSR_1-2021.pdf?language_id=1, *passim.*

[6] EUROPEAN COMMISSION, *Shaping the digital transformation in Europe. Working paper: Economic potential*, Feb. 2020.

principles such as providing an equitable compensation to workers, respecting social and ethical values, and protecting the surrounding environment. The financial market, therefore, is essential to shape the strategies pursued by financial intermediaries and investors' behaviours and to promote rational and sustainable investments.[7]

The European Union is, unsurprisingly, a player of pivotal importance in promoting these goals, being in direct charge of creating an institutional and regulatory framework to adjuvate the shift of the European financial markets towards forms of sustainable capitalism.

Truth to be told, the potential of the financial markets in promoting social development has been part of the scholarly debate for a long time: yet, the pandemic that affected the world in the past two years renewed the need for a structural rethinking of the relationships between ethics, law and economics, also considering the effect of these kind of events of marginalized populations.[8] Already in previous decades, Western countries underlined that the preservation of natural resources and biodiversity was meant to become a social priority in the wake of globalization; in some Member States, this effort has also determined the modification of the Constitutional Charters.[9]

While analysing this issue in its entirety goes out of the scope of the present work, it is work observing that focusing on the relationship between the current functioning of financial markets and social welfare unveils an intrinsic contradiction of contemporary economies: in recent years – and mostly due to the influence of the first wave of EU law and market globalization – entrepreneurship has gained a primary role within society, and emerged as a sort of "quasi-fundamental" right

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[7] G20 GREEN FINANCE STUDY GROUP, *G20 Green Finance Synthesis Report*, 2016.
[8] S. LATOUCHE, *La planète des naufragés: Essai sur l'après-développement*, La Découverte, 2017 (1st ed. 1996).
[9] E.g., the recent modification to Artt. 9 and 41 of the Italian Constitution (8 Feb 2022) encompassed the interest of future generations within the general goal of the protection of environment, biodiversity, animals, and ecosystem.

against conflicting (or, at least, countervailing) values.[10] Previously existing boundaries to private economic initiative have been gradually eroded in view of economic development; this process has been promoted as functional to the establishment and strengthening of the European Single Market, which is oftentimes imprinted with utilitarian interpretations that have actually little (or even no) concern for social benefit.[11]

Alongside the affirmation of the Single Market, arose the awareness regarding the existence of globally widespread frailties existing at economic, social, and environmental level: the development of the market economy has been related to the incremental divide between social groups and to the over-consumption of natural resources, therefore calling for an "ethical rebirth".[12]

The debate over the role and relevance of creating a sustainable financial markets, therefore, lies at the crossroad of all these elements: on the one hand, profit-seeking logics still constitute (and shall continue to do so) the main determinant of any economic activity; on the other hand, economic welfare cannot be fully attained without considering social inclusion, as well as the need that long-term development is intrinsically tied to reaching an equilibrium within the ecosystem. In embracing this perspective, the protection of those rights, that are symptomatic of the egoistic goal of individuals,[13] must be conjugated with the protection of the common interest, including in this concept also the need to protect diversity and future generations.

2. Nowadays, the influence of EU institutions on financial markets does not focus exclusively on its stability and efficiency anymore; in parallel with these goals,

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[10] G. MONTEDORO, *Postfazione*, in AA.VV., *Finanza, impresa e nuovo umanesimo*, a cura di Capriglione, Cacucci, Bari, 2007.

[11] F. CAPRIGLIONE, *Etica della finanza mercato globalizzazione*, Cacucci, Bari, 2004.

[12] M. PELLEGRINI, *"Impresa e finanza" alla luce della dottrina sociale della Chiesa*, in *Finanza, impresa e nuovo umanesimo*, cit.

[13] S. RODOTÀ, *Il terribile diritto. Studi sulla proprietà privata e i beni comuni*, Il Mulino, Bologna, 2013.

the promotion of financial markets' sustainability has gained a major relevance, which is meant to further grow in the forthcoming years.[14]

Starting from the first definition of the notion of sustainability in the 1987 *Brundtland Report,*[15] the goal of promoting sustainable markets represented a common trait in the debates animating the European Union in the first decade of the new millennium.[16] Still, it is only after the 2015 Paris Agreement on climate change that the role of financial markets in promoting sustainable development has been expressly recognized: since that date, a multiplicity of initiatives pertaining to sustainable finance arose:[17] accordingly, the enthusiasm towards the relevance of financial markets as a means to promote sustainable goals led to the need to redefine the pertinent regulatory framework, through the recent approval of the Taxonomy Regulation (TR) and the Sustainable Financial Disclosure Regulation (SFDR).[18]

Consistently with the considerations that inspired the European *Green Deal,*[19] the most recent interventions undertaken by EU institutions are characterized, on the one hand, by their emphasis on intergenerational sustainability and its impact on productive processes; on the other hand, major attention is devoted to all those duties that are based on social solidarity and on the protection of EU citizens' socio-economic rights. This last aspect, in particular, marks a significant change of perspective from the traditional marginalization characterizing the economic-neoliberal approach of the origins.

It is, indeed, undeniable – as we already forementioned – that the events

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[14] C. PEREZ, *Capitalism, Technology, and a Green Global Golden Age: The Role of History in Helping to Shape the Future*, in *Rethinking Capitalism: Economics and Policy for Sustainable and Inclusive Growth*, edited by M. Jacobs and M. Mazzuccato, Wiley, 2016.

[15] ONU, *Report of the World Commission on Environment and Development: Our Common Future*, 1987.

[16] COMMUNICATION FROM THE COMMISSION, *A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development*, 15 May 2001.

[17] See *inter alia* the Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions *Action Plan: Financing Sustainable Growth.*

[18] Reg. (EU) 2020/852 and Reg. (EU) 2019/2088 respectively.

