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THE SUSTAINABILITY OF ESAS TRIUMVIRATE FOR SUSTAINABILITY-RELATED DISCLOSURES IN THE FINANCIAL SECTOR – ALL FOR ONE AND ONE FOR ALL?[1]

Abstract. Sustainability is definitely one of the top priorities of the current highly competitive global society. For almost three decades, the EU has been declaring its commitment to sustainable growth, while progressively recognizing that the concept of shared values, the multi-stakeholder model and corporate social responsibility (CSR) are indispensable. The EU moved, in the context of the COVID-19 pandemic, the war in Ukraine and other events, from mere Directives to Regulations, i.e. the genuine reporting about sustainability is becoming a duty for certain businesses, especially in the financial sector. This political and legislative trend is boosted by the engagement of three special EU institutions (ESAs) entrusted with the development, standardization and monitoring of sustainability-related disclosures based on Regulation 2019/2088. Who belongs in this triumvirate? What are their competencies and tasks? And most importantly, how is this triumvirate and its operations perceived? A holistic multi-disciplinary research of legislative sources and performed surveys and studies yields both quantitative and qualitative data. An open-minded critical analysis

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of such data, along with a comparison, Socratic questioning and forensic glossing brings answers to these three burning questions and offers fresh recommendations regarding EU pro-sustainability endeavours as well as modern European integration.

Keywords: CSR, EU law, European Supervisory Authorities (ESAs), financial services, sustainability

TRWAŁOŚĆ TRIUMWIRATU ESA DLA ZRÓWNOWAŻONEGO ROZWOJU – UJAWNIANIE INFORMACJI W SEKTORZE FINANSOWYM: JEDEN ZA WSZYSTKICH, WSZYSCY ZA JEDNEGO?

Streszczenie. Zrównoważony rozwój jest jednym z głównych priorytetów dzisiejszego rywalizującego globalnego społeczeństwa. Od prawie trzech dekad UE deklaruje swoje zaangażowanie na rzecz zrównoważonego wzrostu, stopniowo uznając, że koncepcja wspólnych wartości, model wielu interesariuszy i społeczna odpowiedzialność biznesu (CSR) są niezbędne. W kontekście pandemii COVID-19, wojny w Ukrainie i innych wydarzeń UE przeszła od zwykłych dyrektyw do rozporządzeń, co oznacza, że adekwatne raportowanie o zrównoważonym rozwoju staje się obowiązkiem niektórych przedsiębiorstw, zwłaszcza w sektorze finansowym. Ta tendencja polityczna i legislacyjna jest wzmacniana przez zaangażowanie trzech wyspecjalizowanych instytucji UE (ESA), którym powierzono opracowywanie, standaryzację i monitorowanie ujawnień nieprawidłowości związanych ze zrównoważonym rozwojem na podstawie rozporządzenia 2019/2088. Kto należy do tego triumwiratu? Jakie są ich kompetencje i zadania? I co najważniejsze, jak postrzegany jest ten triumwirat i jego działania? Całościowe, multidyscyplinarne badanie źródeł legislacyjnych oraz przeprowadzonych ankiet i sondaży dostarcza zarówno danych ilościowych, jak i jakościowych. Otwarta i krytyczna analiza tych danych wraz z porównaniami, sokratejskimi pytaniami i opiniami specjalistów przynosi odpowiedzi na te trzy palące pytania i oferuje nowe zalecenia dotyczące wysiłków UE na rzecz zrównoważonego rozwoju, a także współczesnej integracji europejskiej.

Słowa kluczowe: społeczna odpowiedzialność przedsiębierstw, prawo europejskie, europejskie organy nadzoru, usługi finansowe, zrównoważony rozwój

1. INTRODUCTION

In March 1996, the Intergovernmental Conference was opened in Turin and led to the signing of the Treaty of Amsterdam in October 1997 amending, among else, the Maastricht EU Treaty. In May, 1999, this amendment took effect and so brought changes which became applicable, such as the broadening and simplification of the co-decision procedure. One of the perhaps overlooked changes was the new wording of Article B about EU objectives, i.e.

> The Union shall set itself the following objectives: to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union…

The concept of sustainability vigorously developed and advanced by the United Nations ("UN") found its way in the primary EU law (MacGregor Pelikánová et al. 2021a et 2021b) and became an integral part of EU strategies, such as the famous strategy Europe 2020 for smart, sustainable and inclusive growth, as well as the secondary EU law, such as the updated Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ("Directive 2013/34"). This trend became even more intense after the UN issued in 2015 two critical documents: 2030 UN Agenda for Sustainable development with 17 SDGs ("Agenda 2030") with SDGs and the Paris Agreement on Climate Change ("Paris Agreement"). Both the UN and EU have realized that the sustainability drive is futile without the general support represented by the employment of the multi-stakeholder model with a cross-sector partnership (Van Tulder et al. 2016; Van Tulder, Keen 2018). Hence, it became obvious that the legal duty for large strategic undertakings in the EU to include in their management report, a non-financial statement set by the Directive 2013/34, needs to be expanded (MacGregor Pelikánová, MacGregor 2020). Namely, it became clear that more subjects should have a more specific duty to provide transparent and genuine information about their Corporate Social Responsibility ("CSR") and that this should be a truly enforceable duty with a real sanction mechanism. The Rubicon was crossed by the European Commission of Jean-Claude Juncker, who brought Regulation (EU) 2019/2088 on sustainability related disclosures in the financial services sector ("SFDR") and this expansion of the CSR reporting duty was recently cemented by the European Commission of Ursula von der Leyen, which brought forth a pro-Green Deal Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 ("Taxonomy Regulation"). Both the SFDR and Taxonomy Regulations were adopted as part of the legislative framework for sustainable finance, in particular to induce sustainable finance, its support and reliability of the information about it, and to fight against parasitic practices such as greenwashing. They should directly boost accountability, discipline and efficiency and through that (indirectly) increase the trustworthiness and reliability of a high quality information about sustainability. Such an improved information is indispensable for the multi-stakeholder model (MacGregor Pelikánová, MacGregor 2020) and for the embracing of sustainability and the commitment to it by all stakeholders (MacGregor Pelikánová, Hála 2021).

