
Iris H-Y Chiu

[中图分类号] D95 F835 [文献识别码] A [文章编号] 2096-6180 (2022) 03-0130-29

1

2

3

4

Iris H-Y Chiu

1 HLEG, *Financing a Sustainable European Economy*, European Commission (2018), https://ec.europa.eu/info/sites/info/files/180131-sustainable-finance-final-report_en.pdf.

2 Julia Black, *Enrolling Actors in Regulatory Systems: Examples from UK Financial Services Regulation*, Public Law 63, 63–91(2003).

3 <https://equator-principles.com/about/>; Kirk Herbertson & David Hunter, *Emerging Standards for Sustainable Finance of the Energy Sector*, 7 Sustainable Development Law & Policy 4, 4–9, 70–71(2007); critically, Douglas Sarro, *Do Lenders Make Effective Regulators? An Assessment of the Equator Principles on Project Finance*, 13 German Law Journal 1525, 1525–1558 (2012).

4 Generally Rajna Gibson Brandon & Philipp Krüge, *The Sustainability Footprint of Institutional Investors*, ECGI Working Paper (2018), <https://ssrn.com/abstract=2918926>; George Serafeim, *Investors as Stewards of the Commons?*, 30 Journal of Applied Corporate Finance 8, 8–17 (2018); Johnson Kakeu, *Environmentally Conscious Investors and Portfolio Choice Decisions*, 7 Journal of Sustainable Finance & Investment 360, 360–378 (2017); Peer Osthoff, *What Matters to SRI Investors?*, CFR Working Paper, No. 08–07, <https://www.econstor.eu/bitstream/10419/41365/1/587936231.pdf>.

2019

5

2020

6

7

a

8

b

10

9

c

11

12

13

Camila Yamahaki, *Responsible Investment and the Institutional Works of Investor Associations*, 9 *Journal of Sustainable Finance & Investment* 162, 162–181 (2019). (

) However see Katherina Glac, *The Influence of Shareholders on Corporate Social Responsibility*, 9 *Economics, Management, and Financial Markets* 34, 34–79 (2014); Jody Grewal, George Serafeim & Aaron Yoon, *Shareholder Activism on Sustainability Issues*, Harvard Business School Working Paper, No. 17–003, <https://dash.harvard.edu/bitstream/handle/1/27864360/17-003.pdf?sequence=1>; Sekhar Amba, *Corporate Sustainability: Do Executives and Investors Care?—An Empirical Study*, 11 *International Journal of Management and Marketing Research* 19, 19–26 (2018).

5 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability related disclosures in the financial services sector (Sustainability Disclosure Regulation 2019).

6 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation 2020).

7 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Taxonomy, Corporate Sustainability Reporting, Sustainability Preferences and Fiduciary Duties: Directing Finance Towards the European Green Deal*, European Commission (21 April 2021), https://ec.europa.eu/finance/docs/law/210421-sustainable-finance-communication_en.pdf.

8 n5 and infra n21.

9 Regulations in n5 and 6.

10 Art. 2, Regulation 2019/2088, as well as environmentally sustainable objectives defined in Regulation 2020/852 and the forthcoming Social Taxonomy envisaged by the Commission, European Commission, https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/finance-events-210226-presentation-social-taxonomy_en.pdf.

11 n9; Zetzsche and Sorensen (2021) in this volume.

12 *ESMA Supports IFRS Foundation's Efforts on International Standardisation in Sustainability Reporting*, EMSA (16 December 2020), <https://www.esma.europa.eu/press-news/esma-news/esma-supports-ifrs-foundation%E2%80%99s-efforts-international-standardisation-in>.

13 Dickson Tanzil & Beth Beloff, *Assessing Impacts: Overview of Sustainability Indicators and Metrics*, 15 *Environmental Quality Management* 41, 41–56 (2006).

14

“ ESG”

“

”

15

16

2025

145

17

18

2019

19

20

14 Steven Maijoor, *The Three (Apparent) Paradoxes of Sustainability Reporting and How to Address Them*, EMSA (8 December 2020), https://www.esma.europa.eu/sites/default/files/library/esma32-67-765_speech_steven_maijoor_-_the_three_paradoxes_of_sustainability_reporting_and_how_to_address_them.pdf.

15 Iain MacNeil & Irene-marie Esser, *From a Finance to Entity Model of Sustainability*, 23 *European Business Organisations Law Review* 9, 9–45 (2021).

