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THE ESG AGENDA IN THE EUROPEAN UNION: CONSTITUTIONALISING SUSTAINABLE DEVELOPMENT THROUGH CORPORATE RESPONSIBILITY AND CONSTITUTIONAL DIALOGUE

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Abstract: This article examines the European Union's Environmental, Social and Governance (ESG) agenda as a regulatory pathway for the legal concretisation of sustainable development, rather than merely as a framework for financial risk assessment, investment analysis and corporate disclosure. Starting from the constitutional recognition of sustainable development in EU primary law, the article examines how ESG-related legislation has contributed to the juridical densification of sustainability obligations applicable to undertakings, markets and, more broadly, organisations, translating requirements previously situated predominantly within the domains of ethics, self-regulation and soft law into binding legal duties. It further considers the reconfiguration of corporate responsibility within the context of an emerging socio-ecological market economy, as well as the constitutional tensions arising from the implementation, revision and possible retrenchment of sustainability obligations within the framework of European multilevel constitutionalism. The article contends that, as an open, integrated and multidimensional metaprinciple, sustainable development cannot be concretised exclusively through hierarchical logics of primacy, harmonisation and regulatory uniformity. On the contrary, it requires mechanisms of constitutional dialogue capable of mediating between integration and pluralism, effectiveness and subsidiarity, protection and proportionality, unity and differentiation, as well as between the pursuit of higher levels of protection and respect for the constitutional identities of the Member States. It concludes that ESG emerges as a legal and constitutional mechanism through which sustainable development is concretised and operationalised within the EU legal order, contributing to its consolidation as an integral element of the Union's constitutional identity.

Keywords: ESG; Sustainable Development; European Union; Multilevel Constitutionalism; Constitutional Dialogue.

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Resumo: O presente artigo analisa a agenda *Environmental, Social and Governance* (ESG) da União Europeia como uma via regulatória para a concretização jurídica do desenvolvimento sustentável, e, portanto, como mais do que um quadro de avaliação de riscos financeiros, análise de investimentos e divulgação de informação empresarial. Partindo da consagração do desenvolvimento sustentável no Direito Primário da União Europeia, o artigo examina o modo como a legislação ESG vem contribuindo para a progressiva densificação jurídica de deveres de sustentabilidade aplicáveis às empresas, aos mercados e, mais amplamente, às organizações, traduzindo exigências anteriormente situadas predominantemente nos domínios da ética, da autorregulação e do *soft law* em obrigações jurídicas vinculativas. Analisa-se igualmente a reconfiguração da responsabilidade empresarial no contexto de uma economia socioecológica de mercado emergente, bem como as tensões constitucionais suscitadas pela implementação, revisão e eventual retrocesso das obrigações de sustentabilidade no quadro do constitucionalismo multinível europeu. Sustenta-se que, enquanto metaprincípio aberto, integrado e multidimensional, o desenvolvimento sustentável não deve conhecer uma concretização exclusivamente assente em lógicas hierárquicas de primado, harmonização e uniformização regulatória. Pelo contrário, exige mecanismos de diálogo constitucional aptos a assegurar a articulação entre integração e pluralismo, efetividade e subsidiariedade, proteção e proporcionalidade, unidade e diferenciação, bem como entre a prossecução de níveis mais elevados de proteção e o respeito pelas identidades constitucionais dos Estados-Membros. A final, conclui-se que o ESG se afirma como um mecanismo jurídico-constitucional através do qual o desenvolvimento sustentável é concretizado e operacionalizado na ordem jurídica da União Europeia, contribuindo para a sua consolidação como elemento integrante da identidade constitucional da União.

Palavras-chave: ESG; Desenvolvimento Sustentável; União Europeia; Constitucionalismo Multinível; Diálogo Constitucional.

1. Introduction

The European Union’s sustainability agenda has, particularly in recent years, acquired concrete legal form through a substantial body of binding legislation and regulatory initiatives (Yedeliev, 2025: 3; Lidman, 2024: 378;

Sandström, Stenkula, 2026: 118 ss.). Through the mechanisms and particularities of European integration, sustainability-related legislation has shaped not only the EU legal order but also the legal orders of the Member States, their public administrations and economic actors.

This process has contributed to the legal densification of sustainable development, a concept recognised in the primary law of the European Union ('EU') as a value, objective and task of the Union (see the preamble and articles 3(3), 3(5), and 21(2)(d) and (f) of the Treaty on European Union ('TEU'), as well as article 11 of the Treaty on the Functioning of the European Union ('TFEU')). Such juridification has also strengthened the constitutional significance of sustainable development within the EU legal order. In light of its integrative, multidimensional and future-oriented character, it is argued that sustainable development is enshrined in the Treaties not merely as a task of the Union, but also as a guiding (meta)principle of EU action.

Recent developments, including the Omnibus simplification package[1], have nevertheless reignited debates concerning the "EU's previous ambition of taking the lead in the combating of climate change and biodiversity loss" (Arvidsson, 2026: 224). While such initiatives may raise legitimate questions regarding the scope and intensity of sustainability-related obligations, they do not necessarily undermine the broader normative relevance of sustainable development within the EU legal order. Rather, they highlight

1. See Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements. COM(2025) 81 final; Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements. COM(2025) 80 final and Commission Staff Working Document accompanying the documents Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements and Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements and specifying further steps. SWD(2025) 80 final. The analysis developed below already reflects the final wording of the acts, including the amendments subsequently introduced.

the ongoing tensions surrounding its implementation and the need to clarify the constitutional and regulatory foundations upon which sustainability governance rests.

In addition to the densification of sustainable development as a constitutional principle, sustainability-related legislation has contributed to a transformation of the role of undertakings, a domain previously governed predominantly by ethics and soft law (Ketterling, 2026: 6). In particular, EU law has come to recognise undertakings as actors bearing responsibilities towards human and fundamental rights, society and the environment. This reflects a changed understanding of the relationship between public authorities, private actors and collective interests.

The multifunctionality of fundamental rights has likewise been reinforced. Fundamental rights are no longer perceived merely as subjective positions of freedom opposable to the State. In addition to duties of respect (Deckert, 2024: 114), their objective dimension also encompasses duties of protection, promotion and implementation, mediated through legislation and regulation (Yedeliev, 2025: 1 ss.) and pursued as a shared task by the Union, the Member States, undertakings and society.

Rather than amounting to a social function externally imposed on the undertaking or instrumentalising it, this development reflects a reconfiguration of the undertaking itself. The environment, society and the market cease to appear as antagonistic dimensions and are instead understood as interdependent (Yébenes, 2024: 101).

The growing relevance of Environmental, Social and Governance (ESG) factors[2] must be understood within this context. Although ESG emerged primarily within the fields of investment, financial disclosure and risk management, environmental, social and governance considerations have influenced wider areas of EU sustainability regulation and corporate governance. Particularly following the Paris Agreement on Climate Change and the United Nations 2030 Agenda for Sustainable Development[3], ESG

2. For a historical reconstruction of ESG factors, see Dathe et al. (2022: 117 ss.).

3. For an overview of the United Nations' efforts to develop strategies aimed at establishing the fundamental conditions for equitable and environmentally sustainable forms of development, see, inter alia, Wallace (2020: 15). See also Silander (2020: 1). In this respect, Silander (2020: 37) further observes that "the European Commission has

criteria were incorporated into EU policies and legislation, extending beyond risk analysis and rating metrics confined to the financial and investment sectors to economic and business activity *lato sensu* and to organisations more generally (Kuntz, 2024: 4).

ESG factors provide an analytical and regulatory framework through which organisations are assessed in relation to environmental impacts, social responsibilities and governance structures - dimensions commonly associated with the *triple bottom line* (Adelman, 2018: 24). In this sense, ESG may be understood as integrating concerns traditionally associated with the economic, environmental and social dimensions of sustainable development into organisational practices, governance mechanisms and disclosure requirements, with the governance component performing a predominantly instrumental function aimed at enabling, structuring and operationalising the remaining sustainability dimensions (Wallace, 2020: 19).

A distinction must nevertheless be drawn between sustainable development and ESG. Sustainable development constitutes the broader normative framework recognised in EU primary law, as well as in international law and public policy. ESG, by contrast, does not encompass the entirety of the EU sustainability *acquis*, nor does it constitute a constitutional principle comparable to sustainable development. It refers instead to a set of governance, disclosure, due diligence and organisational mechanisms through which environmental, social and governance considerations are integrated into economic activity and organisational decision-making.

