# SUSTAINABLE FINANCE: REGULATION, ACTORS, AND INSTRUMENTS

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## 1. Introduction

The aspiration to achieve international and European goals — as set out in the UN Global Compact[1], the 2030 Agenda, the Green Deal and the European Commission's Action Plan for the

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[1] The United Nations Global Compact is a voluntary initiative and a commitment made, since 2000, by more than 20,000 companies from all over the world to promote the development of an economy inspired by ten principles of environmental sustainability, relating to human rights, working conditions, environmental protection, and anti-corruption. Companies cooperate within this group by acting according to uniform standards of conduct to guide the market towards sustainable investments to realise the 17 SDGs. Further information can be found at the following link: https://www.globalcompactnetwork.org/it/.

Capital Markets Union (UMC)[2] — and the attempt to adopt new and more sustainable industrial policies has led to a more careful assessment of the negative externalities produced on the environment by economic activities, also in view of the related social and environmental responsibilities[3].

The exercise of economic activities to produce an economic *surplus* value must also be carried out with respect for social and environmental goals. Those who manage to balance all these aspects to a greater extent, in their production phases and in the products and services they offer, are more competitive on the market and subject to a high number of consumer demands[4].

It is therefore necessary to direct and reallocate public financial resources, which are often lacking[5], and private financial resources towards investments oriented towards sustainability and climate protection[6]. To encourage the financial mobilisations and

[2] The aim of this Plan is to create a single capital market, to facilitate the circulation throughout the European territory. The first Action Plan of 2015, whose goals were only partially achieved, was followed in 2020 by a second Action Plan, aimed at: supporting a green, inclusive, and resilient economic recovery; making the European market an economic space in which to invest; and integrating national capital markets into a single market. For more details see the following link: https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/what-capital-markets-union_en.

[3] The reference is to corporate social responsibility, which will not be discussed here. However, it seems appropriate to refer, *ex multis*, to: G. Alpa, *Responsibility of company directors and the principle of "sustainability"*, 3 Contr. impresa 721-732 (2021).

[4] Italian Alliance for Sustainable Development (ASVIS), *Finanza per lo sviluppo sostenibile. Un tema strategico per l'Agenda 2030* (2020), 9 ff. (https://asvis.it/public/asvis2/files/Approfondimenti/GdL_Trasv_FINANZA.pdf); G. Giovando, *Vigilanza bancaria. Dagli aspetti tradizionali ai nuovi orientamenti ESG* (2022), 119-120.

[5] L. Ammanati & A. Canepa, *Intervento pubblico e finanza sostenibile per la transizione ecologica*, 4 Riv. trim. dir. econ. 153-154 (2022); A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia*, in 2 Contr. Ent. Europe 367&369 (2022); G. Giovando, *Vigilanza bancaria. Dagli aspetti tradizionali ai nuovi orientamenti ESG*, cit. at 4, 121. See also Strategy for Financing the Transition to a Sustainable Economy, 2, adopted through the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of July 6th, 2021, COM(2021) 390 final.

[6] A. Davola, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio*, 3 Riv. dir. banc. 517 (2022), expresses a positive opinion on the «pro futuro» suitainability of private investments to achieve

guide actors in their investments, the European Union has intervened by regulating the financial markets to provide them with a single discipline and to align not only European but also national financial resources. In fact, it was necessary to introduce criteria and instruments suitable for identifying green investments and enhancing their reliability.

In the light of these considerations and the increasing prominence of sustainable finance, it may be interesting to analyse its instrumental function in the realisation of the ecological transition process[7].

So, this study attempts to consider regulatory policies, actors and instruments used at European level. This analysis must be conducted considering certain critical profiles concerning the relationship between public and private actors, asking in which direction this relationship evolves, whether the choices adopted by the public actors condition private investment, and what concrete difficulties private actors encounter in adopting European legislative measures.

Increasingly frequent catastrophic natural events have shown the need for public intervention, which can no longer be

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environmental sustainability objectives, partially delegating companies to pursue and implement sustainability policy. On the balance between financial returns and social and environmental benefits, see M. La Torre & H. Chiappini, *Sustainable finance: Trends, opportunities and risks*, in M. La Torre & H. Chiappini (eds.), *Contemporary issues in sustainable finance* (2020), 281-288; M. Mocanu, L.-G. Constantin & B. Cernat-Gruici, *Sustainability Bonds. An International Event Study*, 6 J. Bus. Econ. & Mgmt. 1552 (2021); K. Wendt, *Social stock exchanges: Defining the research agenda*, in M. La Torre & H. Chiappini (eds.), *Contemporary issues in sustainable finance,* cit., 79-129.

[7] This is explicitly argued in Strategy for Financing the Transition to a Sustainable Economy, 2, considering the data and information contained in the study conducted by R. De Haas & A. Popov, *Finance and decarbonisation: why equity markets do it better*, 64 Research bulletin of the ECB, November 27th, 2019, (https://www.ecb.europa.eu/pub/economic-research/resbull/2019/html/ecb.rb191127~79fa1d3b70.en.html). See also L. Aristei, *Sustainable and Climate Finance. The Use of Platforms*, in 1 Eur. Review Public Law 287-295 (2023); F. Capriglione, *The financial system towards a sustainable transition*, 1 Riv. trim. dir. econ. 241 ff. (2021); European Court of Auditors, *Special Report. Sustainable finance: the EU must act more consistently to redirect funding towards sustainable investments* (2021); F. Riganti, *Regolazione del mercato e "fine di lucro". Spunti per una ricerca attualizzata in tema di sostenibilità*, Dirittobancario.it, May 4th, 2022.

postponed in the face of the prevalence of «destructive forces» over «constructive forces»[8].

The public authorities are called upon to adopt new industrial models that favour a transition towards an ecological dimension of the classic economic and production models, so that a real split between the exploitation of the natural resources still available and the achievement of economic goals can take place[9]. Economic growth must, therefore, be combined with environmental protection[10].

The preparation of a new economic and industrial model based on sustainability requires a rediscovery of public intervention. The latter does not intend to manifest itself through the imposition of positive obligations on companies and the market, but through regulatory instruments, with which to guide companies and their economic activities in the light of the principle of environmental sustainability, by preparing appropriate regulations, including programming[11]. Therefore, public intervention qualifies as a market regulation mechanism, and, through regulations, as a programming mechanism, because it is aimed at guiding companies in their production choices.

This public intervention was felt to be most necessary and urgent in relation to sustainable finance, in respect of which there is a clear impossibility of self-regulation by market players[12], since uniform rules need to be adopted throughout the EU to make all market participants informed and aware.

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[8] M.S. Giannini, *Diritto dell'ambiente e del patrimonio naturale e culturale*, 2 Riv. trim. dir. pubbl. 1122 (1971).

[9] G. Rossi, *Dallo sviluppo sostenibile all'ambiente per lo sviluppo*, in G. Rossi & M. Monteduro, *L'ambiente per lo sviluppo. Profili giuridici ed economici* (2020), 3-5.

[10] In the ecological transition process, development must be sustainable. According to G. Rossi, *La "materializzazione" dell'interesse all'ambiente*, in G. Rossi (ed.), *Diritto dell'ambiente* (2021), 20-21, sustainability is a limit to the maximisation of development.

[11] L. Ammanati & A. Canepa, *Intervento pubblico e finanza sostenibile per la transizione ecologica*, cit. at 5, 144 .

[12] L. Ammanati & A. Canepa, *Intervento pubblico e finanza sostenibile per la transizione ecologica*, cit. at 5, 144-147.

**2. Sustainable finance and ESG criteria**

The term "sustainable finance"[13] originates from the combination of the concepts of economic return produced by investments, sustainable development, and environmental protection with a view to financing and encouraging the change from a classic economic system to a circular one. Indeed, the awareness of adopting an economic model aiming at long-term economic growth that, while protecting the needs of not only current but also future generations, comprehensively considers the economic, environmental, and social dimensions has progressively increased[14].

At the international level, the Principles for Responsible Investment (PRI)[15] were drawn up as early as 2006, on the initiative of the UN Global Compact and the UNEP Finance Initiative[16]. Responsible investment[17] means a strategy and a practice, which

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[13] See the definitions provided by the Commissione Nazionale per la Società e la Borsa-CONSOB (https://www.consob.it/web/area-pubblica/finanza-sostenibile) and the Banca d'Italia (https://economiapertutti.bancaditalia.it/informazioni-di-base/finanza-sostenibile/).

[14] J.C.V. Pezzey & M.A. Toman, *Sustainability and its economic interpretations*, in R.H. Simpson, M.A. Toman & R.U. Ayres (eds.), *Scarcity and Growth: Natural Resources and the Environment in the New Millennium* (2005), 129, express themselves in terms of the «three E's»: environment, economy, equity.

[15] The elaboration of the PRIS is due to a group of institutional investors and experts from around the world, set up on the initiative of the UN Secretary General in 2005 to promote a single, uniform investment policy leading to the creation of a sustainable global financial system. There are six principles, and they mainly concern the inclusion of ESG criteria in the analysis and investment decision-making processes, the monitoring of their compliance and their dissemination. For further information on this point, please consult the special document containing the PRIS, which can be found at the following link: https://www.unpri.org/download?ac=10948.

[16] The UNEP Finance Initiative, founded in 1992, was the first global organisation to combine sustainability and financial requirements. In fact, it is a partnership between the United Nations Environment Programme and financial institutions from around the world, helped by UNEP to integrate sustainable practices into financial markets and to pursue sustainability goals. In addition to the PRI, this organisation is responsible for the development of the Principles for Responsible Banking (PRB) and the Principles for Sustainable Insurance (PSI). For further information see: https://www.unepfi.org/.

[17] The UN Global Compact and UNEP Finance Initiative's PRI document defines responsible investing «[...] as a strategy and practice to incorporate environmental, social and governance (ESG) factors into investment decisions and active ownership. There are many terms – such as sustainable investing,

consider environmental (Environmental), social (Social) and governance factors — known as ESG criteria — in investment decisions[18]. It is precisely for this reason that the broader notion of responsible investment can include sustainable investment[19], together with ethical investment and social impact investment[20].

This is where sustainable finance comes in. The High-Level Expert Group on Sustainable Finance (HLEG)[21], in 2016, and the

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ethical investing, and impact investing – associated with the plethora of investment approaches that consider ESG issues. Most lack formal definitions, and they are often used interchangeably […]» (4). The document is freely available at: https://www.unpri.org/download?ac=10948. On this topic, see D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali*, 1 Banca impresa soc. 116-117 (2021).

[18] On this topic see M. Driessen, *Sustainable Finance: An Overview of ESG in the Financial Markets*, in D. Busch, G. Ferrarini & A. van den Hurk (eds.), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets* (2021), 329-350. Investment strategies thus become closely correlated with non-financial evaluations, the negative outcome of which leads to the exclusion of an investment from the portfolio. On this point, see N. Di Fausto, *Investimenti sostenibili: analisi empirica e tradizionale dei fattori ESG*, 1S Riv. trim. dir. econ. 38-40 (2021).

[19] Sustainable investment is defined by Article 2 of the Regulation (EU) 2019/2088 on Sustainability Disclosure in Financial Services (Sustainable Finance Disclosure Regulation-SFDR).

[20] Impact finance is characterised by (risky) investments that, in addition to an economic return, generate a positive and quantitatively measurable environmental and social impact. Green and social bonds are among the main instruments of impact finance, called outcome oriented. Impact investing — the term was coined in 2007, at a Summit, held in Bellagio, convened by the Rockefeller Foundation — differs from the macrocategory of socially responsible investment precisely because of the specific purpose that characterises them. SRI are intended for projects and entities that ensure compliance with environmental, social and governance indices, in pursuit of purposes other than the production of a positive social impact. Given the scarcity of public resources to finance sustainable projects and activities, impact finance is intended to provide them with adequate economic support by incentivising private investment. For more on this topic see the Italian Report of the Social Impact Investment Task Force set up within the G8, *La finanza che comprende: gli investimenti ad impatto sociale per una nuova economia*, available at: https://www.humanfoundation.it/wp-content/uploads/2019/07/6-Rapporto-Italiano.pdf. See also: D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 118-119; G. Sabatini, *Finanza d'impatto e Action Plan sulla finanza sostenibile: il percorso delle banche europee*, 4 Bancaria 23-25 (2019).