[19] COM/2019/640 final.

related to the economic crisis first, and to the pandemic outburst then, exacerbated the need for a radical change of perspective on the social function of financial markets. In recent years, together with enduring these new challenges, populations worldwide had to cope with the disruptive effects of climate change and the crescent disaggregation of social groups: these phenomena, in their conjunction, highlighted how the promotion of traditionally intended entrepreneurship could not be prioritized against the general welfare anymore.

In addition, EU institutions acknowledged the hardship (and even the impossibility) to pursue sustainability goals without an aware and prominent involvement of the private sectors; this, of course, further stressed the central role of the financial system to promote sustainable development.[20]

Sustainability goals have been identified as structural characteristics of modern entrepreneurship, together with the need to reorganize consumption and production processes in order to include natural and social capital within the enterprise's structure of costs, next to the financial capital. These steps are seen as essential to establish a financial system (and indirectly, a market) that can self-sustain and perpetuate itself in the medium and long run:[21] accordingly, the realization of the capital markets shall operate as a tool to promote this change, by stimulating investments in accordance with sustainability goals.

For this process to be accomplished, and in order for the financial system to successfully re-orientate markets towards sustainable development two operative strategies are traditionally identified: a) the *direct contribution* to social and environmental welfare by channelling investments towards projects that are able to create long-term (and not only economic) value; b) the *indirect contribution* by means of the incorporation of *Environmental, Social,* and *Governance* (*ESG*) factors within the dynamics of financial markets.

[20] F. PANETTA, *Finanza sostenibile: trasformare la finanza per finanziare la trasformazione,* 25 Jan. 2021, www.ecb.europa.eu.

[21] D. SCHOENMAKER, W. SCHRAMADE, *Principles of Sustainable Finance*, Oxford University Press, 2019

With regards to this second aspect, the initiatives related to *sustainable corporate governance* are particularly prominent; as far as the first strand of development is considered, a twofold strategy can be envisaged: the promotion of *Socially Responsible Investments* (*SRI*) can be achieved, on the one hand, by promoting investments in sustainable debt (e.g. green bonds, social bonds, or sustainable loans); on the other hand, sustainable goals are attainable by favouring stakeholders' investments in *ESG* attentive enterprises - e.g. through Social Entrepreneurship Funds[22].

3. As far as the relationship between sustainable finance and corporate governance, it is worth observing that encompassing social factors within the traditional modes of activities of a company is able to modify its business organization and management, therefore promoting the adoption of new operative schemes.

First and foremost, considering the social implications of a company's activity implies moving away from strategies based on the maximization of shareholders value in favour of models that take into account – oftentimes as their primary goal – the common interest of all the stakeholders affected by the activity of the company, including the surrounding environment.[23] This step is, indeed, to prioritize high-level social impact investments based on a sound systemic analysis in the regulatory agendas of EU Member States.

In order to promote the growth of sustainable inclusive companies, managers are required to consider those needs and interests, of those people that are (oftentimes indirectly) affected by the company's choices even without qualifying as stakeholders; these groups are highly heterogeneous and include, e.g. company's employees and their families, the customers, suppliers, communities, governments,

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[22] Regulation (EU) No 346/2013.

[23] *Inter alios* L. LOCCI, *Brevi riflessioni in materia di fattori ESG e informativa non finanziaria nella crisi da Covid–19*, in *RTDE*, 1/2020, 124.

and even trade associations that relate to the company.[24] A wider consideration of these interests is, indeed, deemed pivotal in order to ensure that the development of an entrepreneurial process does not contribute to systemic crises.

The consideration of stakeholders' perspectives for the development of business strategies is not, though, limited to purely "internal" considerations occurring within the company and its management: Corporate Social Responsibility is emerging as a fundamental driver for investments as well, and its integration within the corporate governance and its decisional process has become an element, that investors carefully consider when deciding about how to allocate their resources.[25]

Even if, in recent years, major worldwide companies invested significant resources in introducing new management assets and organizational measures to promote sustainability goals within corporate decision-making, it must also be observed that this process must be conducted alongside a concomitant sensibilization of shareholders' expectations, as they are still mostly concerned with short-term return considerations. Consequently, sustainability-attentive boards of directors must strike a delicate balance between the different parties' interests by, on the one hand, altering management policies in favour of general welfare (e.g., with regards to the organization of dividends and their related rights) and, on the other hand, avoiding that these abrupt changes destabilize the company's activity.

The difficulties that this process creates are well highlighted by recent regulatory interventions occurred at EU level: the s.c. *Non-Financial Reporting*

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[24] This is consistent with the notion of Corporate Social Responsibility (CSR), which is defined as "a self-regulating business model that helps a company be socially accountable to itself, its stakeholders, and the public. By practising corporate social responsibility, also called corporate citizenship, companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental." See *inter alia* L. MOIR, *What Do We Mean By Corporate Social Responsibility?*, in *Corporate Governance*, 1,2, 2001, 16-22.

[25] See A. MIGLIETTA, *ESG, CSR, Shareholder value: non è il momento per un reset del capitalismo,* in *Corporate Governance and Research & Development Studies*, 2/2021, 65. In its research, the Author tries to conjugate shareholder and stakeholder theory by demonstrating that investors' preferences are often aligned with the shareholders' ones, as long as a companies' business plan is apt to pursue business optimization, rather than profit maximization.

Directive[26] prescribes (Art. 1) that public interest entities shall include in their management reports "a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including: (a) a brief description of the undertaking's business model; (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; (c) the outcome of those policies; (d) the principal risks related to those matters linked to the undertaker's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; (e) non-financial key performance indicators relevant to the particular business. Also, the *Shareholder Rights Directive II*[27] requires (Art. 9b) that when directors' remuneration is split out by component and includes a variable remuneration, an explanation regarding how the total remuneration contributes to the long-term performance of the company, and information on how the corporate social responsibility criteria were applied must be provided. Lastly, the recently approved proposal for a Directive on corporate sustainability due diligence empowers directors to set up and oversee the implementation of due diligence for the assessment of the sustainability level of the company and to integrate it into the corporate strategy.[28]

These recent developments show policymakers' and institutional investors' major concern about regulating CSR and incorporating ESG factors within entrepreneurial strategies. At the same time, companies have been receptive to

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[26] 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.