This distinction is particularly relevant because ESG remains a contested concept (Boiral et al., 2025: 39 ss.). Critiques have focused on the absence of a stable conceptual definition, the aggregation of heterogeneous environmental, social and governance concerns under a single framework, the limited consistency of ESG ratings and metrics, the risk of greenwashing, the managerialisation or depoliticisation of sustainability objectives, and the proliferation of disclosure and due diligence obligations (Pollman, 2024: 417 ss.). Such critiques have gained renewed prominence in debates concerning the Omnibus simplification initiatives and the broader relationship between sustainability ambitions, competitiveness and regulatory proportionality.

acted upon such global agendas as a European driving force for the promotion of such goals within Europe and through its external action globally".

While the present article does not seek to provide a comprehensive evaluation of these critiques, it considers them an important part of the broader constitutional and regulatory tensions surrounding the implementation of sustainability obligations within the European Union. Conversely, if sustainable development possesses constitutional relevance within the EU legal order, it may operate as a normative benchmark capable of constraining interpretations of ESG frameworks that disregard the balancing requirements inherent in sustainability itself.

Despite growing scholarly attention to the EU ESG agenda, academic discussion has focused largely on financial and investment regulation (Hooghiemstra, 2024: 203; Gilotta, 2024: 226; Kämmerer, 2024: 249; Sellhorn, Wagner, 2024: 269-270), corporate governance and regulatory effectiveness. Comparatively less attention has been devoted to the constitutional implications and limits of ESG-related legislation within the framework of European multilevel constitutionalism. Here, multilevel constitutionalism refers not only to the constitutional dimension of the European Union beyond the State[4], but also to the continuous interaction between European and national constitutional orders through which common constitutional commitments are interpreted, implemented and contested. It is within this framework that sustainable development is

4. The notion of European multilevel constitutionalism is strongly associated with the work of Ingolf Pernice and his conception of the European constitutional order as a composite constitutional system (‘*Verfassungsverbund*’) (Mazzotti, 2024: 146 ss.). Within this framework, constitutional authority is not understood as being exclusively attached to the State, but rather as distributed across interacting constitutional levels (Pernice, 2015: 544 ss.). Its defining features include the relative autonomy of the constitutional concept from statehood (Enes, 2019: 36), the coexistence and interaction of national, supranational and international normative orders (Fabbrini, 2010: 9 ss.), the centrality of citizens as constitutional subjects (Walker, 2009: 4; Pernice, 2015: 544 ss.), constitutional pluralism in place of strict hierarchy (Voßkuhle, 2010: 183 ss.), governance based on principles such as conferral, proportionality and subsidiarity (Pernice, 2015: 545), and judicial cooperation through forms of constitutional and judicial dialogue (Voßkuhle, 2010: 183 ss.). The present article draws upon these premises in analysing the development, concretisation and implementation of sustainable development as a constitutional principle within the European multilevel legal order. See also Maduro (2012) and, more generally, Avbelj and Komárek (eds.) (2012).

shaped and realised through shared legislative, administrative and judicial processes.

Building upon these considerations, the present article advances a more specific claim. It argues that EU ESG-related legislation may be understood as contributing to a process of material constitutionalisation and legal densification of sustainable development within the EU legal order. This does not suggest that ESG exhausts the constitutional meaning of sustainable development, nor that sustainable development operates as a fully autonomous constitutional principle capable of generating direct legal effects independently of legislative concretisation. Rather, sustainable development provides a constitutional imperative for action, while ESG operates as one of the regulatory instruments through which that imperative is translated into legal obligations and organisational practices. The constitutional significance of ESG lies in its contribution to the progressive juridification and operationalisation of sustainability commitments recognised in EU law, particularly through corporate sustainability reporting, sustainable finance, due diligence obligations and organisational governance frameworks.

The article further argues that the constitutional relevance of sustainable development does not render ESG legislation self-sufficient or immune from contestation. Sustainable development remains a multidimensional and open-ended concept whose implementation necessarily involves balancing exercises between competing environmental, social and economic objectives, which may conflict (Ditlev-Simonsen, 2022: 70). As Payer et al. (2025: 18) observe, "sustainability is not a universally uniform concept but one that is context-dependent", requiring "ESG products, benchmarks, and communication strategies" to remain attentive to "regional expectations and societal values." While there is simultaneously a "need for a standardized, comprehensive, and transparent rating system that can function as a credible benchmark for sustainable investment decisions" (Payer et al., 2025: 18), the implementation of sustainability objectives cannot rely exclusively upon hierarchical logics of primacy, harmonisation and regulatory uniformity. Rather, it requires mechanisms of constitutional dialogue capable of mediating between integration and pluralism, effectiveness and subsidiarity, and common objectives and national diversity.

Constitutional dialogue is understood as a process of reciprocal interaction between constitutional actors, broadly understood, aimed at shaping the interpretation, implementation and development of constitutional norms and principles[5]. It constitutes a form of cooperative constitutional governance capable of reconciling sustainability objectives with constitutional pluralism and, therefore, a framework through which the meaning and limits of sustainability obligations are shaped within the European multilevel legal order.

Constitutional dialogue manifests itself at the political-legislative level through the articulation between European harmonisation and national margins of discretion; at the judicial level through cooperation between national courts and the Court of Justice of the European Union, particularly by means of the preliminary reference procedure; and at the regulatory and societal level through interaction between supervisory authorities, undertakings, civil society and other stakeholders. This dialogical logic allows the scope and limits of the ESG agenda as a mechanism for implementing sustainable development to be specified in a context-sensitive and proportionate manner.

Methodologically, the article adopts a predominantly doctrinal, normative and interpretative approach centred on EU primary and secondary law and informed by the concepts of constitutionalisation, multilevel

5. Constitutional dialogue is commonly associated with interactions between courts, particularly within non-hierarchical networks of judicial cooperation, as well as between courts and legislatures. Meuwese and Snel define it as a "sequel of implicitly or explicitly shaped communications back and forth between two or more actors characterized by the absence of a dominant actor - or at least by a bracketing of dominance - with the shared intention of improving the practice of interpreting, reviewing, writing or amending constitutions" (Meuwese, Snel, 2013: 126). However, the concept may also encompass interactions involving regulatory authorities, civil society, stakeholders and economic actors where these contribute to the concretisation of constitutional values and principles (Meuwese, Snel, 2013: 128 ss.). Within the framework of constitutional pluralism and multilevel constitutionalism, constitutional dialogue further operates between legal orders, serving as a mechanism for accommodating normative tensions without relying exclusively upon formal hierarchies (Mazzotti, 2024: 148 ss.). Such a broader understanding is particularly relevant in the context of environmental constitutionalism and sustainability governance, where the implementation of constitutional commitments frequently depends upon multilevel cooperation and shared responsibility involving European, national, regional and societal actors (Panara, 2016: 705 ss.; Petters Melo, 2024: 563 ss.).

constitutionalism and constitutional dialogue. The analysis proceeds in three stages. First, it examines sustainable development as a constitutionally relevant principle within the EU legal order and the role of ESG-related legislation in giving it operative legal content. Secondly, it analyses the constitutional tensions generated by the implementation of sustainability obligations within the EU multilevel legal order. Thirdly, it explores constitutional dialogue as a mechanism for mediating between integration, pluralism, subsidiarity and the pursuit of higher levels of sustainability protection.

2. The constitutionalisation of sustainable development through ESG: beyond a framework of financial risk

2.1. Sustainable development as a constitutional metaprinciple and interpretative framework

Although the concept of sustainable development remains contested and open-textured, its non-controversial core continues to be grounded in the definition advanced by the Brundtland Commission in 1987[6], according to which sustainable development corresponds to a model of development capable of satisfying the needs of present generations without compromising the ability of future generations to satisfy their own needs. In this sense, sustainable development operates as a conceptual bridge between economic and social development and the imperative of environmental protection. Despite its open and contextual character, a relative consensus may nonetheless be identified regarding some of its central structural dimensions, namely intergenerational, intragenerational and global justice (Bugge, 2013: 19), the integration of ecological, economic and social considerations, and the recognition that human activity and economic development remain constrained by environmental and planetary limits (Beyerlin, 2013; Wieland, 2016: 473).

