

# Approaching Esg Compliance Concept From Business Law and Labour Law Perspectives

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## Abstract

*Climate change affects businesses and human rights, respectively and vice versa. Companies are increasingly expected to consider the impacts of climate change on their business operations and, conversely, the impacts of their business on the global climate, which requires reasonable measures to mitigate climate-related risks. Additionally, the human rights approach in terms of business in the era of climate change is considered to be essential in the process of transition towards a sustainable and green economy. Despite broad consensus on the urgent need for significant reductions in greenhouse gas emissions to meet the targets set by the Paris Agreement, binding legal obligations for companies to achieve these reductions still remain limited. As a result, some international financial institutions have adopted guidelines and standards – which, however, are still not legally binding. The recent adoption of specific, enforceable regulations in the EU is essential to drive company responsibility and encourage a transition toward a low-carbon economy. Climate change reporting and, more recently, climate change due diligence analysis are crucial aspects of the legal and economic debate.*

## Keywords

sustainable business • corporate responsibility • ESG compliance • due diligence • business law aspect • labour law aspect

## Introduction and Background of the Study

Although the concept of sustainable finance dates back to the early 1990s, it gained importance in 2007/2008. Sustainability has moved to the forefront and centre of the corporate and public debate after the economic crisis. There are a number of reasons for this. In part, these are linked to that economic crisis. It has raised questions about other issues besides the economic ones by arguing for a more sustainable economic model: that is, more social and environmental consciousness comprising the interest of all stakeholders, in the long run.

Recently, there has been a growing recognition that the global financial system must actively contribute to sustainable development. This trend reflects a shift toward integrating environmental, social, and governance (ESG) standards into financial decision-making.<sup>1</sup> Investors, companies, financial institutions and policymakers increasingly recognize that sustainable practices not only mitigate risks but also create new opportunities for economic growth. The international financial market has experienced significant structural changes as a result of globalization, rapid technological development, and the growth of financial flows at the global level. Financial market changes are reflected through the development of new institutions as well as the development of new financial products and financial innovations (e.g., green bonds).<sup>2</sup>

Initially, at the international level, there is a legal gap in terms of comprehensive regulation of sustainable financial markets. It is undeniable that during the past decade some governments, international financial organizations and private institutions have taken certain steps in the implementation of economic policies that help mitigate the consequences of climate change, but an adequate legal framework is still lacking. Some global financial institutions, such as the International Capital Market Association, issued principles and guidelines to help financial market participants forward in their ESG ambitions. Also, the Financial Stability Board issues recommendations about the global financial system, with the goal of developing voluntary, consistent climate-related financial risk disclosures that would be helpful to investors, consumers, asset managers, and other


1 Ana, Anufrijev. "Green finance and accounting Approach support in the function of sustainable economic development." *Ecologica*, vol. 29, no. 107 (2022): 391-398.

2 Dimić, Maja, Aleksandra Gajdobranski, and Mila Marjanović. "Investment funds and green bonds in the Republic of Serbia." *Ecologica*, vol. 30, no. 112 (2023): 654.

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financial market participants in identifying and managing financial risks.<sup>3</sup> This has coincided with an increased awareness of ecological limits in terms of environmental pollution, biodiversity and, in particular, climate change. *Climate risk* is defined as a comprehensive, integrated systemic risk that affects all forms of property, economy and markets. Therefore, investors and consumers can face significant climate risk without even realizing it. The legal, regulatory and economic barriers to recognition, proper evaluation and timely response are very difficult to overcome.<sup>4</sup> The link between climate change and the financial market has been highlighted in numerous international documents, aiming to suppress and overcome the negative implications of climate change on sustainable development.<sup>5</sup> This is illustrated by the adoption of the UN Guiding Principles on Business and Human Rights in 2011 and United Nations Sustainable Development Goals (SDGs) in 2015. In the same year the EU signed the United Nations Paris Climate Agreement. The focus on human rights and raising awareness about importance of mitigating the effects of climate change has been significantly advocated in the EU. This has resulted in adoption of the European Green Deal on 11 December 2019, which made sustainability an EU priority.

This paper theoretically and normatively discusses the elements of the ESG compliance concept widely advocated by EU policymakers, taking the perspective of business law along with labour law. Therefore, the paper explores and analyses developments from an international perspective, with the main focus on the legal framework in the European Union. Finally, the authors will briefly present the current state of regulation in Serbian law in the context of sustainable and responsible companies reporting on the financial markets.