[21] This independent group was set up in 2016 to advise the European Commission on achieving the objectives of the Capital Markets Union. This group included twenty experts representing the financial, academic, institutional, and civic

Global Sustainable Investment Alliance (GSIA)[22], in 2020, defined sustainable finance as a set of investment strategies, aimed at enhancing financial stability, that consider ESG criteria in financial assessments[23]. The aim is therefore a long-term integration[24] between these ESG criteria and economic practices. The aim is to combine investment strategies with climate change, environmental risks, and the depletion of natural resources by investing capital in activities and projects that have the potential to address them[25]. In addition to the consideration of environmental factors and requirements, investors (mainly banks and insurance companies) assess the sustainability, in social and governance terms, of

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spheres, who made recommendations to insurance companies, asset managers, consultants, and rating agencies.

[22] It is an international association of organisations — based all over the world and promoting sustainable investments — established to enhance their impact on the market and to promote their integration into financial systems. The GSIA consists of: EUROSIF; Responsible Investment Association Australasia (RIAA); Responsible Investment Association Canada (RIA); UK Sustainable Investment & Finance Association (UKSIF); The Forum for Sustainable & Responsible Investment (UK SIF); Dutch Association of Investors for Sustainable Development (VBDO); Japan Sustainable Investment Forum (JSIF).

[23] In GSIA's biennial *Global Sustainable Investment Review* 2020, sustainable investing is defined as: «[...] an investment approach that considers environmental, social and governance (ESG) factors in portfolio selection and management. For this global report and for articulating our shared work in the broadest way, GSIA uses an inclusive definition of sustainable investing which is presented in the strategies in the table below. The term sustainable investment may be used interchangeably with responsible investment and socially responsible investment, among other terms, whilst recognising there are distinctions and regional variations in its meaning and use» (7). In the same direction is the definition of sustainable finance provided by the European Commission on its institutional website, in the appropriate section (https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en).

[24] On this point, the HLEG Final Report 2018, entitled *Financing a sustainable European economy*, points out that: «Sustainable finance is axiomatically linked to the long term. Europe's wide-ranging sustainability challenges need sufficient, stable and committed capital and financing. [...] Sustainable finance means a commitment to the longer term, as well as patience and trust in the value of investments that need time for their value to materialise» (8-9).

[25] A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, 3 Comp. dir. civ. 825-826 (2022). The Author defines sustainable finance as a «private legal model of environmental emergency management that charges private actors with pursuing social objectives through economic incentives» (842). See also G. Siani, *L'impatto del processo di attuazione dell'Action Plan sulla finanza sostenibile,* October 6th, 2021, 3.

activities, projects and companies, and of the recipients of investments. The impacts on society and on subjects involved in the operations and the best practices and principles that guide corporate choices and relationships are observed. In the phase of choosing the subject and activity towards which to direct capital, preference is given to those that best respect the individual indices — characterised by the attribution of a score — that make up each ESG factor[26]. The introduction of the latter allows for a comprehensive assessment of sustainability, carried out from multiple viewpoints using objectively and equally predetermined criteria. The compliance with the ESG criteria produces a higher or lower financial evaluation of projects and companies.

The widespread use of ESG criteria has several positive economic and financial effects: capital is directed towards projects and companies that guarantee sustainability standards and aim at the completion of the ecological transition process; paying attention to environmental profiles makes companies, which comply with ESG criteria in their business, more prepared to respond to market changes in the event of catastrophic natural events and maintain an adequate reputation in the face of them. Complying with ESG criteria implies monitoring and reporting on the different levels of implementation, thus making companies more transparent and attractive to investors, and incentivising them to make progress in achieving sustainable goals to be more attractive in the market. The market's focus on sustainability has favoured the spread of investment funds and *ad hoc* financial instruments, such as green bonds, which will be discussed in more detail below.

The complexity of financial matters and the intention to create a single capital market required regulation by the European institutions, which is discussed in more detail in the following paragraphs.

The European institutions intervened to introduce a common taxonomy of sustainable finance, so that in all member states there would be a single system for classifying and defining what can be considered green and sustainable. This is essential for directing capital towards investments that favour environmental sustainability. There was also a need to determine at European level the duties of investors and to draw up a comprehensive legislation

[26] On this regard, see A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, cit. at 25, 827.

on the risks and opportunities of sustainable investments; to create an interconnected market, in which all European citizens can participate and develop knowledge on sustainable finance. A further profile on which action has been taken relates to the determination of standard information that companies must provide to investors to enable them to measure compliance with ESG indices and to make investment decisions.

### 3. The European objectives: the Action Plan for Financing Sustainable Growth and the Strategy for Financing the Transition to a Sustainable Economy

In the context of the adoption of the 2015 Paris Agreement and the United Nations 2030 Agenda for Sustainable Development, the European Union is actively contributing to the establishment of a sustainable financial system by preparing measures and strategies to promote its uniform adoption among all member states. Directing capital towards sustainable investments implies the use of instruments that make the financial system stable, reliable, and transparent in the long run.

To pursue these objectives the High-Level Expert Group on Sustainable Finance had a leading role in the elaboration of eight strategic recommendations, which formed the pillars of the Action Plan for Financing Sustainable Growth[27], adopted in 2018 by the European Commission, which was followed as a supplement in 2021 by the Strategy for Financing the Transition to a Sustainable Economy[28].

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[27] This is the Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, March 8th, 2018, COM(2018) 97 final. On this topic, see D. Busch, G. Ferrarini & A. van den Hurk, *The European Commission's Sustainable Finance Action Plan and Other International Initiatives*, in D. Busch, G. Ferrarini & A. van den Hurk (eds.), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets,* cit. at 18, 19-59; F. Conte, *La finanza sostenibile: limiti e profili evolutivi*, 33 federalismi.it 12-14 (2022); E. Franza, *Il Piano d'azione europeo sulla finanza sostenibile: il punto sullo stato di realizzazione*, 3 Dir. econ. 675-705 (2020); G. Giovando, *Vigilanza bancaria. Dagli aspetti tradizionali ai nuovi orientamenti ESG*, cit. at 4, 137-138. For more details, see also: CONSOB, *The Action Plan for Sustainable Finance*, https://www.consob.it/web/area-pubblica/il-piano-di-azione-per-la-finanza-sostenibile.

[28] The Strategy for Financing the Transition to a Sustainable Economy was adopted through the Communication from the Commission to the European

Three objectives necessarily emerge from the Action Plan[29]: the adoption of a taxonomy system, i.e. a common definition of sustainable activities, which is essential to promote homogeneous investments; the mandatory disclosure of information on ESG factors by companies and financial and non-financial intermediaries; the development of benchmarks and reference labels to classify sustainable financial products[30] — thus recognisable to investors, who can direct themselves with greater certainty towards suitable investments — and to reduce the risk of greenwashing[31].

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Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of July 6th, 2021, COM(2021) 390 final.

[29] Bank of Italy, *L'impatto del processo di attuazione dell'*Action Plan *sulla Finanza sostenibile,* speech by Giuseppe Siani, Head of the Banking and Financial Supervision Department of the Bank of Italy, Rome, October 6th, 2021, 3-5.

[30] Financial products are defined in Article 2(12) of Regulation (EU) 2019/2088 on sustainability reporting in financial services and fall into this category: «(a) a portfolio managed in accordance with point (6) of this Article; (b) an alternative investment fund (AIF); (c) an IBIP; (d) a pension product; (e) a pension scheme; (f) a UCITS; or (g) a PEPP».

[31] This term refers to all those deceptive communication and marketing practices and strategies used by companies, institutions, and organisations to present their activities as environmentally sustainable, even though they are not. The aim is to increase sales of their products by deceiving consumers, who today are more attentive to environmental sustainability profiles. A definition is provided in the European Banking Authority document, *EBA Progress Report on Greenwashing Monitoring and Supervision,* EBA/REP/2023/16, May 31st, 2023, 12 (https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2023/1055934/EBA%20progress%20report%20on%20greewnwashing.pdf): «The ESAs understand greenwashing as a practice whereby sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants». On the definition and phenomenon of greenwashing, see: F. Annunziata, *La disciplina del mercato immobiliare* (2021), 94; Bank of Italy, *L'abc dell'investitore sostenibile*, freely available at https://economiapertutti.bancaditalia.it/informazioni-di-base/finanza-sostenibile/abc-investitore-sostenibile.pdf; A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia,* cit. at 5, 374-380; A. Davola, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio,* cit. at 6, 514 and 517 ff.; E. Pei-yi Yu, B. Van Luu & C. Huirong Chen, *Greenwashing in environmental, social and governance disclosures*, 52 Research Int. Bus. & Fin. 2020; I. Riva, *Comunicazione di sostenibilità e rischio di "Greenwashing"*, 1 Riv. dir. alim. 2023, 55-65; G. Schneider, *Per un approccio sostanziale alla finanza sostenibile: il greenwashing alla prova del rischio di condotta*, 4

The Action Plan also contains explicit references to the promotion of private financial interventions in the infrastructure sector, from which more than half of the greenhouse gas emissions originate[32], through the provision of new investments by the European Fund for Strategic Investments (FEIS) and a strengthening of the advisory activities of the European Investment Advisory Centre. The Plan also envisages the intervention of the European Fund for Sustainable Development (FESS) and the activation of the European Plan for External Investment (PIE) concerning financial support between the European Union and third partner countries.

A further aspect emphasised in the Plan concerns the growing role of sustainability rating agencies[33], in respect of whose qualification and operation there is a lack of *ad hoc* legislation, for which the Plan called for joint intervention by the Commission and the European Securities and Markets Authority (ESMA)[34].

The European Commission has also highlighted the inadequacy of European legislative sources in establishing precise obligations for institutional investors and asset managers to invest considering ESG factors and risks. In the absence of a uniform discipline on the subject, these issues have not been, and are not, often sufficiently clear, and transparent in their investment policies. The Plan intends in fact to include sustainability in the provision of investment advice and to integrate it into the prudential

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Riv. trim. dir. econ. 222-276 (2022); G. Spoto, *"Greenwashing": tutela dei consumatori e responsabilità delle imprese*, 2 Dir. agroalim. 337-352 (2023); M. Tommasini, *"Green claim" e sostenibilità ambientale. Le tutele ed i rimedi apprestati dall'ordinamento contro le pratiche di "greenwashing"*, 2 Dir. fam. 858-888 (2023); A. Troisi, *La comunicazione ambientale: il "greenwashing" dietro la sostenibilità*, 1 An. giur. econ. 353-367 (2022); T. Wahida Shahn, *Green Washing: An Alarming Issue*, 1 ASA University Review 81-88 (2013).

[32] This emerges from studies conducted by the Organisation for Economic Cooperation and Development (OECD) in the report *Investing in Climate, Investing in Growth* (2017).

[33] The role of sustainability rating agencies is addressed in §4 of this article.

[34] As can be seen from the contents of the letter of January 21st, 2021, sent by ESMA to the European Commission, available at: https://www.esma.europa.eu/sites/default/files/library/esma30-379-423_esma_letter_to_ec_on_esg_ratings.pdf. The collaboration between these two entities led to the opening, on February 3rd, 2022, of a call for evidence on Environmental, Social and Governance (ESG), aimed at gathering information on the activities and methodologies of rating agencies from rated companies, providers, and users of ESG ratings. On this point, see https://www.esma.europa.eu/press-news/esma-news/esma-launches-call-evidence-esg-ratings.

requirements[35], balancing environmental and climate risks among management policies[36].