Within the European Union, sustainable development is similarly conceived as integrating environmental protection and social justice within a common

6. World Commission on Environment and Development. *Our Common Future*. New York: United Nations; 1987. Available at: https://digitallibrary.un.org/record/139811.

constitutional framework, while also accommodating market integration, economic growth and the freedom to conduct a business[7].

Sustainable development is not merely an ethical imperative (Esperança, 2015: 66), nor can it be reduced to a mere political objective of the European Union. It finds explicit anchorage, under the specific formulation of sustainable development[8], within EU primary law, where it has been characterised in the literature as a constitutional principle (Canotilho, 2010: 10; Barbosa, 2022: 3 ss.) of the Union legal order (see articles 3(3), 3(5), and 21 TEU, as well as articles 11 and 191-193 TFEU and article 37 of the Charter of Fundamental Rights of the European Union ('Charter')). This understanding is further reinforced by the fact that sustainable development operates as a value and objective informing the Union's external action, commercial policy and development cooperation policy (see article 21 TEU and article 208 TFEU, the latter of which "provides the EU with measures that should adhere to internationally recognised commitments, such as the SDGs" (Ahlström, Sjåfjell, 2023: 273)). As Lenk (2026: 52) observes, "For decades, the European Union has leveraged its economic weight and large consumer market as a source of influence to advance objectives such as sustainable development".

7. See, among others, EUROPEAN COMMISSION. *Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth*. COM(2018) 97 final, 08/03/2018.

8. For a review of the principal theoretical definitions of sustainability and sustainable development, as well as the distinctions between them, see Ruggerio (2021: 2 ss.). The distinction is not without relevance, particularly for understanding the conception of sustainable development embraced by the Treaties, which continues to accommodate economic growth as one of its structural pillars. For critiques proposing alternatives to the traditionally anthropocentric understanding associated with the concept, see, among others, Adelman (2018: 15 ss.) and Kotzé (2018: 41 ss.). At the same time, part of the literature has warned against conceptions of sustainability that frame environmental protection in strict opposition to economic development and business activity, while favouring more integrated understandings of sustainable development, closer to those progressively reflected in the European Union's sustainability framework, which seek to reconcile environmental protection, innovation, investment and socio-economic development (Tettamanzi, Gotti Tedeschi, Murgolo, 2024: 27113).

It may nonetheless be argued that such textual references are insufficient to sustain the constitutional character of sustainable development. Indeed, the contextual and variable operationalisation of sustainable development has led part of the scholarship to emphasise the difficulties inherent in attributing stable and uniform content to a concept capable of accommodating different and sometimes competing economic, social and environmental objectives (Gomes, Antunes, 2010: 9). The constitutional status of sustainable development should not, however, be understood in binary terms, i.e., as requiring a choice between treating it as a mere political objective or as a fully-fledged constitutional principle with autonomous legal effects. Rather, different constitutional functions may be attributed to sustainable development, ranging from its operation as a political objective[9], a constitutional value[10] and interpretative principle (Barral, 2012: 393 ss.) to its role as a broader metaprinciple structuring the integration of environmental, social and economic considerations[11].

9. The qualification of sustainable development as a political objective is perhaps the most widespread and least controversial characterisation of the concept. This is reflected not only in its promotion as an objective of the international community, but also in its explicit recognition as an objective of the Union in the Treaties. Nevertheless, reducing sustainable development to a merely political objective risks overlooking its normative dimension and treating it solely as a source of political orientation or influence (Barral, 2012: 378). As a constitutional objective, it is argued that sustainable development may perform important interpretative, integrative and orientating functions within the legal order.

10. The qualification of sustainable development as a constitutional value should not be understood merely in the sense of a policy preference or aspirational objective. Owing to its multidimensional nature, sustainable development may be regarded as an integrative value capable of bringing together and reconciling a plurality of values recognised by the Union, including human dignity, freedom, equality, solidarity, the rule of law and respect for human rights (Article 2 TEU) (Vilks, Kipāne, 2020: 184 ss.). Its particularity lies in providing a normative framework through which these values are projected across environmental, social and economic dimensions and oriented towards intragenerational, intergenerational and global justice.

11. Beyond the various references to sustainable development throughout the Treaties and in connection with the Charter, it should also be noted that, although relatively limited, the case law of the Court of Justice of the European Union and the Opinions of the Advocates General likewise support a multifaceted understanding of the concept. Sustainable development is invoked not only as an objective of Union action, but also

From this perspective, sustainable development may function primarily as a metaprinciple or methodology for balancing and integrating interests, closely connected to the principles of integration and proportionality, rather than as an autonomous constitutional principle. Yet, from a material perspective, it is also possible to identify elements pointing towards its nature as a structuring principle of the European constitutional order, one which supplements the procedural logic of integration and proportionality with substantive commitments relating to multidimensionality, shared responsibility and intergenerational justice within the framework of sustainable development.

Indeed, the logic of integration underlying sustainable development, requiring progress in economic integration to be accompanied by parallel progress in environmental and social domains, reveals a principle capable of organising and conditioning the exercise of public power. In this sense, sustainable development imposes a requirement of structural coherence (Ahlström, Sjåfjell, 2023: 274) that operates not merely at the level of political orientation, but also as a constitutional benchmark guiding the interpretation, implementation and review of legislative and administrative action.

Moreover, although sustainable development cannot easily be regarded as a self-standing criterion of legality capable of independently invalidating legislative acts, particularly given its textual openness and dependence upon

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as a value, a principle of orientation and a framework within which other rights, principles and policies are articulated. In this regard, Advocate General Mengozzi observed in Case C-377/12, European Commission v Council of the European Union, that the eradication of poverty must be pursued "in the context of sustainable development", the latter encompassing "good governance, human rights and political, economic, social and environmental aspects" (Opinion of Advocate General Mengozzi, 23 January 2014, Case C-377/12, *European Commission v Council of the European Union*, ECLI:EU:C:2014:29, para. 40). The Opinion is particularly relevant because it portrays sustainable development not as an isolated objective, but rather as an integrative framework capable of bringing together a plurality of values, principles and policy objectives. This multifunctional and intrinsically multidimensional character reinforces the appeal of understanding sustainable development as a constitutional metaprinciple. Rather than operating as a single self-contained norm, it functions as an overarching framework capable of integrating and orienting a plurality of constitutional values, objectives, principles and tasks recognised within the EU legal order.

further legislative concretisation, it nevertheless operates as a transversal constitutional value and interpretative principle permeating the EU legal order. It further functions as a parameter of balancing, particularly in light of its future-oriented intra- and intergenerational dimension (Gomes, Antunes, 2010: 6; Kotzé, 2013: 144), thereby correcting some of the limitations of purely synchronic proportionality analysis.

The relationship between sustainable development and fundamental rights further reinforces its constitutional character[12]. Although distinct in nature, scope and function, both ultimately converge towards the broader objective of securing conditions for human flourishing and collective progress. In this sense, sustainable development provides an integrated framework within which the protection and promotion of fundamental rights may be pursued, contributing to the concretisation of their normative expression within the EU legal order.

This constitutional qualification is further strengthened at the international level. The commitment of the European Union to respect international law (see articles 3(5), 21(1), and 21(2)(b) TEU), together with the Union's alignment with the United Nations 2030 Agenda and the Sustainable Development Goals ('SDGs'), reinforces the normative and interpretative force of sustainable development within the EU legal order.

Accordingly, sustainable development cannot be reduced to a contingent objective of the European Union. By virtue of its explicit recognition in the

12. While the environmental dimension is, in this regard, particularly strong, given the express link established in both the Treaties and the Charter (see, in particular, Article 37 of the Charter), sustainable development cannot be exclusively reduced to the protection of natural resources, nor to the environmental dimension as an end in itself. Rather, it is closely connected to the protection of human dignity, quality of life and the conditions necessary for the effective enjoyment of fundamental rights. This connection was expressly recognised by Advocate General Ruiz-Jarabo Colomer, who described sustainable development, environmental protection and quality of life as intrinsically linked concepts and emphasised the emergence of a right to enjoy an acceptable environment alongside corresponding duties of protection incumbent upon public authorities (Opinion of Advocate General Ruiz-Jarabo Colomer, 26 May 2005, Case C-176/03, *Commission v Council*, ECLI:EU:C:2005:311, paras. 66-70). In this sense, sustainable development provides an integrated framework within which the protection and promotion of fundamental rights may be pursued.