[27] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

[28] See Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 23.2.2022 COM(2022) 71 final.

these instances by implementing CSR and ESG compliant strategies based on the idea that, ultimately, "doing good is good for business".

These are, though, only preliminary steps in order to develop an integrated framework for the achievement of sustainability goals: in order to further advance this process, in fact, the regulatory environment must also empower stakeholders and shareholders to clearly identify if and how managers are actually pursuing sustainability goals, reducing the margins of discretion characterizing the business judgment rule in an uncertain regulatory environment, in which different and heterogeneous interests can be qualified as dominant on a casuistic basis.[29]

In addition, and consistently with the considerations animating the *Sustainable Corporate Governance Consultation*[30] debate, the everlasting primacy of remuneration schemes based on the shareholders' value and the reduced enforcement by companies of the duties deriving from CSR (subject to a highly restrictive interpretation) might jeopardize this evolutionary process. Consequently, further development of the regulations on the subject is advisable. More in general, and with reference to this aspect, the need for a regulatory framework characterized by a significant downsizing of the "theory of efficient markets" – in which the prices of financial instruments always fully reflect the information available – should be taken into consideration, accordingly with positions that banking law scholars have been defending in recent years.[31]

In order to design a model that responds to the need for finding the right financial price also in consideration of non-financial values, various factors (which are not connected to the mere economic performance of the short and medium term only) are structurally required to interact, and a consideration of their entirety is

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[29] C. ANGELICI, *Diligentia quam in suis e business judgement rule*, in *Riv. dir. comm.*, I, 2006, 675; A. SACCO GINEVRI, *Crediti deteriorati e* business judgement rule, in *RTDE*, suppl. 2/2019, 161.
[30]https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_it.
[31] F. CAPRIGLIONE, *Il dopo CoViD-19: esigenza di uno sviluppo sostenibile*, in *NGCC*, suppl. 5/2020, 26.

essential impossible in order to reach a proper risk assessment.[32]

This consideration clarifies the reason why the overall composition of the portfolio – and not only its quantitative content – matters in the general definition of the investment strategy; hence, the conviction that it is preferable to promote investment that focus, besides their economic fundamentals, also on the promotion of other non-financial factors.[33]

4. In recent years, there has been a lot of talk about organisational well-being and corporate welfare[34], often in connection with the (real or supposed) sustainability strategy pursued by corporate management. With most medium-sized and large organisations committing to reduce their net emissions by 2050[35], the obligation to be environmentally sustainable is stronger than ever and companies are finding it difficult to find their way. However, investing in green technology is not only good for the environment. Green practices and solutions have been shown to improve employee productivity, corporate reputation and increase staff retention.

Internally, an organisation can adopt Corporate Social Responsibility policies oriented towards managing the effects on the environment and natural resources, with reference to the natural resources directly used in the production of goods or the provision of services, in order to reduce its environmental impact[36]. This is done

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[32] CUSSEDDU, *La nuova finanza: la transizione verso la sostenibilità*, 21 Feb. 2020.

[33] M. MAUGERI, *Informazione non finanziaria e interesse sociale*, in *Riv. Soc.*, 2019, 1017 ss.

[34] N. CASALINO, *Piccole e Medie Imprese e Risorse Umane nell'Era della Globalizzazione*, Collana di Studi di Tecnica Aziendale, n.90, Wolters Kluwer, Cedam, 2012.

[35] See what the European Council endorsed in December 2019 the objective of making the *EU climate-neutral by 2050*, in line with the Paris Agreement. The EU submitted its long-term strategy to the United Nations Framework Convention on Climate Change (UNFCCC) in March 2020. See also the document *Going climate-neutral by 2050 - A strategic long-term vision for a prosperous, modern, competitive and climate-neutral EU economy*. In November 2018, the European Commission presented a long-term strategic vision to reduce greenhouse gas (GHG) emissions, showing how Europe can lead the way to climate neutrality – an economy with net-zero GHG emissions. The strategy explores how this can be achieved by looking at all the key economic sectors, including energy, transport, industry, and agriculture. A portfolio of options was explored to underline that it is possible to move to net-zero GHG emissions by 2050, based on existing – though in some cases emerging – technological solutions, empowering citizens and aligning action in key areas such as industrial policy, finance, or research, while ensuring social fairness for a just transition.

[36] M. CAROLI, *Economia e Gestione Sostenibile delle Imprese,* 1/Ed, Mc Graw Hill, 2021.

by reducing the consumption of resources, pollutant emissions and waste, paying attention to the impact of products throughout their life cycle, adopting environmental management systems and audits that can be certified by accredited bodies and improving environmental performance throughout the production chain.

Looking outside the company boundaries[37], the organisation can act in the field of Corporate Social Responsibility by intervening in situations involving environmental issues that have much wider repercussions, assuming socially responsible behaviour not only at a domestic level but also on an interregional or international scale. This can be done by encouraging an improvement in environmental performance throughout the production chain, by complying with environmental legislation related to company management and products, and by investing in economic environments other than one's own.

The economic shock of the last two years has led to an increased emphasis on local communities. Organisations are recognising the importance and values of digitalization[38], local markets and supply chains[39], not only as a means of trying to reduce carbon emissions and supply chain costs, but more importantly to tap into local talent and solutions. As a result, companies are engaging in activities that will also benefit their human resources. This could include supporting services aimed at the organisational well-being of their employees, but also local charities, sponsoring community events or sports teams, organising workshops or specific educational programmes.

