Juridisk Publikation

STOCKHOLM - UPPSALA - LUND - GÖTEBORG - UMEÅ

Sara Göthlin

Sustainable Finance and Law – Thoughts on an Emerging Field of Legal Studies

Särtryck ur häfte 2/2021

Nummer 2/2021

SUSTAINABLE FINANCE AND LAW
– THOUGHTS ON AN EMERGING FIELD OF LEGAL STUDIES

By Sara Göthlin[1]

The introduction of sustainability related measures and practices in the world of finance represents, in the words of one senior practitioner, "the end of finance as we know it".[2] If the financial system is indeed the subject of fundamental change, the theory and practice of the law which sets out to regulate finance must also evolve to remain relevant. This paper takes a step back from the current plethora of efforts within sustainable finance and law to ask how this potential area of research and education could be defined. For that purpose, it introduces an approach to navigating the legal aspects of sustainable finance along three dimensions: theoretical, regulatory, and transactional.

1. INTRODUCTION

The quest for climate, environmental and social sustainability permeates 21st century business life and public discourse.[3] Naturally, the sustainability imperative influences scholarship and practice in a wide range of legal fields. Most of you will have noticed, or even taken part in some of, the current abundance of seminars and initiatives containing both the elements "sustainability" and "law". The focus of this paper is however limited to the intersection between sustainable or climate finance and law. It assumes a European perspective. The aim is to plug into a conversation that is already

1 PhD researcher at the Stockholm Centre for Commercial Law. I would like to thank the teachers and participants of the PhD course "Science and Politics in Global and Environmental Governance" given by the Stockholm University Research School on Environment, Climate and Sustainability in 2019. A special thanks to professor emeritus Lars Gorton and professor Göran Millqvist, Stockholm Centre for Commercial Law, Oskar Andrews, Head of Legal, DNB Sweden, and Camilla Hedner, Gernandt & Danielsson, for thoughtful comments. All remaining mistakes are my own.

2 Helena Vines Fiestas, senior policy advisor on sustainable finance, BNP Paribas and rapporteur of the EU Platform on Sustainable Finance, remarks at the EVRACSI Webinar No 2 on Sustainable Finance, 22 April 2021. In a similarly sweeping statement, Sjåfjell et al. (2019) claim that "we need to change the way business operates."

3 As captured in the 2030 United Nations Development Goals: SDGs .:. Sustainable Development Knowledge Platform (un.org) (accessed 27 May 2021). In the EU, environmental sustainability has become legally defined through Regulation (EU) 2020/852 (Taxonomy) on the establishment of a framework to facilitate sustainable investment (the "Taxonomy Regulation").

taking place in the legal community on the role of law and lawyers in furthering a sustainable economy.[4]

One of the benefits of starting to define an area of research is that it facilitates finding the right fellow lawyers with whom to exchange ideas. Even an ever-shifting definition of a field of study allows for the next generation of lawyers to seek out and specialise in related topics. Without an idea of its substance, how could we include sustainable finance as a recurring topic in the law school curriculum? Further, in a truly cross-disciplinary field such as sustainable finance, a successful collaboration with other experts requires a clear idea of the contribution of legal expertise.[5]

The key here however being that the field should belong to everyone with an interest in what they perceive as relevant to it, allowing the subject to constantly evolve. Further, a disclaimer is necessary here. The suggested contours of sustainable finance law are based on how I have personally come to organise the subject. That, in turn, is based on a literature selection, which is both subjective and incomplete.

The paper is organised as follows. First, it provides a snapshot of the field. The tentative building blocks of "sustainable finance law" as a field of study are then examined in the shape of three dimensions – theoretical, regulatory, and transactional. These dimensions are discussed with a view to identifying points of entry that might be of particular interest to the legal community. The paper concludes with final remarks.

2. ON SUSTAINABLE FINANCE AND LAW

2.1 INTRODUCTION

Before venturing into the three dimensions of sustainable finance law suggested in this paper, let us briefly consider how one may pin down, tentatively, a field that is distinct from both (i) the wider discourse on sustainability and the law; and (ii) sustainable finance research that does not fall within the realm of legal issues.

4 See e.g. Net Zero Lawyers (netzerolawyers.com), which was launched 30 June 2021 to mobilise lawyers across disciplines in working towards a net zero economy, and Climate Change Counsel (climatechangecounsel.com). The Chancery Lane Project (https://chancerylaneproject.org/) produces model clauses to facilitate the integration of climate considerations into business contracts.

5 In a similar vein, Belinga & Morsing (2020) provide suggestions to strengthen finance research and education which integrates sustainability aspects.

2.2 DEFINITIONS OF SUSTAINABLE FINANCE

To understand what is meant by "sustainable finance", one may draw on a wide range of institutional, state, and academic actors. There is not, and we should probably not seek, one single definition.[6] Two core elements emerge, I believe, from the selection below. First, sustainable finance is about the allocation of resources; or how to promote the direction of funds for beneficial purposes. Secondly, it is about the incorporation of sustainability in financial decision-making on all levels.

The EU defines sustainable finance as "the process of taking [ESG] considerations into account when making investment decisions in the financial sector, leading to more long-term investments in sustainable economic activities and projects." It is however also defined in the "EU policy context" as "finance to support economic growth while reducing pressures on the environment and taking into account social and governance aspects. Sustainable finance also encompasses transparency when it comes to risks related to ESG factors that may have an impact on the financial system, and the mitigation of such risks through the appropriate governance of financial and corporate actors."[7] In a shorter statement under the sustainable finance caption, the EU "is examining how to make sustainability considerations an integral part of its financial policy in order to support the European Green Deal."[8]

Similarly, the Yale Center for Environmental Law and Policy frames sustainable finance research as an area where we think about "the challenges to integrating sustainability concerns into financial markets and investment decisions."[9]

The Mistra Center for Sustainable Markets states that "An increasing number of institutions ranging from pension funds to governments are considering sustainability aspects in their financial analyses and asset allocation decisions. Sustainable finance refers to the process of taking such environmental and social factors into account when raising capital and making investment

6 See Tripathy et al. (2020) pp. 101–102 for an overview of suggested definitions, as well as explanations of the terms "green" and "climate" finance as opposed to the wider concept of sustainable finance.

7 Overview of sustainable finance | European Commission (europa.eu) (accessed 20 August 2021). For outlooks, see The state of sustainable finance in the United States | UNEP – UN Environment Programme (accessed 27 May 2021) and OECD iLibrary | Green Finance and Investment (oecd-ilibrary.org) (accessed 27 May 2021). ESG is short for environmental, social, and (corporate) governance.

8 Sustainable Finance | European Commission (europa.eu) (accessed 23 June 2021).

9 Sustainable Finance | Yale Center for Environmental Law & Policy (accessed 7 June 2021).

decisions."[10] At the Stockholm Sustainable Finance Centre, the aim is to: "accelerate and promote the shift in capital investments required to deliver the Sustainable Development Goals (SDGs) and climate targets."[11]

Finally, Tripathy et al. (2020) propose (among other definitions) that "climate finance is the mobilization of public and private capital toward climate mitigation and adaptation", stressing that concepts such as sustainable, green or climate finance have not been fully translated into law.[12]

2.3 IT MUST BE ABOUT LAW, AND ABOUT FINANCE

Turning to "sustainable finance law", it will be framed around legal norms rather than social, environmental, financial, or other categories of facts. Legal scholars would not take on an evaluation of the effects of steel production on the concentration of CO2 in the atmosphere. Nor would it probably be a good legal research question to enquire whether climate anxiety affects consumption behaviour.

At the same time, the field is different from other areas of the law which are about sustainability but not finance. The tools of economic policy in mitigating climate change are many-fold and do not necessarily involve matters that are thought of as primarily about the financial system. For instance, research into "green promises" made to consumers is likely to be more about consumer protection, contract law in general and marketing than it is about finance. It neither involves the structuring of financial instruments nor the regulation of the financial system.[13] Similarly, environmental law targeting the protection and preservation of ecosystems or the use of natural resources would not immediately be a matter for sustainable finance.[14] Unless, for example, financing of projects or resources would tie into the problem at

10 Sustainable Finance Initiative (hhs.se) (accessed 17 June 2021).

11 Stockholm Sustainable Finance Centre (SSFC) – a unique initiative by the Government of Sweden, Stockholm Environment Institute (SEI) and Stockholm School of Economics (SSE) (accessed 30 August 2021).

12 Tripathy et al. (2020) pp. 100–102.

13 Unless of course the consumer product is a financial product. See e.g. CMU Action Plan: COM(2020) 590 final (24 September 2020) Action 8, and 3.3.2 (*What is regulated within sustainable finance?*) below regarding sustainability disclosure and operational requirements for investment firms.

14 Michelot & Aseeva (2017) p. 5 offer a general definition of environmental law. Although environmental law can be understood to include a wide array of matters such as climate litigation, public international law, tort, etc., it is not usually described as encompassing legal issues relating to financial markets or financing transactions. This is a general conclusion after reviewing a number of descriptions from legal faculties in Sweden and abroad.

hand.[15] The EU greenhouse gas emissions trading system is often said to be a cornerstone of the European climate policy.[16] Although emissions trading gives rise to financial products and considerations, the system does not necessarily fit into the realm of "sustainable finance".

With these tentative demarcations in mind, section 3 below will aim to translate the elements of sustainable finance into legal problems by organising sustainable finance law across *theoretical*, *regulatory*, and *transactional* dimensions.

3. THREE APPROACHES TO SUSTAINABLE FINANCE LAW

3.1 INTRODUCTION AND DISCLAIMER

As mentioned above, the presentation of sustainable finance law in this paper is based on how I have personally come to organise the subject. Further, the three dimensions below are highly interdependent. I believe however that an effort to disentangle some of the elements of sustainable finance is necessary to facilitate further discussions. Hopefully, the three approaches below could spark further ideas and lay the groundwork for a structured debate.