The Strategy for Financing the Transition to a Sustainable Economy complements the previous Action Plan of 2021, following the adoption of the European Green Deal, about four aspects. Regarding the financing of the transition of the real economy towards sustainability, the Strategy intervenes to incentivise activities that are not already environmentally sustainable, especially in the energy and gas sector[37].

As for the second aspect[38], regarding the participation of a broader range of actors in the field of sustainable finance, the Strategy highlights how, through the mechanism of green loans, it is possible to encourage families and small and medium-sized enterprises (SMES) to switch to better energy classes of buildings or to purchase sustainable vehicles. Initiatives are also aimed at training financial advisors and competent subjects in the integration of climate and environmental risk assessment in SMES' production policies, also using new technologies. The need to introduce more insurance coverage for economic activities exposed to extreme natural and climatic events is also highlighted. According to the Strategy, financial institutions must increasingly provide investment opportunities that foster greater protection of human rights and social issues on the part of investors.

From the same communication, as a third area of action[39], emerges the need to adopt a dual perspective on sustainability: a so-called outside-in perspective, aimed at integrating risks into the

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[35] In the light of Regulation (EU) no. 575/2013 of the European Parliament and of the Council — of June 26th, 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012 — the prudential requirements «aim to ensure the financial stability of operators in these markets, as well as a high level of investor and depositor protection».

[36] In addition to the Action Plan for Financing Sustainable Growth, the European Banking Authority (EBA) has followed up with the formulation of work plans and reports and the launch of consultations, aimed at incorporating ESG factors and risks into prudential supervision. These include the *Report on management and supervision of ESG risks for credit institutions and investment firms* (EBA/REP/2021/18), published on June 23rd, 2021; and the following *Report on incorporating ESG risks in the supervision of investment firms*, *report complementing* Eba/rep/2021/18 (Eba/rep/2022/26), published on October 24th, 2022.

[37] The various measures planned to achieve these ends are enumerated on pages 6-8 of the Strategy.

[38] On this aspect, see the Strategy cited below, 9-13.

[39] Pages 13-21 of the Strategy are devoted to this area of intervention.

financial system, and an inside-out perspective, in terms of supporting sustainability through appropriate financial decisions.

Finally, the Strategy has an impact on the promotion of global action by the Union in the international arena[40]. To promote cooperation between states, as well as highlighting the usefulness of participating in international forums, the European Commission promotes the development of the use of the International Platform on Sustainable Finance (IPSF), already set up in 2019.

At the same time as the Strategy, in July 2021, the Commission proposed, again in the context of the objectives of the Green Deal, the adoption of a regulation dictating a European Green Bond Standard (European Green Bond Standard-EGBS)[41]. The objective — recently achieved[42] — is to determine a common set of rules on the use of the designation «European Green Bond» or «EUGBS» for those bonds that pursue eco-sustainable objectives within the meaning of Regulation (EU) 2020/852 (the so-called Taxonomy Regulation)[43]. To foster the development of a single green bond market and to reduce the risk of greenwashing, it is intended to provide a single «European green bond» designation, useful for European and non-European issuers alike[44].

On the same occasion, the European Commission submitted to the European Parliament and the European Council a delegated act supplementing Article 8 of the Taxonomy Regulation[45]. The regulatory intervention concerns the content and method of disclosure of information that financial and non-financial companies must disclose on the environmental performance of their investment and lending activities.

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[40] See the Strategy, 21-24.
[41] EGBS are discussed in more detail in §5.2 of this chapter.
[42] The green bond regulation was approved on October 5th, 2023.
[43] It is studied in §3.3 of this paper.
[44] For more on the reasons and objectives of the proposal, see the explanatory memorandum preceding the text of the proposal at: https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=CELEX:52021PC0391&from=EN.
[45] In this regard, it may be of interest the press released on July 6th, 2021, about *La Commissione presenta una nuova strategia per rendere il sistema finanziario dell'UE più sostenibile e propone una nuova norma europea per le obbligazioni Verdi*, available at: https://ec.europa.eu/commission/presscorner/detail/it/IP_21_3405, is of interest.

The subject of the Regulation analysed in the following section is precisely sustainability reporting in the financial services sector.

### 3.1 Regulation (EU) 2019/2088 on Sustainability Reporting in the Financial Services Sector (Sustainable Finance Disclosure Regulation-SFDR)

The lack of harmonised European legislation, which should determine unambiguous obligations for financial market participants and financial advisors on the disclosure of information about the integration of sustainable objectives, sustainability risks[46] and the negative effects of climate and environmental events, as well as on the promotion of sustainability in decision-making procedures and advisory activities, led to the adoption of the EU Regulation (EU) 2019/2088 on sustainability disclosure in the financial services sector (Sustainable Finance Disclosure Regulation-SFDR)[47].

The European Union intervenes on the basis of the principle of subsidiarity, as set out in Article 5 TEU, and of the principle of proportionality to the aim to be pursued[48], since strengthening the

[46] Sustainability risk is defined in recital 14 of the Regulation as «an environmental, social or governance event or condition that, if it occurs, could cause a negative material impact on the value of the investment, as specified in sectoral legislation, in particular in Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/65/EU, (EU) 2016/97, (EU) 2016/2341, or delegated acts and regulatory technical standards adopted pursuant to them».

[47] The objectives of the Regulation are set out in its recitals 1-5. On the analysis of this Regulation, see F. Annunziata, *La disciplina del mercato immobiliare,* cit. at 31, 95-99; D. Busch, *Sustainability Disclosure in the EU Financial Sector*, in D. Busch, G. Ferrarini & A. van den Hurk (eds.), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets*, cit. at 18, 397-443; A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia,* cit. at 5, 369-370; A. Davola, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio,* cit. at 6, 519-522; E. Franza, *Il Piano d'azione europeo sulla finanza sostenibile: il punto sullo stato di realizzazione*, cit. at 27, 684-689; A. Mazzullo, *Disclosure and sustainable finance. Dall'informazione del cliente alla conformation del mercato sostenibile*, 6 JusOnline 238-242 (2020); M. Siri & S. Zhu, *L'integrazione della sostenibilità nel sistema europeo di protezione degli investitori*, 1 Banca impresa soc. 18 ff. (2020).

[48] On the principle of proportionality in the European Union, among the most recent doctrine, see: E. Buoso, *Il dialogo tra Corti in Europa e l'emersione della proporzionalità amministrativa*, in M. Bianchini & G. Gioia (eds.), *Dialogo tra Conti (e principio di proporzionalità)* (2013), 405-433; G. della Cananea, C. Franchini & M.

protection of end-investors and increasing the information available to them are considered objectives that cannot be adequately achieved at national level.

The adoption of the Disclosure Regulation was preceded by the EU Directive 2016/2341 of December 14th, 2016, on the activities and supervision of institutions for occupational retirement provision (IORP) and known as the IORP II Directive, and the EU Directive 2017/828 of May 17th, 2017, on the encouragement of long-term shareholder engagement (Shareholder Rights-SRD II)[49]. These initiatives thus highlighted the trend towards the establishment of disclosure requirements regarding sustainable aspects, although the addressees were specific entities, such as shareholders and pension funds.

The Disclosure Regulation, on the other hand, is aimed at a broader group of subjects, namely financial market participants and financial advisors, who, properly informed, can make more informed choices[50].

This regulation is considered essential to contain the proliferation of different national measures and regulations, which can lead to a distortion of competition and fragmentation of the

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Macchia, *I principi dell'amministrazione europea* (2017), 98-100; D.-U. Galetta, *Il principio di proporzionalità fra diritto nazionale e diritto europeo (e con uno sguardo anche al di là dei confini dell'Unione Europea)*, 6 Riv. it. dir. pubbl. com. 903-927 (2019). On the principle of proportionality of administrative action in the Italian legal system, by way of example only, see: A. Albanese, *Il ruolo del principio di proporzionalità nel rapporto fra amministrazione e amministrati*, 3 Ist. fed. 697-723 (2016); A. Averardi & S. Del Gatto, *Il principio di proporzionalità dell'azione amministrativa*, in L. Torchia (ed.), *La dinamica del diritto amministrativo* (2017), 61-86; M. Cartabia, *Diritto amministrativo e diritti fondamentali*, in L. Torchia (ed.), *Attraversare i confini. Giornata di studio dedicata a Sabino Cassese* (2016), 169-189; D.-U. Galetta, *Discrezionalità amministrativa e principio di proporzionalità,* 1 Riv. it. dir. pubbl. com. 142-155 (1994); EAD., *Le Principe de proportionnalité*, in J.B. Auby & J. Dutheil de la Rochère (eds.), *Droit Administratif Européen* (2007), 500-533; EAD., *Principio di proporzionalità e sindacato giurisdizionale nel diritto amministrativo* (1998); A.M. Sandulli, *La proporzionalità dell'azione amministrativa* (1998).

[49] These directives are only some of those that the Regulation has supplemented. Also worth mentioning are Directives 2009/65/EU, 2009/138/EU, 2011/61/EU, 2014/65/EU, 2016/97/EU, and Regulations (EU) 2013/345, 2013/346, 2015/760 and 2019/1238.

[50] See A. Davola, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio,* cit. at 6, 516; L. Enriques & S. Gilotta, *Disclosure and Financial Market Regulation*, in N. Moloney, E. Ferran & J. Payne (eds.), *The Oxford Handbook of Financial Regulation* (2015).

market. The adoption of different information standards leads to unequal treatment of financial products and different investment decisions. The existence of non-homogeneous legislation makes it more difficult to compare the financial products offered in the Member States in the light of sustainable European objectives. The development of harmonised legislation therefore aims to contribute to the creation of the European single market, proposes to facilitate the movement of financial products, and intends to promote the adoption of effective measures to achieve the goals of the 2015 Paris Agreement and the European Green Deal.

The need to disclose such information — through the websites of financial market participants and financial advisers — arises from the increasingly frequent negative consequences of natural disasters and the scarcity of natural resources used in production processes.

The objective of increased transparency by final investors is to mobilise capital, relying not only on public policy recommendations but also on the financial services sector[51].

The relationship between intermediaries and final investors should be characterised by equal and full access to information since the pre-contractual phase. In this phase financial advisors must inform final investors, irrespective of their preferences regarding sustainability aspects, about how they consider sustainability risks when selecting financial products.

Informed and knowledgeable investments can consolidate the financial market and stabilise the real economy[52]. Two types of sustainable financial products are identified in the regulation. Article 8 mentions the so-called light green product, which possesses environmental or social characteristics, or a combination, if the companies in which the investments are made comply with good governance practices. Article 9 lists pieces of information to be disclosed of a financial product, called deep or dark green, if it is aimed at making sustainable investments (e.g. green bonds)[53].

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[51] This information is set out in recital 8 of the Regulation.

[52] On this topic, see E.E. Avgouleas, *The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis* (2005), 173-183; J. Coffee, *Market failure and the Economic Case for a Mandatory Disclosure System*, 4 Virginia Law Review 717 (1984).

[53] To learn about the consequences of the intensified disclosure requirements following the adoption of the Article 8-9 Disclosure Regulation on investments in financial products, see the report *SFDR Article 8 and Article 9 Funds: Q2 2023 in Review* (https://www.morningstar.com/en-uk/lp/sfdr-article8-article9),

Regulation (EU) 2019/2088 also specifies the role of the European Supervisory Authorities (ESAS) about disclosure: they must contribute to the development of suitable standards to determine the content, method, and manner of presentation of information relating to climate sustainability indicators, ESG factors and negative environmental effects. These authorities must design technical standards for the implementation of sustainable objectives and indicate standardised information, related to ESG and sustainable investments, that must be present in marketing communications.

The European Supervisory Authorities also played a central role in the development, and review, in 2023, of the Regulatory Technical Standards (RTS), which were adopted with the EU Delegated Regulation, implementing the Disclosure Regulation, 2022/1288 (SFDR RTS). These are technical standards that financial market participants and financial advisors must comply with when disclosing the information required by the SFDR regulation, especially about contractual, pre-contractual and periodic disclosures[54].