16 Ronald J Gilson & Jeffrey N Gordon, *The Agency Costs of Agency Capitalism Activist Investors and the Revaluation of Governance Rights*, 113 *Columbia Law Review* 863, 863–927 (2013); Lucian Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Policy and Evidence*, 119 *Columbia Law Review* 2029, 2029–2146 (2019); Jan Fichtner & Eelke M. Heemskerk, *The New Permanent Universal Owners: Index Funds, Patient Capital, and the Distinction Between Feeble and Forceful Stewardship*, 49 *Economy and Society* 493, 493–515 (2020).

17 PwC, *Asset & Wealth Management Revolution: Embracing Exponential Change* (2017), <https://www.pwc.com/ng/en/press-room/global-assets-under-management-set-to-rise.html>.

18 *Department of Economic and Social Affairs, Sustainable Development*, <https://sustainabledevelopment.un.org/?menu=1300>.

19 Regulation 2019/2088, Art. 2.

20 Regulation 2019/2088, Art. 3.

| | | | |
|--------|------|-----|--------|
| | 21 | | |
| | | 22 | 23 |
| “ | ” | | |
| “ ESG” | “ ” | 24 | |
| | 2017 | | “ ” 25 |
| 26 | | 27 | |
| | ESG | 28 | |
| | | | “ ” 29 |
| | | “ ” | |
| | | | 30 |

21 *Commission Delegated Regulation to Amend the Alternative Investment Fund Managers Directive*, European Commission (21 April 2021), https://ec.europa.eu/finance/docs/level-2-measures/aifmd-delegated-act-2021-2615_en.pdf; *Commission Delegated Directive to Amend the UCITs Directive*, European Commission (21 April 2021), https://ec.europa.eu/finance/docs/level-2-measures/ucits-directive-delegated-act-2021-2617_en.pdf; *Commission Delegated Directive to Amend the Markets in Financial Instruments Directive*, European Commission (21 April 2021), https://ec.europa.eu/finance/docs/level-2-measures/mifid-2-delegated-act-2021-2612_en.pdf.

22 Regulation 2019/2088, Arts. 4, 7, 8 – 11.

23 Taxonomy Regulation 2020, Arts. 9 – 17.

24 *Unregulated “greenwashing”? ESG Investing is Under the Microscope as the Money Rolls in*, CNBC News(14 October 2020), <https://www.cnbc.com/2020/10/14/esg-investing-meaning-is-under-the-microscope-as-the-money-rolls-in.html>.

25 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, Art. 3g.

26 Marina Bitsch Madsen, *Behavioural Economics in European Corporate Governance-Much Ado about Nudging?*, 32 *European Business Law Review* 295, 295 – 316(2021).

27 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, Arts. 3h and 3i.

28 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, Arts. 3g and 3h in relation to non-financial performance. Principles 9 – 11, UK Stewardship Code, https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Dec-19-Final-Corrected.pdf.

29 Non-financial Disclosure Directive 2014/95/EU, Art. 19a.

30 Beate Sjøfjell, Heidi Rapp Nilsen & Benjamin J. Richardson, *Investing in Sustainability or Feeding on Stranded Assets? The Norwegian Government Pension Fund Global*, 52 *Wake Forest Law Review* 949, 949 – 979 (2017).

31

“ ” “ ”

32

33

2019

2020

a

b

34

2019

“ ” “ ’

” 35

“ ”

36

500

37

2021 6 30

38

31 Freshfields Bruckhaus Deringer, *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment*, UNEPFI (October 2005), https://www.unepfi.org/fileadmin/documents/freshfields_legal_resp_20051123.pdf; UNEPFI, *Fiduciary Duty in the 21st Century* (2019), UNEPFI, <https://www.unepfi.org/wordpress/wp-content/uploads/2019/10/Fiduciary-duty-21st-century-final-report.pdf>.

32 Gunnar Friede, Timo Busch & Alexander Bassen, *ESG and Financial Performance: Aggregated Evidence from More Than 2000 Empirical Studies*, 5 *Journal of Sustainable Finance & Investment* 210, 210–233 (2015); Pablo Durán-Santomil et al., *Does Sustainability Score Impact Mutual Fund Performance?*, 11 *Sustainability* 2972, 2972–2988 (2019); but see sceptical evidence in Mario La Torre et al., *Does the ESG Index Affect Stock Return? Evidence from the Eurostoxx50*, 12 *Sustainability* 6387, 6387–6399 (2020).

33 Roger C. Y. Chen, Shih-Wei Hung & Chen-Hsun Lee, *Does Corporate Value Affect the Relationship Between Corporate Social Responsibility and Stock Returns?*, 7 *Journal of Sustainable Finance & Investment* 188, 188–196 (2017).