### Legal Framework of Sustainable and Responsible Disclosure in the Financial Markets at the EU Level

The growing threat of climate change lifts up the urgency of committing to climate transition, including the significant role of global financial markets in aligning investments with net zero. Hence, the paper will focus on the critical role that financial markets must play towards achieving an orderly net zero transition to low-carbon economies. Although financial markets are beginning to integrate climate risks and opportunities into investment decision-making, a number of restrictions prevent increased investment to encourage orderly transitions to low-carbon economies. In particular, “insufficient data, financially material metrics and analytical tools to measure and manage climate risks remain critical constraints for corporate and financial institutions, which calls for greater attention to policy considerations.”<sup>6</sup> According to Amel-Zadeh and Serafeim, European institutional investors are the most active participants in the financial market in which investment processes and the projects are based on environmental and social protection and responsible corporate governance.<sup>7</sup> Investors, regulators, policymakers, NGOs, and other stakeholders exert pressure on multinational companies to adopt soft law mechanisms to address climate-change risks and opportunities. Particularly, climate change litigation against multinational companies is clearly growing, which increases liability risks.<sup>8</sup>

Recently, adoption of specific, enforceable regulations in the EU is essential to drive company responsibility and encourage a transition toward a low-carbon economy. The legal framework of sustainable financial markets includes various regulations, directives, action plans, and standards aimed at promoting environmentally and socially responsible investment in the financial markets. The EU regulations in the financial markets pursue two goals, namely (1) far-reaching transparency regarding the effects of actions by companies on people, the environment and the climate, and at the same time (2) tightening of due diligence obligations of companies in this respect.<sup>9</sup> With regard to transparency, this concerns both the reporting of sustainability risks due to the company’s actions or omissions and the risks to the company. The EU also has imposed obligations on financial institutions to be transparent about the actual greenness of companies (to avoid greenwashing) when offering their shares or

3 Park, Hyounghun, and Jong Dae Kim, “Transition towards green banking: role of financial regulators and financial institutions.” *Asian Journal of Sustainability and Social Responsibility*, vol. 5, no. 5 (2020): 8.

4 Allen, Mark, Korin Crawford, Jerome Theot, and Luca Toscani (editors), “GSBGEN 390 Climate Change and Capital Markets” *Stanford Business* (2015): 14.

5 Abramović, Vanja, Danijela Ćimović, and Mijat Jocić. “Klimatske promene i njihov uticaj na zemlje (Climate Change and its Impact on countries).” *Ekonomnske ideje i praksa*, no. 20 (2016): 45.

6 Organisation for Economic Co-operation and Development (OECD), *Financial Markets and Climate Transition – Opportunities, Challenges and Policy Implications*, OECD Paris (2021): 3.

7 Amel-Zadeh, Amir, George Serafeim. “Why and how investors use ESG information: Evidence from a global survey.” *Financial Analyst Journal*, vol. 74, no. 3 (2018): 87-103.

8 Hosli, Andreas, and Rolf H. Weber. “Climate change reporting and due diligence: Frontiers of corporate climate responsibility.” *European Company and Financial Law Review*, vol. 18, no. 6 (2022): 950.

9 de Kluiver, Harm-Jan. “Towards a framework for effective regulatory supervision of sustainability governance in accordance with the EU CSDD Directive. A comparative study.” *European Company and Financial Law Review*, vol. 20, no. 1 (2023): 206.

bonds to investors.<sup>10</sup> This is an important objective of the Sustainable Finance Disclosure Regulation (SFDR) which entered into force on 10 March 2021.<sup>11</sup> SFDR is a fundamental pillar of the EU Sustainable Finance agenda. It was introduced by the European Commission as a core part of its 2018 *Sustainable Finance Action Plan* alongside the EU Taxonomy and the Low Carbon Benchmarks Regulation.<sup>12</sup> Its provisions, which were complemented at the technical level via a *Delegated Regulation* adopted by the European Commission, are fully applicable since 1 January 2023. European Securities and Markets Authority (ESMA) recently published a proposal to update this Delegated Regulation, which is planned to be adopted by the European Commission over the course of 2024 and to apply in January 2025.<sup>13</sup>

A crucial legal objective of the Sustainable Finance Disclosure Regulation (SFDR) is to improve transparency in the sustainability features of financial products. This regulation requires financial market participants, such as investment firms, management firms, insurance companies, banks, and financial advisors, to disclose how they integrate ESG factors into their investment processes.<sup>14</sup> Therefore, the main purpose of the Sustainable Finance Disclosure Regulation is to enable investors and consumers to make more informed investment decisions that contribute to a sustainable transition by setting disclosure requirements covering a wide range of ESG metrics at both entity and product level. By setting out how financial market participants have to disclose sustainability information, it helps those investors who seek to invest their money into companies and projects supporting sustainability objectives to make informed choices.<sup>15</sup> By mandating clear and standardized disclosure, the SFDR aims to help investors make informed decisions regarding the sustainability of their investments and to combat greenwashing – where companies or products can falsely claim to be environmentally friendly.<sup>16</sup> Additionally, the SFDR is designed to allow investors to properly assess how sustainability risks are integrated in the investment decision process. Namely, enhanced transparency disclosure does not necessarily refer only to quantitative information, but also to a higher quality.<sup>17</sup> In this way, the SFDR contributes to one of the EU's big political objectives: attracting private funding to help Europe make the shift to a net-zero economy.