Treaties and its integrative function across environmental, social and economic domains, it operates as a constitutional metaprinciple of the EU legal order. Its constitutional relevance lies in its capacity to structure, orient and constrain the exercise of public power while guiding processes of legislative and administrative concretisation. It thereby requires coherence, coordination and integration between policies and actions, while subordinating them to a broader commitment towards multidimensional and intergenerational progress.

Despite its anchorage in the Treaties, however, the material densification of sustainable development remains dependent upon processes of practical concretisation through which binding operative content may emerge (Jürschik, 2023: 15). While EU primary law allows the identification of a meaningful constitutional core centred upon multidimensional progress and guided by ideas of intragenerational, intergenerational and global justice, its implementation largely depends upon legislative, administrative and judicial mediation. Sustainable development may therefore operate as a constitutional benchmark capable of informing the assessment of regulatory choices and potential regressions in environmental and social protection, without thereby predetermining the precise content of legislative solutions. Within this process, the particularities of the European multilevel legal order create space for dialogue between Union and national institutions, authorities and courts as a further mechanism of co-concretisation.

EU secondary law, in particular, enables the institutional, normative and technical concretisation of sustainable development within the exercise of political-legislative discretion available to the Union legislator.

As will be further explored, this process no longer concerns public authorities alone. It increasingly requires the inclusion of undertakings and organisations as actors bearing responsibilities in the implementation of sustainable development, a transformation significantly advanced by EU law itself.

2.2. ESG legislation beyond financial risk: the constitutional concretisation of sustainable development

Although the acronym was formally popularised through the 2004 UN Global Compact report Who Cares Wins[13], no fully consolidated definition of ESG has yet emerged in the literature. Broadly understood, ESG refers to the integration of environmental, social and governance factors into economic decision-making, corporate activity and investment practices, encompassing issues ranging from climate change, human rights and labour conditions to corporate governance, transparency and shareholder protection (Angeloni, 2026). In this sense, ESG may be understood as one of the principal regulatory pathways through which sustainability considerations are incorporated within organisational structures and corporate activity.

Legislation constitutes the primary mechanism through which sustainable development acquires binding operative expression within the EU legal order. As Oliveira (2020: 88-89) contends, "it has become clear that while much of the transition is dependent on technical innovation, economic incentives, collaboration among stakeholders, and complete information, the fast transition aimed by European countries and needed to halt environmental degradation requires and must be pushed by legal enforcement."

In this domain, however, legislation must be understood in a broad sense, as it is "equally important not to neglect the increasing significance of other 'typologies'; notably corporate, private, local government and transnational law, as well as soft law and mixed systems" (French, Kotzé, 2018: 3). The regulatory framework surrounding sustainability and ESG is characterised by a constant interaction between hard law, technical standards, private regulation and soft law instruments. Particularly relevant in this regard are the initiatives developed by the United Nations Global Compact ('UNGC'), the Organisation for Economic Co-operation and Development ('OECD'), the International Sustainability Standards Board ('ISSB') and the Global Reporting Initiative ('GRI') (Bianco, Zamparelli, 2024: 11 ss.; Ditlev-Simonsen, 2022: 86 ss.). Soft law has thus operated not only as a driving force behind juridification, inspiring and informing legislative action, but also as a subsidiary parameter for the concretisation of duties that may not yet find

13. United Nations Global Compact. *Who Cares Wins: Connecting Financial Markets to a Changing World*. New York: United Nations Global Compact; 2004.

explicit expression in EU secondary law while nonetheless remaining connected to broader fundamental rights obligations.

Understood in this broader sense, EU sustainability and ESG legislation has significantly contributed to the concretisation of the meaning and scope of sustainable development, particularly through its translation into the sphere of economic and business activity. The mobilisation of ESG factors as normative and technical criteria for assessing the performance, impacts, risks and practices of entities in environmental, social and governance matters has altered the understanding of the internal market and the market economy itself, embedding them within a socio-ecological framework committed not merely to economic prosperity, but also to social justice and solidarity.

This transformation followed the gradual logic of European integration. It was primarily within the financial and investment sectors, under the broader framework of sustainable finance, that EU legislation began to integrate social and environmental considerations into economic activity. In its Action Plan: Financing Sustainable Growth[14], the European Commission identified three central objectives: the reorientation of capital flows towards sustainable investment, the management of financial risks stemming from climate change and broader environmental and social degradation, and the promotion of transparency and long-termism in financial and economic activity.

Building upon the broader regulatory and policy framework shaped in the aftermath of the Paris Agreement and the United Nations 2030 Agenda, the Union's sustainability concerns expanded beyond the financial sector and into the sphere of corporate activity more generally. Transparency obligations, particularly through sustainability reporting and disclosure requirements, became central mechanisms for redirecting the conduct of both financial and non-financial undertakings (Saci, Khalifa, 2025: 325). By increasing visibility regarding the environmental and social impacts of economic activity, these instruments sought not only to mitigate such

14. European Commission. *Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth*. COM(2018) 97 final, 08/03/2018.

impacts, but also to promote the internalisation of social and environmental costs within market decision-making processes. This framework includes reporting obligations[15], sustainability disclosure requirements, technical reporting standards such as the European Sustainability Reporting Standards ('ESRS')[16], and the development of a harmonised classification system for sustainable activities through the EU taxonomy framework[17] (Ditlev-Simonsen, 2022: 193 ss.).

Alongside transparency, the environmental and climate dimension of the EU sustainability agenda acquired renewed prominence through the European Green Deal[18] and the subsequent Fit for 55 package[19]. As Arvidsson (2026: 207) observes, "there has been a paradigm shift in EU climate policy, with the European Green Deal clearly showing that the EU's ambition is not only to take the lead in the fight to combat climate change and biodiversity loss

15. 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 [2022] OJ L 322, 16/12/2022.

16. Commission 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 [2023] OJ L, 2023/2772, 22/12/2023.

17. 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 [2020] OJ L 198, 22/06/2020.

18. European Commission. *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal*. COM(2019) 640 final, 11/12/2019.

19. European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'Fit for 55': Delivering the EU's 2030 Climate Target on the Way to Climate Neutrality*. COM(2021) 550 final, 14/07/2021. It should nonetheless be emphasised that the Union's environmental and climate policy substantially predates the 2030 Agenda. In this regard, see Budd (2020: 111 ss.). Moreover, within the European Union, "the UN Agenda 2030 was preceded by the Europe 2020 Strategy, already launched by the Commission in 2010" (Silander, 2020: 5).

but also to set a global example." Through instruments concerning climate neutrality, energy efficiency[20], emissions reduction[21], emissions trading[22] and carbon border adjustment mechanisms[23], the European Union progressively reinforced the integration of sustainability considerations across multiple sectors of economic activity, including energy, transport, buildings and land use[24].

It was, however, through the Corporate Sustainability Due Diligence Directive ('CSDDD')[25] that EU law most clearly consolidated a different understanding of the undertaking as a responsible legal subject and, likewise, of ESG as a framework extending beyond financial risk assessment[26]. The Directive marked a significant step in the transformation

20. Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) [2023] OJ L 231, 20/09/2023.

21. Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999 [2023] OJ L 111, 26/04/2023.

22. Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [2003] OJ L 275, 25/10/2003.

23. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L 130, 16/05/2023.

24. At the same time, the progressive expansion of ESG beyond financial markets and investment governance has also fuelled criticisms concerning regulatory overreach, managerialisation and the risk of reducing sustainability objectives to technocratic compliance exercises, illustrating the contested character of the framework itself (Aliakbari, Globerman, 2024: 117 ss.; Chen, 2026; Matos, 2020: 55).

25. 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 [2024] OJ L, 2024/1760, 05/07/2024.

26. It is equally important not to overlook the relevance of other legislative instruments contributing to the governance dimension of ESG, such as Directive (EU) 2022/2381 of

of the relationship between undertakings, society and the environment. Moving beyond the predominantly ethical and voluntary logic traditionally associated with Corporate Social Responsibility (‘CSR’)[27], the juridification of due diligence contributed to the emergence of a model of active legal responsibility based upon obligations of prevention, mitigation and remediation concerning adverse human rights and environmental impacts arising from the activities of undertakings, their subsidiaries and their chains of activities[28].

This transformation was already reflected in the emergence of double materiality, which supplements financial materiality with environmental and social impact materiality. Although such considerations retain autonomous relevance within financial decision-making processes, they simultaneously reveal a broader function as a framework for assessing how sustainability concerns are internalised within organisational activity.