34 *Infra* n42–44.

35 Regulation 2019/2088, Art. 2(22).

36 Benjamin J. Richardson, *From Fiduciary Duties to Fiduciary Relationships for Socially Responsible Investing: Responding to The Will of Beneficiaries*, 1 *Journal of Sustainable Finance & Investment* 5, 5–19 (2011).

37 Regulation 2019/2088, Arts. 4 (3), (4).

38 Regulation 2019/2088, Art. 4 (1)(a).

“ ” “ ”

500

“ ”

2022

12 30

40

41

42

43

44

45

39 Regulation 2019/2088, Art. 4(1)(b).

40 Regulation 2019/2088, Art. 7.

41 Regulation 2019/2088, Art. 6.

42 George Apostolakis et al., *Predicting Pension Beneficiaries' Behaviour When Offered a Socially Responsible and Impact Investment Portfolio*, 8 *Journal of Sustainable Finance & Investment* 213, 213–241 (2018); Lei Delsen & Alex Lehr, *Value Matters or Values Matter? An Analysis of Heterogeneity in Preferences for Sustainable Investments*, 9 *Journal of Sustainable Finance & Investment* 240, 240–261 (2019); Marien de Haan, Lammertjan Dam & Bert Scholtens, *The Drivers of the Relationship Between Corporate Environmental Performance and Stock Market Returns*, 2 *Journal of Sustainable Finance & Investment* 338, 338–375 (2012).

43 Anett Wins & Bernhard Zwergel, *Comparing Those Who Do, Might and Will Not Invest in Sustainable Funds: A Survey Among German Retail Fund Investors*, 9 *Business Research* 51, 51–99 (2016); Manuel Ammann et al., *The Impact of the Morningstar Sustainability Rating on Mutual Fund Flows*, 25 *European Financial Management* 520, 52–553 (2019).

44 Magnus Jansson & Anders Biel, *Investment Institutions' Beliefs About and Attitudes Toward Socially Responsible Investment (SRI): A Comparison Between SRI and Non-SRI Management*, 22 *Sustainable Development* 33, 33–41 (2014); Federica Ielasi & Monica Rossolini, *Responsible or Thematic? The True Nature of Sustainability-Themed Mutual Funds*, 11 *Sustainability Journal* 3304, 3304–3320 (2019).

45 George Apostolakis et al., *Pension Beneficiaries' and Fund Managers' Perceptions of Responsible Investment: A Focus Group Study*, 16 *Corporate Governance* 1, 1–20 (2016); also pro-social individual investors remain a minority, see Charlotte Christiansen et al., *Households' Investments in Socially Responsible Mutual Funds* (2019), <http://ssrn.com/abstract=3128432>.

46

2019

“ ”
“ ” “
, ” 47

“
.....
.....

”

48

ESMA

49

50

51

52

46 Christine Parker, *The Open Corporation : Effective Self-regulation and Democracy*, Cambridge University Press, 2002.
47 Regulation 2019/2088, Art. 2 (17).
48 Regulation 2019/2088, Art. 8, 10.
49 *ESAs Consult on Environmental, Social and Governance Disclosure Rules*, ESMA (23 April 2020), <https://www.esma.europa.eu/press-news/esma-news/esas-consult-environmental-social-and-governance-disclosure-rules>.
50 Regulation 2019/2088, Art. 8, 9.
51 Regulation 2019/2088, Art. 9(1)(b).
52 Robert J. Bianchi & Michael E. Drew, *Sustainable Stock Indices and Long-Term Portfolio Decisions*, 2 *Journal of Sustainable Finance & Investment* 303, 303 – 307 (2012).

ESG 53

54

2019

2020

“ ”

“ ESG”

“

”

55

“

”

“ ”

“ ”

2020

2020

56

57

53 *ESG Index Funds Hit \$250 Billion as Pandemic Accelerates Impact Investing Boom*, CNBC (2 September 2020), <https://www.cnbc.com/2020/09/02/esg-index-funds-hit-250-billion-as-us-investor-role-in-boom-grows.html>.

54 Benchmarks Regulation 2016/1011; amended by Regulation 2019/2089 dealing with “Low Carbon” benchmarks for indexed funds.

55 Taxonomy Regulation 2020, Art. 7.

56 *ESAs Consult on Taxonomy-Related Product Disclosures*, ESMA (17 March 2021) <https://www.esma.europa.eu/press-news/esma-news/esas-consult-taxonomy-related-product-disclosures>.