The SFDR is an important step towards harmonized sustainability transparency, basically because the alternative is not workable, i.e. divergent national rules and market practices lead to confusion for investors and allow for the misleading promotion of allegedly sustainable investments which are in reality plain greenwashing (Busch 2023). Therefore, the SFDR lays down harmonized rules, for financial market participants and financial advisers, on transparency for the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information

with respect to financial products (Art. 1). It defines the sustainable investment as an investment which contributes to environmental, economic or social objectives and does not significantly harm any of these three objectives (Art. 2 point 17). It sets out the principle of do no significant harm, for which technical standards are prepared by the European Supervisory Authorities ("ESAs") (Art. 2a). ESAs are heavily referred as the institution to prepare various technical standards by SFDR (Art. 4(6)(7); Art. 8 (3)(4); Art. 9 (5)(6); Art. 10(2); Art. 11(4)(5); Art. 13(2), etc.). Some of these provisions were included in the original version of SFDR, others where added by the novelization update via the Taxonomy Regulation, which deals extensively with the ESAs. Further, on 5 January 2023, there entered into force the Directive (EU) 2022/2464 amending Directive 2013/34/EU, as regards corporate sustainability reporting aka the Corporate Sustainability Reporting Directive (CSRD) which modernizes and strengthens the rules concerning the social and environmental information that companies have to report, i.e. a broader set of large companies, as well as listed SMEs, are now required to report on sustainability – over 50 000 in total.

ESAs have become one of leading authorities setting requirements regarding the sustainability commitment imposed upon businesses in the EU. This inevitably leads to the concern whether such a sustainability is sustainable. Namely, whether such a triumvirate has the competencies and exercises them in a sustainable pro-sustainability manner. This critical concern can be dissected into three questions: Who belongs in this triumvirate? What are their competencies and tasks in relation to the sustainability and its support? And most importantly, how is this triumvirate and its operation in relation to the sustainability and its support perceived? To answer these three questions, after this Introduction, a Literature and Legislative Review (I.) along with the information about Data and Methods (II.) needs to be presented. Then, each of these three questions is to be discussed consecutively and separately – who are ESAs (III.), what do ESAs do (IV.) and how do ESAs do it (V.). Finally, in the concluding part, answers and observations regarding all three questions are juxtaposed to offer pioneering answers as well as general suggestions and semi-suggestions and not just limited to sustainability reporting in the EU (IV.)

2. LITERATURE AND LEGISLATIVE REVIEW

Every society needs the establishment and respect of a set of orders under the auspices of certain values (Washburn et al. 2018), while working towards the common good (MacGregor Pelikánová et al. 2021a). During the last few decades, it has been argued that such a common good for the modern European integration is the single internal market as a platform for both competitiveness and social matters (Chmelíková et al. 2019; Sroka, Szántó 2018). More recently, it has been argued that

such a common good translates into the European values including the sustainability, and in particular the environmental pillar (MacGregor Pelikánová, MacGregor 2020). Since crises magnify differences and bring both threats and opportunities (D'Adamo, Lupi 2021), arguably the current post-COVID and Ukraine war setting should accelerate the pro-sustainability drive in the EU.

Sustainability has millennial roots and mirrors value judgments about justice in distributing and using resources (MacGregor Pelikánová et al. 2021b). It is tied to Aristotle's idea of distribution of awards according to merits as embedded in a geometrical model of public law distributive justice and an arithmetical model of corrective, aka rectificatory private justice, and provides the general direction for the future (Balcerzak, MacGregor Pelikánová 2020). There are significant differences across the European society regarding the perception and commitment to sustainability (MacGregor Pelikánová, Hála 2021). Sustainability and Environmental, social, and corporate governance ("ESG") parameters are involved in investment decisions (Skapa et al. 2022).