Accordingly, despite its continuing relevance within financial and investment sectors, ESG can no longer be understood exclusively through the lens of financial regulation. This broader understanding is reflected, for instance, in the definition adopted by the Regulation on a pan-European Personal

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the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures [2022] OJ L 315, 07/12/2022, and Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L 188, 12/07/2019.

27. On the notion of CSR and its related synonyms, see Ditlev-Simonsen (2022: 31 ss.) and Dathe et al. (2022: 23 ss.).

28. For an overview of the CSDDD and the evolution of corporate sustainability from soft law to binding legal obligations, see Moreira LE. *A nova diretiva relativa ao dever de diligência das empresas em matéria de sustentabilidade (“CSDDD”)*. *Revista da Faculdade de Direito da Universidade do Porto*. 2022-2024; XIX-XXI: 193-219 and Moreira LE. *A evolução da agenda da UE para a sustentabilidade empresarial e seus possíveis impactos na corporate governance*. *Direito das Sociedades em Revista*. 2025; 17(34): 123-168.

Pension Product ('PEPP')[29], which refers to environmental, social and governance factors through express reference to the Paris Agreement, the SDGs, the United Nations Guiding Principles on Business and Human Rights and the United Nations Principles for Responsible Investment.

Similarly, the increasing use within EU legislation of broader expressions such as "sustainability matters"[30] reflects the incorporation of environmental, social and governance concerns into a wider sustainability framework.

In this respect, the connection between ESG and the SDGs is particularly significant (Dragomir et al., 2026). Although primarily directed towards States and international organisations, the SDGs, especially SDG 12 concerning sustainable production and consumption, also address markets, undertakings and civil society as actors bearing responsibilities in the implementation of sustainable development. As Silander observes, "The UN urges a global commitment to address challenges and reach the development goals by 2030 (see Goal 17). It does not only address the crucial importance of state engagement in the developed and developing world, but also of local, sub-regional, regional and global engagement, in addition to private-sector actorness and civil society." (Silander, 2020: 3). The emphasis placed upon sustainable business practices, sustainability reporting and responsible production models reinforces the understanding of ESG not merely as a framework for financial risk management, but as a broader mechanism for embedding sustainable development within organisational activity itself.

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29. Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP) [2019] OJ L 198, 25/07/2019.

30. See, among others, article 2(17) of the Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC [2013] OJ L 182, 29/06/2013 and article 2(24) of 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 [2019] OJ L 317, 09/12/2019.

2.3. ESG and the reconfiguration of the undertaking in a socio-ecological market economy

Beyond contributing to the substantive densification and practical implementation of sustainable development, the EU ESG agenda has also operated as a driver of the juridification of corporate responsibility. Indeed, while the international community has contributed to increasing expectations regarding corporate behaviour through international sustainability initiatives (Ahlström, Sjåfjell, 2023: 272), EU law has increasingly transformed expectations previously confined largely to ethics and soft law into binding legal obligations and regulatory requirements, including reporting and transparency duties, sustainability due diligence obligations and other normative limitations shaping the exercise of the freedom to conduct a business.

In this context, the ESG agenda has contributed both to a reorientation of the European Union's role in pursuing the SDGs[31], from the correction of market failures towards the construction of a socio-ecological market economy, and to the reconfiguration of the undertaking itself as a responsible legal subject. Corporate autonomy and economic freedom are now situated within a legal framework more explicitly structured around solidarity, sustainability and responsibility, extending beyond merely negative duties not to cause harm and incorporating positive obligations of conduct and prevention. ESG thereby reflects a broader transformation in which corporate governance and financial regulation increasingly operate as mechanisms for the internalisation of environmental and social externalities, moving beyond paradigms exclusively centred upon shareholder primacy and short-term profit maximisation (MacNeil, Esser, 2022: 31 ss.).

The interaction between the ESG framework and the SDGs (Lukács, Molnár, Tóth, 2026) reinforced this transformation. ESG contributed to the organisational internalisation of SDG-related objectives and, more broadly, of sustainable development. In parallel, it facilitated the adaptation of the

31. Indeed, if, according to doctrine, the SDGs acquire normative relevance through their capacity to shape legislation and public policies, which States are expected to mobilise in order to translate the SDGs into operative commitments (Castillo-Winckels, 2018: 121 ss.), such responsibility today also rests - and in certain domains rests primarily - upon the European Union itself as an autonomous political and legal subject.

multifunctional understanding of fundamental rights to a context of shared responsibilities, where duties traditionally associated with State protection increasingly came to justify forms of positive corporate responsibility directed towards the prevention, mitigation and management of adverse environmental and human rights impacts.

Accordingly, although the United Nations Guiding Principles on Business and Human Rights continue to assign the duty to protect to States, the combined influence of the OECD Guidelines for Multinational Enterprises[32], sustainability due diligence frameworks and, more recently, the CSDDD demonstrates that corporate due diligence increasingly extends beyond a mere duty of respect. Rather, it reflects a broader logic of active responsibility centred upon protection, prevention and remediation.

The ESG framework has therefore contributed to the progressive reconfiguration of undertakings not merely as holders of economic freedoms and fundamental rights, but also as subjects bearing responsibilities towards society and the environment. The obligations imposed upon undertakings no longer consist solely of abstention from harmful conduct or compliance with fundamental rights standards. Increasingly, they require positive organisational conduct structured around due diligence obligations and sustainability governance mechanisms. This transformation has been reinforced through EU secondary legislation, which progressively internalised environmental, social and governance concerns through reporting obligations, due diligence requirements, transparency duties, sustainability metrics and other sustainability-oriented duties of conduct.

It is within this context that undertakings are no longer understood in isolation from the societies, markets and natural environments in which they operate; these relationships are instead conceived as relational and interdependent. The principle of double materiality contributed significantly to this transformation. As Coutinho de Abreu highlights, it is precisely the reciprocal or bidirectional connection between economic, social and

32. OECD. *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. Paris: OECD Publishing; 2023. Available at: https://doi.org/10.1787/81f92357-en. Also, OECD. *OECD Due Diligence Guidance for Responsible Business Conduct*. Paris: OECD Publishing; 2018. Available at: https://doi.org/10.1787/15f5f4b3-en.

environmental factors, operating simultaneously through outside-in and inside-out dynamics, that characterises the contemporary "sustainable undertaking" (2025: 49). Human rights and environmental concerns are no longer perceived merely as external sources of reputational or financial risk, but increasingly influence the very conception of the undertaking itself. The undertaking thereby emerges not simply as the aggregate expression of shareholders' interests or short-term investment expectations, but as an autonomous organisational subject whose activity necessarily produces broader social and environmental implications.

In this sense, the evolution of the European Union reflects a reorientation from a model centred predominantly upon market integration and economic freedoms towards a socio-ecological market order increasingly structured around sustainable development. Within this framework, the freedom to conduct a business, recognised in article 16 of the Charter, is increasingly understood in conjunction with responsibilities relating to human rights, environmental protection and sustainability governance.

This transformation is also visible in the external dimension of EU action, which has already positioned the Union as "a de facto global ESG standard-setter, displacing the influence of US corporate governance-based reforms" (Schwartz, 2025: 352). The growing extraterritorial reach of sustainability-related obligations and the increasing conditioning of access to the internal market upon compliance with environmental and human rights standards reveal the progressive integration of sustainability concerns into the Union's external economic and regulatory projection (Redondo Alamillos, de Mariz, 2022).

More than merely technical metrics, ESG factors increasingly contribute to expressing the European Union's constitutional commitment to sustainable development, reinforcing a model of economic governance that extends beyond market integration and incorporates environmental, social and governance concerns as structuring elements of the European project (Payer et al., 2025: 18).

Within this emerging framework, environmental protection, social justice, governance and fundamental rights become interconnected dimensions of a broader constitutional commitment to multidimensional and intergenerational progress. Corporate responsibility forms part of this shift and is given legal form through legislative and judicial concretisation, within the limits of the EU constitutional framework.

3. Constitutional dialogue and the multilevel realisation of sustainable development through ESG: avenues and limits

3.1. Sustainable development within European multilevel constitutionalism

As previously argued, sustainable development operates as a constitutional metaprinciple of the European Union, informing the interpretation, implementation and concretisation of EU law and the sustainability-related obligations imposed upon Member States, undertakings and other actors subject to Union law. Beyond functioning as an interpretative and orienting constitutional framework, sustainable development also serves as a guiding parameter for legislative action.