57 Karthik Ramanna, *ESG Accounting Needs to Cut Through the Greenwash*, Financial Times (17 January 2021), <https://www.ft.com/content/99b7a241-dfd4-4770-82b6-13de5a2804bf>.

2019

“

”

2020

71

72

2020

73

“ ESG”

“ ESG”

“ ”

74

ESG

ESG

75

76

77

78

79

80

81

Viageo Eiris⁸² Robeco

Sam⁸³

Refinitiv⁸⁴

ESG

85

71 Herwig Pilaj, *The Choice Architecture of Sustainable and Responsible Investment: Nudging Investors Toward Ethical Decision-Making*, 140 *Journal of Business Ethics* 743, 743 – 753 (2017).

72 Daniel C Esty & Quentin Karpilow, *Harnessing Investor Interest in Sustainability: The Next Frontier in Environmental Information Regulation*, 36 *Yale Journal on Regulation* 625, 625 – 692 (2019).

73 n7, p.3.

74 “ ” ESG



86

ESG

87

”

“

“ ESG”

88

89

90

92

93

94

95

96

2019

“ ”

97

98

92 Stephen Kim Park, *Social Responsibility Regulation and Its Challenges to Corporate Compliance*, 14 Brooklyn Journal of Corporate, Financial & Commercial Law 39 (2019).

93 Jan Diebecker, Christian Rose & Friedrich Sommer, *Spoiled for Choice: Does the Selection of Sustainability Datasets Matter?*, SSRN(24 July 2019), <https://ssrn.com/abstract=3359508>.

94 Nick Barter, *Natural Capital: Dollars and Cents/Dollars and Sense*, 6 Sustainability Accounting, Management and Policy Journal 366, 366–373 (2015); Régis Martineau & Jean-Philippe Lafontaine, *When Carbon Accounting Systems Make Us Forget Nature: From Commodification to Reification*, 11 Sustainability Accounting, Management and Policy Journal 487, 487–504 (2020).

95 Jeremy Andrew Nicholls, *Integrating Financial, Social and Environmental Accounting*, 11 Sustainability Accounting, Management and Policy Journal 745, 745–769 (2020).

96 Questions raised in Delphine Gibassier, *The Corporate Reporting Landscape: A Market for Virtue or the Virtue of Marketization?*, 6 Sustainability Accounting, Management and Policy Journal 527, 527–536 (2015).

97 Dominik Dienes, Remmer Sassen & Jasmin Fischer, *What are the Drivers of Sustainability Reporting? A Systematic Review*, 7 Sustainability Accounting, Management and Policy Journal 154, 154–189 (2016); Maria Lucia Passador & Federico Riganti, *Less Is More in the Age of Information Overload: The Paradigm Shift from a Shareholder-to a Stakeholder-Oriented Market*, 15 New York University Journal of Law & Business 567, 567–651 (2019).

98 Dominik Dienes, Remmer Sassen & Jasmin Fischer, *What Are the Drivers of Sustainability Reporting? A Systematic Review*, 7 Sustainability Accounting, Management and Policy Journal 154, 154–189 (2016); Maria Lucia Passador & Federico Riganti, *Less Is More in the Age of Information Overload: The Paradigm Shift from a Shareholder-to a Stakeholder-Oriented Market*, 15 New York University Journal of Law & Business 567, 567–651 (2019).

99

100

ESG

¹⁰¹ ESG

102

103

104

105

ESG

99 Marc T Moore, “Whispering Sweet Nothings”: *The Limitations of Informal Conformance in UK Corporate Governance*, 15 *Journal of Corporate Law Studies* 95, 95 – 138 (2015).

100 Such as the Wates Principles, critically discussed in Roger Barker & Iris H-Y Chiu, *Examining the Wates Principles for Large Private Companies as a Social Contract for Business-Society Relations*, ECGI (May 2019), https://ecgi.global/sites/default/files/working_papers/documents/finalbarkerchiu.pdf, chapter 3.

101 Richard C. Darton, *Setting a Policy for Sustainability: The Importance of Measurement*, in Jiri Klemes ed., *Assessing and Measuring Environmental Impact and Sustainability*, Elsevier, 2015, chapter 14; Federb701d2pacteo

| | | | | | |
|------|------|------|------------------------------|-----|------|
| | | | Taïbi | 106 | |
| | | 107 | (True Value Capital Account) | 108 | |
| 109 | SASB | IIRC | | | 110 |
| IFRS | | | | 111 | IFRS |
| | 112 | | IFRS | | |
| | | ESG | GRI | | |
| | | | | 113 | |
| | | | ESG | | SEC |

106 Souâd Taïbi, Nicolas Antheaume & Delphine Gibassier, *Accounting for Strong Sustainability: An Intervention-Research Based Approach*, 11 Sustainability Accounting, Management and Policy Journal 1213, 1213–1243 (2020).