The CSR has centennial roots and represents a private reflection of the public concept of sustainability, because it is a systemic reaction by each individual business to the global and general call for conduct balancing the use of resources in a long term manner while reflecting the interests of the entire society (MacGregor Pelikánová et al. 2021a, 2021b; Turečková, Nevima 2019). The EU is determined to support the multi-stakeholder model and an ongoing dialogue and interaction between businesses and their stakeholders (Ferraro, Beunza 2018; Małecka et al. 2017) while inducing, if not ordering businesses to be responsible towards each other and the entire society (MacGregor Pelikánová, Hála 2021). There are a number of a multi-stakeholder initiatives on sustainability in the EU (de Bakker et al. 2019), while the European Commission leads the way and individual businesses, especially their middle and low management, are lagging behind (MacGregor et al. 2020). Businesses are aware that other stakeholders, including governments, investors, and consumers, do expect them to do what is morally and/or legally right (Sroka, Szántó 2018). However, at the same time, they can be perceived as a risk (Stepien, Polcyn 2019), if not waste, to move to the higher levels of Carroll's pyramid (Carroll 2016) and embrace ethical expectations and philanthropic desires (Eger et al. 2019) The concept of shared values (Porter, Kramer 2011; Kramer, Pfitzer 2016), which ultimately combines sustainability and CSR concerns and presents a common foundation, is currently not automatically the first business management choice by European businesses (MacGregor et al. 2020). The EU understands that it would be hardly effective, efficient and legitimate to directly impose an extensive and enforceable CSR duty upon all European businesses, but at the same time feels that the mechanism brought by Directive 2013/34 is weak (MacGregor, MacGregor Pelikánová 2020). In addition, after the GDPR, the European Commission of Jean-Claude Juncker moved on to address climate change and resource depletion

by looking for options to induce "green investement". These endeavors led to the COM(2018) 97 final Sustainable Finance Action Plan ("SFAP") of March 2018, which outlines 10 Actions, aka reforms, in three areas: a) Reorient capital flows towards sustainable investment, in order to achieve sustainable and inclusive growth, b) Mainstreaming sustainability into risk management and c) Fostering transparency and long-termism in financial and economic aktivity (Balcerzak et al. 2023). Action 9 of the SFAP is about the strengthening of sustainability disclosures and the material and provides for the financial sector acts as an intermediary between users and providers of capital and therefore has a key role to play in the very needed green transition. The SFAP was presented as an integral part of the Capital Markets Union (CMU) Action Plan and of European Climate Plans, i.e. the Green Deal, the European Climate Law, etc. The SFAP was set to lead to concrete measures, such as the clarification of duties of institutional investors and asset managers, strengthening of sustainability disclosures, both for investors and for financial supervisors, and the establishment of an EU classification system (taxonomy) for sustainable activities (Busch 2023). In May, 2018, the European Commission presented, as a part of the sustainable finance package, and in relation to Action 9, the proposal for the SFDR, including a developed memorandum, see 2018/0179(COD) (Balcerzak et al. 2022). The legal basis was Art. 114 TFEU and the process was the ordinary legislative route, and this process was completed in November 2019, when the SFDR was signed by the President of the European Parliament and by the President of the European Council (Balcerzak et al. 2023).

Consequently, the EU made a strategic legislative twist from prior rather declatory policy instruments to SFDR in 2019 and Taxonomy Regulation in 2020, which are not typically Regulations ordering substantive duties, instead they are rather unifying transparent reporting to which customers should be sensitive (Streimikiene, Ahmed 2021). In addition, they make a distinction between (i) conventional (traditional) inside-out sustainability concerns and reporting with the goal to convince businesses to cause less harm to society and to the environment and (ii) newer outside-in sustainability risk and reporting aka the Environmental, Social, Governance ("ESG") with the goal to identify whether a business is at risk from environmental and social impacts on the business, i.e. to cause an actual or a potential material negative impact on the value of an investment. In the center of this unification of transparent duplex, advanced reporting is neither the European Commission, nor CJ EU, nor EU member states… but ESAs.

The exploration of the ESAs legal framework starts with Art. 2a of SFDR which not only establishes the famous "principle of do no significant harm", but as well states clearly that the ESAs are established by Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 of the European Parliament and of the Council.

Table 1. ESAs legal framework

Regulation 1093/2010	establishing a European Supervisory Authority (European Banking Authority – EBA) aka Authority in Paris	Art. 1. The Authority shall form part of a European system of financial supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole, and effective and sufficient protection for the customers and consumers of financial services. Art. 2. The ESFS shall comprise the following: (a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010 and this Regulation; (b) the Authority; (c) the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/… (d) the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010… (e) the Joint Committee of the European Supervisory Authorities (Joint Committee). Art. 5. The Authority shall be a Union body with legal personality.
Regulation 1094/2010	establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority – EIOPA) aka Authority in Frankfurt am Main	Art. 1. This Regulation establishes a European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter the Authority')… The Authority shall contribute to the work of the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (3) related to the prevention of the use of the financial system for the purpose of money laundering or terrorist financing in accordance with Directive (EU) 2015/849 of the European Parliament and of the Council (4) and Regulation (EU) No 1093/2010. Art. 2. The Authority shall form part of a European system of financial supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and effective and sufficient protection for the customers and consumers of financial services… Art. 5. The Authority shall be a Union body with legal personality.

Table 1. (continued)

Regulation 1095/2010	establishing a European Supervisory Authority (European Securities and Markets Authority – ESMA) aka Authority in Paris	Art. 1. This Regulation establishes a European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority'). Art. 2. The Authority shall form part of a European system of financial supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and effective and sufficient protection for the customers of financial services. Art. 5. The Authority shall be a Union body with legal personality…

Source: prepared by the Authors based on EurLex 2022.