The progressive concretisation of sustainable development through EU secondary legislation contributed to its semantic densification and, with it, to the identification of a constitutional core (Mittwoch, 2024: 25) increasingly connected to the Union's commitment to advancing sustainable development across its environmental, social and economic dimensions. As scholarship has emphasised, contemporary understandings of sustainability and sustainable development evolved from early concerns regarding ecological limits and intergenerational responsibility into a multidimensional framework integrating environmental, social and economic dimensions, progressively consolidated through instruments such as the Brundtland Report, the Rio Declaration and the 2030 Agenda (Stark, 2023: 120). With this meaning, sustainable development thereby emerged not merely as a political objective, but also as a structuring principle of contemporary European integration. The European Green Deal and the broader body of sustainability legislation adopted in recent years illustrate this transformation, progressively articulating market integration, economic efficiency and competitiveness with concerns relating to solidarity, environmental protection and social justice.

It was primarily through legislation that sustainable development acquired institutional, normative and technical expression capable of translating broad constitutional commitments into operative obligations, standards and mechanisms of implementation. At the same time, however, the constitutional relevance of sustainable development cannot be understood as implying the existence of a fixed or exhaustive substantive model. Given its inherently open and multidimensional nature, the concrete implications of sustainable development necessarily remain dependent upon ongoing processes of legislative, administrative and judicial concretisation (*konkretisierungsbedürftig*). As scholarship has argued, the multidimensionality of sustainability may itself undermine the principle's practical effectiveness if its ecological, economic and social dimensions are not further concretised through legal, institutional and interpretative mechanisms capable of mediating between competing objectives (Stark, 2023: 123).

The global orientation of sustainable development introduces an additional layer of complexity. As Cunha (2022: 133) observes, contemporary global regulation increasingly develops through an interplay between processes of constitutional integration and hierarchical coordination on the one hand, and forms of functional fragmentation into specialised normative subsystems on the other, some of which progressively acquire relatively autonomous mechanisms of implementation and responsibility. This transformation necessarily requires governance methods extending beyond traditional state-centred models confined to a single polity, demanding instead renewed forms of multilevel governance and coordination, within which dialogue assumes particular relevance.

Accordingly, within the EU, the constitutional content of sustainable development emerges through the interaction between EU primary law, including the Charter, EU secondary law, judicial interpretation, and the practice of administrative authorities and stakeholders involved in the implementation of sustainability obligations. This evolutionary dimension is characteristic of open-textured constitutional principles, whose operative meaning cannot be predetermined in abstract terms.

To begin with, sustainable development cannot be understood exclusively as a constitutional principle of the European Union. Through its close connection with fundamental rights, environmental protection and social justice, it also forms part of the constitutional traditions and normative structures of the Member States themselves. Consequently, the implementation of sustainable development through EU law cannot operate as an absolute ceiling preventing Member States from adopting more protective approaches. EU secondary legislation should not automatically be understood as establishing exhaustive or definitive models of sustainability governance and may, depending on the legal instrument and degree of harmonisation, preserve space for more protective national approaches. Member States should retain the possibility of pursuing more ambitious forms of protection and implementation, except where overriding Union interests justify a different balancing solution.

Within these limits, however, the multidimensional and compromise-based nature of sustainable development requires differentiated forms of implementation capable of accommodating the economic, institutional and social asymmetries between Member States, sectors and undertakings. Otherwise, harmonisation risks generating either levelling down, by constraining more ambitious national approaches, or disproportionate burdens upon States and economic actors lacking equivalent structural capacities.

In this respect, sustainable development follows a logic comparable to that applicable to fundamental rights protection under the Charter. It cannot autonomously expand Union competences beyond the limits established in the Treaties, nor can it validate unjustified or disproportionate reductions in the level of protection otherwise guaranteed under national constitutional orders. On the contrary, its implementation should remain guided by the principle of the highest level of protection compatible with the coherence and effectiveness of Union law.

On the other hand, although sustainable development does not prescribe a single constitutionally required outcome, its constitutional status nonetheless requires careful scrutiny of measures capable of causing a regression from previously attained levels of environmental, social or governance protection (Telesetsky, 2013: 185-186). In this context, the principles of non-regression and "Do No Significant Harm" ('DNSH') acquire particular relevance, especially where limitations imposed upon one sustainability dimension are justified by reference to competing economic or regulatory concerns. In other words, openness and multidimensionality do not imply the absence of constitutional limits. The progressive constitutionalisation of sustainable development through EU law contributed to the emergence of a core of protection constraining both Union and national action. Previously attained levels of environmental, social and governance protection ought not to be reduced arbitrarily or disproportionately, particularly where such regression compromises the integrated and intergenerational logic underlying sustainable development itself. As Collins (2021: 98) observes, "The principle of non-regression may be a key solution to the problem of uncertainty in environmental regulation."

The balancing exercises inherent in sustainable development may therefore be understood as taking place within a constitutional corridor defined by the prohibition of insufficiency and the prohibition of excess. Within those limits, different balancing solutions may remain constitutionally acceptable, provided that they respect the integrated and future-oriented logic of sustainable development. Any regression affecting previously achieved levels of sustainability protection should be supported by proportionate justification grounded upon competing concerns of constitutional relevance. Sustainable development thereby operates not as a rigid or absolute principle, but as a composite constitutional framework requiring integrated and proportionate balancing (Oliveira, 2026: 52 ss.) between interconnected dimensions.

The complexity of these balancing exercises is particularly visible in contemporary debates concerning competitiveness, regulatory burden and recent sustainability simplification initiatives, including the Omnibus reform proposals. Such developments illustrate not only the evolving nature of ESG regulation, but also the need for mechanisms capable of reconciling constitutional coherence with contextual flexibility.

At the same time, while the openness and multidimensionality of sustainable development may militate against the recognition of a fully autonomous and self-standing principle of non-regression, the very idea of development as continued progress and optimisation across environmental, social and economic dimensions provides a strong constitutional argument against unjustified regressions in previously attained levels of protection. From this perspective, proposals involving the reduction of existing sustainability obligations should be subject to particularly careful scrutiny, not only as regards their substantive justification, but also in relation to their scope, proportionality and procedural legitimacy.

In this regard, considerations of competitiveness or regulatory simplification - even if legitimate and, in particular cases, ultimately prevailing - cannot automatically outweigh sustainability objectives merely by virtue of their political expediency or conjunctural character. Rather, it is for the legislator, when designing or revising regulatory frameworks, to ensure that overlaps, inconsistencies and unjustified burdens are effectively addressed without undermining the core objectives pursued by sustainability legislation.

In this context, and in order to avoid legitimate concerns relating to competitiveness or simplification being used to justify forms of deregulation that are not genuinely required by those objectives, any significant regression should be supported by sufficiently weighty reasons, grounded in competing concerns of constitutional relevance, and adopted through procedures capable of ensuring transparency, adequate deliberation and meaningful participation by affected stakeholders[33]. Such requirements do not render regulatory adjustment impossible, but seek to ensure that changes remain compatible with the integrated and future-oriented logic inherent in sustainable development itself.

A logic of cooperative constitutional governance assumes particular relevance precisely within this framework. The concretisation of sustainable development as a constitutional metaprinciple cannot rely exclusively upon hierarchical mechanisms of primacy and uniformity. Rather, it requires processes of coordination, interpretation and mutual accommodation involving Union institutions, Member States, courts, supervisory authorities, undertakings and stakeholders.

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33. The importance of such procedural guarantees is illustrated by the debates surrounding the Commission's Omnibus simplification package. In Case 983/2025/MAS, concerning the proposal amending the CSRD and the CSDDD, the European Ombudsman examined whether the Commission had complied with its Better Regulation requirements when preparing the proposal, particularly regarding stakeholder consultation, impact assessment, climate consistency assessment and the justification of urgency-based procedural derogations. While not questioning the possibility of regulatory simplification as such, the Ombudsman identified shortcomings relating to transparency, evidence-based law-making, participation and the documentation of departures from ordinary procedural requirements, recommending the adoption of clearer safeguards for urgent legislative initiatives. The case illustrates how significant revisions of sustainability legislation may raise not only substantive questions, but also procedural issues connected with the legitimacy of legislative decision-making. See EUROPEAN OMBUDSMAN, Case 983/2025/MAS, *The European Commission's failure to comply with its 'Better Regulation Guidelines' in preparing a legislative proposal on corporate sustainability reporting and due diligence*, Recommendation, 25 November 2025.