The SFDR requires financial institutions to highlight sustainability aspects and related risks when offering certain financial products. Closely related to this is what is known as the “taxonomy”, that is, “the determination of what does or does not qualify as a ‘green’ investment (in EU terminology: ‘environmentally sustainable activities’).”<sup>18</sup> This is elaborated in the EU Taxonomy Regulation 2020/852, which came into force on 12 July 2020. The main legal objective of the EU Taxonomy Regulation 2020/852 is to provide a classification system for environmentally sustainable economic activities.<sup>19</sup> It aims to create a common legal framework that helps investors, financial and non-financial companies, and policymakers to determine which activities can be considered sustainable in the context of the EU's broader goals for climate change mitigation and environmental protection. Specifically, the regulation seeks to facilitate sustainable investments by defining what constitutes an environmentally sustainable economic activity. Also, it aims to direct investments toward projects and activities that contribute to the EU's climate and environmental goals. It requires enhancement of transparency of companies concerning how and to what extent their activities are environmentally sustainable, promoting greater transparency for investors and consumers.<sup>20</sup> By establishing clear criteria

10 de Kluiver, Harm-Jan. “Towards a framework for effective regulatory supervision of sustainability governance in accordance with the EU CSDD Directive. A comparative study.” *European Company and Financial Law Review*, vol. 20, no. 1 (2023): 206.

11 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, *Official Journal of the European Union*, L 317.

12 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, *Official Journal of the European Union*, L 171.

13 European Securities and Markets Authority (ESMA), 2025 Annual Working Programme, 1 October 2024, ESMA22-50751485-1488, Available at: <https://www.esma.europa.eu/press-news/esma-news/esma-2025-work-programme-focus-key-strategic-priorities-and-implementation-new>, (27 October 2024).

14 Based on the survey in which 324 organizations and individuals participated, 89% of respondents agree that the broad objective of the SFDR is still relevant today. Additionally, 94% of respondents mostly agree that opting for a disclosure framework at EU level was more effective and efficient than in national measures and national legal systems had been taken at Member State Level. However, approximately 83% of respondents agree that “the SFDR is currently is not being used solely as a disclosure framework as intended, but is also being used as a labelling and marketing tool”. Summary Report of the Open and Targeted Consultations on the SFDR assessment, 14 September 2023 – 22 December 2023, 4-5. Available at: [https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2023-sfdr-implementation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2023-sfdr-implementation_en), (27 October 2024).

15 Summary Report of the Open and Targeted Consultations on the SFDR assessment, 14 September 2023 – 22 December 2023, 1. Available at: [https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2023-sfdr-implementation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2023-sfdr-implementation_en), (27 October 2024).

16 Sovilj, Ranko. “Green Securities Market – the situation and perspectives.” *Pravo & Privreda (Law & Economy Journal)*, no. 2 (2020): 143.

17 Weber, Rolf H. “From disclosure to transparency in consumer law.” In: Klaus Mathis and Avishalom Tor (eds.), *Consumer Law and Economics* (2021): 73, 84.

18 de Kluiver, Harm-Jan. “Towards a framework for effective regulatory supervision of sustainability governance in accordance with the EU CSDD Directive. A comparative study.” *European Company and Financial Law Review*, vol. 20, no. 1 (2023): 206.

19 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, *Official Journal of the European Union*, L 198, Art. 1.

20 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, *Official Journal of the European Union*, L 198, Art. 6-8.

and definitions, the regulation helps to prevent misleading claims about the environmental performance of investments and activities.

The taxonomy is a classification system that defines criteria for economic activities that are aligned with a net zero trajectory by 2050 and the broader environmental goals other than climate. The EU taxonomy allows financial and non-financial companies to share a common definition of economic activities that can be considered environmentally sustainable.<sup>21</sup> In this way, it plays an important role in helping the EU scale up sustainable investment, by creating security for investors, protecting private investors from greenwashing, helping companies become more climate-friendly and mitigating financial market fragmentation.<sup>22</sup> To summarize, its basic principle is that a green activity exists if sustainability is promoted in a particular respect (e.g., air or water quality or biodiversity) without harming other aspects of sustainability. The EU taxonomy is a cornerstone of the EU's sustainable finance framework and an important market transparency tool. It helps direct investments to the economic activities most needed for the low-carbon transition, in line with the European Green Deal objectives.