All this brings us to the need to consolidate the new work organisation, characterised also by more flexible working hours and spaces, more collaboration and sharing of objectives, relationships based on trust and empowerment of people,

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[37] D. ROGERS, *The network is your customer: 5 strategies do thrive in a digital age*, Yale University Press, UK, 2011.
[38] R. BASKERVILLE, F. CAPRIGLIONE, N. CASALINO, *Impacts, challenges, and trends of digital transformation in the banking sector,* in *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 9, part 2, pp. 341-362, 2020.
[39] M.P.M. DUEÑAS, L. AIELLO, R. CABRITA, M. GATTI, *Corporate Social Responsibility for Valorization of Cultural Organizations*, IGI-Global, 2018.

rather than on control.

Similarly, the corporate welfare projects that work are those in which management acts as an intellectual sponsor and in which workers actively and constantly participate. They are those that identify strategic levers for action in several areas (better organisation of working time, corporate culture, personal and workplace services, working environment, etc.) and that are adequately communicated and valorised.

Finally, a similar discussion can be made in relation to the need for greater transparency in business operations and practices. In this respect, in response to the increasing availability of data and consumer and shareholder demands for information that once remained private, buyers and organisational experts want organisations to be transparent about their internal operations, especially their environmental, social and governance disclosures[40]. For example, companies that have invested their time and therefore committed to achieving gender balance goals are expected to demonstrate what they are really doing towards that goal by showing reports with relevant indicators and detailed company's statistics.

Much of the stress in the workplace stems from a lack of harmony between employees' needs, demands and those of their environment. With so many people feeling that their work and personal lives are becoming increasingly complex and pose a threat to work-life balance, employees are more likely to be loyal to an organisation that helps them contribute to the work and personal issues they care about. That's why, in addition to providing appropriate working conditions, transparency[41], diversity, equity and inclusion policies, mental health support, and better addressing complex workplace issues, internal CSR activity should also extend to creating opportunities for meaningful engagement that align with employees' social concerns. This not only creates a motivated and open work culture, but also

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[40] F. CAPRIGLIONE, N. CASALINO, *Improving Corporate Governance and Managerial Skills in Banking Organizations*, in *International Journal of Advanced Corporate Learning* (iJAC), Austria, vol. 7, issue 4, pp. 17-27, 2014.

[41] M. CAROLI, *La politica anticorruzione nei Gruppi internazionali*, Luiss University Press, 2019.

much less stressful, which bodes well for employee retention.

5. Human resources are the name given to all the people who bring value to an organisation and who, on a day-to-day basis, build the foundations or reinforce a significant source of competitive advantage. This asset allows organisations to grasp the convergence between *Corporate Social Responsibility* and *Employer Branding*.

In general, the main objective of Employer Branding strategies is to build a distinctive, positive corporate image, capable of attracting good resources and contributing to the professional growth of those already employed. This is a fundamental asset for organisations which, in the context of a constantly evolving labour market, are increasingly oriented towards social, environmental, and economic sustainability.

Human resources are the first actors on which social responsibility actions should focus precisely because they are the subjects towards whom the organisation has a direct responsibility arising from a relationship of trust and a common purpose that binds them[42]. Companies, which today are effectively oriented towards sustainability, are looking for professional figures with high skills and strong specialisation able to identify ethical and sustainable production processes, attract new customers and investors, and exponentially increase the performance of their business processes[43].

Among the most sought-after roles for these positions are those linked to the corporate areas of supply chain management, human resources and diversity management, research and development, analysis of “green” strategies, resources and energy supply management, organisational planning and process design, finance

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[42] V. WEERAKKODY, M. JANSSEN, Y.K. DWIVEDI, *Transformational change and business process reengineering (BPR), Lessons from the British and Dutch public sectors* in Government Information Quarterly, 28(3), pp. 320-328, 2011.

[43] N. CASALINO, M. DE MARCO, C. ROSSIGNOLI, *Extensiveness of Manufacturing and Organizational Processes: an Empirical Study on Workers Employed in the European SMEs*, in *Smart Digital Futures 2015*, Neves-Silva R., Tsihrintzis G.A., Uskov V. (Eds.), Smart Education and E-Learning 2015, Uskov V., Howlett R.J. and Jain L.C. (Eds.), IOS Press, KES Smart Innovation Systems and Technologies series (TBC), Springer, 2015.

and risk management, marketing, environmental management, all roles naturally declined according to the dimension of sustainability.

A category of stakeholders considered by many scholars, researchers, and entrepreneurs to be the most important and influential is therefore that of human resources, considering that every organisation cannot refrain from considering the problem of the impact of its activities on the environment nor ignore the social function it is called upon to perform in the communities in which it operates[44].

For example, by encouraging innovation[45] and creativity, recognising the merits of its employees, ensuring that the workplace gives them a sense of security. Furthermore, that pay is fair and adequate, that they are also allowed to properly fulfil their family responsibilities, that there is a real opportunity to make suggestions and present constructive criticism, as well as the fact that equal work, development, and career opportunities are always guaranteed for those with the required skills and that superiors are responsible for the choices they make, are competent and that their actions are just and ethically correct.

Common objectives that can only be pursued through cooperation between individuals, or rather between people who make up the organisation itself. There are two fundamental concepts in this vision: people and cooperation. Individuals in a company do their work daily, but it is when they become people, interfacing and relating to each other, that they achieve something that goes beyond their individuality, an added value that only exists in the relationship, as Simon said, with others.

All this can be achieved by activating a process to improve the quality of work and the working environment, implementing a healthy corporate culture, increasing the degree of satisfaction of the internal customer (the employee) and the commitment that will consequently stimulate the interest of the labour market. It is

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[44] L. GIUSTINIANO, A. PRENCIPE, *La digital transformation di una multi-utility. Tecnologia e persone, fattori chiave dell'esperienza ACEA*, Harvard Business Review Italia, 2017.
[45] T. BURNS, G.M. STALKER, *The management of Innovation*, Oxford University Press, 1996.

fundamental to remember that people are basically a company's primary asset. However, there is also a need for legislation that is even more focused on creating and fostering working conditions that allow, in a time of persistent economic crisis such as the current one[46], to value, incentivise, reward, and equip workers with the tools to improve and enhance their performance[47].