Without prejudice to the need for binding legislation in particular domains, the constitutional openness of sustainable development presupposes cooperation, multilevel governance and shared responsibility. As Lafferty (2004: 14) emphasises, "we should not expect the definitional conflict over sustainable development to be 'resolved' by critical discourse alone. We can only enhance a more consensual understanding of the concept, and promote a more effective realization of its goals, by judicious analytic attempts to elucidate the instrumental consequences of applied uses of the general idea." It is through this dialogical structure that the Union may reconcile the commitment to sustainable development with the pluralism inherent in the European multilevel legal order.

Ultimately, the implementation of sustainable development necessitates a form of constitutional governance grounded upon dialogue between legal orders, institutions, sectors and stakeholders, capable of reconciling integration with diversity, harmonisation with differentiation and constitutional unity with pluralism.

3.2. Constitutional dialogue as a mechanism of multilevel and shared governance of ESG

The constitutional dialogue defended here necessarily operates at multiple levels and, as such, constitutes a shared responsibility. As Voigt (2013: 157) points out, "Legal scholars, lawmakers, judges, civil servants – all have a responsibility: not to neglect, but to stress sustainable development's ecological meaning, in particular in the process of integration of diverse, and often colliding, interests". Such responsibility begins within the legislative process itself, through the adoption of legal instruments capable of accommodating different constitutional, institutional and socio-economic contexts while simultaneously recognising both the margins of discretion available to Member States and the discretion available to undertakings when complying with obligations of conduct and obligations of result. Indeed, as scholarship has noted, even identical sustainability obligations may vary considerably in their scope, intensity and practical implementation depending on the specific factual, economic and geopolitical contexts in which they operate. For instance, in relation to undertakings conducting business in conflict-affected areas, the effectiveness of "classical" due diligence mechanisms may be significantly constrained by the rapidly changing and unstable nature of the surrounding conflict environment (Kaplina, 2024: 164).

Although the transformation generated by EU ESG legislation may derive constitutional significance from its connection with sustainable development as a constitutional metaprinciple, including in light of the United Nations 2030 Agenda and the SDGs, this evolution cannot eliminate the political and constitutional discretion inherent in the implementation of multidimensional sustainability commitments. Although the constitutionalisation of sustainable development implies limits upon unjustified, disproportionate or arbitrary regression, particularly in response to purely deregulatory pressures, the implementation of ESG obligations necessarily remains dependent upon political balancing, institutional capacities and evolving socio-economic priorities.

Constitutional dialogue should inform legislative choices from the outset, including the selection of the appropriate legal instrument, whether regulations, directives or forms of soft law. As scholarship concerning the EU Green Taxonomy framework has highlighted, the choice of a regulation as the legal instrument reflects a preference for more uniform implementation of sustainability objectives throughout the Union, limiting the divergences that could otherwise result from national transposition mechanisms (Tettamanzi, Gotti Tedeschi, Murgolo, 2024: 27121). In other domains, however, and within the limits established by the Treaties, legislative choices should reflect not only the objectives pursued by the Union, but also the diversity of national constitutional traditions, economic realities and institutional capacities, as well as the need to avoid disproportionate interference with the freedom to conduct a business recognised under article 16 of the Charter.

Particularly relevant in this regard is the inclusion of non-regression clauses intended to safeguard the possibility of higher levels of protection at national level. Article 1(2) of the CSDDD constitutes an important example insofar as it prevents the Directive from being used as a justification for reducing existing standards of human rights or environmental protection within Member States. At the same time, however, the Directive also contains provisions pursuing partial harmonisation and limiting national divergence in specific areas (Moreira, 2022-2024: 197-198). This coexistence between openness and harmonisation reflects the tensions inherent in the embedding of sustainable development within the Union and reinforces the need for constitutional dialogue mediating between uniformity, effectiveness and constitutional pluralism.

Moreover, despite the progressive integration of the European legal order, Member States continue to have markedly different economic structures, administrative capacities and socio-historical contexts, and ESG is, in itself, "an international and transnational movement, with norms and ideas crossing borders and legal systems", as a result of which "[u]nderstanding ESG and its repercussions in different countries and regions of the world as well as navigating the debate therefore requires a deeper understanding of legal landscapes" (Kuntz, 2024: 3). This reality is reflected, for example, in the flexibility granted under the Paris Agreement regarding nationally determined contributions for the reduction of greenhouse gas emissions and climate adaptation measures. Similar considerations necessarily arise within the implementation of ESG obligations and sustainability policies more broadly. Different levels of economic development, industrial dependence, social vulnerability and institutional maturity inevitably affect the capacity of States and undertakings to pursue sustainability transitions at the same pace and intensity.

Such considerations equally explain why dialogical constitutionalism must extend beyond legislative activity and encompass administrative authorities, supervisory bodies, courts, undertakings and civil society actors, which play "[a] hugely instrumental and catalytic role in development" (Cooper, French, 2018: 285). Particularly in technically complex sectors, cooperation between administrative and supervisory authorities may contribute to overcoming deficits of expertise, legitimacy or institutional coordination in the balancing of sustainability concerns. At the same time, EU law has demonstrated that even authorities whose original mandates appear only indirectly connected to sustainability may progressively incorporate ESG-related considerations within their regulatory and supervisory activities. This is particularly visible in the evolution of the European Supervisory Authorities framework, where Union initiatives increasingly encourage authorities such as the EBA, ESMA and EIOPA to integrate ESG risks and sustainability considerations into financial supervision, guidance and regulatory interpretation, including through soft law instruments aimed at promoting coherent implementation while safeguarding financial stability (Martini, 2021: 16885). Similar dynamics may be identified in other regulatory domains, including competition law, where the growing debate surrounding sustainability agreements illustrates the progressive opening of traditionally market-oriented fields to broader sustainability-oriented forms of interpretation and enforcement (Neves, 2025: 197 ss.).

Likewise, administrative discretion exercised by the European Commission and national authorities may function as a mechanism of concretisation, provided it remains anchored in legality, proportionality and the constitutional parameters derived from sustainable development itself.

This is particularly evident in the calibration of enforcement mechanisms. The choice between more punitive or more dialogical approaches may legitimately vary according to the concrete circumstances at stake, including the economic and institutional conditions affecting compliance. Similarly, in infringement proceedings under articles 258–260 TFEU, the objective nature of Member State non-compliance cannot be disregarded. Nevertheless, particularly in areas structurally dependent upon complex socio-economic transitions and differentiated implementation capacities, the Commission's enforcement discretion should still allow room for cooperative and context-sensitive approaches capable of accommodating legitimate structural constraints without compromising the effectiveness of Union law.

Constitutional dialogue equally assumes particular relevance within the judicial sphere. Indeed, as climate litigation demonstrates, courts are increasingly called upon to give concrete meaning to indeterminate concepts and principles associated with sustainable development, while addressing complex technical assessments, broad areas of political discretion and tensions involving proportionality, liability and the separation of powers, without allowing such complexity to result in a denial of effective judicial protection (Oliveira, Pilão, 2025: 52). As common courts of EU law, national courts participate alongside the Court of Justice of the European Union in the interpretation and concretisation of sustainable development as a constitutional principle. In this regard, judicial dialogue contributes not only to ensuring the uniform interpretation of Union law, but also to mediating tensions between constitutional pluralism, primacy and differentiated national realities.

First, much as EU secondary legislation contributed to the concretisation of sustainable development within the European constitutional order, it may also indirectly influence the interpretation and densification of analogous constitutional principles and state objectives contained within national constitutions, including in fields where Union competences remain limited, such as forestry (Brożek et al., 2025: 2). In this sense, ESG legislation may generate forms of indirect constitutional influence extending beyond strictly harmonised sectors.

Secondly, judicial dialogue may contribute to identifying the constitutional adjustments required by the emergence of a socio-ecological market economy increasingly embedded within EU constitutional development. Without disregarding national constitutional identity, courts may progressively recognise the constitutional relevance of sustainability obligations within economic governance and corporate activity.

Thirdly, judicial interpretation will be particularly relevant in concretising the numerous "without prejudice" clauses contained in ESG-related legislation, including article 1(3) and (4) of the CSDDD and article 4a(5) of Directive (EU) 2024/1619 regarding environmental, social and governance risks within the banking sector. Such clauses necessarily presuppose interpretative balancing between Union objectives and national constitutional specificities.