107 Discussed in Orhan Akisik & Graham Gal, *Integrated Reports, External Assurance and Financial Performance: An Empirical Analysis on North American Firms*, 11 Sustainability Accounting, Management and Policy Journal 317, 317–350 (2020); Laura Mervelskemper & Daniel Streit, *Enhancing Market Valuation of ESG Performance: Is Integrated Reporting Keeping Its Promise?*, 26 Business Strategy and the Environment 536, 536–549 (2017).

108 Bernd Hendriksen, Jeroen Weimer & Mark McKenzie, *Approaches to Quantify Value from Business to Society: Case Studies of KPMG's True Value Methodology*, 7 Sustainability Accounting, Management and Policy Journal 474, 474–493 (2016); Critique in Nick Barter, *A Review of "A New Vision of Value" – Old Wine, New Bottle*, 7 Sustainability Accounting, Management and Policy Journal 531, 531–538 (2016); Mark W. McElroy & Martin P. Thomas, *The MultiCapital Scorecard*, 6 Sustainability Accounting, Management and Policy Journal 425, 425–438 (2015).

109 Jody Grewal, Clarissa Hauptmann & George Serafeim, *Material Sustainability Information and Stock Price Informativeness*, 171 Journal of Business Ethics 513, 513–544 (2021); Cristiano Busco et al., *A Preliminary Analysis of SASB Reporting: Disclosure Topics, Financial Relevance, and the Financial Intensity of ESG Materiality*, 32 Journal of Corporate Finance 1117, 117–125 (2020).

110 *IIRC and SASB Intend to Merge*, IAS Plus (25 November 2020), <https://www.iasplus.com/en/news/2020/11/iirc-and-sasb-intend-to-merge>.

111 IFRS Foundation, *Consultation Paper on Sustainability Reporting*, IFRS (September 2020), <https://www.ifrs.org/content/dam/ifrs/project/sustainability-reporting/consultation-paper-on-sustainability-reporting.pdf>.

112 Zehra G. Kavame Eroglu, *The Political Economy of International Standard Setting in Financial Reporting: How the United States Led the Adoption of IFRS Across the World*, 37 Northwestern Journal of International Law & Business 459, 459–516 (2017); Israel Klein, *A Change in Accounting, A Change in Law*, 42 Delaware Journal of Corporate Law (2017).

113 Federico Fornasari, *Knowledge and Power in Measuring the Sustainable Corporation: Stock Exchanges as Regulators of ESG Factors Disclosure*, 19 Washington University Global Studies Law Review 167, 167–233 (2020); Cristiano Busco et al., *A Preliminary Analysis of SASB Reporting: Disclosure Topics, Financial Relevance, and the Financial Intensity of ESG Materiality*, 32 Journal of Corporate Finance 117, 117–125 (2020). GRI ESG



120

121

122

123

124

ESG

125

120 Steven Maijor, *The Three (Apparent) Paradoxes of Sustainability Reporting and How to Address Them*, ESMA (8 December 2020), https://www.esma.europa.eu/sites/default/files/library/esma32-67-765_speech_steven_maijor_-_the_three_paradoxes_of_sustainability_reporting_and_how_to_address_them.pdf.

121 Michael S. Pagano Graham Sinclair & Tina Yang, *Understanding ESG Ratings and ESG Indexes*, in Susan Boubaker ed., *Research Handbook of Finance and Sustainability*, Edward Elgar, 2018, chapter 18.

122 Steven Maijor, *The Three (Apparent) Paradoxes of Sustainability Reporting and How to Address Them*, ESMA (8 December 2020), https://www.esma.europa.eu/sites/default/files/library/esma32-67-765_speech_steven_maijor_-_the_three_paradoxes_of_sustainability_reporting_and_how_to_address_them.pdf.

123 Alfonso Del Giudice & Silvia Rigamonti, *Does Audit Improve the Quality of ESG Scores? Evidence from Corporate Misconduct*, *12 Sustainability* 5670, 5670–5685 (2020).

124 Oren Perez, *The Green Economy Paradox: A Critical Inquiry into Sustainability Indexes*, *17 Minnesota Journal of Law Science & Technology* 153, 153–219 (2016).