3.2 THEORETICAL DIMENSION

3.2.1 PURPOSE AND MAIN CONTENTS OF THIS SECTION

The purpose of this section is to provide possible points of entry for legal scholars that are interested in the wider (mainly) finance and governance-oriented literature on sustainable finance as a catalyst for combatting climate change.

First, I discuss potential benefits of exploring the *narratives* of sustainable finance, or, alternatively, its *framing*. Second, this section accounts for the theories on *exit*, *voice or coercion* as governance tools, as relevant to research in sustainable finance law. Finally, it concludes by underlining a fundamental choice regarding how to understand the dynamics of sustainable finance that I believe almost always will influence legal analysis.

15 The study of commodification techniques as a way of internalising externalities or correcting perceived market failures is in my view an area where scholars of sustainable finance and law could perhaps be more involved. See e.g. Michelot & Aseeva (2017), in particular pp. 5–6 in relation to commodification and "ecosystem services", Gómez-Baggethun & Ruiz-Pérez (2011) and Hahn et al. (2015).

16 See Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC. Also see EU Emissions Trading System (EU ETS) | Climate Action (europa.eu) (accessed 31 August 2021).

3.2.2 NARRATIVES

For purposes of this paper, a narrative is understood as a story with a clear sequential order that connects events in a meaningful way.[17] Recognizing influential stories within this growing discipline may help us identify the boundaries that they represent and to consider alternative discourses. In the mapping of legal issues, we may wish to take note of how various stakeholders articulate their belief in sustainable finance as a solution to climate change. If we are able to discuss not only the many details of policy measures, but also the underlying stories, the debate on legal issues can become more robust.[18]

As a finance lawyer, I am prone to looking at the world as entities entering into transactions, with the movement of money at the centre of any event. From this vantage point, it makes sense to experience sustainable finance as a conscientious development by and within the financial markets. Climate change can be fought by closing the *funding gap*, in the words of the European Commission: "As public funds will not suffice, the EU and its Member States will coordinate their support to engage with partners to bridge the funding gap by mobilising private finance."[19]

This places the emphasis on the act of investing, which in turn directs attention to the creation of appropriate securities (shares, bonds, or derivatives) in which to invest.[20]

17 See the review of definitions and outline of narratives provided by Arnold (2018) pp. 61–63. Hajer (1996) p. 246 discusses how emblems (issues of great symbolic potential that dominate environmental discourse) mobilise bias in and out of environmental politics: "They are 'story lines' that dominate how we understand a problem, which also governs the debate on necessary changes". Robbins (2012) uses the term "narrative" interchangeably with "stories" about environmental change. On the idea of meta-narratives, which are "the grand narratives of our time", see Patterson and Monroe (1998) p. 326. One such meta-narrative is the story of constant and limitless human progress or forward movement. An example of how "narratives" are used in legal sciences, see Tuori (2002) p. 31 (Chapter II).

18 In this strain of thought, Park (2018) p. 7.

19 See COM(2019)640 final (The Green New Deal) (3). Further, OECD (2020) and Park (2018) p. 4. Also see Recital (7) and (8) of Regulation (EU) 2019/2089 on Climate Transition Benchmarks. Falkner (2016) p. 1109 states that "the cost of taking carbon out /…/ is unprecedented in the history of environmental politics." Also see A Clean Planet for all. European Commission, In-Depth Analysis in support of the Commission Communication (COM(2018)773) pp. 235–239 and Commission Communication (COM(2018)773) p. 16.

20 An illustrative example is the story as told by the Stockholm Sustainable Finance Centre: https://www.stockholmsustainablefinance.com (accessed 22 August 2021).

A main story of sustainable finance can be outlined as follows:

i. Policy makers along with the business community have realised that a massive transformation of the economy is needed in the face of climate change. This story will often recall the 2015 Paris Agreement.[21]

ii. Such realisation has sparked private initiatives and self-regulatory bodies such as the Green Bond Principles and the Climate Bond Initiative to create new categories of debt. The first corporate green bond was issued in 2012, and the sustainable finance sphere has grown rapidly since. At the same time as green debt instruments are being developed, so are climate accounting and disclosure for the purpose of guiding investors;[22]

iii. …which is enabling investors to choose to direct their money into financial instruments that are labelled as sustainable.

iv. This in turn allows companies to invest in renewable technology, greener buildings or other projects that live up to the standard required to label their investments as "green".

v. However, legislation is needed to aid and accelerate market-led developments, since the economy is not changing fast enough to meet the targets of the Paris Agreement (or, as of late, the EU 2050 zero emissions goal).[23]

21 The Paris Agreement | UNFCCC (accessed 22 August 2021). Article 2 paragraph 1 (c) expresses the goal of "Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."

22 See e.g. Christine Lagarde, President of the ECB, at the launch of the COP 26 Private Finance Agenda, 27 February 2020: Climate change and the financial sector (europa.eu) (accessed 9 August 2021). Also see https://www.fsb-tcfd.org/ on the Task Force on Climate-Related Disclosure and 3.3.2 (*What is regulated within sustainable finance?*) below.

23 Ramos Muñoz et al. (2021) p. 3, stating that "European policymakers' aspiration is to lead the process". See e.g. Recital (12) of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (the "CSRD Proposal"). Pacces (2021) pp. 151–152 explains the sequence of events slightly differently, stating that legal tools traditionally used to "police externalities" have been "questioned on the grounds of their limited effectiveness. As a result, policymakers have switched gears and increasingly rely on financial markets to support the control of externalities. This strategy is called sustainable finance."

Narratives, such as that suggested above, may serve to allow the mapping of critical perspectives. Two such potential groups of criticism shall be touched upon here.

The first challenge is if we ought to be aware of the consequences of how environmental projects are "packaged" as financial products.[24] Projects to limit CO2 emissions are translated into bonds, listed on stock exchanges and valued on a daily basis according to their market performance. This may prompt the question of whether sustainable finance techniques take away from the notion that changes for the improvement of environmental conditions have a value in and of themselves.[25] In a way, sustainable finance can be said to reinforce instrumentalism or even take it to another level.[26] In addition to regarding the environment or nature as something of instrumental value to humans, our efforts to rectify the damage inflicted on the environment are commodified as financial instruments intended for trading. This discourse also ties in with an overarching critique of the "financialization" of society.[27]

A second critical perspective focuses on the fact that sustainable finance as a solution to the climate crisis leaves the market paradigm unchallenged. Legal strategies that are anchored in the mainstream narrative tend to be in line with Hajer's statement "The hardware can be kept but the software should be changed."[28] In relation to sustainable finance, this may for example underpin the belief that once the concept of risk is updated to account for climate effects, the primary goal of obtaining the best possible return on investment will automatically work in favour of transition.[29]

3.2.3 FRAMING

In addition to taking note of narratives, one may also wish to consider how the framing of issues in sustainable finance affects legal strategies. At the core of this

24 Tripathy et al. (2020) p. 106 refer to recent literature which critically examines green bonds as a way of "accounting for nature, translating it into the language of finance…". Taxonomy Regulation, Recital (11) for example, reads: "Making available financial products which pursue environmentally sustainable objectives is an effective way of channelling private investments into sustainable activities."

25 See Lund (2021) p. 21, tying green financing techniques to moral hazard. Also see the discussion on ecosystem services and commodification in e.g. Michelot & Aseeva (2017) and Gómez-Baggethun & Ruiz-Pérez (2011).

26 On instrumentalism in this context, see Plumwood (2007) p. 2.

27 Epstein (2005), Lagoarde-Segot (2015) pp. 5–6, Bracking (2019). Also see Ahlström & Monciardini (2021) pp. 2–3.

28 Hajer (1996) p. 252.

29 Robbins (2012) p. 18 and Storm (2009). Park (2018) p. 30.

perspective is the conflict-or-compliment relationship between sustainability and financial performance.[30]

On the one hand, there is a comprehensive literature which is based on, or proposes, theories on a trade-off for investors between wealth and social benefits.[31] The conflict is often framed as a tension between short- or long-term perspectives. Mark Carney, former Governor of the Bank of England, addressed in a landmark speech in 2015 how to "break the tragedy of the horizon".[32] A play on the "tragedy of the commons" metaphor,[33] the phrase captures the problem that the cost of taking action is being borne in the short term whereas the benefits may only materialise in the long run. Further, whereas traditional credit risk management entail evaluation of risks on the basis of past performance, and modelling is undertaken with the business cycle (5–7 years) or credit cycle (10+ years) in mind, sustainability risks can be defined as risks that might crystallise over a generation or more (25 years).[34]

On the other hand, recent developments raise the question if this is not a false dichotomy.[35] At the very least, distinctions have to be made between different

30 See Ahlström & Monciardini (2021) regarding the conflict/complementarity in regulatory dynamics. Yan et al. (2019) use a means and ends distinction to discuss whether the means of finance to reach *different* (sustainability) ends will create a financial sector that is more aligned with societal goals.

31 Hart et al. (2020) p. 2 refer to literature claiming that "the usual presumption that firms should maximize profit or market value is no longer valid in a world where, as result of political failures either at the national or international level, externalities are not well-controlled." Another prominent example is Larcker & Watts (2019) p. 2. Also see Sjåfjell et al. (2021) p. 7.

32 https://www.bankofengland.co.uk/speech/2015/breaking-the-tragedy-of-the-horizon-climate-change-and-financial-stability. Accessed 22 June 2021.