Another legislative rule that prescribes sustainability reporting is the Corporate Sustainability Reporting Directive (CSRD). This rule aims to improve and standardize sustainability disclosure across the EU, and was adopted on 5 January 2023.<sup>23</sup> One of the key legal principles of CSRD is the improvement of transparency. Namely, the CSRD requires that companies disclose more detailed and relevant information about their sustainability impacts, risks, and opportunities, thereby increasing transparency for all stakeholders.<sup>24</sup> The CSRD includes strict reporting rules on a broad range of sustainability and human rights issues, which rules are supplemented by very detailed standards developed by the European Financial Reporting Advisory Group (EFRAG).<sup>25</sup> According to Article 33, the members of the administrative, management and supervisory body of an undertaking have a "collective responsibility" to ensure that the relevant company's financial statements and management reports are compiled and published in accordance with the requirements of the CSRD. That collective responsibility should be extended to the digitalisation requirements laid down in Delegated Regulation (EU) 2019/815, to the requirement to comply with EU sustainability reporting standards and to the requirement to mark up sustainability reporting.<sup>26</sup> This is also covered by a general obligation that the information provided by the company is "to the best of their knowledge" correct.<sup>27</sup> The CSRD modernizes and strengthens the rules concerning the social and environmental information that companies must report. The aim of CSRD is to establish common reporting standards that can be used by all companies, facilitating comparability and consistency in sustainability disclosures. A broader set of large companies, as well as listed Small and Medium Enterprises (listed on stock exchanges), will now be required to report on sustainability. Some non-EU companies will also have to report if they generate over EUR 150 million on the EU financial market.<sup>28</sup> The new rules will ensure that investors, consumers, and other stakeholders have access to the relevant information they need to assess the impact of companies on people and the environment and for investors to assess financial risks and opportunities arising from climate change and other sustainability issues. Also, CSRD obliges companies to make their sustainability reports available in digital format, thus improving access to information for investors and the public. Finally, reporting costs will be reduced for companies over the medium- to long-term by harmonizing the information to be provided. Companies will have to apply the new rules for the first time in the 2024 financial year, for reports published in 2025.<sup>29</sup> In general, CSRD aims to create a more sustainable and responsible business environment within the EU, encouraging accountability and informed decision-making among stakeholders.

On 23 February 2022, the European Commission adopted a proposal for a Directive on corporate sustainability due diligence (CSDDD). Primarily, the concept of due diligence was introduced to the public discourse on how to accomplish responsible

21 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, Official Journal of the European Union, L 198, Art. 5.

22 Hyoungkun, Park, and Jong Dae Kim, "Transition towards green banking: role of financial regulators and financial institutions." *Asian Journal of Sustainability and Social Responsibility*, vol. 5, no. 5 (2020): 15.

23 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, Official Journal of the European Union, L 322.

24 Hosli, Andreas, and Rolf H. Weber. "Climate change reporting and due diligence: Frontiers of corporate climate responsibility." *European Company and Financial Law Review*, vol. 18, no. 6 (2022): 963.

25 European Financial Reporting Advisory Group published plans to submit two different sets of standards for SMEs – the legally binding "ESRS for Listed SMEs" and the "Voluntary Sustainability Reporting Standard for non-listed SMEs". Allgeier, Sina, and Robert Feldman. "CSRD Sustainability Reporting for Non-listed SMEs: European Regulators Remain Challenged." *European Company and Financial Law Review*, vol. 20, no. 3 (2023): 443.

26 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, Art. 33.

27 de Kluiver, Harm-Jan. "Towards a framework for effective regulatory supervision of sustainability governance in accordance with the EU CSDD Directive. A comparative study." *European Company and Financial Law Review*, vol. 20, no. 1 (2023): 207.

28 Guides for Policy Makers Series, "CSRD – Implications for companies outside the EU." Available at: <https://www.globalreporting.org/media/3fpxjvfp/gri-reporting-outside-eu-final.pdf>, (29. October 2024).

29 Commission on Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, Official Journal of the European Union L 22.12.2023, Art. 2.

business through the 2011 UN Guiding Principles on Business and Human Rights (UNGP), which frame it as a “process by which companies identify, prevent, mitigate, and account for how they address their actual and potential negative impacts on human rights”.<sup>30</sup> In 2019 OECD was adopted Due Diligence for Responsible Corporate Lending and Securities Underwriting guidance which highlights the key role of financial institutions in achieving the ESGs and the goals of the Paris Agreement. Due diligence concept can help financial institutions to prevent or address negative impacts related to human rights and labour rights, the environment, and corruption associated with their clients as well as to avoid financial or reputational risks.<sup>31</sup>

The European parliament approved the Directive on Corporate Sustainability Due Diligence in 24 April 2024. Finally, on 25 July 2024, the Directive on Corporate Sustainability Due Diligence entered into force.<sup>32</sup> The CSDDD originates from the European Green Deal, with the intention that sustainability “should be further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects”.<sup>33</sup> The main objective of this Directive is to encourage sustainable and responsible corporate behaviour in companies’ operations and throughout their global value chains. The new rules will ensure that companies within their scope identify and address harmful human rights violations (e.g., child labour) and environmental impacts (e.g., pollution) of their actions inside and outside Europe.<sup>34</sup> According to CSDDD, companies must assess potential risks related to human rights and environmental damage in their operations and supply chains. In addition, financial and non-financial companies are required to implement measures to prevent the materialization of identified risks. If negative impacts occur, companies must take steps to remedy them, ensuring that affected parties are compensated. The CSDDD encourages dialogue with affected stakeholders, including workers, communities, and civil society organizations.