125 Gianni Betti, Costanza Consolandi & Robert G. Eccles, *The Relationship Between Investor Materiality and the Sustainable Development Goals: A Methodological Framework*, *10 Sustainability* 2248 (2018); Laura Mervelskemper & Daniel Streit, *Enhancing Market Valuation of ESG Performance: Is Integrated Reporting Keeping Its Promise?*, *26 Business Strategy and the Environment* 536, 536–549 (2017); Selena Aureli, *The Value Relevance of Environmental, Social, and Governance Disclosure: Evidence from Dow Jones Sustainability World Index Listed Companies*, *27 Corporate Social Responsibility and Environmental Management* 43, 43–52 (2019). ESG

UN SDGs

126 *Half of FTSE 100 Companies Link Executive Pay to ESG Targets*, Financial Times (17 March 2021), <https://www.ft.com/content/609eae5e-1576-4081-9340-5d5001b5b02e>.

127 Catherine Le Roux & Marius Pretorius, *Exploring the Nexus Between Integrated Reporting and Sustainability Embeddedness*, 10 Sustainability Accounting, Management and Policy Journal 822, 822–843 (2019).

128 Hazel Bradford, *Demand Has More Seeing Inclusion of ESG Metrics*, Pensions & Investments (24 February 2020), <https://www.pionline.com/investing/demand-has-more-seeing-inclusion-esg-metrics>.

129 Lucien Georgeson & Mark Maslin, *Putting the United Nations Sustainable Development Goals into Practice: A Review of Implementation, Monitoring, and Finance*, Geo: Geography and Environment (2018), <https://doi.org/10.1002/geo2.49>.

130 Julia Walker, Alma Pekmezovic & Gordon Walker eds., *Sustainable Development Goals: Harnessing Business to Achieve the SDGs Through Finance, Technology, and Law Reform*, John Wiley & Sons, 2019.

131 OECD, *Making Blended Finance Work for the Sustainable Development Goals* (2018), <http://www.thkforum.org/wp-content/uploads/2018/01/Making-Blended-Finance-Work-for-SDGs.pdf>; critical discussion Celine Tan, *Creative Cocktails or Toxic Brews? Blended Finance and the Regulatory Framework for Sustainable Development*, in Clair Gammage and Tonia Novitz eds., *Sustainable Trade, Investment and Finance: Toward Responsible and Coherent Regulatory Frameworks*, Edward Elgar, 2019, chapter 13.

132

2019

“

”

133

134

information-signalling effects

European Green

132 Neil Reederet et al., *Measuring Impact in Impact Investing: An Analysis of the Predominant Strength that Is Also Its Greatest Weakness*, 5 *Journal of Sustainable Finance & Investment* 136,136–154 (2015) ; Lisa Brandstetter & Othmar M. Lehner, *Opening the Market for Impact Investments: The Need for Adapted Portfolio Tools*, 5 *Entrepreneurship Research Journal* 87, 87–107 (2015).

133 Madelyn Antoncic et al., *Sustainable Investment-Exploring the Linkage Between Alpha, ESG, and SDG's*, SSRN Working Paper (August 2020), <https://ssrn.com/abstract=3623459>.

134 Dana Brakman Reiser & Anne M. Tucker, *Buyer Beware: Variation and Opacity in ESG and ESG Index Funds*, 41 *Cardozo Law Review* 1921,1921–2018 (2020). ESG ESG While see Davide Fiaschi et al.,*How Bad Is Your Company? Measuring Corporate Wrongdoing Beyond the Magic of ESG Metrics*, 63 *Business Horizons* 287, 287–299 (2020). “ ”

142

143

144

145

2020

2020

146

“

”

147

2020

5

“ ”

142 n7.

143 The Modern Slavery Act 2015, Section 54.

144 UK Home Department (2019), p.40–41, government consultation on reforms as of 22 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf.

145 Jono Sankara, Dennis M Patten & Deborah L Lindberg, *Mandated Social Disclosure: Evidence that Investors Perceive Poor Quality Reporting as Increasing Social and Political Cost Exposures*, 10 Sustainability Accounting, Management and Policy Journal 208, 208–228 (2019).

146 Taxonomy Regulation 2020, Art. 8.

147 ESMA, *Final Report: Advice on Art 8 of the Taxonomy Regulation*, EMSA (February 2021), https://www.esma.europa.eu/sites/default/files/library/esma30-379-471_final_report_-_advice_on_article_8_of_the_taxonomy_regulation.pdf.

148

149

150

“ ”

SASB/IIRC IFRS GRI ESMA

148 John Ackermann, *Co-governance for Accountability: Beyond “Exit” and “Voice”*, 32 *World Development* 447, 447–463 (2004);
Michèle Finck, *Blockchain Regulation and Governance in Europe*, Cambridge University Press, 2018.