These three Regulations from 2010 are still in force. Regulation 1093/2010 was amended 8x (the last update in 2019), Regulation 1094/2010 was amended 2x (the last update in 2019) and Regulation 1095/2010 was amended 3x (the last update in 2019). The Taxonomy Regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable (Art. 1 Taxonomy Regulation). It applies to financial market participants and undertakings which are subject to the obligation to publish a non-financial statement or a consolidated non-financial statement pursuant to Article 19a or Article 29a of Directive 2013/34 (Art. 2 Taxonomy Regulation), i.e. public interest entities with 500 or more employees (Art. 19a Directive 2013/34). These participants must disclose (Art. 5 – Art. 7 Taxonomy Regulation) and these public interest entities must include in their non-financial statements information about their environmental sustainability (Art. 8 Taxonomy Regulation), i.e. about the six environmental objectives: (a) climate change mitigation, (b) climate change adaption, (c) sustainable use of water, (d) transition to a circular economy, (e) pollution prevention, (f) the protection of biodiversity (Art. 9 Taxonomy Regulation). Environmental sustainability is defined based on four criteria – contributing to at least one of the six environmental objectives, not significantly hurting any of them, complying with minimal social standards and with technical screening criteria (Art. 3 Taxonomy Regulation). The minimal social standards are set by the reference to the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights (Art. 18 Taxonomy Regulation). The technical screening criteria are to be established by the Commission in cooperation with the Platform on Sustainable Finance, i.e. ESAs and other groups and institutions (Art. 19 and Art. 20 Taxonomy Regulation). Drafts of these technical standards are prepared by the ESAs and submitted to the Commission (Art. 2a SFDR). In sum, all three ESAs (the EBA, EIOPA and ESMA)

have, and exercise, their competency to both prepare and interpret reporting rules, in particular regulatory technical standards ("RTS"). Therefore, they should be vital in the process of making the information about sustainability and even ESG more transparent and standardized. To put it differently, if there is not a clear definition and interpretation of what is ecologically sustainable, and how the information about it should be done, then the supply and demand of green capital could not be well matched in Europe (Busch 2023) and confusions and deceptions, such as greenwashing, would undermine the EU sustainability vision.

3. DATA AND METHODS

The consideration of the sustainability of the ESAs triumvirate for sustainability-related disclosures in the financial sector leads to a myriad of questions and invites various multi-disciplinary studies and analyses exploring heterogenous data. Since the ESAs are rather underdeveloped topics in the academic press, the Authors decided to take a basic approach examining their foundations, their operation and their prima facia perception. This translates in three fundamental questions – who, what and how, and each of these questions demands particular data and methodologic processing. The juxtaposition of generated answers provides a basis for a Meta-analysis allowing one to appreciate the sustainability parameters in the context of the ESAs and to achieve a deeper understanding of the ESAs, and perhaps even about the modern European integration attempting to go for sustainability during the stormy days of the current crises, such as the COVID-19 pandemic and the war in the Ukraine.

The first question is who are the ESAs? The data for its answer is contained in the EU law and EU policies. The EU law is to be researched via the EurLex portal, while particular focus is to be given to general norms included in Directive 2013/34, SFDR, Taxonomy Regulation and to special norms included in Regulation 1093/2010, Regulation 1094/2010 and Regulation 1095/2010. Their interpretation is to be done by conventional EU law methods, which are dominated by the teleological approach. Due to the novelty, the case law is not yet developed and cannot be used. The law picture about who are the ESAs is to be complemented by EU policies which are presented on the website of the European Commission. Here, the conventional interpretation oscillates between the literate and purposive approach. Last, but not least, one's own www presentations are to be considered and referred to.

The second question is what are the competencies and tasks of the ESAs, i.e. what are the ESAs supposed to do. As with the first question (who are the ESAs), both the EU law and EU policies are to be researched, interpreted and analysed. In addition, relevant academic literature should be taken account. Its sources are

the WoS database and Scopus database and its interpretation should be dominated by the literature and contextual approach.

The third question is how are the ESAa doing, in particular how the ESAs and their endeavors are perceived by Europeans. This is to be addressed based on an official consultation survey via targeted consultations conducted between March and May 2021 and involving 107 stakeholders from 27 EU member states, and contrasted to the survey from 2019 (EC 2021). Considering the multi-stakeholder model, contributions from the public-at-large were sought, including national supervisors, national ministries, financial institutions and other market participants, the ESAs themselves, EU institutions, non-governmental organisations, think tanks, consumers, users of financial services and academics (EC, 2021). This targeted consultation survey consisted of 116 questions addressing the assessment of ESAs and its framework and the single rulebook. Regarding the perception of ESAs and its activities, the most relevant were questions directly asking about the impact of individual ESA's activities and the efficiency potential. The answers provided, along with additional feedback were processed and visualized via charts and complemented by explanatory comments.

In sum, the employed methods are determined by the nature of the sources and data (Yin 2008). Since a significant part of them consists of Regulations, i.e. the secondary EU law, methods of legal modelling and methods of systemic interpretations under the auspices of the very European "spirit of the law" should be critical. The involved analysis includes both induction and deduction (Krippendorff 2013; Vourvachis, Woodward 2015) and entails more qualitative than quantitative aspects (Kuckartz 2014). At the same time, considering the dynamic evolution of the modern European integration and the impact of policies and surveys endorsed by top EU institutions, the contextual and evolutionary approach is to be used to process the given data in a multi-disciplinary and dynamic manner and so to satisfy the demands of an advanced thematic analysis and content analysis (Silverman 2013). Due to the legal nature, the argumentative features take priority over axiomatic features. The methodologic backbone is the persuasive argumentation comparable to Meta-Analysis (Glass 1976; Schmidt, Hunter 2014) showing that we ultimately know (or should realize that we know) more than we initially believed. This is to be refreshed by forensic juxtaposition, the critical comparison, glossing and Socratic questioning (Areeda 1996).