**3.2 Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and contracts or to measure the performance of investment funds**

The accurate identification of reference indices, the so-called benchmarks, contributes to the pricing of financial instruments and contracts: the questioning of their integrity and stability produces, in fact, market and real economy distortions, also in view of the cross-border impact of indices.

The presence of different directives and regulations partially regulating some benchmark indices[55] and of isolated and non-

prepared by Morningstar, an expert in financial and investment studies and reports.

[54] Commission Delegated Regulation (EU) 2023/363 of October 31st, 2022, amending and correcting the regulatory technical standards set out in Delegated Regulation (EU) 2022/1288, regarding the content and presentation of disclosures in pre-contractual documents and periodic reports for financial products investing in environmentally friendly economic activities, was also adopted.

[55] Reference is made to directive 2014/65/EU regarding the indices for determining the price of listed financial instruments; directive 2009/65/EU on the use of reference indices by undertakings for collective investment in transferable securities (UCITS); directive 2003/71/EU on reference indices used

homogeneous national regulations on the subject led to the adoption of the Regulation (EU) 2016/1011 (the so-called Benchmark Regulation)[56], to achieve one of the main objectives of the Sustainable Finance Action Plan. Indeed, it was feared that the lack of regulatory harmonisation would lead to a fragmentation of the internal market and a consequent difficulty in achieving the goal of creating a single European market[57].

The use of the normative form of a regulation fulfils the aim of determining a regulation that is directly mandatory for the Member States and sufficiently detailed in every aspect relating to the provision of reference indices, to avoid the provision of different measures in relation to aspects that are not regulated at supranational level[58].

All those who use benchmark indices in the exercise of their financial activities are bound by the regulation: the addressees are in fact banks, insurance companies, investment companies and bodies, asset management companies and investment fund managers[59].

The legislator's clarifying ambitions, however, come up against the changing relevance of reference indices and the discretion in their determination: it is precisely the vulnerability of the importance of an index that makes it more manipulable[60].

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by issuers. The manipulation of benchmark indices used for wholesale energy products was prohibited by Regulation (EU) 2011/1227.

[56] For an analysis of the Regulation see E. Franza, *Il Piano d'azione europeo sulla finanza sostenibile: il punto sullo stato di realizzazione*, cit. at 27, 689-693 and the information on the Bank of Italy's institutional website, *Benchmark Regulation*, https://www.bancaditalia.it/compiti/sispaga-mercati/riforma-tassi-riferimento/regolamento-benchmark/index.html.

[57] See recitals 4 to 6 of the Regulation.

[58] This is clarified in recital 7 of the Regulation. The Italian legislation was adapted to the provisions of the European Regulation by the adoption of Legislative Decree February 13th, 2019, no. 19.

[59] E. Peggi, *Manipolazione degli indici di riferimento e strategie di contrasto: alcune considerazioni sul legame tra il regolamento Benchmarks e il regolamento abusi di mercato*, 2 Banca impresa soc. 275-276 (2022).

[60] On this subject, see recital 8 of the Regulation and recital 17, according to which: «An index is calculated using a formula or some other methodology on the basis of underlying values. There exists a degree of discretion in constructing the formula, performing the necessary calculation and determining the input data which creates a risk of manipulation. Therefore, all benchmarks sharing that characteristic of discretion should be covered by this Regulation». On this point, it follows from recital 22 that investors and consumers may be harmed by the manipulation or unreliability of benchmark indices, therefore, to avoid such

According to Article 3(1)(3) of the Regulation, a «benchmark index» is defined as «an index by reference to which the amount to be paid for a financial instrument or a financial contract, or the value of a financial instrument, is determined, or an index used to measure the performance of an investment fund for the purpose of monitoring the performance of that index or to determine the asset allocation of a portfolio or to calculate performance-related fees»[61]. The use of benchmarks in the financial sector is dual: in the issuance and production of financial instruments and contracts and in measuring the performance of investment funds to monitor their performance, to identify the asset allocation of a portfolio and to calculate performance fees. In these fields of application, a single index can be used alone or in combination with others.

The provision of the benchmarks takes place through a process of outsourcing the activities of calculating the index, collecting the relevant data, and publicising and disseminating the index itself to parties with the appropriate skills. The outsourcing of the performance of these operations to third parties and the control of their correctness are the tasks of an administrator, i.e. a natural or legal person in charge and subject to appropriate oversight mechanisms[62].

The transparency of both the methodology and the data characterises the provision of reference indices: it is, in fact, necessary that suitable information be disclosed to allow understanding of the development of a given index and the

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consequences or to better deal with possible complaints, the Benchmark Regulation regulates record keeping by those who administer and provide data and the transparency regime regarding the purpose and method of production of benchmark indices. On the risk of index manipulation, see S. Miller, *The Corruption of Financial Markets: Financial Markets, Collective Goods and Institutional Purposes*, Law & F. M. Rev. 155-164, June 2014; E. Peggi, *Manipolazione degli indici di riferimento e strategie di contrasto: alcune considerazioni sul legame tra il regolamento Benchmarks e il regolamento abusi di mercato*, cit. at 63, 269-275.

[61] As indicated by the Bank of Italy, on its institutional website (https://www.bancaditalia.it/compiti/sispaga-mercati/riforma-tassi-riferimento/), the main reference indices for the euro area are the €STR (administered by the European Central Bank and published from October 2nd, 2019) and the EURIBOR (administered by the European Money Market Institute, last reformed in November 2019).

[62] On the role of the administrator, see recital 16 and Articles 4 and 5 of the Regulation.

assessment of its accuracy and reliability with respect to the purpose[63].

The Benchmark Regulation has been amended regarding the European Climate Transition Benchmark Indices, those aligned with the Paris Agreement, and the Sustainability Communications for Benchmark Indices, by the Regulation (EU) 2019/2089 of November 27th, 2019.

In fact, it was necessary to supplement the provisions of the previous Regulation with some specifically related to sustainable investments due to the increase of low-carbon investments and the use of specific benchmark indices to measure the performance of portfolios. As stated in recital no. 11 of the Regulation, it is indeed necessary to differentiate between reference indices that aim to reduce the carbon footprint of a standard investment portfolio (EU Climate Transition Benchmarks - EU CTBS)[64] and those that aim to select only the components that contribute to the achievement of the target of a maximum 2°C increase in global temperatures, established in the Paris Agreement (Eu Paris-aligned Benchmarks - EU PABS)[65].

The European legislator intervened, also, to harmonise the matter following the proliferation of low-carbon index categories with different objectives and strategies, the presence of which could have caused confusion for consumers and investors and, once again, a fragmentation of the internal market[66].

The objective of the Regulation (EU) 2019/2089 is to introduce on a regulatory level the minimum requirements that European climate transition benchmarks and those in line with the Paris Agreement must meet to also comply with the ESG targets.

To make market participants informed about investment choices, those who administer benchmark indices must disclose, in the declaration of the administered benchmark, whether it pursues ESG objectives and whether it offers any such objectives. The administrators must also disclose whether and how the

[63] This follows from recital 27 of the Regulation.

[64] These indices refer to financial instruments issued by companies that focus their activities on reducing greenhouse gas emissions.

[65] These benchmarks consist of financial assets selected based on the compliance of the greenhouse gas emissions of the relevant financial portfolio with the objectives of the Paris Agreement, i.e. aiming to keep the increase in global average temperatures below 2°C.

[66] See recitals 11 to 13 of the Regulation.

administered indices contribute to the pursuit of carbon reduction or other goals of the Paris Agreement.

To be transparent, it is necessary for managers themselves to disclose the methodology used in the calculations of these benchmark indices, the measurement of the carbon emissions of the assets related to a given index and of the index itself. Indeed, it seems essential that investors choose the most suitable benchmark index for their investment strategy after knowing the methods and parameters of the benchmark index and how it contributes to environmental objectives[67]. The Regulation, in recital 22, requires administrators to review the methodologies periodically, stating the reasons for any substantial changes to the index and their consistency with the sustainability objectives.

The Regulation (EU) 2019/2089 also provides for the possibility to delegate to the European Commission the adoption of acts specifying the minimum content of the reporting obligations of the administrators of both types of benchmark indices, including the method by which the carbon emissions associated with the underlying assets are calculated. Supporting this work of the Commission the Technical Expert Group on Sustainable Finance (TEG)[68] published in June and September 2019 respectively two reports, one interim[69] and one final[70], on Climate Benchmarks and Benchmarks' ESG Disclosures[71]. These documents set out the

[67] This is stated in recital 20 of the Regulation.
[68] The EGT was established in July 2018 to support the European Commission in the implementation of the European Sustainable Finance Plan and is composed of 35 expert members selected among citizens, academics, public institutional bodies. The work of the group is aimed at contributing to the development of the EU taxonomy, a European standard for green bonds, methodologies for the development of climate benchmarks and guidelines to foster climate and ESG disclosure. More information on TEG can be found at https://finance.ec.europa.eu/publications/technical-expert-group-sustainable-finance-teg_en.
[69] This is the TEG Interim Report on Climate Benchmarks and Benchmarks' ESG Disclosures, available at: https://finance.ec.europa.eu/system/files/2019-06/190618-sustainable-finance-teg-report-climate-benchmarks-and-disclosures_en.pdf.
[70] This is the TEG Final Report on Climate Benchmarks and Benchmarks' ESG Disclosures, available at: https://finance.ec.europa.eu/system/files/2019-09/190930-sustainable-finance-teg-final-report-climate-benchmarks-and-disclosures_en.pdf.
[71] On this topic, see E. Franza, *Il Piano d'azione europeo sulla finanza sostenibile: il punto sullo stato di realizzazione*, cit. at 27, 691-692.

decarbonisation percentages that the benchmark indices[72] must aim for; the minimum technical requirements that new types of sustainable benchmarks must meet, to curb greenwashing; and the disclosure of ESG factors within the indices (excluding interest rate and currency indices) to facilitate a better comparison between benchmarks.

### 3.3 The EU taxonomy for sustainable activities: Regulation (EU) 2020/852 and delegated acts

Having analysed the European regulatory interventions on financial reporting requirements and benchmarking, it is now useful to focus on another relevant area subject to European regulation, in accordance with the 2018 Action Plan: the taxonomy[73].

For the realisation of a stable and harmonised sustainable financial system, it is necessary to determine in a holistic and unified manner which activities are classifiable as "sustainable", and which are those that contribute substantially to the ecological transition[74] . The growth of sustainable requirements and the lack of adequate knowledge about sustainable finance have required the creation of a common language, a so-called taxonomy, drawn up at

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[72] This is 30% for climate transition indices and 50% for those in line with the Paris Agreement.

[73] On this topic, see L. Alessi, B. Alemanni & G. Frati, *Financial Regulation for Sustainable Finance in the European Landscape*, in N. Linciano, P. Soccorso & C. Guagliano (eds.), *Information as a Driver of Sustainable Finance. The European Regulatory Framework* (2022), 215-221; S. Antoniazzi, *Transition to the Circular Economy and Services of Economic General Interest: An Overview of the Issues*, 7 federalismi.it 16 ff. (2021); A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia,* cit. at 5, 371-374; C.V. Gortsos, *The Taxonomy Regulation: More Important Than Just as an Element of the Capital Markets Union*, in D. Busch, G. Ferrarini & A. van den Hurk (eds.), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets,* cit. at 18, 351-395; A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, cit. at 25, 834-835.

[74] In this direction D. Busch, G. Ferrarini & A. van den Hurk, *The European Commission's Sustainable Finance Action Plan and Other International Initiatives,* cit. at 27, 22; A. Davola, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio,* cit. at 6, 520-521; B. Lombardi, *La finanza sostenibile: nuova regolazione europea e standard Kpi per la selezione degli investimenti sostenibili*, 2S/1 Riv. trim. dir. econ. 87-88 (2022).

supranational level and applied in the same way in all Member States.

The intention of the Regulation (EU) 2020/852 June 18th, 2020, known as the Taxonomy Regulation, is to establish a framework that favours sustainable investments and to amend the Disclosure Regulation[75].