149 Regulation (EU) 2020/1503 on crowdfunding service providers.

150 Regulation (EU) 2020/1503, Arts. 23–24.

151

152

“ ”

153

IFRS

154

IFRS

155

IFRS

156

IFRS

157

IFRS

TFCD

158

TFCD

151 Jan Diebecker, Christian Rose & Friedrich Sommer, *Spoiled for Choice: Does the Selection of Sustainability Datasets Matter?*, SSRN(24 July 2019), <https://ssrn.com/abstract=3359508>.

152 Stockholm Resilience Center, <https://www.stockholmresilience.org/>.

153 Saule T. Omarova, *Bankers, Bureaucrats, and Guardians: Toward Tripartism in Financial Services Regulation*, 37 *Journal of Corporation Law* 621, 621 – 674 (2012).

154 Directive 2013/34/EU.

155 *Infra* n158.

156 Christopher S Armstrong et al., *Market Reaction to the Adoption of IFRS in Europe*, 85 *The Accounting Review* 31, 31 – 36 (2012).

157 Karthik Ramanna & Ewa Sletten, *Network Effects in Countries' Adoption of IFRS*, Harvard Business School Working Paper 10–092, Harvard University (22 August 2013), https://dash.harvard.edu/bitstream/handle/1/12175233/ramanna,sletten_10-092_network-effects.pdf;sequence=.

158 European Commission, *Guidelines on Reporting Climate-Related Information*, European Commission (2019), https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf.

ESMA

IFRS

159

ESG

160

161

162

2019 “ ” 163 “ ”

“ ”

LIBOR EURIBOR

164

165

159 Jannis Bischof & Holge Daske, *Interpreting the European Union's IFRS Endorsement Criteria: The Case of IFRS 9*, 13 *Accounting in Europe* 129,129–168 (2016).
9 Martin Gelter & Zehra G. Kavame Eroglu, *Whose Trojan Horse? Dynamics of Resistance Against IFRS*, 36 *University of Pennsylvania International Law Journal* 89 (2015); Steven Hijink, *Towards European Accounting Law* (2013), <http://ssrn.com/abstract=2233089>.

160 Antonio Vives & Baljit Wadhwa, *Sustainability Indices in Emerging Markets: Impact on Responsible Practices and Financial Market Development*, 2 *Journal of Sustainable Finance & Investment* 318, 318–337 (2012).

161 Iris H-Y Chiu, *Building a Single Market for Sustainable Finance in the EU-Mixed Implications and the Missing Link of Digitalisation*, <https://doi.org/10.1515/9783110749472-007>.

162 Regulation 2016/1011 on benchmark regulation.

163 Regulation (EU) 2019/2089 on EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.

164 *Libor Scandal: The Bankers Who Fixed the World's Most Important Number*, *The Guardian* (18 January 2017), <https://www.theguardian.com/business/2017/jan/18/libor-scandal-the-bankers-who-fixed-the-worlds-most-important-number>; *Two Former Traders Handed Jail Terms in Euribor Manipulation Case*, *Financial Times* (19 July 2018), <https://www.ft.com/content/c970a0c0-8b53-11e8-b18d-0181731a0340>.