The acknowledgment of the primary role of human resources as stakeholders involved in the development of sustainable organizations, is also at the basis of a renovated understanding of sustainability within the organizational environment as well. In such a sense, it is worth observing that, even within the new models of sustainable corporate governance, different goals and different notions of sustainability can be identified, which overall contribute to the general idea of organizational sustainability.

6. Desired Organizational Learning (DOL) is often intentionally pursued as part of a sociotechnical agenda and explicit aim for organizational excellence in financial organizations. Organizational Learning and change always happen, but not all organizational learning is desirable, and some can even be described as organizational stupidification[48] or nonsense-making[49] as if not addressed it can result in practices which sabotage desirable outcomes and any effort to change business practices for the better, towards organizational excellence.

Recently the awareness that there needs to be a significant investment and governmental support for the development of systemic organizational sustainability,

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[46] M. PELLEGRINI, V. USKOV, N. CASALINO, *Reimagining and re-designing the post-Covid-19 higher education organizations to address new challenges and responses for safe and effective teaching activities*, in Law and Economics Yearly Review Journal - LEYR, Queen Mary University, London, UK, vol. 9, part 1, pp. 219-248, 2020.

[47] P. BOCCARDELLI, C. ACCIARINI, E. PERUFFO, *Dinamismo ambientale, esperienza digitale del board e cambiamento strategico delle imprese. L'integrazione tra Dynamic Managerial Capabilities e Resource Dependence Theory*, in Corporate Governance and Research & Development Studies-Open Access, 2021.

[48] M. ALVESSON, A. SPICER, *The Stupidity Paradox: The Power and Pitfalls of Functional Stupidity at Work*. Profile Books, 2016.

[49] M. ALVESSON, A. JANSSON, *Organizational Dischronization: On Meaning and Meaninglessness, Sensemaking and Nonsensemaking*, in *Journal of Management Studies*, 2021.

and that this by necessity requires attention to Human Sustainability as well as Environmental Sustainability has become more and more pronounced. Many have realized that the ambition of Industry 4.0 is not enough and could not address the real complexity of the challenges faced by contemporary society.[50] It is not satisfactory to prioritise efficiency, local effectivity, and societal sub optimization when it sabotages overall effectivity and global wellbeing.

The main purpose with promoting sustainable organizational excellence is about supporting a long-term competitive advantage in an increasingly complex and changing socio-technical environment.[51] Desired and successful outcomes are all based on how the organizational work systems are being supported/improved not only for the now and here, but especially for the future of work. The background is rather simple. Employees are expected to be able to solve complex problems which are intrinsically not predictable. Basically, if problems are predictable and not complex then the work could be automated, and no employees would be needed. If however managers need and want their employees to go out of their way to try to solve complex problems these employees must be willing to volunteer to do so. Also, employees must be allowed to solve complex problems in their work environment on the basis of their own professional competences. Which means they must also be supported in their problem-solving efforts as part of the development of Smart Working Practices.[52] Not micro-managed.

A sociotechnical system approach and perspective refers to the interrelatedness of social and technical aspects of an organized human activity, whether or not formalized. Any long-term competitive advantage is intrinsically dependent on Human Sustainability, in the context of a Human Activity System. If people are to volunteer to go out of their way in their efforts to explore and solve

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[50] EUROPEAN COMMISSION. *Industry 5.0: Towards a sustainable, human-centric and resilient European industry*, in https://op.europa.eu/en/publication-detail/-/publication/468a892a-5097-11eb-b59f-01aa75ed71a1/language-en, 2021.

[51] P. BEDNAR, *Socio-Technical Toolbox*. 5th ed. Craneswater Press, 2022.

[52] P.M. BEDNAR, C. WELCH, *Socio-Technical Perspectives on Smart Working: Creating Meaningful and Sustainable Systems,* in *Information Systems Frontiers*, 2020, 22, 281–298.

problems and to pursue work excellence in collaboration with each other; they also need to be able to maintain their health, enjoy their work and get satisfaction from their efforts.

The real-world organizational problem space is complex, ambiguous, and changing. Organizational achievement is a consequence of individual professionals' work activity as part of a work system. Each professional is interacting with technology and collaborating with other professionals. Organizational sustainability consists of many complementary areas of concern, none of which can be successfully addressed in isolation from any of the others.[53] People do not just need to be able to do their job as professionals, they also need to be allowed to use their competence and knowledge of context to be able to do "their best jobs". Or to aim for professional excellence. This means professionals to be allowed (and supported) to make professional decisions. It means that professionals need to be trusted and they need to be able to trust their employer. Which requires special care and attention to the human sustainability aspect of the organized activity.

In such sense, different meanings of sustainability within the organizational system can be envisaged, by distinguishing inter alia:

a) *Environmental Sustainability:* This is about how work practices in a Human Activity System are related and influence natural resources. Today we often talk about "green work". How are existing work practices green? For the professional employee it is about how green work is actually promoted and prioritised as part of everyday work activities? How could these activities become greener in the future?;

b) *Economic / Financial Sustainability:* This is about how work practices in a Human Activity System are able to continue in the future because they are competitive enough in context. How is the employee involved in decision making related to costs of resources required to do their jobs?;

c) *Social Sustainability:* This is about how work practices in a Human Activity

[53] *Ibidem.*

System are experienced as fair and responsibilities are distributed in a socially and culturally just fashion. How is the employee involved in decision making or support of others, and themselves? How could collaboration between and help for different stakeholders (inside and outside the organization) be supported better in the future?

d) *Technical Sustainability:* This is about how work practices in a Human Activity System are related to and influence use of technological resources. How is the employee involved in the design, decision making process and choice of the appropriate technology, including design of use of technology, in their job as a priority? How could this be done better in the future?

e) *Cybersecurity Sustainability:* This is about how work practices are naturally involved in IS Security activities (including information and knowledge management), or not, as part of their everyday work routines. How is the employee involved in the decision making in the development of security practices? How has the employee influenced IS Security as a professional?