This Directive establishes a corporate due diligence duty. Companies are expected to report on their due diligence efforts, making information publicly available to increase accountability. The core elements of this duty are identifying, bringing to an end, preventing, mitigating and accounting for negative human rights and environmental impacts in the company’s own operations, their subsidiaries and their value chains. In addition, some large companies need to have a transition plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement.<sup>35</sup> For EU companies, the directive applies to those with more than 500 employees and a turnover exceeding €150 million. Alternatively, companies with over 250 employees and a €40 million turnover also fall under the directive, provided that 50% of their revenue comes from high-risk industries like fashion, minerals, or agriculture. Non-EU companies operating within the EU also fall under the scope of the CSDDD.<sup>36</sup> This includes third-country companies active in the EU that meet the turnover thresholds aligned with the above-mentioned groups, with the revenue being generated in the EU, irrespective of whether they have a branch or subsidiary in the region. The financial sector has been excluded from CSDDD (for now at least), despite being included in the existing sectoral OECD guidance. The concern that led to this is that it is not very feasible for banks and other financial institutions to effectively monitor whether all those to whom they lend money comply with human rights and environmental obligations.<sup>37</sup>

Directors are incentivized to contribute to sustainability and climate change mitigation goals. The Directive also introduces duties for the directors of the EU companies covered. These duties include setting up and overseeing the implementation of the due diligence processes and integrating due diligence into the corporate strategy. In addition, when fulfilling their duty to act in the best interest of the company, directors must take into account the human rights, climate change and environmental consequences of their decisions.

30 Rugie, John. “Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.” Annex to UNHRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. UN Doc A/HRC/17/31, (2011): 15.

31 Organisation for Economic Co-operation and Development (OECD), *Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key considerations for banks implementing the OECD Guidelines for Multinational Enterprises*. (2019): 3.

32 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, Official Journal of the European Union.

33 de Kluiver, Harm-Jan. “Towards a framework for effective regulatory supervision of sustainability governance in accordance with the EU CSDD Directive. A comparative study.” *European Company and Financial Law Review*, vol. 20, no. 1 (2023): 207.

34 The Corporate Sustainability Due Diligence Directive (CSDDD) – Directive (EU) 2024/1760, Available at: <https://www.corporate-sustainability-due-diligence-directive.com>, (28. October 2024).

35 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, Official Journal of the European Union. Art. 1 (1C).

36 Iris Carbon Team, “EU Takes the Lead: Corporate Sustainability Due Diligence Directive Becomes Law.” June 19, 2023. Available at: <https://www.iriscarbon.com/eu-takes-the-lead-corporate-sustainability-due-diligence-directive-becomes-law/>, (29. October 2024).

37 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, Official Journal of the European Union. Par. 62.

## Sustainability, ESG Compliance and Corporation Violation of Labour Rights – Where Are We Standing For?

The legal construct of the “general duties of the directors” in multinational companies has been grounded primarily on economic goals, by “acting in the company’s best interests” to maximize the company’s profit. It means that, in a globalized world, the environmental, social and human rights-related issues of a company’s activities all over supply chains mainly stay outside the traditional director’s duties and the concept of the legal construct of the company, taken from the standpoint of corporate law. However, with the evolved approach to companies’ market activities that also encompass the environmental and social component of production based on so-called “due diligence legal compliance initiatives”<sup>38</sup>, more recently the focus of policymakers and legislators has been directed to the implementation of the *Environmental, Social, and Governance (ESG) issues* in corporate decision-making.<sup>39</sup>

The main reason for an altered viewpoint on corporate business activities lies in the mainstream concept of sustainability of businesses, states, and societies at large and the existing normative gap regarding the liability of multinational companies for human rights violations through global supply chains, particularly when operating in developing countries.<sup>40</sup> In that regard, so far, there are no international standards that impose the legal obligation for multinational companies to respect universal human and labour rights in developing countries where labour standards are extremely low, and where no international court has jurisdiction over them.<sup>41</sup> Instead, workers are facing precarious working conditions of overtime work, low wages, poor safety and health protection and, in some cases, “modern slavery” work arrangements.

Initially, to provide for the protection of fundamental labour rights in global corporate operations, there were initiatives to address the issues by supporting companies to adopt so-called voluntary compliance standards in the form of a unilateral corporate codes of conduct or by negotiating and concluding international framework agreements<sup>42</sup> at the company level. It was considered as a part of the *corporate social responsibility (CSR) concept* oriented on internal company practice. Most recently, the *ESG compliance concept* was highly advocated by policymakers at the international level, and considered to be an external activity of the companies’ duty of reporting. Both concepts – CSR and ESG – are employed in terms of providing the sustainability of business and labour in a highly globalized and consumer-based economy transiting to its low-carbon and green concept.