The development of guidelines that determine which activities are suitable for contributing to eco-sustainability has been followed by larger information and greater awareness of the investments that can support them: the result is an increase in the investor's confidence that they have adequate tools to understand the environmental impacts of financial products, thus reducing the risk of greenwashing[76]. To contain this phenomenon, some Member States have equipped themselves with their own systems for classifying sustainable activities, products, and investments. The use of different criteria and methods in national classification operations could discourage investors from migrating to states other than their own, thus limiting cross-border financial trade, also due to an increase in the costs of checking and comparing any sustainable characteristics of financial products[77].

As explained in recital 23, according to the Taxonomy Regulation, an eco-sustainable activity is one that is carried out even by a non-green private individual and that contributes to the pursuit of at least one of the following six environmental objectives: «climate change mitigation; climate change adaptation; the sustainable use and protection of water and marine resources; the transition to a circular economy, pollution prevention and control; and the protection and restoration of biodiversity and ecosystems»[78].

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[75] The TEG also played an important role in the establishment of a taxonomy system by developing recommendations in the final report on the EU Taxonomy 2020 (*Taxonomy: Final report of the Technical Expert Group on Sustainable Finance*, available at: https://finance.ec.europa.eu/system/files/2020-03/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf).

[76] See recital 11 of the Regulation. In this sense, see D. Claringbould, M. Koch & P. Owen, *Sustainable Finance: The European Union's Approach to Increasing Sustainable Investments and Growth. Opportunities and Challenges*, 2 Vierteljahrshefte zur Wirtschaftsforschung 19-20 (2019); A. Del Giudice, *La finanza sostenibile. Strategie, mercato e investitori istituzionale* (2019), 68.

[77] This follows from recitals 11 and 13 of the Regulation. Articles 10 to 15 concern each objective.

[78] Recitals 24 to 31 contain an explanation of each objective.

The Regulation stipulates that each environmental objective corresponds to criteria for determining the sustainability of an economic activity[79]. The attempt to adjust the latter to the sustainability criteria to achieve a specific objective must not, however, cause significant harm to any other of the pursued objectives. This is the principle of «Do Not Significant Harm» (DNSH), a pivotal principle of the Taxonomy Regulation, enshrined in its articles 3(b) and 17[80]. It is in fact considered that «this would prevent investments from being considered environmentally sustainable in cases where the economic activities benefiting from them damage the environment to an extent that exceeds their contribution to an environmental objective»[81].

It also requires that – in accordance with the OECD guidelines for multinational enterprises and the un Guiding Principles on business and human rights, including the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, the eight core ILO Conventions and the

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[79] As explained in recital 34, these criteria are determined by considering the life cycle of products and services that are the result of economic activity and its environmental impact, evaluating their use and end-of-life. The awarding of the EU Ecolabel is also done by analysing the life cycle: it is an environmental label awarded to goods and services intended for distribution, consumption or use against payment or free of charge in the territory of the Union. It was established in 1992 by Regulation (EEC) 1992/880, today it is governed by Regulation (EC) 2010/66, as amended by Regulation (EU) 2013/782. The awarding of this label, by an independent body such as the Ecolabel and Ecoaudit Committee, takes place by assessing the consideration of various environmental aspects (raw materials used, production processes, water and energy consumption) in relation to threshold values. The provision of this label and the discipline of taxonomy have raised several doubts regarding the competition of criteria to be met. On this topic, see A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia,* cit. at 5, 377-378; E. Macchiavello & M. Siri, *Sustainable finance and Fintech: can technoloqy contribute to achieving environmental goals? A preliminary assessment of "Green FinTech"*, 71 European Banking Institute Working Paper Series (2020); A. Redi, *L'Ecolabel come certificazione del livello delle qualità ecologiche*, in G. Rossi & M. Monteduro, *L'ambiente per lo sviluppo. Profili giuridici ed economici,* cit. at 9, 117-122. For more on the EU Ecolabel see https://www.mase.gov.it/pagina/ecolabel-ue and https://www.mase.gov.it/pagina/i-criteri-ecolabel-ue.

[80] L. Ammannati, *Transizione energetica, "just transition" e finanza*, 1s Riv. trim. dir. econ. 304 ff. (2022); F. de Leonardis, *Lo Stato Ecologico. Approccio sistemico, economia, poteri pubblici e mercato* (2023), 257-262; S. Quadri, *Nuovi orizzonti per una finanza realmente sostenibile*, 4 Riv. trim. dir. econ. 406 ff. (2022).

[81] So reads recital 34 of the Regulation.

international Charter on Human Rights – minimum social protections about human rights and labour are respected[82].

Sustainable activities are activities that avoid or reduce emissions, using carbon capture techniques or renewable energy; economic activities that make a substantial contribution to other activities with a view to achieving sustainable goals; and transitional production activities, for which there is no way to produce low carbon emissions, but which use the technology available with the lowest emissions.

The uniform criteria used to determine the substantial contribution of an economic activity to the target must consider the life cycle of the products and services provided by the economic activity, especially considering their production, use and end of life[83].

The use of the taxonomy by financial market participants is in any case not compulsory: they can decide whether to invest according to the intended strategies, assessing only environmental performance. The use of the taxonomy by investors only provides tools with which to decode the sustainability of certain corporate activities and with which to design green financial products, such as bonds, mortgages, or loans[84].

The taxonomy should, however, not only be understood as a tool to incentivise private investment, but also as a benchmark in assessing the sustainability of public investment projects and plans, as is also demonstrated by the reference to it, and to the principle of «Do Not Significant Harm», in the Next Generation EU to ensure the sustainability of the investments envisaged[85].

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[82] As stipulated in Article 3 of the Regulation, an environmentally sustainable economic activity must ensure compliance with the minimum safeguards of Article 18. They are «an integral part of the taxonomy» so that activities that violate fundamental human, social and labour rights principles or are carried out by companies that do not behave responsibly are not considered sustainable. To provide clarification on this issue, the European Commission intervened by issuing Communication 2023/C211/01 on the interpretation and implementation of certain legal provisions in the EU Taxonomy Regulation and links with the Regulation on sustainability reporting in financial services.

[83] On this point, see recital 34 of the Regulation.

[84] L. Alessi, B. Alemanni, G. Frati, *Financial Regulation for Sustainable Finance in the European Landscape,* cit. at 78, 217-218.

[85] L. Alessi, B. Alemanni, G. Frati, *Financial Regulation for Sustainable Finance in the European Landscape,* cit. at 78, 219. The application of this principle has also been extended to the measures of the National Recovery and Resilience Plans, according to the provisions of Regulation (EU) 2021/241, establishing the

All activities that do not meet the criteria of the Taxonomy Regulation are simply classified as «non-sustainable»: these are activities that fall within the scope of the regulation, but do not achieve one of the six sustainable objectives or do not meet the principle of not causing significant harm; or activities that have a low environmental impact and for that reason do not fall within the scope of the taxonomy, such as education; polluting activities; or, finally, activities that could potentially fall under the regulation, but are not yet envisaged.

Through the Delegated Regulation (EU) 2021/2139 (known as the Climate Taxonomy) of June 4th, 2021, the Commission supplemented the Taxonomy Regulation by laying down technical screening criteria, which allow it to determine under which conditions an economic activity can be considered to contribute substantially to climate change mitigation or adaptation and whether it does not cause significant harm to any other environmental objective. Technical screening criteria, as referred to in Article 19 of the Taxonomy Regulation, consist of threshold values or quantitative minimum requirements for a relative improvement, qualitative performance requirements, or requirements based on processes or practices, or a precise description of the nature of the economic activity, if it contributes to climate change mitigation[86] . Such technical screening criteria are useful to ensure that a given activity has a positive impact or at least reduces the negative impact on the climate objective. To comply with the principle of «Do Not Significant Harm», these criteria also serve to assess whether an economic activity has a negative impact on the environment: they must therefore specify the minimum performance of an economic activity that is considered environmentally sustainable[87].

Complementing the Taxonomy Regulation, Delegated Regulation (EU) 2021/2178 of July 6th, 2021, was also adopted to specify the content, methodology and presentation of the

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Recovery and Resilience Facility. On this point, see C. De Vincenti, *Green investments: two possible interpretations of the "do no significant harm" principle*, 16 Luiss Sep. Policy Brief (2022); M. Pignatti, *Il principio "do no significant harm" come strumento strategico. La nozione di "attività economica sostenibile" e le prospettive di innovazione nei contratti pubblici*, 1 Riv. reg. merc. 206 (2023).

[86] In these words, see recital 3 of the Delegated Regulation.

[87] See recital 4 of the same Delegated Regulation.

information that companies subject to Articles 19-bis[88] or 29-bis[89] of Directive 2013/34/EU must report on environmentally friendly economic activities.

To further extend the scope of the latter two Regulations, Delegated Regulation (EU) 2022/1214 of March 9th, 2022, amending Delegated Regulation (EU) 2021/2139 regarding economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 on public disclosure of specific information on these economic activities was adopted.

Finally, to expand the range of economic activities considered suitable for climate change mitigation and adaptation, the Commission, in June 2023, proposed the introduction of a new delegated act amending the Climate Taxonomy, considering low-carbon industry and transport sectors. A second delegated act, proposed at the same time as the first, introduces technical assessment criteria for the environmental objectives of sustainable use and protection of water and marine resources and protection and restoration of biodiversity and ecosystems. The taxonomy for all six sustainable objectives is thus completed.

The analysis of the legislation shows, therefore, that the development of a common sustainable language produces positive effects for all players in the financial markets[90]. More information on green activities and instruments allows economic operators and investors, both European and global, to invest faster and more consciously, thus strengthening the single financial market. Knowing the classification of environmentally sustainable activities favours an increase in investments in them, as private actors such as banks, insurance companies and financial advisors are also incentivised to adapt their activities to the new sustainable criteria. Public institutions also benefit from the development of the

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[88] These are large companies that are public interest entities and exceed the criterion of an average number of 500 employees during the financial year at the balance sheet date.

[89] These are public interest entities which are parent companies of a large group and which, at the balance sheet date, exceed the criterion of an average number of 500 employees during the financial year on a consolidated basis.

[90] An analysis on the economic and financial implications of the Taxonomy Regulation can be found in the Sustainable Finance Forum paper, *EU Taxonomy and Other Sustainable Finance Regulations: Implications and Perspectives for Financial Practitioners*, September 9th, 2021, available at: https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-europea_WEB.pdf.

taxonomy in the definition and elaboration of appropriate policies to achieve the ecological transition.

On the other hand, the costs of compliance with sustainability aspects and the balancing of green finance with social and governance aspects need to be considered, because there is a lack of an ESG taxonomy to ensure an all-round turn of activities towards sustainability, not only environmental[91] .

To further the objectives of the Taxonomy Regulation by promoting international cooperation, the International Platform on Sustainable Finance (IPSF)[92] was established in 2019.

It is an advisory body of the European Commission, consisting of representative experts from the public sector[93], the private sector[94] and civil society, active in the areas of ESG. The platform, in accordance with Article 20 of the Taxonomy Regulation, is also composed of experts appointed in a personal capacity, with knowledge and proven experience in the areas covered by the Regulation; experts representing academia, including universities, research institutes and other scientific organisations, and individuals with global expertise.

### 4. The ESG rating agencies

The regulatory interventions analysed so far, which allow for the dissemination of information capable of constituting a single

[91] N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria & M. Taverna (eds.), *La finanza per lo sviluppo sostenibile. Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea*, 1 Quaderni Consob 60-64 (2021).

[92] On its role see Strategy for Financing the Transition to a Sustainable Economy, 16; and the report on its work *Final Report on Social Taxonomy*, February 2022, available at https://finance.ec.europa.eu/system/files/2022-08/220228-sustainable-finance-platform-finance-report-social-taxonomy_en.pdf. See also N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria & M. Taverna (eds.), *La finanza per lo sviluppo sostenibile. Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea*, cit. at 91, 108.