4. ESAS – WHO ARE THEY? AN INTEGRAL PART OF THE ESFS

Who are the ESAs, i.e. who belongs to the ESAs? In 2009, the de Larosière expert group issued its report and, based on it, the European Commission prepared proposals regarding the improvement of financial supervision in light of the failures of financial supervision exposed by the financial crisis. In 2010, the

European system of financial supervision ("ESFS") as a decentralised network was introduced and consists of the European Systemic Risk Board ("ESRB") and all three ESAs, i.e. the European Banking Authority ("EBA") located in Paris, the European Insurance and Occupational Pensions Authority ("EIOPA") located in Frankfurt am Main and the European Securities and Markets Authority ("ESMA") located as well in Paris. All 5 of them, i.e. ESFS and its ESRB and three ESAs (EBA, EIOPA, ESMA), are established by Regulations from 2010 and began operating in January, 2011.

Table 2. ESFS = ESRB + ESAs (EBA, EIOPA, ESMA) legal framework

Regulation 1092/2010	establishing ESRB	ESRB was established to oversee the financial system of the European Union (EU) and prevent and mitigate systemic risk. The General Board of ESRB, chaired by the President of the ECB, Christine Lagarde, is the ESRB's decision-making body, see https://www.esrb.europa.eu/about/html/index.en.html
Regulation 1093/2010	establishing EBA	EBA was established to ensure effective and consistent prudential regulation and supervision across the European banking sector. Its overall objectives are to maintain financial stability in the EU and to safeguard the integrity, efficiency and orderly functioning of the banking sector. The EBA is represented externally by its Chairperson, José Manuel Campa, whose role is also to prepare the work and to lead the discussions at the Board of Supervisors' table, see https://www.eba.europa.eu/
Regulation 1094/2010	establishing EIOPA	EIOPA was established to promote a sound regulatory framework for and consistent supervision of insurance and occupational pensions sectors in Europe. This protects the rights of policyholders, pension scheme members and beneficiaries. It also creates public confidence in the EU's insurance and occupational pensions sectors. The Chairperson is Petra Hielkema, see https://www.eiopa.europa.eu/
Regulation 1095/2010	establishing ESMA	ESMA was established to contribute to safeguarding the stability of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets. Its Chairperson is Verena Ross, see https://www.esma.europa.eu/about-esma/esma-in-brief
Regulation 1096/2010	conferring specific tasks upon the European Central Bank concerning the functioning of the ESRB	
Directive (!!!) 2010/78	amending existing financial services legislation to ensure that the new authorities can work effectively	

Source: prepared by the Authors based on EurLex 2022.

Interestingly, all three ESAs as well as ESRB, i.e. all four institutions belonging to the ESFS, are independent authorities produced in the aftermath

of the 2007–2010 crises, especially financial and Eurozone crises, to address various aspects of financial systems in the EU and helping to promote stability and sustainability. At the same time, it needs to be pointed out that the European Central Bank and the Eurozone national competent authorities ("NCAs") very quickly formed a partnership, but the EBA was not considered apt to assume the supervisory job for which the ECB was elected and so received only a "consolation prize" in the form of additional powers to co-ordinate and converge both inside and outside of the Eurozone (Gortsos 2015).

Currently, the chairpersons of these institutions are majority female, see ECB, ESRB, EIOPA and ESMA, i.e. only the EBA is chaired by a Chairman. All three ESAs (EBA, EIOPA and ESMA) have stakeholder groups that represent the industry and consumers to facilitate consultation with stakeholders in areas relevant to their tasks. After ten years of operation, in 2021, the European Commission launched a public consultation on the supervisory convergence and the single rulebook of the three ESAs.

5. ESAS – WHAT DO THEY DO? PROMOTING CONSISTENT, TRANSPARENT AND STABLE SINGLE INTERNAL MARKET REPORTING

To start with, the EU law has organically and continuously evolved for almost one decade to achieve a robust, harmonized (partially even unified) and detailed substantive setting regarding sustainability reporting and sustainable investment (MacGregor Pelikánová, Rubáček 2022). Recent studies about its assessement brought about four propositions about its legitimacy, effectiveness and efficiency. Firstly, this framework, having at its center the SFDR, is in the process of a very dynamic evolution prompted more by the European Commission and not so much by the European Council and European Parliament. Secondly, key legislative and semi-legislative instruments are expressed in a rather neutral and technical manner, but their authenticity varies dramatically. Thirdly, morality appears to be totally avoided. Fourthly, already the plain literate interpretation of the wording of the SFDR and the Taxonomy Regulation strongly litigates against an artificial disassociation of concepts linked to sustainability, CSR and shared values (Balcerzak et al. 2023). This is the basic scenery in which ESAs are set and supposed to operate for the sustainability.

There is clear progress to be observed and the materialization of the Green Deal and SDGs demands are noticeable. At the same time, it must be emphasized that this evolution is input oriented and rather spontaneous, leading to a fragmented and complex substantive law framework which might be legitimately perceived as Byzantine. However, the biggest issue is the enforcement and procedural dimension. The setting of a robust and harmonized, if not unified, enforcement mechanism and its application on the EU level is not on the agenda. The EU law has evolved between

2014 and 2020 to create a clear and identifiable duty of a more or less clear group of subjects, but regarding the enforcement mechanism, we are at the very beginning. So far, it is basically left to EU member states, and they are asked to provide "effective, proportionate and dissuasive penalties". As well, other general, ESAs, or sectorial institutions are invited to participate in the mechanism.