Historically, the origin of the *ESG compliance concept* dates to the 2004 United Nations Global Compact Report on “Who Cares Wins: Connecting Financial Markets to a Changing World” and to the 2005 “Freshfield Report” of the UN Environmental Program’s Finance Initiative, representing the continuum of the initiative of non-governmental organizations (NGOs) on environmental and sustainability issues.<sup>43</sup> The elements of the ESG notion are presented as follows: companies’ efforts to mitigate the impact of its activities on climate change (E), contribution to the respect of fundamental labour rights (S), and ensuring gender parity in companies’ management bodies (G).<sup>44</sup> However, still, there is no clear, universally accepted definition of ESG compliance, while in general it could be determined to be “a voluntary and, in some jurisdictions, mandatory company commitment to operate in line with international standards on human and labour rights protection, to ensure due diligence in its activities and to disclose the relevant non-financial information of the operations through all supply chain.”<sup>45</sup>

In terms of labour law, the ‘S’ element of ESG corporate reporting and disclosure is crucial to address. Since there is no universally defined set of ‘S’ standards, there are different approaches to the issue that depend on country and industry, or sector applied. In general, the ‘S’ element in the ESG concept encompasses indicators related to basic labour rights, well-

38 In some jurisdictions, there were amendments to company laws stipulating mandatory clauses for directors to consider the ESG’s issues in the decision-making process and make reports in that regard, for instance, the case of the United Kingdom which amended the Company Act in 2006, and more recently, Germany adopted the special Act on Corporate Due Diligence in Supply Chains (2021). Stephen J. Turner, “Corporate Law, directors’ duties and ESG interventions: Analysing pathways towards positive corporate impacts relating to ESG issues.” *Journal of Business Law*, no. 4 (2020): 245-264.

39 Turner, Stephen J. “Corporate law, directors’ duties and ESG interventions: Analysing pathways towards positive corporate impacts relating to ESG issues.” *Journal of Business Law*, no. 4 (2020): 245-264.

40 Maksimović, Marijana. “Labor market, digitalisation of the economy and sustainable development.” *Macedonian International Journal of Marketing*, vol. 8, no. 15 (2022): 41-44.

41 Velluti, Samantha. “Labour standards in global garment supply chains and the proposed EU corporate sustainability due diligence directive.” *European Labour Law Journal* (2024): 15. <https://doi.org/10.1177/20319525241239283>.

42 The International Framework Agreements are counterparts to the unilaterally adopted codes of conduct at the company level, negotiated between multinational companies and global union federations aiming to provide for the protection of fundamental labor and social rights in every country where the multinational company operates. Hennebert, Marc Antonin, Isabelle Roberge-Maltais, and Urwana Coiquaud. “The effectiveness of international framework agreements as a tool for the protection of workers’ rights: A metasynthesis.” *Industrial Relations Journal*, vol. 54, no. 3 (2023): 242-260.

43 Eccles, Robert G. and Judith Stroehle. “Exploring Social Origins in the Construction of ESG Measures.” (July 12, 2018). Available at SSRN: <https://ssrn.com/abstract=3212685> or <http://dx.doi.org/10.2139/ssrn.3212685>

44 Eccles, Robert G. and Judith Stroehle. “Exploring Social Origins in the Construction of ESG Measures.” (July 12, 2018). Available at SSRN: <https://ssrn.com/abstract=3212685> or <http://dx.doi.org/10.2139/ssrn.3212685>

45 Sychenko, Elena. “Labour rights and international labour standards in the ESG agenda.” *Italian Labour Law e-Journal*, vol. 16, no. 1 (2023): 137.

being, and equitable policies and standards within the multinational company, particularly core international labour standards: that is, ILO core standards, standards of occupational health and safety, anti-discrimination and standards on work-life balance and well-being.

For instance, according to the Global Reporting Initiative, the 'S' standards encompass those related to employer-worker relationship, occupational health and safety, training and education, diversity and equality, non-discrimination, freedom of association and collective bargaining, child and forced labour.<sup>46</sup> On the other side, there are examples of corporate best practice models addressing the 'S' element in the ESG concept determined voluntarily as a part of social corporate responsibility. Thus, for example, Microsoft has implemented the software titled "AI for Humanitarian Action" employing artificial intelligence to assess compliance with the 'S' standards in terms of disaster response, refugee resettlement, and human rights while *Nestle* cooperates with suppliers to improve working conditions and has implemented a human rights due diligence model.<sup>47</sup>

Ongoing digital and green transition in economics stressed the importance of the due diligence human rights approach as an effective management mechanism to cope with new, emerging risks in the workplace.<sup>48</sup> The due diligence management model is a hybrid mechanism that is not strictly legal in its nature, comprising policy, economics, (work) ethics, and finally, labour-legal elements for assessing business operations in all their phases on a global level. This form of corporate management supports a holistic, integrated, and worker-centered approach from the bottom to the top of companies' operations. The approach targets the individual relationship between employer and employee in terms of labour law (at micro level) as well as the effects of that practice on overall company activities in terms of business law (at macro level). Finally, human rights due diligence management could be seen as a follow-up mechanism supporting the 'S' element in the ESG compliance system.