33 Hardin (1968).

34 Alexander & Fisher (2018) p. 1. Brans & Scheltema (2019) p. 101 (Commenting on The Final Report of the High Level Expert Group on Sustainable Finance: https://ec.europa.eu/info/publications/180131-sustainable-finance-report_en, p. 2).

35 Strategy for Financing the Transition to a Sustainable Economy (COM(2021) 390 final), especially p. 14. As noted by Lord Sales of the UK Supreme Court: "the old dichotomy between a company's financial success and its environmental profile is collapsing…", p. 6 of the speech: Directors' duties and climate change: Keeping pace with environmental challenges (supremecourt.uk) (accessed 18 August 2021). In the CSRD Proposal, Recital (7), it is suggested that: "Many stakeholders consider the term 'non-financial' to be inaccurate, in particular because it implies that the information in question has no financial relevance. Increasingly, however, the information in question does have financial relevance." Also see Recital (9) of said CSRD Proposal. From a Swedish perspective, see Östberg (2020). At the same time, Zetzsche & Anker-Sørensen (2021) caution against further regulation *inter alia* on the basis that the relationship between sustainability and financial performance is largely unknown and lacks solid theoretical foundations.

types of investments.[36] Solana states, for example, "…early reports had already concluded that 'integrating ESG considerations into an investment analysis so as to more reliably predict financial performance is clearly permissible and is arguably required in all jurisdictions [n]."[37] Climate risk in the form of transition, physical or liability risks (including the risk of hard law being imposed should the market move too slowly) is in this strand of thought decidedly understood to be financial risk and should be treated as such.[38]

In the context of financial regulation, the EU appears to prefer framing the relationship as one of complementarity. EU directives and regulations relating to sustainable finance follow a similar pattern in how legislation is motivated.[39] First, the recitals will reiterate how the EU is committed to the UN Sustainable Development Goals and include mentioning of the Paris Agreement.[40] Then, aside from recalling the necessity of harmonisation between Member States, the overarching goals are still efficient markets and financial stability. Problems of agency/principal conflicts and the information asymmetries that characterise financial markets are still addressed through measures targeting corporate governance and investor protection.[41]

In other words, awareness of the "tragedy of the horizon" has not meant that the objectives of financial regulation have been replaced with new ones, but rather it appears as though – so far – traditional goals have gained additional layers of complexity.

36 See e.g. Quigley (2020) pp. 5 and 8 on the different dynamics of investor influence on the primary and secondary markets.
37 Solana (2020) pp. 125–126.
38 Delis et al. (2021) p. 3. Also see on the business case for equity investors in Armour, John, Enriques Luca and Wetzer Thom. Corporate Carbon Reduction Pledges: Beyond Greenwashing. Oxford Business Law Blog, 2 July 2021.
39 Alexander & Fisher (2018) describe their task in a recent paper as seeking to answer the question of how banks, and banking regulation in particular, can contribute to sustainability objectives. Tripathy et al. (2020) p. 109 "point to the role that central banks, regulators, and supervisors will play in addressing the risks that climate change poses to the financial system." The authors highlight the difference in regulatory approaches between Western countries on the one hand and China and other Asian countries on the other. Whereas the EU and US sustainable finance developments have relied on mainly private initiatives and self-regulation, Chinese and, notably, Indian regulators have historically provided more hard law. Also see Zadek (2019) pp. 22–23. See Wymeersch (2019) on the objectives of financial regulation in the EU generally.
40 Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the "SFDR") and Regulation (EU) 2019/2089 on Climate Transition Benchmarks, Recitals (1) and (2). Taxonomy Regulation, Recitals (2) and (3).
41 SFDR Recitals (10) and (35) and Regulation (EU) 2019/2089, Recital (14).

3.2.4 EXIT, VOICE, COERCION

An important discourse in relation to both equity and debt finance is considered with identifying paths to exerting investor influence, where the primary goal of the investor is to further climate resilience. Theories of the efficiency of ideal-typical governance strategies labelled *exit*, *voice,* and *coercion* have been applied as analytical tools in this context.

As first formulated by Hirschman, a person or group that is dissatisfied with the performance of a firm can respond either by withdrawing from the relationship (exit) or by engaging with the aim of improving the relationship (voice).[42] The concepts of exit and voice have been analysed by, inter alia, Park (2018), Pacces (2021), and Hart et. al. (2020) in relation to sustainability geared equity investors. In a concrete example, Pacces asks whether "institutional investors [can] better influence corporate choice by way of exit, voice, or both? Answering these questions is crucial to determine whether externalities such as climate change can be controlled by corporate governance rather than government regulation."[43]

Ramos Muñoz et al. (2021) expand the analysis by considering in more detail the properties of green debt (in addition to equity) investments on the basis of experience from financial promises. In their analysis, the concept of *coercion* is added to exit and voice. Coercion mechanisms can be broadly understood as those that "force the promisor by penalizing non-performers…".[44] The authors, positioning "green promises" alongside financial promises, point out that "financial promises are the bedrock of deep and sophisticated capital markets because they are credible, and they are credible because their fulfilment is protected by many different tools."[45] In debt finance, one does not readily "exit" an investment in a privately held loan or a bond that is not sufficiently liquid. The exit option in such case would entail acceleration, which may be detrimental both to the investor and trigger cross-defaults in the issuer/borrower's other debt financing. An exit strategy may hence in that context drive insolvency, which in many cases leads to value deterioration and negative externalities. Similarly, the "voice" strategy is different for debt investors. As opposed to shareholders, creditors only have a right to information and influence on the decisions of a company to the extent that is either allowed by contractual rights and/or arises under special circumstances (such as restructuring negotiations).

42 Hirschman (1970). Pacces (2021) p. 164.
43 Pacces (2021) pp. 160 and 165.
44 Ramos Muñoz et al. (2021) p. 5.
45 Ramos Muñoz et al. (2021) p. 5.

3.2.5 SUMMARY OF THEORETICAL POINTS OF ENTRY

Based on the above, there is arguably a fundamental choice to be aware of before analysing legal developments. Awareness in this respect is especially relevant where we are looking to contribute by making normative claims rather than simply describing what laws have been enacted.[46] The research we absorb and build on often rests on the outcome of this choice, whether consciously made and whether or not explicit. It relates to one's prior understanding of whether and how in any given context sustainability and financial goals are conflicting or complimentary. That is, to simplify, whether investors are perceived to be making a monetary sacrifice in order to deliver or gain from *other* values, or if in fact sustainability is key to financial performance. This may but does not have to be a matter of distinguishing between the short- and long-term perspectives. It may also involve predictions about the future price of, and legal barriers to, carbon emissions.[47]

Sometimes one will sense that another choice has been made, which is perhaps more ideological than based on economic science. That is, whether to understand the financial markets – and by extension the Western capitalist system – as either a viable machine that has to be somewhat re-programmed to direct resources for sustainable purposes, or as a broken machine that has to be replaced.

The position of individual draftsmen is often difficult to pin down. For example, the EU High Level Group on Sustainable Finance said that "reaching our Paris agreement goals requires no less than a transformation of the entire financial system, its culture and its incentives…".[48] At the same time, any measures actually suggested are well within the boundaries of the market paradigm.[49]

Having understood the underlying choices relating to financial and political motivations that inform a given legal argument, one may take advantage of

46 Hansen et al. (2020) capture the problem of how tacit beliefs about the market economy working (or not working) in favour of sustainability and the conflict/complementarity relationship between financial performance and sustainability can cloud a fruitful legal debate.
47 Armour, John, Enriques Luca and Wetzer Thom. Corporate Carbon Reduction Pledges: Beyond Greenwashing. Oxford Business Law Blog, 2 July 2021. Commented by Fisch, Jill. Can and should corporations commit to a voluntary carbon tax? Oxford Business Law Blog, 6 July 2021.
48 The Final Report of the High Level Expert Group on Sustainable Finance at https://ec.europa.Eu /info/publications/ 180131-sustainable-finance-report_en p. 2.
49 Esposito et al. (2019) approach this puzzle by organising regulatory measures into three groups, where (to oversimplify) two are more or less compatible with the "system" and one is not.

the concepts of exit, voice, and coercion to facilitate multi-jurisdictional and cross-disciplinary discussions.

3.3 THE REGULATORY DIMENSION

3.3.1 INTRODUCTION

This section will approach the interface between sustainable finance and law from the perspective of the regulator. As a starting point, we may simply ask which kinds of legal interventions are undertaken under the headline "sustainable finance".[50]

In relation to finance, hard law on a national level has increasingly become the prerogative of the EU legislature. EU institutions intervene mainly on the basis of furthering the freedom of movement for capital and free establishment, and in the shape of supervision and regulation of financial stability.[51] An increasing use of regulations over directives, and the method of adding technical provisions in delegated acts under the Lamfalussy process, have become well-established in relation to financial regulation.[52] The legislative mandate and procedures that have become customary for financial regulation in general can be seen to extend to sustainability measures as well.[53]

The plurality and multi-level nature of norms in sustainable finance call for methodological awareness.[54] In particular, the sustainable finance context requires an understanding of the interaction between market and state led regulation.[55] The behaviour of market participants is not only shaped by hard

50 Sustainable finance package | European Commission (europa.eu) (Accessed 23 June 2021).

51 See in particular Arts. 63 and 114 of the Treaty on the Functioning of the European Union. Among others, Recital 19 of Regulation EU 2019/2089 talks about financial stability.

52 https://ec.europa.eu/info/business-economy-euro/banking-and-finance/regulatory-process-financial-services/regulatory-process-financial-services_en (Accessed 22 June 2021).

53 Tripathy et al. (2020) pp. 106–107.

54 In order to organise an analysis of the regulatory dimension, tools like the *x y z of norm-making* suggested by Kelly Chen can be helpful. See Chen (2018) p. 292. Further, see Cafaggi (2011) p. 118. Park (2018) pp. 38–41 proposes in the context of sustainable finance *hybridity* as a conceptual framework though which the governance and regulation of the green bond market can be analysed.