Contemporary society is experiencing a lot of turmoil and upheaval on multiple fronts, pandemic, economic, energy and political crisis. It is perhaps not surprising that concerns have resulted in raised expectations that governing bodies do more and prioritize the required transformation both in public as well as private organizations. The demands on proactive change continue to be growing.[54] It is relatively easy to change models of organizational processes, easy to change models of workflows, and easy to have ambitious policies documented. But it is not easy to change real world behaviour, for that we need to promote human sustainability. And put our money where our mouth is.

The difficulty in encompassing these different "souls" of organization sustainability is also one of the reasons why a significant amount of attention has been devoted to the capacity of the State to promote Socially Responsible

[54] EUROPEAN COMMISSION *Industry 5.0, a transformative vision for Europe: Governing systemic transformations towards a sustainable industry*, 2022, in https://op.europa.eu/en/ publication-detail/-/publication/38a2fa08-728e-11ec-9136-01aa75ed71a1/language-en/format-PDF/source-search

Investments, which represents an approach that is significantly closer to the traditional parameters and modes of public interventions.

7. As it has been pointed out, one strategy to promote the affirmation of sustainability themes within the financial market entails the incorporation of ESG attentive practices in corporate governance, it is clear that a significant portion of this process must necessarily pass through the allocation of market capital as well: this can be achieved, in particular, through the integration of ESG factors in the creation, research, and analysis of financial products, as well as more generally in the composition of investment portfolios, ultimately favouring the development of Socially Responsible Investment in an integrated model which allows to carry out, in addition to the assessment of economic underpinnings, also the analysis of other non-financial factors which can be generally be traced back to negative externalities.

Such processes are being met with great interest by institutional and retail investors: investors are exhibiting increasing awareness for environmental and social concerns related to sustainable development; subsequently, they often pursue products that align with their values. This phenomenon is symptomatic of a broader trend taking place in consumption phenomena, as consumers declare to be willing to change their shopping habits to reduce environmental impact, and support the use of clean energy resources, indirectly fostering the adoption of green technology and sustainable products and processes in the market.[55] Notably, consumers' concern is not limited to the environmental impact arising from uncontrolled industrial development and mass consumption, but rather embraces a wide set of social goals: promotion of gender equality, reduction of wealth disparity, contrast to extreme poverty and systemic unemployment in developing countries currently all represent major declared drivers for consumption.[56]

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[55] IBM, *Meet the 2020 consumers driving change. Why brands must deliver on omnipresence, agility, and sustainability* 2020, https://www.ibm.com/downloads/cas/EXK4XKX8.
[56] *Healty & Sustainable Living. A global consumer insight project*, in *Globescan* 2020.

Even if the reasons behind investors and shareholders' interest for Corporate Social Responsibility are disputed,[57] in response to this trend, financial market actors are increasingly marketing financial products and services that directly or indirectly support sustainability-related projects, promoting these products as green and sustainable.

The opportunity therefore arises, to take advantage of the current favourable conjunction by stimulating investment activity towards sustainable debt instruments or in the shares of companies that promote sustainable goals. In both cases, this can be achieved alternatively by promoting investments in those bonds, the proceeds of which are specifically earmarked for sustainable projects, or in products which are linked to sustainable activities although not having their direct implementation as the main goal (s.c. sustainability-linked products).

Besides constituting sources for direct investment in sustainable activities, green or social financial products are, in fact, likely to operate indirectly as well, through the inclusion of instances that are collaterally linked to environmental and social sustainability within traditional investments: the conjunct use of these two tools allows, on the one hand, to reduce the externalities associated with the environmental and social impact of traditional investments – while providing companies enough margins of appreciation to gradually accomplish their transition processes - and, on the other hand, to preserve (and, where possible, raise) investors' perception regarding the risks that are related to the sustainable impact of traditional investments.[58]

With reference to the first hypothesis – that is, the promotion of investment in directly or indirectly sustainable products - public entities can play a leading role in two ways: firstly, they can be directly involved in the issue of green or social

[57] A. PACCES, *Sustainable Corporate Governance: the Role of the Law*, in D. Busch, G. Ferrarini, S. Grünewald (eds.), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets*, Palgrave Macmillan, Londra, 2021.

[58] G20 GREEN FINANCE STUDY GROUP, *G20 Green Finance Synthesis Report*, 2016, https://unepinquiry.org/wp-content/uploads/2016/09/Synthesis_Report_Full_EN.pdf.

securities, whose emission is strictly connected to initiatives that have a positive impact in terms of ESG performance (this happened, e.g. in February 2021, with the Italian government issuing the first block of green *BTP*s)[59]. In this way, sovereign sustainable bonds can operate alongside those already issued by supranational entities, financial corporations, and banks. As an alternative, the public operator can indirectly promote investments in sustainable financial products through the creation of a regulatory framework that clearly identifies the minimum standards to qualify a given bond as green or social. Currently, no global standard exists, to certify a bond as being univocally “green” or “sustainable”, and the industry mostly refers guidelines developed by non-regulatory entities such as the International Capital Market Association (ICMA); this is, though, not advisable, as it is generally up to the legislator to encourage the identification of unambiguous indexes for sustainable products, that can promote investors’ confidence and at the same time provide effective parameters for public supervision.