[93] According to recital 50 of the Taxonomy Regulation, these experts include representatives of the European Environment Agency, the ESAS, the European Investment Bank, and the European Union Agency for Fundamental Rights.

[94] Among these entities, recital 50 of the Taxonomy Regulation lists representatives of financial and non-financial market participants and economic sectors, representing the industries concerned, as well as entities with accounting and reporting expertise.

financial market in which participants are aware of sustainability and related financial products, are not by themselves sufficient to place investors and market operators on the same information level. This information gap includes the role of ESG or sustainability rating agencies, which are responsible for measuring and assessing the environmental, social and governance performance of companies[95].

These agencies must, in fact, provide a numerical evaluation and ranking of companies according to their commitment to sustainability: alongside economic and financial evaluations of companies, sustainability rating agencies provide investors with information on the environmental impact of activities, respect for human rights and sustainable working conditions[96].

These are expert bodies, appointed to collect and analyse information relevant to compliance with ESG criteria. Investors,

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[95] Rating agencies are independent of issuers of securities and operators of regulated markets and are responsible for assessing the creditworthiness of these entities. The assessment of the issuer's solvency within the required timeframe determines the issuance of a rating on the degree of risk. A definition to this effect is provided by the Italian Stock Exchange, under the heading «Rating Agency» in its financial glossary (https://www.borsaitaliana.it/borsa/glossario/agenzia-di-rating.html). The role of rating agencies in the market has become more incisive due to the "outsourcing" of the credit rating process (traditionally entrusted to banks) to rating agencies. Credit rating refers to the development of a synthetic judgement on the ability of a company to meet principal and interest payments on bonds or debentures it has contracted. On this point, see G. Carriero, *Brevi note sulle agenzie di rating,* 2 Foro it. 50 (2012). The author highlights the critical nature of the activities of these agencies linked, above all, to the conflict of interest between the agencies themselves and the rated companies, since it is precisely the latter that provide the former with the information on which the rating assessments are based. On rating agencies, *ex multis*, see: S. Amorosino, *Rilevanze pubblicistiche dell'attività di rating finanziario*, 3 Dir. banca mercato fin. 415-428 (2013); M. De Bellis, *La regolazione dei mercati finanziari* (2012), 170 ss.; M. De Bellis, *La nuova disciplina europea delle agenzie di rating*, 5 Giorn. dir. amm. 453-463 (2010); G. Di Gaspare, *Teoria e critica della globalizzazione finanziaria. Dinamiche del potere finanziario e crisi sistemiche* (2011), 184 ff.; L. Pianesi, *Le agenzie di rating tra privatizzazione di funzioni pubbliche e opinioni private "geneticamente modificate"*, 1 Riv. trim. dir. pubbl. 179-213 (2011); G. Sciascia, *Credit Rating Agencies in the Context of EU Regulation of Financial Markets: Developments, Standards, Public Functions*, in E. Chiti & G. Vesperini (eds.), *The Administrative Architecture of Financial Integration. Institutional Design, Legal Issues, Perspectives* (2015), 210 ff.

[96] See European Commission, *Study on SustainabilityRelated Ratings, Data and Research* (2020), 57-58, available at: https://op.europa.eu/en/publication-detail/-/publication/d7d85036-509c-11eb-b59f-01aa75ed71a1/language-en.

issuers of financial instruments or interested third parties make use of these agencies to obtain useful elements for the assessment of investments to be made. Rating agencies draw up — based on information obtained from documents made public or kept private, such as reports, websites, interviews, and questionnaires filled in by internal members of the company[97] — brief judgements, based on statistical models, on the stability and reliability of entities or financial instruments[98]. Since the scores compiled by each rating agency, it is possible to compare companies and financial instruments: a higher score is synonymous with sustainability and security of investment[99].

While the work of these rating agencies is useful for understanding a company's focus on ESG factors, it also helps to know the degree to which a company's business is exposed to environmental and climate risks, determining the greater or lesser value of its investments[100].

The rating process is essential for directing sustainable and responsible investments. Financial intermediaries must consider a company's environmental, social and governance sustainability scores before making it the beneficiary of an investment[101]. So, the ESG rating becomes the driver of all sustainable finance condemning or facilitating the issuer's growth and the entire sustainable development process[102].

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[97] On the origin of ESG rating information see OICV-IOSCO, *Environmental, Social and Governance (ESG) Ratings and Data Products Providers. Final Report*, November 2021, 16 ff. (the document is available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf).

[98] On the characteristics of ESG rating agencies, see: G.C. Landi, *Sostenibilità e rischio d'impresa. Evidenze e criticità dei Rating Esg* (2020), 59-89; Università degli studi di Padova, *Agenzie di rating ESG: problematiche e prospettive*, available at https://www.sostenibile.unipd.it/non-categorizzato/agenzie-di-rating-esg-problematiche-e-prospettive/.

[99] It is a process of converting an ESG score into an ESG rating, so that a better or worse score corresponds to a better or worse rating. See T. Roncally, *Handbook of Sustainable Finance* (2023), 105 ff.

[100] On the impact of rating agencies' assessment on investors' perceived risk, see V. Bontempi, *L'amministrazione finanziaria dello Stato. La gestione della finanza pubblica in un sistema di governo multilivello* (2022), 93.

[101] S. Michielin, *Misurare la sostenibilità: note introduttive e inquadramento del problema. Il ruolo del rating ESG*, 2 Riv. reg. merc. 709-710 (2022). About the incidence of the role of such actors on the market, see G. Losappio, *Agenzie di "rating" e manipolazione del mercato*, ¾ Riv. trim. dir. pen. econ. 506-527 (2018).

[102] S. Michielin, *Misurare la sostenibilità: note introduttive e inquadramento del problema. Il ruolo del rating ESG*, cit. at 106, 710.

Due to the incidence of rating assessments on the market, not only investors, banks, consultants, and financial intermediaries, but also the companies themselves turn to these agencies to have their sustainability assessed and to supplement the missing requirements for a positive rating[103].

It is possible to take advantage of the services offered by these agencies[104] by paying a fixed cost for a certain period, which is usually one year, in the form of a subscription or licence, by paying a higher initial cost and lower annual maintenance costs. Finally, it is also possible to customise the services offered and the related payments according to the person requesting them.

With respect to these ratings, however, some critical aspects emerge: each rating agency adopts different assessment criteria, in the light of which greater or lesser consideration is given to different aspects of sustainability[105]. Although there are standard indices to be assessed in relation to the environment, the social aspect and governance, rating agencies are not always transparent about the way in which scores are awarded (giving rise to the so-called black box rating phenomenon) and do not adequately ascertain the veracity of the information gathered. This happens in the absence of harmonised legislation on the subject, requiring the adoption of common methods for assessing financial reliability.

The need to make rating activities more uniform and transparent and the substantial absence of *ad hoc* rules led the European Commission to submit a proposal for a regulation on transparency and integrity of environmental, social, and

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[103] Especially in this case, the absence of standardised corporate reporting affects the quantity and the quality of information and data used by rating agencies.

[104] On the access to rating services, see S. Michielin, *Misurare la sostenibilità: note introduttive e inquadramento del problema. Il ruolo del rating ESG*, cit. at 107, 712.

[105] On the methodology used by ESG rating agencies, see: A. Benedetti, *Le agenzie di rating tra crisi dei modelli di mercato e criticità dei processi di regolamentazione*, 2 costituzionalismo.it (2012); F. Berg, J.F. Kölbel & R. Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings*, Forthcoming Rev. Fin. (2022), 15 April; M. Billio, M. Costola, I. Hristova, C. Latino & L. Pelizzon, *Inside the ESG ratings: (Dis)agreement and performance*, 284 SAFE Working Paper 9 ff. (2020); A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia,* cit. at 5, 378-379; A.K. Chatterji, R. Durand, D.I. Levine & S. Touboul, *Do ratings of firms converge? Implications for managers, investors, and strategy researchers*, 8 Strat. Mgmt. J. 1597-1614 (2016); A. Del Giudice, *La finanza sostenibile. Strategie, mercato e investitori istituzionale*, cit. at 81, 22-44.

governance rating activities in June 2023[106]. With a view to achieving the more general objectives of transition towards financial sustainability, strengthening the reliability of the single financial market, protecting consumers, and reducing the risk of greenwashing, rating agencies – in accordance with the proposed regulation – would have to comply with specific constraints. They would be subject to authorisation and supervision by ESMA; they would have to use predetermined methodologies, subject to annual review; they would be required to use independent and objective ESG indices, to reduce the risk of conflicts of interest; and they would be subject to public disclosure requirements concerning the methods and models used. Rating agencies would, in any case, retain full autonomy in choosing the methodology to be used, which would not be subject to harmonisation through the future regulation.

A regulatory intervention in this sense is significant in view of the increasingly penetrating consideration of ESG factors in financial mechanisms and the consequent presence of numerous rating agencies — numerically destined to grow further — of which 30 are based in the European Union and 29 in other states[107]. In view of the important role played by these entities, the Commission intends to intervene with European legislation to avoid the adoption of different disciplines among Member States, which would hinder the market participation and make it impossible to compare ratings.

**5. Green Bonds**

Having analysed the relevant Regulations of the sustainable finance sector and the leading role played by rating agencies in assessing the sustainability of companies in the financial markets, it is of interest to move on to the analysis of green bonds.

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[106] For an analysis of the proposed regulation, it is useful to consult Dossier No. 29, September 6th, 2023, of the Chamber of Deputies' Office for Relations with the European Union on *Elements for the Subsidiarity Check - Proposal for a Regulation on Transparency and Integrity in Environmental, Social and Governance (ESG) Rating Activities*, freely available at http://documenti.camera.it/leg19/dossier/pdf/ES029.pdf.

[107] This data was provided by ESMA, in June 2022, in the paper on *Outcome of ESMA Call for Evidence on Market Characteristics of ESG Rating and Data Providers in the EU*, available at https://www.esma.europa.eu/sites/default/files/library/esma80-416-347_letter_on_esg_ratings_call_for_evidence_june_2022.pdf.

The main impact finance instruments used in financial markets to achieve sustainable objectives are green bonds. These are debt securities and bonds placed on the market by public or private issuers for the sole purpose of financing or refinancing green projects capable of producing positive environmental impacts[108].

They are fixed-income financial instruments aimed at raising capital from investors via the debt capital market. Investors entrust a fixed amount of capital to the issuer of the bond for a limited period, who at the end of the term returns the principal amount and the related interest accumulated periodically[109]. Green bonds are classic bonds[110] defined as "green" because the investment proceeds or invested capital must only be used in projects that positively affect the environment[111]. So, you have to consider that

[108] This is precisely the direction of the definition provided by the OECD in the Report on *Green bonds. Mobilising the debt capital markets for a low-carbon transition* (2015), 5, «A "green bond" is differentiated from a regular bond by its label, which signifies a commitment to exclusively use the funds raised to finance or re-finance "green" projects, assets or business activities (ICMA, 2015)».

[109] In the OECD report, *Green bonds. Mobilising the debt capital markets for a low-carbon transition*, cit. at 113, 5, the financial characteristics of green bonds are described: «Like any other bond, a green bond is a fixed-income financial instrument for raising capital from investors through the debt capital market. Typically, the bond issuer raises a fixed amount of capital from investors over a set period (the "maturity"), repaying the capital (the "principal") when the bond matures and paying an agreed amount of interest ("coupons") along the way. A green bond is differentiated from a regular bond by being "labelled", i.e. designated as "green" by the issuer or another entity, whereby a commitment is made to use the proceeds of green bonds (i.e. the principal) in a transparent manner, and exclusively to finance or re-finance "green" projects, assets, or business activities with an environmental benefit».

[110] A further element that characterises green bonds is the so-called greenium, which will not be discussed in detail here, but will only be mentioned because of the topicality of the phenomenon. This is a premium paid by investors whereby those who invest in green bonds can obtain a lower interest rate than if they were to acquire non-green bonds. On this point, see S. Fatica& R. Panzica, *Strumenti di debito sostenibili:* green bond *e non solo*, 20 Riv. econ., cult. ric. soc. (2021); C. Marasco, *Il mercato dei green bond alla prova della disciplina europea*, 4S Riv. trim. dir. econ. (2022), 333.