Well, tasks and powers of ESAs are specifically stipulated by the concerned Regulations, further developed via the related policies and ultimately presented on the www pages of the European Commission and ESAs. Tasks and powers are set for the EBA in Art. 8 and 9 of the Regulation 1093/2010, for the EIOPA in Art. 8 and Art. 9 of the Regulation 1094/2010 in Art. 8 and Art. 9 of the Regulation 1095/2010, see Table 3.

Table 3. ESAs (EBA, EIOPA, ESMA) tasks and powers

EBA, EIOPA and ESMA (Art. 8)	– to contribute to the establishment of high-quality common regulatory and supervisory standards and practices; – to contribute to the consistent application of legally binding Union acts, preventing regulatory arbitrage, fostering and monitoring supervisory independence, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial institutions; – to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities; – to cooperate closely with the ESRB; – to organise and conduct peer reviews of competent authorities; – to monitor and assess market developments in the area of its competence including where relevant, developments relating to trends in credit; – to undertake market analyses to inform the discharge of the EBA's functions; – to foster, where relevant, depositor, consumer and investor protection, in particular with regards to shortcomings in a cross-border context and taking related risks into account; – to promote the consistent and coherent functioning of colleges of supervisors; – to publish on its website, and to update regularly, information relating to its field of activities, ..ic; – to publish on its website, and to update regularly, all regulatory technical standards, implement….ing technical standards, guidelines, recommendations and questions and answers for each legislative act referred to in Article 1(2), …
EBA, EIOPA and ESMA (Art. 9)	The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market
EBA (Art. 9a, 9b, 9c)	Special tasks related to preventing and countering money laundering and terrorist financing and Request for investigation related to the prevention and countering of money laundering and of terrorist financing and No Action Letters
EIOPA and ESMA (Art. 9a)	No Action Letters

Source: prepared by the Authors based on EurLex 2022.

The EBA is a specialised agency of the EU, established to achieve a more integrated approach to banking supervision across the EU. The EBA has to put together a single set of rules applicable to all banking institutions in the EU in the same manner, which is the basis for the creation of an EU single market in the banking sector. This should support a consistent and transparent single market for EU banking that is beneficial to all and contributes to financial stability in the EU. The consolidated version of Regulation (EU) No 1093/2010 is from 26 June, 2021 and includes not only Art. 9 and Art. 9c dealing with No Action Letters, but as well Art. 9a, dealing with Special tasks related to preventing and countering money laundering and terrorist financing and Art. 9b, dealing with the Request for investigations related to the prevention and countering of money laundering and of terrorist financing.

The EIOPA is the EU financial regulatory institution and is at the heart of insurance and occupational pensions supervision in the EU. The EIOPA protects the public interest by contributing to the stability and effectiveness of the financial system for the EU economy, its citizens and businesses, in particular in insurance and occupational pensions sectors in the EU. The consolidated version of Regulation (EU) No 1094/2010 is from 1st January 2020 and includes only Art. 9 and Art. 9a, dealing with No Action Letters (no provisions about money laundering).

The ESMA is an independent European Union (EU) Authority that contributes to safeguarding the stability of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets. ESMA achieves its mission and objectives through four activities: (i) assessing risks to investors, markets and financial stability; (ii) completing a single rulebook for EU financial markets; (iii) Promoting supervisory convergence; and (iv) directly supervising specific financial entities – Credit Rating Agencies, Securitisation Repositories and Trade Repositories. The consolidated version of Regulation (EU) No 1095/2010 is from January 1, 2020 and includes only Art. 9 and Art. 9a dealing with No Action Letters (no provisions about money laundering). In sum, providers of sustainability-related information are to be regulated under an EU regulation and be subject to direct supervision by the ESMA, just as is already the case with credit rating agencies (CRAs) under the CRA Regulation (Busch 2023).

The wording of relevant Regulations and policies reveals that three ESAs are the outcomes of endeavours induced by global 2007–2009 crises and partially orchestrated by the G-20 Summit in Pittsburgh, which confirmed the urgency of more regulation as well as supra-national supervision of financial activities (Botopoulos 2020). The starting text regarding tasks and powers were identical and recently more additions occurred regarding EBA, due to money laundering concerns and other issues pertinent for sustainability-related disclosures. In the context of the plans for a further integration of the European capital markets (the Capital Markets Union (CMU) Action Plan), convergence

and centralization of supervision are quite high on the agenda of the European Commission (Busch 2023). However, progress on this subject is slow. The Juncker Commission made an attempt to designate the ESMA as the direct supervisor of certain types of investment institutions and crowdfunding service providers, but this attempt failed. The reason is simple – more supervisory powers for the ESMA (or the EIOPA) would be at the expense of the influence of national supervisors and hence of the member states. France and the Netherlands were in favour of a more centralized form of supervision, but, at the time in question, Germany was not. If the supervision of financial markets is to be more centralized, Germany will have to give up its opposition. After all, it is well known how things work in Europe: if the Franco-German axis agrees on a course of action, there is a real chance it will happen, especially now that the UK has left the EU (Busch 2023). Nevertheless, in future discussions on this subject Germany will find it harder to claim that its national supervision is always beyond reproach, as the German Federal Financial Supervisory Authority (BaFin) and also the German Financial Reporting Enforcement Panel (FREP) were recently confronted with a highly critical report from the ESMA about their defective supervision of Wirecard AG (Bush 2023).