55 Park (2018) examines "how a constellation of market participants regulates the green bond market through quasi-regulatory tools. Investor-based standards[n], market-oriented certification schemes[n], specialized indices[n], and external assurance[n] serve as de facto market-based regulation." (p. 6). Also see Park (2018) p. 18 on the legal authority of private governance in the context of sustainable finance, and p. 31 on "regulatory capture" where public regulators are influenced by the firms that they regulate.

law, but also by private agreements (whether enforceable or not) made in the shadow of public regulation.[56]

3.3.2 WHAT IS REGULATED WITHIN SUSTAINABLE FINANCE?

The authors of *Sustainable Finance in Europe* (2021) frame actions taken by the EU in this area as responding to five broad strategies, defined as *public incentives*, *standardisation*, *disclosure*, *corporate governance* and *financial regulation*.[57]

Following their lead, let us look first at public incentives. This includes the establishment by the European Commission of an investment fund providing support and technical assistance to facilitate private investment.[58] Further aspects of public funding and support for a transition of the economy however falls outside of common understandings of "sustainable finance" since the area is typically read as being about channelling private investments.[59]

The lion's share of hard law applying to market participants produced thus far is concerned with *standardisation and disclosure*.[60] That is, efforts by the legislator to provide the tools necessary to enable transparency and informed decision-making. The availability of comparable data on the climate impact of businesses is a pre-condition both for market mechanisms to work in favour of sustainability, and for imposing hard law restrictions down the line.

Among standardisation measures, the Taxonomy Regulation represents a comprehensive and much debated component. Through its delegated acts, it sets out to catalogue green economic activities, which in turn will make it

56 Vandenbergh (2005).

57 Busch, Ferrarini & van den Hurk (2021) p. 57. Zetzsche & Anker-Sørensen (2021) (p. 6) on the other hand organise the discourse according to six building blocks, where the first is the Taxonomy Regulation, four relate to (other) disclosure rules and the last one relates to the organisation of financial intermediaries.

58 Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal. In this vein, see CMU Action Plan: COM(2020) 590 final (24 September 2020), Action 3.

59 Busch, Ferrarini & van den Hurk (2021) pp. 57–58.

60 See the CSRD Proposal, the Taxonomy Regulation, the SFDR (each as defined above), Regulation (EU) 2019/2089 on Climate Transition Benchmarks, and Proposal for a Regulation of the European Parliament and of the Council on European Green Bonds (COM/2021/391 final). Also see European Securities and Markets Authority (ESMA) technical advice to the European Commission on integrating sustainability risks and factors in MiFID II (2019), https://service.betterregulation.com/document/385225 (accessed 31 August 2021). Also see (the global, privately led) Task Force on Climate-Related Financial Disclosures | TCFD (fsb-tcfd.org) (Accessed 20 August 2021).

possible to define which investments are green. In addition, in order to use labels such as "sustainable", market actors within the scope of the regulation must now show to what extent their exposures are taxonomy aligned. That is, to what extent the activities of investee businesses meet the taxonomy screening criteria. Taxonomy alignment is also part of the disclosure regime set out in the SFDR. In this context the term environmentally sustainable has been legally defined.[61]

Underlying the discourse on sustainability disclosure is an aspect of the fundamental choice discussed in 3.2.5 (*Summary of theoretical points of entry*) above. To what extent do climate risks overlap with financial risks, and how should one estimate their materiality? Since there are already rules in place requiring companies of a certain size or capitalisation to disclose material financial risks to the market, are they not by extension already required to produce information about climate risk?[62]

Moving on to the fourth broad strategy, this concerns regulation that targets *corporate governance*.[63] In this area, which up until now has largely been the subject of national law and self-regulation, the EU launched a consultation on possible legislative actions in 2020.[64] Aspects of this area of regulation are discussed under 3.4.2 (*Investments in equity*) below.

61 Taxonomy Regulation Articles 1(2) and 5–8. For reactions, see 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 (COM(2021) 188 final) p. 3. Gortsos (2020) p. 10 offers a helpful summary of the scope of application of the Taxonomy Regulation.

62 See e.g. Art. 2(22) of the SFDR, where 'sustainability risk' is defined as an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential *material negative impact on the value* of the investment (my emphasis). On the concept of *double materiality* as key to sustainability reporting, see EFRAG report "Proposals for a Relevant and Dynamic EU Sustainability Reporting Standard-Setting", pp. 7–8. (Accessed 19 August 2021 at: https://www.efrag.org/Lab2#subtitle2). "EFRAG" is short for the European Financial Reporting Advisory Group, which has been mandated to work in parallel with the EU Commission in development of the CSRD. For U.S. purposes, see Sec. & Exch. Comm'n, Commission Guidance Regarding Disclosure Related to Climate Change, 75 Fed. Reg. 6290 (Feb. 8, 2010) (requiring a company to disclose climate change impacts and risks if there is a clear and quantitatively material effect on its business). The SEC is currently consulting on updated standards for climate risk disclosure, see https://www.sec.gov/news/public-statement/lee-climate-change-disclosures (Accessed 19 August 2021).

63 Definitions of the term "corporate governance" are provided by Östberg (2020) pp. 13–15.

64 The status of this process can be tracked and documents found at: Sustainable corporate governance (europa.eu). See Siri & Zhu (2021) p. 179 for an overview of EU law relating to corporate governance.

Finally, let us have a look at what fits within the scope of *financial regulation*. The introduction of sustainability considerations within finance and risk management involves the core of the regulation of financial intermediaries. In the past few years, supervisors have seen their mandates updated to include the management of sustainability risks by the supervised entities.[65] It is uncontroversial today that the risks to the financial system posed by climate change – in the form of transition, physical and liability or regulatory risk – must be fully integrated by regulated financial entities.[66] Further changes are expected in the framework for investment firms, asset managers and insurers, to clarify their respective obligations when it comes to sustainability factors, above and beyond what follows from the SFDR.[67]

Policy measures within the sustainable finance sphere are undertaken on the basis that investors have not been sufficiently engaged in long-term projects required for the transition into a CO2 neutral economy. One explanation for this is that long term (and hence more uncertain) projects require more capital for financial stability purposes. A greater buffer must be maintained, which is expensive.[68] In light of this, and in the hope of both furthering the redirection of resources and mitigating climate risk, the EU is considering whether to explicitly provide a discount – a "green supporting factor" – in capital adequacy calculations for financial institutions that lend to green activities.[69]

65 See European Central Bank (ECB): Guide on climate-related and environmental risks – Supervisory expectations relating to risk management and disclosure. November 2020. Also see EBA report and opinion: https://www.eba.europa.eu/eba-advises-commission-kpis-transparency-institutions%E2%80%99-environmentally-sustainable-activities (Accessed 19 August 2021). Solana (2020) pp. 111–112 provides further references to the debate on the mandate of supervisory authorities and in particular the ECB. Also see Grünewald (2021) p. 250.

66 On climate change and financial stability from a macroprudential perspective, see Grünewald (2021) especially pp. 229–231. On the effect on the pricing of bank loans of transition and climate policy risk, see Delis et al. (2021).

67 See in 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 (COM(2021) 188 final) p. 11.
Colaert (2021), in particular pp. 456–459. See Busch, D. (2020) highlighting some of the legal questions that have arisen for regulated entities in the context of sustainability disclosure. Also see CMU Action Plan: COM(2020) 590 final (24 September 2020), Action 8.

68 This is a general assumption. For more on the cost of holding regulatory capital, see Plosser & Santos (2018), Gorton & Metrick (2013) p. 39.

69 Ramos Muñoz et al. (2021) give an account of the Green Supporting Factor or "GSF" debate on p. 39. Also see Solana (2020) p. 110. The relevant rules on capital adequacy are found in the Capital Requirements Regulation, Regulation (EU) 575/2013 as amended ("CRR"). An inspiration for the potential GSF, the SME supporting factor, which is intended to increase lending

Its success, if implemented, hinges on (among other things) the accuracy and availability of climate data.[70]

3.3.3 SUMMARY OF THE REGULATORY DIMENSION

It is clear from the above summary that the legislator, within the realm of finance, does not yet use tools such as prohibitions against lending to heavy fossil fuel emitters or outright monetary penalties to compel sustainable business practices. Instead, members of the financial industry in their roles as intermediaries are expected to influence the real economy (and net emissions) by greater transparency and updating of risk and pricing mechanisms. Against this regulatory backdrop, let us move on to review what sustainable finance entails from a market or transactional point of view.

3.4 THE TRANSACTIONAL DIMENSION

3.4.1 INTRODUCTION

This section emphasises a practical approach that allows cultivation of a set of skills when it comes to drafting and advising market actors. It draws on the most prevalent types of transactions that tend to fall under the sustainable finance label. This dimension could however be developed to involve any transactions that relate to climate or sustainability impacts, and that are entered into in provision of any of the services fulfilling the functions of financial markets. Such functions have been summarised as follows by Armour et al. (2016):

i. providing a secure mechanism for payments at a distance;

ii. *mobilising capital* from savers who have more financial resources than uses for them;

iii. *selecting projects* from amongst those seeking investment to capital;

iv. *monitoring* the performance of those executing projects in which investment has been made; and

v. *managing risk*.[71]

to small and medium sized businesses, is found in CRR, Article 501.

70 The availability of data on the climate impact of business activities is one of the main practical issues characterising all aspects of sustainable finance regulation. See e.g. Busch, D. (2020) (section 9) in relation to the SFDR and Taxonomy Regulation. See CMU Action Plan: COM(2020) 590 final (24 September 2020), Action 1.