At the EU level, on 5 January 2023, Corporate Sustainability Reporting Directive (CSRD)<sup>49</sup> entered into force, while the first companies' reports are set to be published in 2025 for 2024. The aim of the Directive is to improve non-financial reporting of the companies, in terms of sustainability. It means the obligation for mainly large companies to disclose information about their business model and practice, particularly regarding due diligence models, performance and risk management in terms of environmental, social, and labour issues, respect for human rights, and anti-corruption. From the aspect of labour law, the CSRD mandates transparent reporting on issues such as fair wages, safe and healthy working environments, diversity and equal opportunities, which ultimately supports the EU's goal of promoting decent work and human rights across supply chains. The CSRD replaces the Non-Financial Reporting Directive (2014/95/EU) and has been adjusted to the European Green Deal.<sup>50</sup>

Previously, the European Council adopted *Conclusions calling on the Member States and the Commission to promote Human Rights and Decent Work in Global Supply Chains (2020)*<sup>51</sup>, stressing the corporate, that is, human rights due diligence approach as a key mechanism in providing decent, fair and just working conditions in the global supply chain along with sustainable and responsive management and social partnership within the company. Additionally, on 10 March 2021, the European Parliament adopted the *Resolution with recommendations to the Commission on corporate due diligence and corporate accountability*<sup>52</sup> that focuses on ensuring businesses act responsibly by implementing due diligence model that protects fair labour practices, supports workers' rights to safe and healthy workplaces and promotes the right to collective bargaining. Through this, the EU aims to hold companies accountable for violations of labour and human rights and to foster sustainable and ethical business practices across industries.

46 Waas, Bernd. "The "S" in ESG and international labour standards." *International Journal of Disclosure and Governance*, vol. 18 (2021): 406.

47 Deloitte. *Beyond Environmental Impact: The Case of Social in ESG - The importance of prioritizing the social aspect of ESG in creating a more sustainable future*. Jul 2023, Available at: <https://www.deloitte.com/nl/en/issues/climate/beyond-environmental-impact-the-case-of-social-in-esg.html>

48 Sanja, Stojkovic Zlatanovic, and Predrag, Jovanovic. "Workforce aging and decent work in the era of the digital economy – towards a holistic public policy approach." *Stanovništvo*, Vol. 61, No. 1 (2023): 60.

49 DIRECTIVE (EU) 2022/2464 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, *Official Journal of the European Union*, L 322.

50 Alberti, Jakob Johannes. "New Corporate Sustainability Reporting Directive (CSRD) policy from the EU, Quantitative Analysis of the financial impact on MNEs in Germany." *Master Thesis*, Tilburg University (2024): 6.

51 Council Conclusions on Human Rights and Decent Work in Global Supply Chains, Council of the European Union, ST 12945/20, Brussels, 1 December 2020.

52 European Parliament Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL), P9\_TA (2021)0073.

## Legal Framework of Sustainable Finance in Serbian Law: The Applicability of ESG Standards on the Financial Market

Taking into account that the Republic of Serbia is a member (signatory) of 2030 Agenda for Sustainable Development – the global goals of sustainable development – the state is committed to respecting the principles of a healthy environment, supporting a low-carbon economy, collecting and mobilizing financial resources for the implementation of national goals of sustainable economic and ecological development. In accordance with the current global goals of financial markets development, in 2021 the Republic of Serbia adopted the Capital Market Development Strategy for the period from 2021 to 2026. The Capital Market Development Strategy is connected to the Revised Fiscal Strategy of the Republic of Serbia for 2022, with projections for 2023 and 2024,<sup>53</sup> as well as the Industrial Policy Strategy of the Republic of Serbia from 2021 to 2030.<sup>54</sup> While the Revised Fiscal Strategy requests for a lot of activities to improve the capital market and the functioning of financial institutions, the banking sector, and deposit insurance, the Industrial Policy Strategy concentrates on the usage of financial incentives to promote digitalization and technology innovation, and capital redirection towards green projects in the industrial sector.<sup>55</sup>

The main objective of the Capital Market Development Strategy is to contribute to positive impacts on the environment in the context of harmonizing the national legal framework with both EU initiatives for sustainable financing and the EU green bond standard. In addition, the aim of the Strategy is to strengthen and improve the national capital market, the implementation of which should enable sustainable economic growth, attracting domestic and foreign investments, as well as expanding the offer of new financial instruments on the capital market.<sup>56</sup> Also, the Strategy supports the establishment of a *one-stop-shop platform* that should provide a comprehensive set of services related to the development of the national capital market, and supports raising awareness of the importance of green financing development and its positive impact in the fight against climate change.<sup>57</sup> Financing of green energy projects through grants, soft loans and guarantees is of great importance for the development of the financial market and operations of financial and non-financial companies.