The need to lay down a clear-cut regulatory framework regarding this issue is, indeed, already well-known to EU institutions and to national legislators: with reference to the latter, for example, alongside the aforementioned issuance of green BTPs, the Italian government established a plurality of issuance and traceability parameters; in addition, an Interministerial Committee was empowered to identify and supervise eligible investments. As regards initiatives at EU level, the identification of unambiguous classification indices is the core *rationale* behind the drafting of the Taxonomy Regulation and its Technical Screening Criteria.[60]

As for the second potential strategy (i.e. the promotion of investments in the shareholding of ESG attentive companies), the recent experience of the European Social Entrepreneurship Funds (EuSEF) is of particular note: according to Regulation (EU) 2013/245, these funds are required to allocate a significant proportion of the total amount of their capital contributions and uncalled subscribed capital in assets

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[59] http://www.dt.mef.gov.it/it/debito_pubblico/titoli_di_stato/quali_sono_titoli/btp_green/.
[60]https://ec.europa.eu/info/files/200309-sustainable-finance-teg-final-report-taxonomy-annexes_en.

qualifying as eligible investments under the Regulation; more generally, EuSEF shall conduct their business activity in a way that furthers the positive social impact of the portfolio undertakings in which they invest, the best interests of the social entrepreneurship funds they manage, ultimately promoting market integrity as a whole.[61]

As the framework outlined so far unveils, the developments that have taken place over the last decade in the relationship between the financial system and sustainability have changed and at the same time reaffirmed the role of the public authority in the pursuit of sustainability-related objectives. For a long time, policies on socio-environmental preservation have been considered to be the exclusive prerogative of the State (or, in the EU, of the Union): this view was supported by the idea that the socio-environmental aspects of business development should have been included among the negative externalities, to which businesses must pay attention in terms of cost only; consequently, consideration of these aspects was minimized both in the definition of entrepreneurial projects and (considering, for example, the dynamics connected to access to credit) in the worthiness assessment for the purposes of granting loans.

In contrast to this traditional view, however, recent times are witnessing a reversal of such trend, and an increased favour for the (direct or indirect) externalization of sustainability policies by the actors of the financial system.

This *revirement* can be, indeed justified both on the basis of considerations that are common to the general debate on sustainable finance (reduction of the environmental and social impact of the investment and reallocation of economic resources towards virtuous investments) and also in the light of the desire to encourage greater involvement of businesses and an overall functionalization of the financial system as a whole towards sustainability goals, in order to compensate for the difficulties encountered by public bodies in promoting sustainable consumption.

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[61] Artt. 3 and 7 Reg. (EU) 2013/245.

Lastly, a major involvement of the private sector in the pursuit of sustainability-related policies would also raise investors' awareness of environmental and social risk in a broad sense, through their direct involvement and building on the current interest towards these issues, that can be generally observed within contemporary consumer markets.

In light of these aspects, public entities are required to play a twofold role in the approach to sustainability issues, operating both as directly involved actors and regulators levelling the playing field for private parties to operate.

8. The great attention paid to the functionalization of financial markets to the promotion of sustainability-related issues is undoubtedly a welcome development. At the same time, it should also be noted that focusing economic interests in this area is likely to create new risks for the market functioning, and therefore calling for action by public actors not only as legislators and market agents but also as a monitor for the correct implementation of financial practices related to sustainability.

In particular, in recent years market operators have undertaken a series of promotional initiatives which – with the alleged aim of strengthening the perceived sustainability of their activities – might end up favouring a distorted or manipulative use of sustainability claims: this trend, identified with the term "greenwashing"[62], has emerged as a fundamental issue in contemporary financial markets.

In the lack of a common definition and with little or no-normative clarification by policy makers, financial service providers developed their definition for "green" and "sustainable" products in isolation: therefore, they vary in scope, level of detail, transparency, and other dimensions.[63]

It is no surprise that, since investors have little guidance in selecting investments that have an actual potential to provide environmental benefits, the

[62] T. WAHIDA SHAHAN, *Green Washing: An Alarming Issue*, in *ASA University Review* 7, 1, 2014, 81-88.

[63] EUROPEAN COMMISSION, *Defining "green" in the context of green finance. Final report*, 2017, https://ec.europa.eu.

breadth of definitions hampers the selection of assets for green products, reduces transparency for investors and ultimately fosters greenwashing, also considering that financial products are usually qualified as credence goods.[64]

As soon as financial companies started modernizing their products making them eco- and social friendly, the integration of sustainability risks and factors in the investment protection regime to avoid greenwashing emerged as a primary goal of the European strategy within the Financing Sustainable Growth Action Plan:[65] as part of their duty to act in the best interest of clients, financial markets participants – and, in particular, advisors – must inform investors on the sustainable characteristics of the promoted investments, in order to reduce the principal-agent informational asymmetry lying at the core of greenwashing phenomena.[66]

This is mainly because promoting investment in greenwashed financial products by unaware investors is likely to cause sector-specific externalities that are worthy of primary consideration: financial greenwashing misallocates capital, therefore indirectly hindering the transformative process towards sustainable markets; in addition, it increases investors' confusion about CSR and has a negative effect on investment propensity[67]. Lastly, in the long run financial greenwashing is likely to affect investors' attitude and increase their scepticism over environmental commitments.[68]

In order to hold up to the promise that sustainable finance subtends to foster responsible development, a significant effort was made in recent years by European

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[64] A. DAVOLA, *Algoritmi decisionali e trasparenza bancaria*, Utet, Milano, 2020, 214; ID., *Bias cognitivi e contrattazione standardizzata.*

[65] Communication from the Commission to the European Parliament, the European Council, the Council, the
European Central Bank, the European Economic and Social Committee and the Committee of the Regions action plan: Financing Sustainable Growth, Com/2018/097.

[66] M. SIRI, S. ZHU, *Will the EU Commission Successfully Integrate Sustainability Risks and Factors in the Investor Protection Regime? A Research Agenda*, in *Sustainability,* 11, 2019, 6292.

[67] P. SEELE, L. GATTI, *Greenwashing revisited: in search of a typology of an accusation-based definition incorporating legitimacy strategies*, in *Business strategy and the Environment*, 26(2), 2017 239-252.