165 Regulation 2016/2011, Arts. 4–11, 15, 16.

- 166
- 167
- 168
- 169
- 170
- 171
- 172
- ” 173
- 174
- “ ”
-
- 166 Regulation 2016/2011, Arts. 12, 13.
- 167 Regulation 2016/2011, Arts. 20–25.
- 168 Iris H-Y Chiu, *Standardization in Corporate Social Responsibility Reporting and a Universalist Concept of CSR-A Path Paved with Good Intentions*, 22 Florida Journal of International Law 361, 361–398 (2010).
- 169 E.g. the Canberra aggregation method, see Humberto S. Brandi, RJ Daroda & AC Olinto, *The Use of the Canberra Metrics to Aggregate Metrics to Sustainability*, 16 Clean Technologies and Environmental Policy 911, 911–920 (2014).
- 170 Boonlert Jitmaneeoj, *Reform Priorities for Corporate Sustainability: Environmental, Social, Governance, or Economic Performance?*, 54 Management Decision 1497,1497–1521 (2016); Daniel C. Esty & Todd Cort, *The Data Challenges that Remain*, in Cary Kronsinsky and Sophie Purdom eds., *Sustainable Investing: Revolutions in Theory and Practice*, Routledge Earthscan, 2017, chapter 9; Todd Cort & Daniel Esty, *ESG Standards: Looming Challenges and Pathways Forward*, 33 Organisation & Environment 491,491–510 (2020); Davide Fiaschi et al., *How Bad Is Your Company? Measuring Corporate Wrongdoing Beyond the Magic of ESG Metrics*, 63 Business Horizons 287, 287–299 (2020).
- 171 Christin Nitsche & Michael Schröder, *Are SRI Funds Conventional Funds in Disguise or Do They Live Up to Their Name?*, in Sabri Boubaker, Douglas Cumming & Duc Khuong Nguyen eds., *Research Handbook of Investing in the Triple Bottom Line*, Edward Elgar, 2018, chapter19.
- 172 Iván Arribas et al., *The Inclusion of Socially Irresponsible Companies in Sustainable Stock Indices*,11 Sustainability 2047 (2019).
- 173 Robert G. Eccles, Jock Herron & George Serafeim, *Reliable Sustainability Ratings*, in Tessa Hebb, James P. Hawley, Andreas G. F. Hoepner, Agnes L. Neher, David Wood eds., *The Routledge Handbook of Responsible Investment*, Routledge, 2015, chapter 48.
- 174 Mohamed Chelli & Yves Gendron, *Sustainability Ratings and the Disciplinary Power of the Ideology of Numbers*, 112 Journal of Business Ethics 187,187–203 (2013); Robert G. Eccles & Judith C. Stroehle, *Exploring Social Origins in the Construction of ESG Measures* (2019), <http://ssrn.com/abstract=3212685>.

“ ”

175

2007—2009

176

177

178

179

175 Bloomberg ESG or Viageo Eiris.

176 Regulation (EC) No 1060/2009 on credit rating agencies.

177 Harry McVea, *Credit Rating Agencies, The Subprime Mortgage Debacle and Global Governance: The EU Strikes Back*, 59 *International & Comparative Law Quarterly* 701, 701–730 (2010).

178 Lynn Bai, *On Regulating Conflicts of Interests in the Credit Rating Industry*, 13 *New York University Journal of Legislation and Public Policy* 253 (2010).

179 Regulation 1060/2009, Art. 8, also Commission Delegated Regulation (EU) 447/2012, Arts. 4–7, see critical discussion in Iris H-Y Chiu, *Regulatory Governance of Credit Rating Agencies in the EU: The Perils of Pursuing the Holy Grail of Rating Accuracy*, 4 *European Journal of Risk Regulation* 209, 209–226(2013).

ESMA

180

¹⁸¹ ESMA¹⁸² 2017

183

184

2017

GRI AA1000

185

AA1000

Accountability

AA1000AS ¹⁸⁶

180 Stephen J. Choi, Jill E. Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 Emory Law Journal 869, 869–920 (2010).

181 *Best Practice Principles for Providers of Shareholder Voting Research and Analysis*, Best Practice Principles for Shareholder Voting Research Providers (March 2014), <https://bppgrp.info/wp-content/uploads/2014/03/BPP-ShareholderVoting-Research-2014.pdf>.

182 ESMA, *Report: Follow-up on the Development of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis* (2015), ESMA, <https://www.esma.europa.eu/document/follow-report-development-best-practice-principles-providers-shareholder-voting-research>.

183 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, Art. 3j.

184 *Big Investors Ignore Proxy Advisors on Controversial Votes*, Financial Times (8 February 2020), <https://www.ft.com/content/fd275eff-39b9-438d-bf15-31bb242a1924>.

185 *The Sustainability Report Assurance*, <https://www.sgs.com/en/sustainability/sustainability-reporting/sustainability-report-assurance-sra>, is based on GRI or AA1000 reporting.

186 *AA1000 Assurance Standard*, <https://www.accountability.org/standards/aa1000-assurance-standard/>.



ISAE3000

187

188

189

190

191

192

193

2020

The EU Sustainable Finance Agenda: Developing Governance for Double Materiality in Sustainability Metrics

Iris H-Y Chiu (Author)

CHENG Lei LIN Lin (Translator)

Abstract: This article argues that the regulatory steers in the recent EU Sustainable Disclosure and Taxonomy Regulations rely heavily on the outworking of market-based governance to meet public interest goals in sustainable finance. Hence, additional work in sustainability metrics development that informs the investment sector of sustainable performance in companies would be of key importance. This article argues that there remain gaps in EU leadership for governing metrics development, and suggests that EU-level governance can be designed appropriately, especially in a multi-stakeholder manner, for metrics development and in relation to key information intermediaries in this space.

Keywords: Sustainable Finance; Sustainable Taxonomy; Double Materiality; Sustainable Benchmark; Sustainable Index