This strategy, as one of the measures that will contribute to the realization of the goals, states the adoption of the new Capital Market Law. The Capital Market Law was adopted in December 2021.<sup>58</sup> The new Law entered into force on January 5, 2022, and it began to be applied after one year, precisely, on January 5, 2023, except for the provisions whose implementation were postponed until the accession of the Republic of Serbia to the European Union.<sup>59</sup>

The new Capital Market Law is harmonized with the EU regulations governing financial instrument markets, prospectuses, investor compensation systems, transparency, irrevocability of netting in securities netting systems, and market abuse.<sup>60</sup> Monitoring European practice in the financial market development reflects Serbia's ambition to meet the standards for EU accession in the foreseeable future. However, to date, the regulation of Serbian financial market is not harmonized with the EU legal framework of the sustainable financial market, comprising several recently adopted regulations – Sustainable Finance Disclosure Regulation, EU Taxonomy Regulation, Corporate Sustainability Reporting Directive, and Directive on Corporate Sustainability Due Diligence.

53 Government of the Republic of Serbia, Revised Fiscal Strategy for 2022 with projections for 2023 and 2024: 3.

54 Industrial Policy Strategy of the Republic of Serbia from 2021 to 2030, Official Gazette of RS, No. 30, (2018).

55 Petrović, Miloš M. "Brief Overview of Particular Elements of the Capital Market Development Strategy (2021): Adjustment of Insurance Industry to European Union Standards." *Tokovi osiguranja*, no. 4 (2022): 110. Ivana Ostojić. and Marijana Maksimović. "Development of Institutions, Rule of Law and European Integration." *Knowledge – International Journal*, vol. 48.1 (2021): 223.

56 Capital Market Development Strategy from 2021 to 2026 (Strategija za razvoj tržišta kapitala za period 2021. do 2026. godine), Official Gazette of RS, No. 102, (2021): 1.

57 Action Plan from 2021 to 2023 for the Implementation of Capital Market Development Strategy from 2021 to 2026 (Akcioni plan za period 2021-2023. godine za sprovođenje Strategije za razvoj tržišta kapitala za period od 2021. do 2026. godine), Official Gazette of RS, No. 118, (2021): 3.

58 Capital Market Law, Official Gazette of RS, No. 129, (2021).

59 Ranko, Sovilj. "Legal Status of Investment Firms in the Capital Market (Pravni položaj investicionih društava na tržištu kapitala)." Institute of Social Sciences, Belgrade, (2023): 63.

60 In that sense, the new Capital Market Law and Capital Market Development Strategy are harmonized with those of the European Union, particularly with the Directive 2014/65/EU on markets in financial instruments, Regulation (EU) No. 600/2014 on markets in financial instruments, Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories, Regulation 648/2012 on OTC derivatives, central counterparties and trade depositories (EMIR Regulation), Directive 97/9/EC on investor-compensation schemes, Directive 98/26/EC on settlement finality in payment and securities settlement systems, Directive 2002/47/EC on financial collateral arrangements, Directive 2010/73/EU on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and Directive 2014/57/EU on criminal sanctions for market abuse (market abuse directive), and Regulation (EU) No 596/2014 on market abuse (market abuse regulation). Capital Market Development Strategy from 2021 to 2026 (Strategija za razvoj tržišta kapitala za period 2021. do 2026. godine), Official Gazette of RS, No. 102, (2021): 12-13.



## Conclusion

The implementation of sustainable development principles and business operations in accordance with ESG standards enhances the long-term stability of the financial market while also strengthening trust and increasing the knowledge of financial market participants. Simultaneously, the implementation of ESG principles and transparent reporting enhances the companies and investors reputation, as well as their financial performance. Climate-related disclosure, and climate due diligence are important topics in the debate on how to increase companies' responsibility with respect to their contribution to climate change. On the other side, from the perspective of labour law, the 'S' element in ESG compliance concept emphasizing to consider decent work standards and fair labour conditions in the management decision-making through the global supply chain. It could be achieved by introducing mandated due diligence human and labour rights assessment and management procedure along with already developed internal employers' practice of adopting corporate codes of conduct or international framework agreements. The transition to a low-carbon economy offers an opportunity to promote equitable, fair, and sustainable economic development, enabling stakeholders to achieve a fair share of a zero-carbon future. Therefore, it is necessary to establish a legal and regulatory framework in collaboration with global, regional, and national government bodies, independent regulatory bodies, development finance institutions, trade unions, and companies, as well as unions and employers' organizations.<sup>61</sup> However, the legal regulation of financial market sustainability is still in its nascent stage and extremely fragmented. Sustainable financial markets are undoubtedly set to be a prominent topic in discussions of legal and financial regulation in the following years. In that sense, the European Commission has recently opted to revise the entire legal and regulatory framework to mobilize the financial sector, considering that the financial market has a crucial role in advancing and supporting the achievement of low-carbon development goals.

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61 Ranko, Sovilj. “Legal Consequences of Climate Change on Redefining the Capital Market – Can Capital Market Contribute to Transition to a Low-Carbon Economy?” *Pravo & Privreda (Law & Economy Journal)*, no. 2 (2022): 340.

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