6. ESAS – HOW DO THEY DO? ALL FOR ONE AND ONE FOR ALL, BUT WHERE IS THE SUSTAINABILITY?

Before the ESFS, the crisis-prevention function of supervisors in the EU did not perform well (Botopoulos 2020). In 2010, the ESFS, including three ESAs, came with an almost identical regime for all involved institutions and authorities. Since then until now, the European Commission has demonstrated efforts to make the ESAs and their operations effective, efficient and legitimate. Therefore, reports and public consultations regarding the ESAs and their operations have been done annually since 2013, while each European Commission has underlined its priorities. For the European Commission of Jean Claude Juncker, the top priority was clean finances, see the Communication on strengthening the Union framework for prudential and anti-money laundering supervision. The European Commission of Ursula van der Leyen continues with this trend by amending the Solvency II Directive, the MiFID II Directive and the 4th Anti-Money Laundering Directive, but adds as well her priorities related to sustainability, and the Green Deal in particular (MacGregor Pelikánová, Rubáček 2022).

In the Spring of 2021, targeted consultations on taking stock of the framework for supervising European capital markets, banks, insurers and pension funds took place while involving 107 respondents who replied to the consultation: 57 from businesses or their representatives, 36 public authorities, 2 consumer organizations, 2 NGOs, 2 citizens, 2 trade unions, 1 research institute and 5 classified as other (EC,

2021). Considering the size and nature of the sample and the employed methodology, this survey had inherent limitations, but still has the potential to bring intereting indices. Almost all the respondents appreciated the rapid reaction and the increased market monitoring and coordination between national competent authorities ("NCAs") and that the ESAs provided guidance to market participants. A majority of the respondents had a rather positive view regarding the ESAs and their operations and over 70% of the respondents believe that the EBA and EIOPA have correctly set competencies and exercise them in an appropriate manner, i.e. are both effective and efficient. Interestingly, only 50% of the respondents think the same regarding ESMA. Even more interestingly, a large number of respondents took advantage of the open format of additional interviews in order to discuss sustainability-related disclosures with newly adopted No Action Letters, both in a positive as well as in a negative tone. However, even respondents critical of ESMA admitted that they have doubts even about NCAs and perhaps even the European Commission. Further, especially respondents from the public authority groups expressed a need to boost the transparency of ESG rating methods and to introduce a supervision at the EU level regarding ESG rating agencies, ESG data providers and Sustainability-related Service Providers. Several NGO respondents proposed a stronger role of ESMA in this arena. From this setting of mixed feelings comes a strong call for more transparency about sustainability reporting and its methodology, see especially consumer organizations respondents. Figure 1, below, shows the respondents´ perception of information collection by each of the three ESAs. This is enlightening and also a warning, i.e. the asymmetry of information can erode all pro-sustainability endeavors in the context of the multi-stakeholder model, and this implies that the EBA, EIOP and ESMA must genuinely contribute to increase the trustworthiness and reliability of high quality information about sustainability (…) otherwise they are futile.

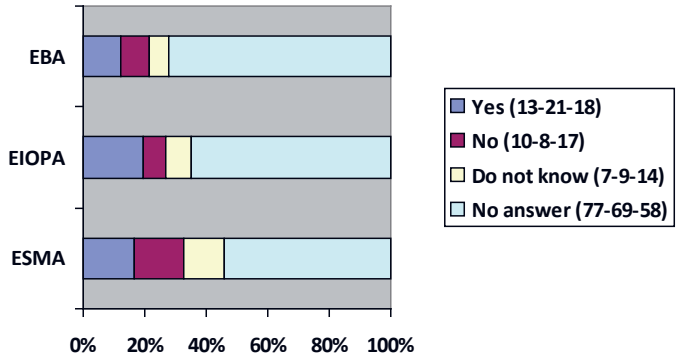

Figure 1. EBA, EIOPA and ESMA effectiveness of the collection of information
Source: prepared by the Authors based on Spring 2021 consultation by the European Commission (EC, 2021).

The survey results are not impressive as the large majority of respondents are not convinced about the effectiveness of the collection of information. Namely, although almost all respondents link the transparency and open data processing with the effectiveness and efficiency, only 12.1% of them are satisfied with the EBA in this respect, only 19.6% with the EIOPA and only 16.8% with the ESMA. These numbers need to be mutually juxtaposed, both externally and internally. Hence, in the case of EBA the ratio between basically satisfied and dissatisfied respondents is 13 v 10, while for EIOPA it is 21 v 8 and for ESMA 18 v 17 (!). This suggests that generally the public is not sure about the effectiveness and efficiency of ESAs and that EIOPA is perceived definitely better than ESMA. In complementary interviews, respondents expressed concern about the processing and use of the information and about the related bureaucracy burdening smaller subjects. In particular, respondents appreciate the extension of information providing duty, but are concerned about how it is done, whether a proper balance is maintained and what happens with the ultimate publication of results. Further concerns were expressed about the lack of an enforcement capacity and drive of ESAs, i.e. respondents want not only information about the sustainability, but they want that this information is obtained in a sustainable and fair manner without burdening compliant subjects and not punishing non-compliant subjects, and thus ultimately rewarding breachers and cheaters. Clearly, these results called for more studies and amendments of the ESAs regime.