[68] Y. CHEN, C. CHANG, *Greenwash and green trust: The mediation effects of green consumer confusion and green perceived risk*, in *Journal of Business Ethics*, 114, 2003 489-500.

institutions to introduce sustainability-related rules on investments. In particular, the abovementioned SFDR and TR are supposed to shape a uniform system for qualifying, indexing, and reporting sustainable investments, reducing information asymmetry between end-investors and financial market participants, ultimately favouring aware investments considering sustainability risks and adverse impacts.[69]

The SFDR operates by introducing both disclosure rules and fiduciary duties, and its goal is to facilitate comparison amongst sustainable (and non-sustainable) financial products, level the playing field for such products and for distribution channel, and to promote transparency with regards to the consideration of sustainability factors in the communication between professionals and investors. To do so, the SFDR establishes under which conditions financial products can be qualified as "sustainable investments" and then, if a product fits the definition the Regulation fleshes out specific disclosure obligations that must be provided to investors regarding its sustainability characteristics, impact, and risks.[70]

On the other hand, the Taxonomy Regulation aims at establishing a harmonized classification system for sustainable activities at European level[71] and, in order to do so, it identifies six environmental objectives;[72] accordingly, the Regulation qualifies a product as environmentally sustainable if it makes a significant contribution to (at least) one of them while not significantly harming the others.[73]

While it is certainly appropriate for the EU institutions to take legislative action in this regard, it should be pointed out that the introduction of a regulatory framework (even a well-structured one) is unlikely to be sufficient to avert the risks associated with greenwashing in the absence of a system able to couple it with

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[69] SFDR Recital 9 and 10.
[70] See Art. 2(22) and Art. 2(24) SFDR.
[71] For an overview of the TR see D. BUSCH, G. FERRARINI, A. VAN DEN HURK, The European Commission's Sustainable Finance Action Plan and Other International Initiatives in *EUSFiL Research Working Paper Series* 3 8, 2020.
[72] Art. 9.
[73] Artt. 11, 12, 13, 14.

effective supervision:[74] the integration and monitoring of ESG factors in the processes of prudential supervision has therefore been identified as a priority in the process of transition of the financial system, placing sustainability at the heart of the control activities of Member States' and European Supervisory Authorities.[75]

This is, indeed, consistent with the idea that preventing greenwashing activities – and, more generally, combating disinformation in the financial markets - constitutes a traditional task of supervision, as the latter is aimed at preserving confidence in the financial system, protecting investors, and preserving markets' stability, smooth operation, and competitiveness.

It should be noted, though, that these goals can be achieved only in part through the definition of an ad hoc regulatory framework: public players (and, in this case, the Supervisory Authorities in particular are, in fact, equally in charge of preserving the safety and soundness of the financial system by ensuring compliance with positive law. At the same time, in conducting supervision, they must be flexible enough to allow for the proper "maintenance" of the Regulations – as they are still in development – and, at the same time, to engage in a fruitful dialogue with the players in the financial sector. This interaction must be aimed not only at ensuring compliance to the rules, but also at promoting competitiveness in the market for (effectively) sustainable products, by encouraging their dissemination and placement towards investors.

9. The overview conducted shows that the transition of the financial system (and, consequently, of the market) towards sustainable dynamics raises - alongside the ones pertaining to the identification of the most effective strategies and the definition of the relative regulatory framework - several open questions regarding the role to be attributed to the public actor within this process.

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[74] See *Discussion Paper on management and supervision of ESG risks for credit institutions and investment firms* (EBA/DP/2020/03).

[75] See *Consob*, *UE, primi passi di vigilanza Esg*, 2020 https://www.eticanews.it/esma-una-strategia-esg/.

In the past thirty years, the affirmation of the essential function of Corporate Social Responsibility businesses as well as – more recently – the discovery of Corporate Social Performance as an integrated parameter for evaluating business results, have been gradually challenging the traditional role of the State as the subject in charge of controlling and minimizing externalities; as a result of this process, the role reserved for the public authorities has changed, and they now operate in financial markets not only as regulators but also as facilitators and as players directly involved in the sustainable transition. This process goes beyond the transition from the entrepreneurial to the regulatory state that characterized the market economy of European countries in the '90s;[76] rather, it marks an increased awareness of the opportunities arising from a synergic approach between the private and public sector.

The latter is, currently, in charge of designing an industrial ecosystem that is favourable to 'virtuous' entrepreneurship, while at the same time being directly involved in activities that contribute to the achievement of goals related to social and environmental sustainability; as for the role of private parties, companies are required to gradually convert their operating models, combining the needs of profitability and stability with those related to sustainability. Moreover, the direct involvement of public actors as providers of sustainable products and services seems to be functional to an indirect regulation (as in the case of green BTPs), setting operational standards which can serve as guidelines for private sector companies.

The State plays, therefore, a dual role - regulator and key player - which becomes indeed threefold considering how the transition of financial markets towards the provision of sustainable services and products requires - in the uncertainty of a still in-development regulatory framework[77] - the assumption by the supervisory authorities of a delicate balancing role; this in order to ensure legal

[76] See M. PELLEGRINI, A. SACCO GINEVRI, *Il ruolo dello Stato nei settori strategici dell'economia*, in *Corso di diritto pubblico dell'economia*, edited by M. Pellegrini, Cedam, Padova, 2016, 462.
[77] E.g., the TR will operate from 2022 - with some aspects delayed to 2024 - onwards.

certainty, providing unambiguous guidance to operators in the sector.

Seeking for a balance between these different roles of the State and its structures – considering also that these issues are often intertwined with the allocation of competences at Member States' and EU level - is certainly a complex issue, which will require a considerable coordination effort in terms of interdependence and convergence between the ESAs and national financial markets and banking authorities. Nevertheless, this path seems to be the only one to promote the exchange and dissemination of sound practices on sustainability. This coordination process – that has been already anticipated by ESMA during the announcement of the creation of the *Sustainability Coordination Network*[78] – is indeed necessary to stimulate the transition towards a financial system capable of reconciling economic development with environmental, ethical, and social values.

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[78]https://www.esma.europa.eu/press-news/esma-news/esma-prioritises-fight-against-greenwashing - in-its-new-sustainable-finance.