[111] As stated in the HLEG Final Report 2018, entitled *Financing a sustainable European economy,* cit. at 24, 31, «The HLEG defines an EU Green Bond as any type of listed bond instrument meeting the following requirements: 1) The proceeds will be exclusively used to finance or refinance in part or in full new and/or existing eligible green projects, in line with the future EU Sustainability Taxonomy; and, 2) The issuance documentation of the bond shall confirm the

alongside the issuer and the investor there may also be a third party who is concretely financed and who benefits from the capital as the realiser of the objective[112].

Although reference is often made to a single bond, green bonds should be thought «as securities or mass transactions, and therefore not individual financing contracts, but standardised fractions of a unitary transaction which, as such, can only be issued by the parties and in accordance with the procedures laid down by law»[113].

The spread of green bonds has mainly taken place since 2007, when not only supranational financial institutions, but also local authorities, individual companies or agencies started to place these new financial instruments on the market, demonstrating a growing focus on environment and sustainability by public and private actors[114].

Indeed, there has been a progressive increase since 2007 in the value of the sustainable market: the debt of the green, social and

intended alignment of the EU Green Bond with the EU Green Bond Standard; and, 3) The alignment of the bond with the EU Green Bond Standard has been verified by an independent and accredited external reviewer. An issuer may only use the term "EU Green Bond" if the above criteria are met». See also the in-depth discussion in OECD, *Green bonds. Mobilising the debt capital markets for a low-carbon transition*, cit. at 113, 13, box 7 on *Green bonds currently have financial features that are identical to conventional bonds*.

[112] A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, cit. at 25, 825; D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 125.

[113] D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 122.

[114] See Borsa Italiana, *Cosa sono i Green Bond*, in https://www.borsaitaliana.it/notizie/sotto-la-lente/green-bond-definizione.htm; B. Faske, *Turning Billions into (Green) Trillions: Tracking the Growth and Development of the Green Bond Market in China, France, India and the United State*, 2 Tulane Env. L. J. 297 ff. (2018); A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, cit. at 25, 825.

sustainability (GSS) markets[115] — calculated with reference to the first half of the year 2022 — amounts to USD 417.8 billion[116].

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[115] A distinction should be made between green bonds and social bonds, which are considered, together with the former, among the thematic investments of impact finance. Social bonds can also be considered as bonds but, unlike green bonds, are used to finance or refinance projects that pursue social goals in the infrastructure, health, business, and essential services sectors. The market for social bonds is more recently established, and still developing in 2017 alone, the Council of Europe Development Bank (CEB) issued a EUR 500 million social inclusion bond, followed by the Dutch bank NBW, which issued a EUR 2 billion one. The dissemination of social bonds can contribute to the realisation of the SDGs, especially the goals of reducing poverty, unemployment, hunger, and gender inequality, improving health systems, collective welfare, and education. On the characteristics of social bonds, see A. Blasini, *Nuove forme di amministrazione pubblica per negozio: i "Social Impact Bonds"*, 1 Riv. trim. dir. pubbl. 69-87 (2015); A. Del Giudice, *La finanza sostenibile. Strategie, mercato e investitori istituzionale*, cit. at 81, 87-101; D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 120 ff. Mention must also be made of sustainability bonds. These are bonds, the income from which are used to finance or refinance projects that pursue both environmental and social goals, thus enabling a wider variety of objectives to be realised. Precisely because of this, an investor interested in compliance with ESG factors might consider these bonds more attractive. On sustainability bonds, see R. AlAhbabi & H. Nobanee, *Sustainability Bonds: A Mini-Review*, February 18th, 2020, available on SSRN at https://ssrn.com/abstract=3540119; D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 122; M. Mocanu, L.-G. Constantin & B. Cernat-Gruici, *Sustainability Bonds. An International Event Study*, cit. at 6, 1552; UNCTAD, *World Investment Report 2020: Inter-national production beyond the pandemic* (2020), 187-194 (freely available at https://unctad.org/system/files/official-document/wir2020_en.pdf). Finally, it is interesting to make a brief reference to sustainability-linked bonds, by which the funds collected can be used for any purpose by the issuer, if the issuer complies with sustainability indicators (KPI). If the company does not comply with them, financial interests are increased (step-up clause) and decreased if they are complied with (step-down clause). The company is thus liable for the environmental damage produced by its failure to comply with the KPI. For more on the controversial use of sustainability-linked bonds see: A. Carrisi, *Il ruolo degli strumenti finanziari ESG nella transizione ecosostenibile dell'economia,* cit. at 5, 388-390; J.M. Schmittmann & C. Han Teng, *IMF working paper. How Green are Green Debt Issuers?*, International Monetary Fund, 2021, WP/21/194, 17 ff.

[116] These data are indicated and analysed in the Climate Bonds Initiative (CBI) report, *Sustainable debt. Global State of the Market 2022*, available at https://www.climatebonds.net/files/reports/cbi_sotm_2022_03e.pdf. For a constant update on the value of green bonds issued, consult the CBI's institutional website. Italy has also entered the global sustainable market: the Italian Treasury, on March 3rd, 2021, issued — in accordance with the Green Bond Principles and the EU Green Bond Standards — the Green Multi-year Treasury Bond (BTP),

Since these are so-called thematic bonds, the typical cause of the contractual instrument consists in the realisation of a common benefit for the environment: it is precisely this aim that determines a scrutiny of the financial interests pursued by the investment[117].

So economic interests, i.e. the repayment of the principal with the associated interest, and non-economic interests in common environmental sustainability, are to be satisfied through these contractual arrangements, to be implemented using the capital raised[118]. It is therefore the interest in the destination of the latter that differentiates thematic bonds from classic debt securities, since what characterises them is the ultimate purpose of the investment itself[119].

This type of financing of sustainable projects and activities reflects a new orientation of the economic and financial system in the light of environmental requirements, which now characterise the structural apparatus of public and private investment[120]. The investment in green bonds is suitable for the pursuit of "green" purposes — to establish new production mechanisms that are better able to respond to and contain environmental risks — and to produce private economic benefits, generated not only by the collection of investment proceeds, but also by the realisation of new production facilities and energy-sustainable projects[121]. From private economic benefits therefore derive social benefits, for the community, and reputational benefits, for those involved in the investment process.

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maturing on April 30th, 2045. Cassa Depositi e Prestiti also plays an important role on the capital market in the ecological and energy transition: in fact, since 2017, it has been issuing ESG Bonds, i.e. social, green, and sustainability bonds, in accordance with the CDP Green, Social and Sustainability Bond Framework. On this topic, consult CDP's institutional page at the link: https://www.cdp.it/sitointernet/it/green_social_sust_bonds.page.

[117] M. Cossu, *Delle scelte di investimento dei Post-Millennials, e del difficile rapporto tra analfabetismo finanziario e finanza sostenibile*, 5-6 Riv. soc. (2021), 1270-1271.

[118] D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 124.

[119] D. De Filippis, *Transizione ecologica e mercati finanziari: i* green bonds, 5 Nuovo dir. soc. 869-870 (2023); C. Marasco, *Il mercato dei* green bonds *alla prova della disciplina europea*, cit. at 115, 32-34.

[120] A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, cit. at 25, 826; G. Strampelli, *Gli investitori istituzionali salveranno il mondo? Note a margine dell'ultima lettera annuale di BlackRock*, 1 Riv. soc. 51-71 (2020).

[121] A. Las Casas, *Mercati finanziari e transizione ecologica: il modello dei green bonds*, cit. at 25, 827.

### 5.1 The Green Bond Principles

The use of the financial model of green bonds has led to the need to intervene by means of instruments useful for the identification of bonds that can be labelled as "green", removing the issuer itself from this defining function and the investor from control over the actual assessment of the environmental sustainability of the purpose pursued with the investment[122].

A significant contribution to the definition of green bonds[123] was first made in 2014 by the International Capital Market Association (ICMA), which drew up the first Green Bond Principles (GBP), which are constantly updated by its members, users of the principles and stakeholders[124]. This is an international non-profit association, set up in 2005, in which mainly issuers, investors and banks participate, and which is responsible for certifying as green those bonds that comply with the criteria it has determined, based on an audit by a third party that must approve the certification[125].

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[122] This valuation mechanism, which determines a substantial information asymmetry between the issuer and the investor, is typical of labelled green bonds, bonds "self-labelled" as green by the issuer himself, who then acts to convince market participants of the convenience of the bonds he holds. For more information, see the CBI's institutional page at: https://www.climatebonds.net/cbi/pub/data/bonds.

[123] Over time, the Climate Bond Initiative has also drawn up standards for the classification of green bonds (further information on this can be found at: https://www.climatebonds.net/standard/the-standard), compliance with which is monitored by a third party, which is responsible for drawing up the so-called second party opinions, mainly rendered by the Centre for International Climate and Environmental Research Oslo (CICERO). The latter only classifies bonds *ex ante* because of the degree of environmental protection, subdividing them into dark, medium, and light green, and does not check the actual achievement of the objectives. For more information on the activities carried out by the research centre, see the institutional webpage: https://cicero.oslo.no/en/about.

[124] The latest Green Bond Principles were drawn up in 2021 and updated in 2022 with an appendix. The document is freely available at: https://www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Green-Bond-Principles-June-2022-060623.pdf. ICMA itself also published the Social Bond Principles in 2016, following the example of the GBP, most recently updated in June 2023 and freely available at: https://www.icmagroup.org/assets/documents/Sustainable-finance/2023-updates/Social-Bond-Principles-SBP-June-2023-220623.pdf.

[125] For details on ICMA's activities, see the institutional website at https://www.icmagroup.org/.

The ICMA does not, in fact, intend to determine global "green"certification standards, but rather to disseminate guidelines, recommendations and good practices to promote transparency and information in the financial markets to attract more capital.

GBP are widely used standards in the classification of green bonds[126] and are representative of a private, non-binding definitional system that stops at the moment a bond is issued, without dictating the criteria and characteristics of the financed activity or project[127].

As indicated in the latest available version of the GBP, updated to June 2022, green bonds are currently of four types: Standard Green Use of Proceeds Bond, Green Revenue Bond, Green Project Bond, Secured Green Bond[128].

In accordance with the green bond principles, all bonds are considered "green" if they have the following four characteristics[129]. The proceeds from the bond issue must be

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[126] A definition of green bonds can be found in ICMA, *Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds*, June 2021, 3: «Green Bonds are any type of bond instrument where the proceeds or an equivalent amount will be exclusively applied to finance or re-finance, in part or in full, new and/or existing eligible Green Projects (see Use of Proceeds section below) and which are aligned with the four core components of the GBP».

[127] As stated in the same guide to GBP, ICMA, *Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds*, cit. at 131, 4: «The Green Bond Principles (GBP) are voluntary process guidelines that recommend transparency and disclosure and promote integrity in the development of the Green Bond market by clarifying the approach for issuing a Green Bond. The GBP are intended for broad use by the market: they provide issuers with guidance on the key components involved in launching a credible Green Bond; they aid investors by promoting availability of information necessary to evaluate the environmental impact of their Green Bond investments; and they assist underwriters by offering vital steps that will facilitate transactions that preserve the integrity of the market».

[128] To understand the characteristics of each type, see ICMA, *Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds*, cit. at 131, 8; OECD, *Green bonds. Mobilising the debt capital markets for a low-carbon transition*, cit. at 113, p. 12.

