

TADAS ZUKAS

**Regulating Sustainable Finance
in Europe**



Duncker & Humblot · Berlin

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Preface

The European Sustainable Finance Action Plan marked its 5th anniversary in 2023. Since its publication in 2018, the Action Plan reshaped the European sustainable finance. It has also substantially impacted the global sustainable finance debate. This remarkable document's first small round anniversary has served as our main reason for publishing this book at this point in time.

As I write these lines, the four key regulations that emerged out of the Action Plan's legislative agenda are now all in force (see *Figure*). The sustainable finance market is also in the process of reaching a new level of maturity in tackling greenwashing, which is also the European capital market supervisors' current strategic priority topic. And while there is some healthy debate ongoing among sustainable finance practitioners on whether the new European regulatory framework will be successful in practice, we are at the point of the sustainable finance regulatory journey where we can be reasonably certain regarding the direction it will take in the next five years. The new European regulatory architecture for sustainable finance is getting closer and closer to its conceptual completion.

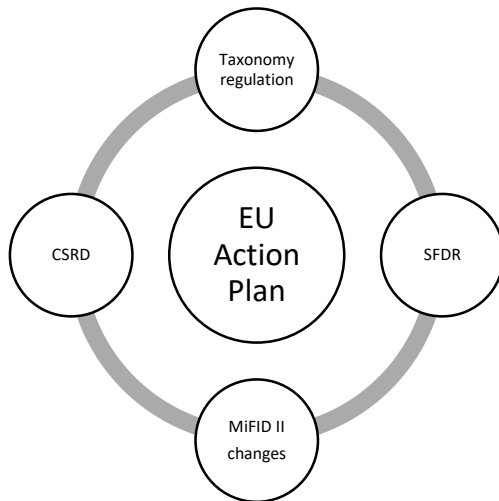


Figure: The EU Action Plan – key regulations

The book that you hold in your hands is a reprint of my paper which has been originally published by Duncker & Humblot earlier this year as a contribution to an anniversary volume titled “Law and Economics in all its facets: Festschrift in Honor of Klaus Mathis”, edited by Professor Peter Nobel, Alexander Gian-Carlo Baumann and Elias Aliverti.

We expect that the book format will make the text easier accessible to the broader sustainable finance expert community and will contribute to the European and global sustainable finance debate.

Zurich/Lucerne, November 2023

Tadas Zukas

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I. Introduction*

An invitation from the publishers to contribute a paper to this *Festschrift* volume celebrating the 55th anniversary and some of the most important career milestones of my esteemed colleague Professor Klaus Mathis of the University of Lucerne has been a true honour. As a law practitioner covering the area of sustainability regulation in my daily work, I feel tremendous admiration for the academic pioneers of this field of law such as Professor Mathis. Both the fact that Klaus Mathis holds the first law professorship concentrating on the law of the sustainable economy in Switzerland, as well as the fact that he has authored a major study, a ‘habilitation’ on the topic entitled “Sustainable development and inter-generational justice”¹, has served and continues to serve as a personal source of inspiration for focusing on sustainability and sustainable finance in particular in my career as a global business lawyer.

It would not be an overstatement to say that the topic of my paper – the European way of approaching the regulation of sustainable finance – is currently the hottest topic in finance regulation in Europe. A field of finance – known under various names such as “sustainable finance”, “sustainable investing”, “responsible investing”, “green finance” and very often simply “sustainability” or just “ESG” (and sometimes misunderstood as a mere “check the box”-exercise) – which has been generally unregulated until very recently, is in process of becoming one of the most densely regulated areas in financial services. This primarily due to the European effort to address the field of sustainable finance which in the course of last years has been in process of constantly moving from a niche area to mainstream, a regulatory effort with an overarching aim to increase market transparency and efficiency, address sustainability risk and climate risk in particular and thus increase investor protection, channel private funds towards more sustainable economic activities and, very importantly, to prevent greenwashing.

* The author would wish to express a special thank you to Dr. Uwe Trafkowski, Frankfurt am Main, as well as to Dr. Egle Svilpaite, Lucerne/Zurich, for their comments on the initial draft of this paper. The views expressed in this paper are the author’s personal views. The paper has been submitted for publication in August 2022; it has been updated in January 2023 to reflect the entry into force of CSRD and regulatory developments relating to greenwashing prevention.

¹ *Mathis*.



Legend: Year indication on the left – adoption dates; dates on the right – go live dates key provisions.

Timeline overview: EU's emerging sustainable finance regulatory architecture – Key elements

This paper deals with the emerging regulatory architecture for sustainable finance in Europe, with various key concepts and pieces of it still being in flux and transition, their interplay in some parts still being open for conceptualization and (re)interpretation, on all levels. As the field of sustainable finance starts to dominate the practice of financial services regulation as no other, it is important to start conceptualizing it also on the academic level.

In order to fit the format set by the publishers, I will limit the scope of this contribution to asset and wealth management-related regulation, generally excluding insurance-related topics and other areas of finance. For the same reason, I will also focus on key elements of that new regulatory architecture, such as the Sustainable Finance Disclosure Regulation (“SFDR”)², Taxonomy Regulation (“TR”)³, the Directive on Markets in Financial Instruments (MiFID II) regulatory framework changes regarding client’s sustainability preferences as well as the Corporate Sustainability Reporting Directive

² 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, OJ L 317, pp. 1–16.

³ 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, OJ L 198, pp. 13–43.

(“CSRD”)⁴, touching upon other topics from the European Union’s current legislative pipeline in sustainable finance only briefly, to show their overall role and importance. Throughout the text, references to Europe are to be understood as referring to the European Union.

⁴ 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, OJ L 322, pp. 15–80.