71 Armour et al. (2016) pp. 22–23 (emphasis in original).

When taking a transactional approach, my impression is that established legal terms and tools are recycled to feature in the context of sustainable finance, rather than invented from scratch. A recurring legal question is therefore whether it is appropriate, or even possible, to apply the law relating to settled concepts on legal positions where sustainability is in focus.[72]

3.4.2 INVESTMENTS IN EQUITY

Where investors are providing equity capital, two main legal themes are triggered. *The first theme* is how an investor is supposed to know about the sustainability performance of a company. Translated into legal questions, this is about rules for disclosure of information. It is also about standardisation and accounting to ensure sustainability disclosures that can be easily accessed and compared.[73] Further, it includes thinking about the duties of fund managers and other intermediaries when brokering or advising clients. These issues are similar across both equity and traded debt investments, building on classical areas of regulation to overcome information asymmetries, and to promote investor protection and market efficiency.

Rules that target information have so far been mostly relevant in relation to *exit* strategies, ensuring that investors have the knowledge required to "vote with their feet". It is however often stated that abandoning "brown" assets is not a viable strategy on the aggregate level. Investors also need to stay and engage with heavy carbon emitters to enable a transition of the whole economy.[74] To expand from the *exit* option, one may wish to study the exit mechanisms together with legal strategies that allow *voice* to be exercised or that *coerce* carbon emitters into changing their behaviour.

The second theme is therefore about the design and interpretation of company law. With Ramos Muñoz's framework, this relates to finding the best *voice and coercion* strategies. The potential and perils of a reshaping of company law for purposes of the transition to a net zero emissions economy are currently the focus of a rich international and cross-disciplinary debate.[75] In legal terms,

72 E.g. Ramos Muñoz et al. (2021) p. 29, suggest in a recent paper that the concept of a bond trustee, which is used to overcome coordination problems in the bond market, could be extended to fulfilling the function of a "green trustee". Further, they emphasise the need to analogise between financial promises and "green" contractual undertakings.

73 See above under 3.3.2 (*What is regulated within sustainable finance?*) and Ramos Muñoz et al. (2021) p. 30.

74 Quigley (2020). More on divestment and the problem with "stranded assets", see Delis et al. (2021), especially pp. 3 and 7.

75 Ferrarini et al. (2021). Möslein & Sørensen (2021). Östberg (2020) accounts for important literature regarding the incorporation of sustainability objectives into the legal purposes of

it relates to the duties of directors, strategies for investor influence, and the purpose of (typically) a limited liability company.

In discussions regarding the permitted or appropriate purposes of companies beyond profit maximisation, Ferrarini suggests that "[r]ecent scholarly works tend to polarize to the extremes, either restoring a pure theory of shareholder value or subordinating corporate profit to social value and its direct implementation by firms."[76]

Recalling the choice discussed in 3.2.5 (*Summary of theoretical points of entry*) above, such polarization may be read as an illustration of fundamentally differing basic – and in the worst case, tacit – views on the relationship between financial performance and sustainability. For illustrative purposes, consider the following statement by Sjåfjell et al., which becomes the backdrop of all their subsequent reform proposals and analyses: "Pushing back against the social norm of shareholder primacy, the pressure on business to maximise returns for investors, is key to achieving sustainability."[77] While a review of recent literature does not leave such a claim unsubstantiated, it is still controversial.[78]

As Ferrarini shows, today's scientific and business consensus on climate change and the weight of concepts such as the "universal owner" may render a perceived dichotomy between Friedman's shareholder value primacy on the one hand and stakeholderism or sustainability considerations on the other largely obsolete.[79]

limited liability companies. In relation to legal action as an enforcement (and political) strategy, see the much-discussed case Shell Milieudefensie et al. v. Royal Dutch Shell plc. This and other climate lawsuits can be readily accessed at the Sabin Center's site www.climatecasechart.com (accessed 19 August 2021). Solana (2020) provides a typology of climate finance legislation. Also see Ramos Muñoz et al. (2021) pp. 36–39, Siri & Zhu (2021) pp. 186–187 on the EU Commission's recent studies on due diligence and directors' duties, respectively.

76 Ferrarini (2021) p. 96.

77 Sjåfjell et al. (2019) p. 7.

78 See e.g. Östberg (2020) p. 49, Ferrarini (2021) p. 86, Hansen et al. (2020) p. 4.

79 Ferrarini (2021) pp. 98–99. Pacca (2021) on p. 156 states that: "Doing well by doing good" is a short-termism theory. According to this theory, long-term investors temporarily accept lower returns on "green" investments to avoid future losses from climate change risk." On the "universal owner"-theory, see Quigley (2020). On stakeholderism, see Bebchuk & Tallarita (2020). It refers to a situation where corporate leaders consider the well-being of stakeholders (rather than just shareholders) in business decisions. A different view, see Deffains et al. (2021) p. 3: "…These de jure or de facto amendments to shareholder-value-maximization objective fall short to reformulate governance principles that would tie any firm to the broader society in an efficient and coherent way. Without a profound reform of those principles, the only choice will be to proceed by accumulating legal CSR constraints on firms, which will repel entrepreneurs."

3.4.3 INVESTMENTS IN DEBT

Investments in debt (as opposed to equity) entail a larger scope for market participants to design the desired level of enforceability when it comes to sustainability performance.[80] The focus of attention therefore turns to analysing market practice, contract and insolvency implications rather than debating potential new legislation. Interesting legal aspects include (i) whether the objective of a sustainable future can be taken into account on different levels of legal and/or contract interpretation;[81] (ii) the benefits and draw-backs of different types of green contractual undertakings, highlighting for example the difficulties in combining undertakings on topics characterised by a high pace of innovation with longer maturities; and (iii) the interplay between the freedom of contract and the EU regulatory regime, including the boundaries set therein of how and where to disclose information about the green properties of bonds.

Contract law in the context of financing cannot, I believe, be properly understood without considering the interaction with insolvency law on the one hand, and financial regulation on the other. In the relationship between borrower and lender, agreements are primarily put in place to manage the downside risk associated with the borrower's default. Further, the lender will typically be subject to financial regulation that provides barriers and incentives for its business decisions.

3.4.3.1 USE OF PROCEEDS BONDS

The most commonly used debt instrument in sustainable finance to date is a bond where the borrowed funds are ear-marked for green purposes.[82] The definition of what should qualify as "green" in this context has been subject to market-led developments.[83] As of April 2021 however, and as discussed

80 Hansen et al. (2020) p. 10, discuss the difference between debt and equity investments, in the context of potential changes to company law.

81 See Sisula-Tulokas (2020).

82 Park (2018) p. 16, Maltais & Nykvist (2020) p. 1.

83 See ICMA Green Bond Principles at https://www.icmagroup.org/sustainable-finance/the-principles-guidelines-and-handbooks/green-bond-principles-gbp/ and the CBI at https://www.climatebonds.net (both accessed 18 August 2021). Third party consultants and certifiers (such as Cicero and Sustainalytics) are crucial to this market. The focus of third-party service providers and certifiers is likely shifting to include increasingly more data collection support and analysis regarding taxonomy alignment. Further, see Tripathy et al. (2020) p. 103 for a mapping of three different (but often overlapping) strategies for labelling a bond as green, environmental or sustainable.

above, the EU has launched the first parts of a taxonomy which legally defines what constitutes a "green" activity.[84]

The drafting of a green promise under such bond instruments may be reviewed from a contract law perspective, bearing in mind the purposes of including a green element. Further, one will want to consider that terms and conditions of bonds that are offered to the public or listed on an exchange in the EU are covered by the Prospectus Regulation.[85] Hence, there are formal constrains to the freedom of contract.

Borrowers that breach important terms of their agreement with lenders must normally be prepared to make an early repayment and to compensate the lenders for losses due to the default. In contrast, the market view has (up until now) been that standard commitments by an issuer of a green bond to undertake CO2 reducing projects are not, and should generally not be, enforceable.[86] This means that investors, on the face of it, are not entitled to any rights or remedies in case an issuer of green bonds would fail in relation to its green undertakings. Reporting and tracking in relation to green projects is however mandatory. Market-led standards for use-of-proceeds bonds, as well as the voluntary standard for EU Green Bonds produced by the EU Commission, rest on third party certification, tracking and reporting as a "mode of governance".[87]

If one were to legally analyse the consequences of using proceeds for something other than what is specified in bond or loan documentation, there is not necessarily a separate analysis to be made in relation to the "green". The requirement to specify use of proceeds for a public debt issuance has been there for a long time and now follows from the Prospectus Regulation. Use

84 See Gortsos (2020) and House et al. (2020) for recent comments on the Taxonomy Regulation.

85 Regulation (EU) 2017/1129 of the European Parliament and of the Council (the "Prospectus Regulation").

86 On the potential enforceability of green use of proceeds elements in Swedish MTN programmes listed as of 2018, see Göthlin (2019). For a discussion of the design of contract terms (using EMTN programs as a starting point) from a Nordic perspective, see Forsbacka (2021).

87 Proposal for a Regulation of the European Parliament and of the Council on European Green Bonds (COM/2021/391 final). Park (2018) pp. 25 and 28–29. Also see Flammer (2020) who has found that certification is what sets (financially and sustainability-wise) successful green bonds apart, p. 5. Both the threat of revocation of a certification and the de-listing from a certain green list can work as coercion tools in practice, since such factors are often a pre-condition to the investor's ability and decision to invest. Park (2018) p. 28, observes that institutional investors are often required to invest in benchmark-eligible securities only.

of proceeds is also specified in privately negotiated loan agreements, simply because the lenders base their decision to lend on the borrower's business case and information on what the money is for.[88]

The contractual innovation here simply lies in replacing the standard "general corporate purposes" with "in accordance with green framework" in the use of proceeds box of template bond terms. That change is what adds complicated tracing and reporting obligations and breathes life into a previously dead part of the documentation.