[129] On this point, see ICMA, *Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds*, cit. at 131, 4, where it is specified that: «The four core components for alignment with the GBP are: 1. Use of Proceeds 2. Process for Project Evaluation and Selection 3. Management of Proceeds 4. Reporting The key recommendations for heightened transparency are: (i) Green Bond Frameworks (ii) External Reviews». See also F. Conte, *La finanza sostenibile: limiti e profili evolutivi*, cit. at 27, 11; D. Lenzi, *La finanza d'impatto e i green e social bonds. Fattispecie e disciplina tra norme speciali e principi generali,* cit. at 17, 126-127.

invested in the realisation of green projects, according to a suitably described and documented prospectus. The issuer of the green bonds must disclose to the public how the projects are evaluated and selected and, therefore, the relative purposes and instruments. It is also stipulated that the management of the proceeds must take place in a transparent manner, so that they can be traced, with appropriate reporting and information by the issuer[130]. The issuer is obliged to keep a report of all the activities carried out, to disclose how the proceeds are used and how the financed projects are realised[131].

To also realise the transparency objectives[132] issuers are recommended to make use of third parties who can prepare external reviews that assess, in the moment before the issuance, the alignment of the green bond or the related project with the characteristics just analysed. Even after issuance, the issuer is recommended to use an external reviewer to monitor the allocation of proceeds against the planned projects[133].

### 5.2 The European Green Bond Standard

A turning point in the green bond landscape is the approval, on October 4th, 2023, of the Regulation on European Green Bonds and Voluntary Disclosure for Bonds Marketed as Green Bonds and Sustainability-Related Bonds, proposed by the Commission in July 2021, in line with the objectives of the Green Deal and the provisions of the Taxonomy Regulation.

The Regulation (EU) 2023/2631 is the first regulatory instrument adopted at supranational level to establish a European

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[130] The information must be disclosed within a Green Bond Framework, relating it to the context of the issuer's overall sustainability strategy, i.e. through reference to the five high-level environmental objectives of the GBP (climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation and pollution prevention and control). See ICMA, *Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds*, cit. at 131, 7.

[131] An analysis of the four components that characterise green bonds that are in line with the GBP shows that the essential elements are transparency, accuracy and integrity of the information disclosed and reported by issuers to stakeholders with adequate reporting and disclosure.

[132] The centrality of disclosure and transparency also emerges from OECD, *Green bonds. Mobilising the debt capital markets for a low-carbon transition*, cit. at 113, 8-11.

[133] ICMA, *Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds*, cit. at 131, 7.

green bond standard, known as the European Green Bond Standard (EGBS).

In fact, there was the need, which had already become apparent over time, to establish a harmonised regulatory framework that would encourage the spread of green investments, improving the capacity of investors and increasing confidence in the European single market, following the determination of tools to identify environmentally sustainable investments. Just think of the European Parliament's resolution of May 29th, 2018, on sustainable finance[134]; the Commission's communication of January 14th, 2020, on the «Investment Plan for a Sustainable Europe. Investment Plan for the European Green Deal»[135] ; the European Parliament resolution of November 13th, 2020, on «Investment Plan for a Sustainable Europe - How to finance the Green Deal»[136]; and the European Council conclusions of December 11th, 2020[137].

As clarified for the previous European Regulations analysed, the need driving the development of common rules is mainly to avoid market fragmentation and the creation of barriers to trade due to the development of different market practices in the Member States. In fact, the risk is that of the coexistence of non-homogeneous trading conditions between issuers and resulting alterations in investment decisions, also because of the possible spread of greenwashing phenomena[138].

The purpose of the regulation is to determine uniform and specific requirements that bonds – issued by financial, non-financial and sovereign issuers – must have to fall into the category of European Green Bond (EUGB). Again, to avoid different national transposition measures, the regulatory instrument of the European regulation, and not the directive, was used: all those who intend to issue European Green Bonds are thus bound to the same regulatory source[139] .

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[134] The resolution can be found at: https://eur-lex.europa.eu/legal-content/IT/ALL/?uri=CELEX%3A52018IP0215.

[135] You can read the text of the communication at the link: https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A52020DC0021.

[136] The resolution can be found at: https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A52020IP0305.

[137] These conclusions are available at: https://www.consilium.europa.eu/media/47332/1011-12-20-euco-conclusions-it.pdf.

[138] This is the content of recital 6 of the Regulation.

[139] This specification is contained in recital 8 of the Regulation.

According to recital 12 of the Regulation, EUGB are those bonds the proceeds of which finance economic activities that have a long-term and positive impact on the environment. This can be done in three ways: by financing «tangible or intangible assets that are not financial assets, provided that these assets relate to economic activities that meet the taxonomy criteria»; by financing other assets «provided that the proceeds of these assets are used directly, or indirectly through sequential financial assets, for economic activities that meet the taxonomy criteria»; by using the proceeds of these bonds in the financing of family activities and expenditures that can impact the environment in the long run. It is also considered possible for these proceeds to be used in the financing of capital and operating expenditures of economic activities that already meet the taxonomy or are compatible with it in the short term, if the issuer already has a plan to expand activities aligned or to be aligned with the taxonomy. This Regulation also assumes that issuers allocate proceeds to a portfolio of fixed assets or financial assets (the so-called portfolio approach) if their total value exceeds that of outstanding bonds.

The financing transactions illustrated must correspond to adequate standards of transparency: as specified in recital 27 of the Regulation, issuers are required to publish periodic disclosures on the degree of alignment of issues with the taxonomy and on the level of pursuit of sustainable purposes, by means of special information sheets and reports on the allocation of proceeds before and after the issue of the bonds, by means of special templates attached to the Regulation[140]. Even companies that issue bonds that do not yet meet all the requirements to be defined as EUGB, but that demonstrate environmental awareness and protection, must comply with these transparency and disclosure obligations.

Article 5 of the Regulation introduces an important system of flexibility in the use of the proceeds of European green bonds, providing that 15% of them may also be used for economic activities other than those in line with the taxonomy, if they are adequately indicated in the information sheets and do not significantly harm the other activities receiving the remaining 85% of the proceeds.

To fulfil the transparency objectives, it is also envisaged that European green bond issuers should commission an independent external auditor to carry out pre-issue verifications of the bond

[140] See the provisions of Article 11 of the Regulation.

information sheet and subsequent annual reports on the allocation of proceeds.

External auditors must be qualified and independent entities to avoid conflicts of interest and ensure that investors are adequately protected: so, they must be subject to registration and supervision by ESMA[141].

It is precisely to the latter that powers are attributed to verify the compliance of the issuer's bonds with the EUGB criteria, being able to suspend approval of future projects and not assign European green bond status[142].

If, therefore, until now the determination of green certification criteria for bonds was left to voluntary private initiatives, the adoption of this European Regulation — in concert with those previously analysed — and of uniform defining models and criteria is intended to remove numerous barriers to accessing the sustainable financial market and to reduce the risks of investing in it.

## 6. Conclusions

The paper is focused on one of the main tools used to attempt an implementation of the ecological transition process: sustainable finance. The discovery of its centrality comes from the understanding of the need to employ public and private financial resources in investments oriented towards sustainability and climate protection, to conduct economic activities in accordance with social and environmental objectives.

Sustainable finance arises from the combination of the concepts of economic return produced by investments, sustainable development, and environmental protection, with a view to financing and encouraging the transition from a classical economic system to a circular one. Through sustainable finance, the environmental, social, and governance factors are integrated into economic practices over the long term. In addition to considering environmental factors and needs, market operators evaluate the sustainability of activities, projects, and companies, the recipients of investments, at the social and governance levels.

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[141] See recitals 36, 42, 46, 49, 51, 55, 56 and Articles 22, 23 and 24 of the Regulation.
[142] On the supervisory system, see the provisions in Title V of the Regulation.

It is precisely in the field of sustainable finance that the impossibility of self-regulation by market actors becomes evident[143], as it is necessary to adopt uniform rules across the European Union to make all operators participating in the single European market informed and aware. To try to achieve these objectives, European institutions have intervened – through the adoption of the Disclosure Regulation – determining at the European level the duties of investors and developing updated and comprehensive regulations regarding the risks and opportunities of sustainable investments.

Another area where the European legislator has intervened, adopting the Benchmarks Regulation, concerns the indication of standard information that companies must provide to investors to enable them to measure compliance with ESG indices and to decide on investments.

Consistently with these aims, the Taxonomy Regulation introduced a common classification of sustainable finance, ensuring a unified system of defining what can be considered green and sustainable in all Member States, essential for directing capital towards investments that promote environmental sustainability.

At this point, the question arose of what tools can achieve sustainable goals in financial markets. Green bonds could fulfill these purposes, as they are traditional bonds defined as "green" because the proceeds from the investment or the invested capital must be used only for projects that positively impact the environment. To certify bonds as green, the International Capital Market Association developed the first Green Bond Principles in 2014, representing a private, non-binding definitional system. However, a real turning point in determining uniform and specific requirements that bonds – issued by financial, non-financial companies, and sovereign issuers – must possess to fall under the category of European Green Bonds is the recent introduction of the Regulation on European Green Bonds and Voluntary Disclosure for Bonds Marketed as Green Bonds and Sustainability-Related Bonds.

The various regulatory interventions have highlighted the still emerging nature of the sustainable finance sector, and at the same time, its relevance in the European market. The public-private relationship becomes more intense and intricate: private entities,

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143 L. Ammanati & A. Canepa, *Intervento pubblico e finanza sostenibile per la transizione ecologica*, cit. at 5, 144-147.

such as companies, banks, and insurance companies, must comply with the guidelines imposed by European public entities, which have introduced new measures that impact the aims of their activities. Therefore, private entities must integrate strategic and decision-making processes with the provisions contained in the new legislative measures, which are not always clear and unambiguously interpretable. This requires the use of substantial financial resources to invest in recruiting competent personnel and updating those already employed with the new knowledge and skills required.

The necessary structural changes often discourage companies from making them. For this reason, although the interventions analysed aim to favour the single European market, to incentivise sustainable investments, and to overcome informational asymmetries between investors and issuers, the market continues to be characterised by a high risk of greenwashing[144]. Greenwashing has direct negative effects on investments, harming investors who intend to allocate their resources to sustainable economic activities. Furthermore, this phenomenon constitutes a real practice of unfair competition, penalising companies genuinely aiming to carry out the ecological transition process. The market loses stability, and all entities practicing greenwashing bear reputational, legal, and financial risks[145].

The framework becomes more complex when considering that the EU regulatory overload has hampered the competitiveness of EU enterprises, leading to a new legislative initiative within the EU. This is the new «Omnibus Simplification Package», through which European institutions aim to bring together the Taxonomy Regulation, Directive (EU) 2022/2464 (Corporate Sustainability Reporting-CSRD), and Directive 2024/1760/EU (Corporate Sustainability Due Diligence Directive-CS3D or CSDDD)[146]. This

[144] According to a study conducted by the European Commission – published in 2022 but relating to the year 2020 – the percentage of environmental claims, examined with reference to the territory of the European Union and considered vague, misleading, or unfounded, amounts to 53.3%. However, 40% of them were totally unfounded.

[145] European Banking Authority document, *EBA Progress Report on Greenwashing Monitoring and Supervision,* cit. at 31, 7.

[146] Through this directive, which came into force in July 2024 and is part of the measures under the Green Deal, the due diligence measures are identified that companies, their subsidiaries, and any business partners must adopt and

initiative, whose official proposal is expected around the end of February 2025, seeks to simplify the complex bureaucratic system and facilitate compliance with the new measures, especially for small and medium-sized enterprises[147].

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enhance to prevent and mitigate the negative impacts of their activities on the environment and human rights.

[147] While Europe has witnessed a gradual strengthening of the sustainable financial market, the situation in the United States is different. Although the US was a pioneer in the ESG investment sector, showing highly positive trends until 2021, since 2020, it has been at the center of various political debates. The Republican Party has shown interest in opposing such investments—going as far as proposing legislation to ban them—thus causing negative consequences in the economic and financial world not only in the United States but globally. For further data on this topic, see Start Magazine & Institute for Culture and Innovation, *ESG: Where Do We Stand?*, June 26th, 2024, available at https://www.innovativepublishing.it/wp-content/uploads/Paper_ESG_a-che-punto-siamo.pdf, 3-5.