Amendments have occurred and the European Commission prepared a new report on the operation of the ESAs by the European Commission in May, 2022. This report, i.e. COM (2022) 228 final assesses the ESAs' tasks activities and follows up on the Commission's commitment in the 2020 capital markets, see at https://finance.ec.europa.eu/publications/report-operation-european-supervisory-authorities_en. Pursuant to this report, the ESAs have continued to perform their tasks efficiently and effectively, including during the recent challenging circumstances caused by the COVID-19 pandemic. The European Commission proclaims that the setting and operation of ESFS are good and work well and points to the example of the new peer-review process operating as an efficient convergence tool, see the Wirecard case. Despite this laudatory tenor, the European Commission admits that new consultations suggest that respondents are concerned e.g. regarding the governance of the ESAs and the employment of 27 national supervisors. The European Commission recognizes both the importance of sustainability and the need to enhance customer and consumer protection. In a more general manner, the EU is determined to be economically highly competitive, carbon neutral and socially aware while enjoying sustainable development, and this is to be achived by the transition to a digital, green and value-based economy. This is extremely ambitious and, in the context of large differneces in priorities and cultures across the EU, hardly feasible. At the same time, the single internal makret with four freedoms was looked upon as some kind

of Utopia back in 1951 and now, thanks especially to the rigorous co-operation of the internal pro-integration tandem, the European Commisison and the CJ EU, it is a reality. Therefore, the EU vision of sustainability and its materialization can be achieved and, as in the case of the single internal market, rather through consistent and inducement oriented endeavors than by a plain mandatory imposition. This means that the ESAs must work extremely closely with other EU institutions and, by their consistent work, achieve respect. They should be committed vehicles towards transparent and reliable reporting. If there are doubts about whether the EBA, EIOP or ESMA contribute legitimately, effectively and efficiently to the trustworthiness and reliability of the high quality information about sustainability, then this is unsustainable. Boldly, the EU cannot afford any deficiency, each and every EU institution must work effectively and efficiently to overcome obstacles to the harmonized, if not unified, reliable and transparent high quality of both (i) conventional (traditional) inside-out sustainability reporting and (ii) newer outside-in sustainability risk reporting, aka ESG reporting.

The bad picture, especially of ESMA, should be improved by the coordination of mystery shopping, the development of retail risk indicators, collection, analysis and reporting on consumer trends, etc. Quite correctly, the European Commission and respondents recognize that sustainability and consumer issues can be global, regional, but also well very local and that it is critical to establish and maintain cooperation between ESAs and national competent authorities, see the issue of cross-border services to reduce the risk of harm to consumers. Centralization would not be the right move, except for critical sustainability standard development and operation of ESG rating agencies, ESG data providers, and sustainability-related service providers.

7. CONCLUSION

Prevention is better than cure and sustainability is better than wasteful immediate gratification. The EU has learned the message from a myriad of past and even ongoing crises and wants to have stability and sustainability, and not just in the field of finances. Further, the EU knows that it is necessary to balance between centralization and decentralization, between strict Regulations and softer Directives and that it is critically important to engage in a multi-stakeholder model involving communications with national authorities and the ultimate addressees of the sustainability-related disclosures. The EU crossed the Rubicon with the SFDR and Taxonomy Regulation and with the establishment and improvement of appropriate and quasi-enforcement special authorities in this context – three ESAs, i.e. EBA, EIOPA, and ESMA. This triumvirate constitutes, with ESRB, the much needed and discussed ESFS. A holistic multi-disciplinary research of legislative sources, performed surveys and studies suggests that the three ESAs

are set in a similar, if not identical, manner, and their tasks and powers differ only in a minor manner – the EBA has a more developed money-laundering control capacity. However, despite a satisfied and unified tenor voiced by the European Commission, stakeholders expressed a colourful feedback and doubts about the effectiveness of the collection of information and about the ultimate transparency, reliability and high quality of sustainability related reporting. They are often not as sure as the European Commission, and if they state their opinions about the legitimacy, effectiveness and efficiency of ESAs, the conventional 'one for all and all for one' sustainability pictures become cracked. In addition, the field observation suggests certain discrepancies in the Franco-German integration tandem, see the ESMA and Wirecard.

The performed survey and field observation had inherent limitations and it would be extremely useful to expand on it and build its longitudinal features, but still the already generated indices appear sufficiently logical and well founded. In particular ESMA is subject to much criticism and this is significant in the context of ongoing inflation issues. The European Commission, and the entire EU, has a much longer and challenging venue ahead than so far expected and admitted. Tolerating a lack of legitimacy, effectiveness or efficiency of one EU institution in hopes that it will be off-set by another is unsustainable and the EU cannot afford a massive dissatisfaction and/or lack of trust in operating by stakeholders with respect to any of the ESAs. Future studies should entail a much larger pool of respondents from the entire EU and work on the longitudinal and multi-disciplinarian aspects. Their results should be juxtaposed to results from prior studies, especially those after 2019, and bring input to be subjected not only to legislative processes. *The merit of all things lies in their difficulty* (Dumas 1844).

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