It is not a settled question whether and to what extent a violation of the specified use of proceeds would affect investors' control and acceleration rights, and whether the issuer/borrower, advisors or underwriters in the context of green undertakings could become liable under either prospectus rules or private or public loan terms.[89] While significant standardisation efforts are being made when it comes to defining "green" products from the taxonomy and accounting perspectives, diverging national rules on damages and contract law still govern the rights and obligations of investors, underwriters and issuers.[90] Given the political weight of climate change mitigation and

88 In relation to disclosure of use of proceeds under prospectus rules, see Prospectus Regulation, Annex I, IV (*Essential Information*) (C) (among other instances). Further, Commission Delegated Regulation (EU) 2019/980 of 14 March 2019, Art. 38 (a)–(d) and Annex 14, item 3.2. In relation to information on the use of proceeds in non-public loans, see Göthlin (2019) p. 578 and Wright (2014) p. 82.

89 Regarding the civil liability for the contents of a prospectus, see Art. 11 of the Prospectus Regulation.

90 See Busch, D. (2020), Section 11 (*No harmonisation of liability law*) in relation to disclosure. Following a request for a preliminary ruling from the Spanish Supreme Court, the CJEU has recently held that (i) investors other than those for whose investments a prospectus has been directly prepared are entitled to rely on a prospectus, and (ii) Article 6(2) of Directive 2003/71 (which preceded Art. 11 of the Prospectus Regulation) does not preclude national law from taking into account in a claim for damages that a qualified investor was, or ought to have been, aware of the economic situation of the relevant issuer otherwise than through the prospectus. Bankia SA v Unión Mutua Asistencial de Seguros (UMAS), C-910/19. ECLI:EU:C:2021:433. Other CJEU cases relating to liability for the information published in a prospectus include Alfred Hirmann v Immofinanz AG, C-174/12. ECLI:EU:C:2013:856. In May 2021, the CJEU clarified the EU jurisdiction in which an action must be brought to claim for losses arising out of an investment decision based on incorrect, inaccurate or misleading statements published by an issuer. Under article 7(2) of the Recast Brussels Regulation (1215/2012), the company must be sued in the jurisdiction in which its reporting obligations arise, not the jurisdiction in which the investment decision is made. See Vereningen van Effectenbezitters v BP plc (C-709/19). ECLI:EU:C:2021:377.

adaptation, how would a court interpret the civil liability for information on the climate properties of an issuer or its green undertakings?[91]

Aside from the use of proceeds undertaking as a basic property of the green bond, it is most commonly structured as a recourse-to-the-issuer loan.[92] This means that the repayment of the bond does not depend on the outcome of any particular project, but is tied to the overall performance of the issuer. From a purely financial risk perspective, it is therefore no different than any other loan. In the insolvency of the issuer, investors must compete with all other creditors. Funds will therefore arguably be advanced to companies that would have been able to obtain such money in any case. This is sometimes referred to as a problem of *additionality*.[93]

Over the past couple of years, the non-enforceable use-of-proceeds model for green bonds has been complemented by bonds and loans with bespoke terms, which will be discussed below.

3.4.3.2 SUSTAINABILITY LINKED BONDS AND LOANS

When issuing a green bond, companies (and investors) may prefer to design its green elements as bespoke undertakings rather than earmarking of proceeds. One early example in the capital markets space was a bond issued by Italian utility ENEL, the terms of which included a margin adjustment tied to the issuer's fulfilment of certain carbon emission reduction goals.[94]

91 Ramos Muñoz et al. (2021) pp. 34–35 and adding on p. 36: "The provision of specific liquidated damages clauses or penalty clauses in the prospectus to 'ensure' the green promise would partly solve the enforcement problem, adding to the credibility of the promise. However, this is not an established practice, and for obvious reasons, because it unlikely that issuers may take the initiative spontaneously to commit to pay damages if they fail to abide by their promises."

92 Maltais & Nykvist (2020) p. 1. Green bonds can also be structured as project bonds, with recourse for investors only to certain defined green projects or revenue streams.

93 "Additionality" refers to the question of whether sustainable finance techniques contribute to less CO2 emissions or other benefits for the environment or if the borrowing entities would have carried out the same projects regardless of how their financing is labelled. Additionality in the context of public funding is discussed by Brown et al. (2010). In the narrower context of green bonds, additionality is discussed by Shishlov et al. (2016). Also see Ahlström & Monciardini (2021) who refer in their conclusions to the question of additionality from a policy perspective being whether an intervention has an effect compared to the status quo.

94 Allen & Overy advises ENEL on largest sustainability-linked transaction ever priced – Allen & Overy (allenovery.com) (Accessed 22 August 2021). A recent Swedish example is: Sustainability-Linked Finance – H&M Group (hmgroup.com) (Accessed 20 August 2021). For an influential market initiative, see Sustainability-Linked Bond Principles (SLBP) (icmagroup.org).

Issuers have also begun combining a use-of-proceeds approach with predefined sustainability performance targets. For the investor, this entails both the comfort of seeing reporting and tracking of proceeds *and* a level of enforceability in relation to the borrower's other sustainability related commitments. Among the first to issue "taxonomy aligned" bonds, EON:s green framework explicitly specifies how the activities that are financed with green bond proceeds are classified in accordance with the Taxonomy Regulation.[95]

Alternatives to use-of-proceeds clauses are also used in privately negotiated loan agreements. Alas, the terms of private debt issuances are rarely made available to the public in Europe. Efforts to standardise and make visible the various models that have become popular among borrowers and lenders have however been made by the Loan Market Association (LMA).[96] In the LMA sustainability linked loan principles, "…sustainability linked loans look to improve the borrower's sustainability profile by aligning loan terms to the borrower's performance against the relevant predetermined SPTs. For example, sustainability linked loans will often align the borrower's performance to margin redetermination over the life of the sustainability linked loan."[97]

Even if no hard defaults are tied to certain sustainability performance targets of a borrower, lenders are increasingly working with their borrowers to incorporate sustainability ambitions into financial models. Banks themselves are under pressure to increase their share of lending that is aligned with the Taxonomy Regulation, also known as their green asset ratio (GAR).[98]

3.4.4 SUMMARY OF THE TRANSACTIONAL DIMENSION

The question of what might be an optimal contractual solution for green debt instruments has gained traction in recent years. Arguments can be made for enforceability as well as "soft" undertakings from both governance and economic efficiency perspectives, although later discussions raise the question

95 Green Bonds: Sustainable business & green financing | E.ON (eon.com) (accessed 10 June 2021).

96 LMA_ELFA_Best_Practice_Guide_to_Sustainability_Linked_Leveraged_Loans.pdf (Accessed 11 August 2021).

97 Sustainability_Linked_Loan_Principles_V032.pdf (lma.eu.com), (Accessed 28 May 2021). SPTs is short for sustainability performance targets. Also see Guide and checklist for issuance of Sustainability-Linked Loans | The Chancery Lane Project.

98 See EBA report and opinion on: https://www.eba.europa.eu/eba-advises-commission-kpis-transparency-institutions%E2%80%99-environmentally-sustainable-activities (Accessed 19 August 2021).

of "*coercion*" as a tool that may become more important in light of the urgency of the climate transition.[99]

More specifically, one legal discourse is concerned with how to make green undertakings credible, as opposed to "gameable".[100] The idea is that in order to really further climate resilience, market actors should not be able to renegotiate or pay themselves out of green promises. Imagine that a party promises its counterparty under any kind of contract to cut CO2 emissions, but does not. Customary contractual remedies are not designed to compensate for the externalities already inflicted in such cases. Nor is there anything to stop private parties from forgiving or renegotiating the terms of the relevant contract.

Against this background, it has been discussed whether and how to introduce *third parties* that could be recipients of a green "penalty" in case of a breach by either party in a bilateral relationship. Undertakings that are subject to such credibility enhancements feature in the academic debate as a "voluntary carbon tax" or a "green pill". The common trait being that a failure to perform under certain sustainability targets or promises increases the costs payable by the breaching party, and at the same time, the recipient of such payment is extrinsic to the main business relationship.

The use of a third party as recipient of potential future proceeds bears resemblance to Ramos Muñoz's idea of a "green trustee".[101] Solutions that rest on the introduction of a third party in the financing arrangements of a company have many merits. At the same time, they carry the disadvantage of increased transaction costs (which are borne by the issuer/borrower) which largely precludes SMEs from such structures.

Any discussion on the design of debt contracts is closely tied to theories and evidence of pricing. As pointed out by Tripathy et al. (2020), coercion mechanisms in debt contracts are not hard to invent, but they tend to come with additional legal risks and perhaps also higher legal fees.[102] Arguments have therefore been advanced to the effect that there must be a clear pricing advantage to issuing green, if the "green" comes in the shape of enforceable undertakings. Following through on this thought, a lower interest rate which

99 Ramos Muñoz et al. (2021).
100 Armour, John, Enriques Luca and Wetzer Thom. Corporate Carbon Reduction Pledges: Beyond Greenwashing. Oxford Business Law Blog, 2 July 2021. Commented by Fisch, Jill. Can and should corporations commit to a voluntary carbon tax? Oxford Business Law Blog, 6 July 2021.
101 Ramos Muñoz et al. (2021) p. 29.
102 Tripathy et al. (2020) p. 112. Göthlin (2019) p. 576.

manifestly derives from the green properties of a bond may in itself support investor litigation that hinges on being able to show financial losses.[103]

Finally, while taxonomies and sustainability accounting standards facilitate screening and benchmarking, there is still an inherent conflict in trying to make lasting undertakings on topics characterised by a high pace of innovation. This is especially relevant to consider in tap issues where securities are issued on identical terms (and so are fungible) with previous ones. Legal undertakings should work in favour of borrowers daring to aim higher, not align businesses with out-dated green standards because they have been enshrined in agreements.

4. FINAL REMARKS

Legal perspectives on sustainable finance are increasingly present at scholarly conferences and in academic programs. However, looking at examples of banking and finance law literature, even reasonably new editions do not cover the subject.[104] That is certainly about to change.[105]

As legal scholarship evolves, a promising avenue of research could be to develop the discourse on how promises that aim to have a positive (or avoid a negative) impact on society are made to be credible and not susceptible to renegotiation or shifting investor collectives. This may involve new kinds of contract structures and market actors, such as green trustees.

Regardless of the chosen approach, legal enquiries should not be confined to one's own jurisdiction, since neither the flow of capital nor the scientific discourse on finance and sustainability are. Further, when reviewing existing literature, I believe it is helpful to consider the impact of the fundamental choice outlined in 3.2.5 (*Summary of theoretical points of entry*) above on an author's approach and conclusions.

103 Tripathy et al. (2020) p. 112.

104 This includes the following otherwise comprehensive and forward-looking titles: Dalhuisen, Jan H. Dalhuisen on Transnational Comparative, Commercial, Financial and Trade Law, Volumes 1–3, Hart Publishing, 7th ed. 2019. Cranston, Principles of Banking Law (2018), Wood (2019), Armour et al. (2016), and Busch et al. Prospectus Regulation (2020). Swedish textbooks concerning banking and finance are scarce on the whole, and none of them considers sustainable finance (yet).

105 Forthcoming titles that will include sustainable finance considerations include the Swedish "Aktiebolagets funktion" by Daniel Stattin (Iustus 2021) and the Danish "Finansieringsret" by Henrik Kure (Karnov Group, 3rd ed. 2021).

With this paper, I have started sketching a roadmap to how sustainable finance could be included in legal education across a theoretical, regulatory, and transactional dimension. The role of law in shaping a sustainable economy deserves a prominent position in law school curriculums, whether as a distinct subject or as a feature that influences other, traditional, subjects. In other words, a lot of challenging and rewarding work remains to be done.

REFERENCE (ALPHABETHICALLY)	CITED AS
Ahlström, H., Monciardini, D. The Regulatory Dynamics of Sustainable Finance: Paradoxical Success and Limitations of EU Reforms. Journal of Business Ethics (2021). https://doi.org/10.1007/s10551-021-04763-x.	Ahlström & Monciardini (2021)
Alexander, Samuel Kern and Fisher, Paul, Banking Regulation and Sustainability (November 5, 2018). Available at: https://ssrn.com/abstract=3299351.	Alexander & Fisher (2018)
Armour, John, Awrey Dan, Davies Paul, Enriques Luca, Gordon Jeffrey, Mayer Colin and Payne Jennifer. Principles of Financial Regulation. Oxford. 2016.	Armour et al. (2016)
Armour, John, Enriques, Luca and Wetzer Thom. Corporate Carbon Reduction Pledges: Beyond Greenwashing. Oxford Business Law Blog, 2 July 2021.	N/A
Arnold Annika. Climate Change and Storytelling, Palgrave Studies in Environmental Sociology and Policy. 2018. https://doi.org/10.1007/978-3-319-69383-5_1.	Arnold (2018)
Bebchuk, Lucian A. and Tallarita, Roberto, The Illusory Promise of Stakeholder Governance (February 26, 2020). Cornell Law Review, Volume 106, 2020, pp. 91–178, Harvard Law School John M. Olin Center Discussion Paper No.1052, Harvard Law School Program on Corporate Governance Working Paper 2020-1, Available at: http://dx.doi.org/10.2139/ssrn.3544978.	Bebchuk & Tallarita (2020)
Belinga, Rachelle and Morsing, Mette. Teaching Sustainable Finance. Report. Mistra Center for Sustainable Markets (MISUM). Stockholm School of Economics. 2020.	Belinga & Morsing (2020)
Bracking, S. (2019). Financialisation, climate finance and the calculative challenges of managing environmental change. Antipode, 51(3), 709–729.	Bracking (2019)
Brans, Edward and Scheltema, Martijn. Addressing Climate (Liability) Risks in the Financial Sector. In Beekhoven van den Boezem, Jansen and Schuijling (eds). Sustainability and Financial Markets, Wolters Kluwer (2019).	Brans & Scheltema (2019)
Brown J., Bird, N. and Schalatek, L., 2010, 'Climate Finance Additionality: Emerging Definitions and their Implications', Climate Finance Policy Brief No.2, ODI and Heinrich Boll Foundation.	Brown et al. (2010)
Busch, Danny. Sustainable Finance Disclosure in the EU Financial Sector. EBI Working Paper Series 2020 no. 70. 06/04/2021.	Busch, D. (2020)
Busch, Danny, Ferrarini, Guido and Frankx, Jan Paul. Prospectus Regulation and Prospectus Liability. Oxford University Press (2020).	Busch et al. Prospectus Regulation (2020)
Busch, Danny, Ferrarini Guido and van den Hurk Arthur. The European Commission's Sustainable Finance Action Plan and Other International Initiatives. In Busch, Danny, Ferrarini Guido and Grünewald Seraina (eds). Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets. EBI Studies in Banking and Capital Markets Law. Palgrave McMillan (2021).	Busch, Ferrarini & van den Hurk (2021)
Cafaggi, Fabrizio. Private Regulation in European Private Law. In Hartkamp, Arthur et al. (eds). Towards a European Civil Code. Wolters Kluwer. 4th ed. 2011.	Cafaggi (2011)

Chen, Kelly. Legal Aspects of Conflicts of Interest in the Financial Services Sector in the EU and China – The XYZ of Norm-making. Stockholm University. 2018.	Chen (2018)
Colaert, Veerle. Integrating Sustainable Finance into the MiFID II and IDD Investor Protection Frameworks. In Busch, Danny, Ferrarini Guido and Grünewald Seraina (eds). Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets. EBI Studies in Banking and Capital Markets Law. Palgrave McMillan (2021).	Colaert (2021)
Cranston, Ross, Avgouleas Emilios, van Zweiten Kristin, Hare Christopher and van Sante Theodor. Principles of Banking Law, 3rd ed. 2018.	Cranston, Principles of Banking Law (2018)
Deffains, Bruno and Durand, Rodolphe and Hurstel, Daniel, Manifesto Shareholder Duacy and Efficient Governance for the XXIst Century Responsible Firm (July 30, 2021). Available at SSRN: https://ssrn.com/abstract=3894234.	Deffains et al. (2021)
Delis, Manthos D. and de Greiff, Kathrin and Iosifidi, Maria and Ongena, Steven R. G., Being Stranded with Fossil Fuel Reserves? Climate Policy Risk and the Pricing of Bank Loans (April 21, 2019). Swiss Finance Institute Research Paper No. 18-10, Available at: https://ssrn.com/abstract=3125017.	Delis et al. (2021)
Epstein, G.A. (ed.) (2005). Financialization and the world economy. Cheltenham: Edward Elgar Publishing.	Epstein (2005)
Esposito, L., Gatti, E.G. and Mastromatteo, G. (2019). Sustainable finance, the good, the bad & the ugly: A critical assessment of the EU institutional framework for the green transition. Milan: Dipartimento di Politica Economica, Univesità Cattolica del Sacro Cuore. Available at: https://ssrn.com/abstract=3382242.	Esposito et al. (2019)
Falkner, Robert. The Paris Agreement and the New Logic of International Climate Politics. *International Affairs* 92: 5 (2016) 1107–1125.	Falkner (2016)
Ferrarini, Guido. Redefining Corporate Purpose: Sustainability as a Game Changer. In Sustainable Finance in Europe (2021). In Busch, Danny, Ferrarini Guido and Grünewald Seraina (eds). Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets. EBI Studies in Banking and Capital Markets Law. Palgrave McMillan (2021).	Ferrarini (2021)
Ferrarini, Guido, Siri Michele and Zhu, Shanshan, The EU Sustainable Governance Consultation and the Missing Link to Soft Law (April 9, 2021). European Corporate Governance Institute – Law Working Paper No. 576/2021, Available at SSRN: https://ssrn.com/abstract=3823186.	Ferrarini et al. (2021)
Fisch, Jill. Can and should corporations commit to a voluntary carbon tax? Oxford Business Law Blog 6 July 2021.	N/A
Flammer, Caroline, Corporate Green Bonds (April 14, 2020). Journal of Financial Economics (JFE), Forthcoming, Available at: https://ssrn.com/abstract=3125518.	Flammer (2020)
Forsbacka, Kristina, Climate Finance and the Point of Green Bonds (Licentiate Thesis), Luleå University of Technology (2021).	Forsbacka (2021)
Gómez-Baggethun E, Ruiz-Pérez M. Economic valuation and the commodification of ecosystem services. Progress in Physical Geography: Earth and Environment. 2011;35(5):613–628. doi:10.1177/0309133311421708.	Gómez-Baggethun & Ruiz-Pérez (2011)

Gorton, Gary and Metrick, Andrew. Handbook of the Economics of Finance, Volume 2 Part A, Constantinides, George, Harris, Milton and Stulz Rene (eds). Elsevier B.V. 2013.	Gorton & Metrick (2013)
Gortsos, Christos, The Taxonomy Regulation: More Important Than Just as an Element of the Capital Markets Union (December 16, 2020). European Banking Institute Working Paper Series 2020 – no. 80, Available at: https://ssrn.com/abstract=3750039.	Gortsos (2020)
Grünewald, Seraina. Climate Change as a Systemic Risk in Finance: Are Macroprudential Authorities Up to the Task? In Busch, Danny, Ferrarini Guido and Grünewald Seraina (eds). Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets. EBI Studies in Banking and Capital Markets Law. Palgrave McMillan (2021).	Grünewald (2021)
Göthlin, Sara. The Green Promise – Contract Law and Sustainable Purpose Bonds, Juridisk Tidskrift 2018/2019 pp. 567–586.	Göthlin (2019)
Hahn, Thomas, McDermott Constance, Ituarte-Lima Claudia, Schultz Maria, Green Tom and Tuvendal Magnus. Purposes and degrees of commodification: Economic instruments for biodiversity and ecosystem services need not rely on markets or monetary valuation, Ecosystem Services, Volume 16, 2015, Pages 74–82.	Hahn et al. (2015)
Hajer, Maarten. (1996): Ecological modernisation as cultural politics. *Risk, environment and modernity: towards a new ecology, 253*.	Hajer (1996)
Hansen, Jesper Lau et al. Response to the Study on Directors' Duties and Sustainable Corporate Governance by Nordic Company Law Scholars (October 7, 2020). Nordic & European Company Law Working Paper No. 20-12, University of Copenhagen Faculty of Law Research Paper No. 100, Available at: https://ssrn.com/abstract=3709762.	Hansen et al. (2020)
Hardin, G. Tragedy of commons. *Science* 1968, *162*, 1243–1248.	Hardin (1968)
Hart, O., Broccardo, E.D. and Zingales, L. Exit vs. Voice. NBER Working Paper No. 27710. August 2020.	Hart et al. (2020)
Hirschman, Albert O. Exit, voice and loyalty: Responses to decline in firms, organisations, and states. 3–4, 30 (1970).	Hirchman (1970)
House, Katie, Mok Lionel and Tripathy Aneil. Defining Climate-Aligned Investment: An analysis of Sustainable Finance Taxonomy Development. Journal of Environmental Investing, vol 10, no. 1 (2020).	House et al. (2020)
Lagoarde-Segot, Thomas. Diversifying finance research: From financialization to sustainability, International Review of Financial Analysis, Volume 39, 2015, Pages 1–6.	Lagoarde-Segot (2015)
Larcker, David F. and Watts, Edward. Where's the Greenium? (February 12, 2019). Rock Center for Corporate Governance at Stanford University Working Paper No. 239, Stanford University Graduate School of Business Research Paper No. 19-14, Journal of Accounting and Economics, Volume 69, Issues 2–3, April–May 2020, 101312, Available at: https://ssrn.com/abstract=3333847.	Larcker & Watts (2019)
Lund, Dorothy S., Corporate Finance for Social Good (March 25, 2020). USC CLASS Research Paper No. CLASS20-3, USC Law Legal Studies Paper No. 20-3, 121 Columbia Law Review, Forthcoming 2021, Available at: https://ssrn.com/abstract=3511631.	Lund (2021)

Maltais, Aaron and Nykvist, Björn. Understanding the role of green bonds in advancing sustainability. 2020. Journal of Sustainable Finance & Investment. DOI: 10.1080/20430795.2020.1724864.	Maltais & Nykvist (2020)
Michelot, Agnès and Aseeva, Anna, From Ecosystem Services to Ecological Solidarity (December 21, 2016). Chapter 3 in Westra, Laura, Gray, Janice, Gottwald, Franz-Theo (eds). The Role of Integrity in the Governance of the Commons. Governance, Ecology, Law, Ethics. Springer, 2017, pp. 37–50, Available at https://ssrn.com/abstract=3056677.	Michelot & Aseeva (2017)
Möslein, Florian and Sørensen, Karsten Engsig, Sustainable Corporate Governance: A Way Forward (January 4, 2021). Nordic & European Company Law Working Paper No. 21-03, Forthcoming in European Company Law, European Corporate Governance Institute - Law Working Paper No. 583/2021, Available at: https://ssrn.com/abstract=3761711.	Möslein & Sørensen (2021)
OECD (2020), Global Outlook on Financing for Sustainable Development 2021: A New Way to Invest for People and Planet, OECD Publishing, Paris.	OECD (2020)
Pacces, Alessio M., Sustainable Corporate Governance: The Role of the Law. In Busch, Danny, Ferrarini Guido and Grünewald Seraina (eds). Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets. EBI Studies in Banking and Capital Markets Law. Palgrave McMillan (2021).	Pacces (2021)
Park, Stephen, Investors as Regulators: Green Bonds and the Governance Challenges of the Sustainable Finance Revolution (March 16, 2018). Stanford Journal of International Law, Vol. 54, No. 1, 2018, University of Connecticut School of Business Research Paper No. 18-12, Available at https://ssrn.com/abstract=3142887.	Park (2018)
Patterson Molly and Renwick Monroe Kristen (1998): Narrative in Political Science, Annual Review of Political Science 1998 1:1, 315–331.	Patterson & Monroe (1998)
Plosser, Matthew C. and Santos, João A. C. The Cost of Bank Regulatory Capital (June, 2018), FRB of New York Staff Report No. 853.	Plosser & Santos (2018)
Plumwood, V (2007): Chapter 17 Environmental Ethics in Pretty, J., Ball, A., Bemton, T., Guivant, J., Lee, D.R., Orr, Pfeffer, M. and Ward, H. (eds). 2007 The SAGE handbook of environment and society, Sage; Thousand Oaks.	Plumwood (2007)
Quigley, Ellen, Universal Ownership in Practice: A Practical Investment Framework for Asset Owners (May 28, 2020). Available at: https://ssrn.com/abstract=3638217.	Quigley (2020)
Ramos Muñoz, David, Garcia Elia Cerrato and Lamandini Marco. The EU's "green" finance. Can "exit", "voice" and "coercion" be enlisted to aid sustainability goals? EBI Working Paper Series 2021 -no. 90. 12/04/2021.	Ramos Muñoz et al. (2021)
Robbins, P. (2012): Chapter 1 Political and Apolitical Ecologies in Robbins, P. Political Ecology: A Critical Introduction, John Wiley & Sons; Hoboken, NJ.	Robbins (2012)
Shishlov, Igor & Morel, Romain & Cochran, Ian. (2016). Beyond transparency: unlocking the full potential of green bonds. 10.13140/RG.2.2.11081.85606.	Shishlov et al. (2016)

Siri, Michele and Zhu, Shanshan. Integrating Sustainability in EU Corporate Governance Codes. In Busch, Danny, Ferrarini Guido and Grünewald Seraina (eds). Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets. EBI Studies in Banking and Capital Markets Law. Palgrave McMillan (2021).	Siri & Zhu (2021)
Sisula-Tulokas, Lena. Kan en varas klimatbelastning vara ett köprättsligt fel? JFT 3/2020 s. 313–329.	Sisula-Tulokas (2020)
Sjåfjell, B, Mähönen, J, Taylor, MB, Maitre-Ekern, E, van der Velden, M, Novitz, T, Gammage, C, Cullen, J, Andhov, M & Caranta, R 2019, Supporting the Transition to Sustainability: SMART Reform Proposals. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3503310>.	Sjåfjell et al. (2019)
Solana, Javier, Climate Litigation in Financial Markets: A Typology. Transnational Environmental Law, 9:1 (2020), pp. 103–135. 2019 Cambridge University Press.	Solana (2020)
Storm, S. (2009): Capitalism and Climate Change: Can the Invisible Hand Adjust the Natural Thermostat? Development and Change, Vol. 40, No. 6, PP. 1011–1038.	Storm (2009)
Tripathy, Aneil, Mok Lionel, and Lunven Grégoire. A Multidisciplinary Literature Review of Academic Research on the Green Bond Market (September 12, 2020). Journal of Environmental Investing, 2020, Available at: https://ssrn.com/abstract=3691631.	Tripathy et al. (2020)
Tuori, Kaarlo. Critical Legal Positivism. Aldershot, Ashgate, 2002	Tuori (2002)
Yan, S., Ferraro, F. and Almandoz, J. (2019). The rise of socially responsible investment funds: The paradoxical role of the financial logic. Administrative Science Quarterly, 64(2), 466–501.	Yan et al. (2019)
Zadek, Simon. (2019). Financing a Just Transition. Organization and Environment, 32(1), 18–25.	Zadek (2019)
Zetzsche, Dirk Andreas and Anker-Sørensen, Linn, Regulating Sustainable Finance in the Dark (June 22, 2021). University of Luxembourg Law Working Paper Series 2021-007; EBI Working Paper 2021 - No. 97; European Business & Organisation Law Review (EBOR) -Forthcoming, Available at https://ssrn.com/abstract=3871677.	Zetzsche & Anker-Sørensen (2021)
Vandenbergh, Michael P. The Private Life of Public Law. Columbia Law Review, Nov., 2005, Vol. 105, No. 7, pp. 2029-2096. Stable URL: https://www.jstor.org/stable/4099486.	Vandenbergh (2005)
Wood, Philip R. Regulation of International Finance, Sweet & Maxwell, 2nd ed. 2019.	Wood (2019)
Wright, Sue. Handbook of International Loan Documentation. Palgrave MacMillan. 2nd ed. 2014.	Wright (2014)
Wymeersch, Eddy O., Financial Regulation: Its Objectives and Their Implementation in the European Union (March 26, 2019). European Banking Institute Working Paper Series 2019 – no. 36, Available at: https://ssrn.com/abstract=3360540.	Wymeersch (2019)
Östberg, J. Corporate Sustainability and Profit Maximisation in the Land of Unicorns (December 07, 2020). Faculty of Law, Stockholm University Research Paper No. 88, Available at: https://ssrn.com/abstract=3731281.	Östberg (2020)