Within this multilevel structure, the preliminary ruling mechanism assumes particular importance. Through judicial cooperation between national courts and the Court of Justice, preliminary references may contribute to ensuring coherent interpretations of sustainable development while simultaneously allowing constitutional tensions to emerge institutionally rather than politically.

At the same time, judicial dialogue may mitigate some of the limitations inherent in abstract ESG indicators and standardised metrics. Quantitative models remain vulnerable to phenomena such as greenwashing, social washing, selective compliance strategies and excessive focus upon measurable indicators detached from concrete social realities. National courts, operating in closer proximity to local conditions and sector-specific contexts, may therefore contribute to identifying disproportionate impacts upon small and medium-sized enterprises, vulnerable sectors or constitutionally sensitive national arrangements.

The dialogical implementation of ESG equally extends beyond institutional actors strictly understood. Stakeholder participation constitutes an autonomous and indispensable dimension of cooperative constitutional governance in the implementation of sustainable development. Article 9 of the European Climate Law[34] offers an important example insofar as it requires the Commission to engage with all sectors of society in promoting a socially fair and climate-neutral transition. Likewise, article 13 of the CSDDD expressly requires undertakings to engage effectively with stakeholders throughout due diligence processes.

Such provisions demonstrate that the implementation of sustainable development increasingly occurs through participatory and cooperative structures involving public authorities, undertakings, civil society organisations, affected communities and market actors. Constitutional dialogue thereby assumes not merely an inter-institutional dimension, but also a broader societal function connected to democratic legitimacy and epistemic inclusiveness. Although significant challenges remain regarding the effectiveness and practical operability of participatory mechanisms, particularly from the perspective of corporate actors, such forms of engagement nonetheless constitute an essential vehicle through which sustainable development and its multidimensional requirements may progressively shape corporate conduct and organisational decision-making.

Constitutional dialogue also allows the constitutionalisation of sustainable development to remain compatible with pluralism, proportionality and differentiated integration. In this sense, constitutional dialogue functions simultaneously as a mechanism of coordination, limitation and mutual learning within the multilevel governance of ESG.

34. Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') [2021] OJ L 243, 09/07/2021. Following the adoption of the European Climate Law, the EU Biodiversity Strategy for 2030 and the Farm to Fork Strategy were also introduced. See Arvidsson (2026: 206 ss.); EUROPEAN COMMISSION. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Biodiversity Strategy for 2030: Bringing Nature Back into Our Lives*, COM(2020) 380 final; and EUROPEAN COMMISSION. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A Farm to Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System*, COM(2020) 381 final.

The dialogue defended here should not, however, be understood merely as an abstract procedural ideal. Rather, it constitutes a structural requirement flowing from sustainable development itself in its material and multidimensional sense. As such, it necessarily requires concretisation through enabling legislation, participatory procedures and institutional practices capable of facilitating coordination between Union institutions, national authorities, undertakings and affected stakeholders. The existence of mechanisms of participation, consultation and justificatory engagement may be regarded not only as a condition of legitimacy of sustainability-related regulatory action, but increasingly as part of its minimum expected constitutional content.

At the same time, sustained constitutional dialogue implies a degree of openness and flexibility within the multilevel constitutional structure of the Union, while remaining fully subject to equally fundamental constitutional requirements, including legal certainty, proportionality and the rule of law.

In legislative terms, this may favour regulatory techniques based on framework obligations, due diligence processes and standards of conduct, rather than exclusively on command-and-sanction models. Administratively, it requires forms of supervision and enforcement capable of accommodating contextual and sector-specific realities through cooperation, guidance, regulatory dialogue and coordinated implementation, while remaining subject to enhanced requirements of transparency, equality and accountability.

Judicially, it demands interpretative and balancing practices attentive to the ecological, economic and social dimensions of sustainable development, without according absolute hierarchical primacy to any one of them. While the boundaries between judicial activism and judicial restraint may become less clear in the context of an open-ended constitutional metaprinciple, courts cannot abstain from engaging in such balancing exercises merely because they involve complex technical, economic or political considerations, particularly where a sufficiently developed normative framework already exists within Union and national law.

It is at this point that constitutional dialogue encounters an additional dimension: the interaction between law, science and technical expertise, requiring courts and administrative authorities alike to engage seriously with the scientific, technological and socio-economic contexts underlying sustainability-related disputes and regulatory choices.

Ultimately, the constitutional embedding of sustainability through ESG cannot therefore be understood exclusively as a process of regulatory expansion or uniformisation, but rather as the progressive construction of a multilevel constitutional framework in which integration, pluralism, participation and contextual balancing jointly shape the meaning and limits of sustainability within the European Union.

4. Conclusion

This article has sought to map how the EU ESG agenda has extended beyond sustainability regulation directed at the financial sector (Schwartz, 2025: 352) to become a framework for organisational and, particularly, corporate transformation. By translating an open metaprinciple into operative legal obligations, technical standards and organisational practices capable of reshaping both public governance and corporate activity, ESG-related legislation has contributed to giving sustainable development concrete and operative expression within the EU legal order.

Beyond the growing density of sustainability-related legislation, the constitutional relevance of ESG lies in its contribution to the juridification of responsibilities traditionally confined to ethics, voluntarism and soft law. Through transparency and reporting requirements, sustainability due diligence, governance duties and accountability mechanisms, EU law has incorporated environmental, social and governance concerns into the operation of markets, undertakings and institutions.

This does not, however, render ESG-related legislation exhaustive, self-sufficient or immune from contestation. Sustainable development remains an open, multidimensional and compromise-based metaprinciple whose implementation depends upon legislative, administrative and judicial processes of interpretation and balancing. As Canotilho (2010: 10) suggests in the environmental context, sustainability calls for new schemes of governance that extend beyond traditional structures of command, permission and prohibition mediated exclusively through acts of public authority. The implementation of ESG obligations cannot therefore rely solely on hierarchical logics of primacy, harmonisation and regulatory uniformity. It also requires constitutional dialogue capable of mediating between integration and pluralism, effectiveness and subsidiarity, and common objectives and differentiated capacities.

From this perspective, constitutional dialogue is more than an instrument for accommodating tensions between legal orders. It constitutes a structural condition for the legitimate implementation of sustainable development within the European multilevel constitutional framework. Legislative institutions, courts, supervisory authorities, undertakings and stakeholders all participate in defining the constitutional meaning and limits of sustainability obligations. The implementation of ESG thus reflects a model of cooperative and shared constitutional governance, rather than a purely top-down process of regulatory integration.

The openness of sustainable development as a future-oriented and multidimensional metaprinciple must not, however, be confused with the absence of constitutional requirements and constraints. The consolidation of sustainable development through EU law contributes to the delineation of a core of protection capable of imposing minimum requirements and limiting arbitrary or disproportionate regression in environmental, social and governance standards. That core encompasses the principles of integration, multidimensionality, global and intergenerational justice, proportionality and the prohibition of insufficiency, which inform the concrete decisions of legislative, executive and judicial actors when balancing competing rights and interests.

Although the Member States and the Union itself retain discretion when balancing environmental protection against competing economic and societal interests, such balancing cannot become unreasonable, arbitrary or regressive to the point of undermining previously attained levels of protection or generating foreseeable infringements of fundamental rights (Knox, 2017: 18). At the same time, the implementation of sustainable development, particularly in a multilevel context, must remain sufficiently flexible to accommodate differentiated capacities, competing constitutional interests and evolving socio-economic conditions.

Contemporary debates surrounding competitiveness, regulatory burdens and sustainability simplification initiatives expose a central tension within the EU ESG agenda (Suchrow-Köster, 2026: 140-141). While simplification should not be equated with deregulation or constitutional regression, neither can it be treated as a merely quantitative exercise in reducing the volume of legislation. The central challenge is, however, more complex: it concerns the coherence and integration of sustainability policies, legislative instruments and regulatory objectives, as well as the need to avoid overlap, fragmentation and duplicative burdens. Major reforms must therefore be supported by procedures capable of ensuring adequate deliberation, participation and constitutional and political legitimacy, while also promoting coherence and coordination across regulatory frameworks.

Future developments are likely to intensify these challenges. Emerging regulatory fields, particularly artificial intelligence, already demonstrate the difficulty of integrating sustainability concerns into rapidly evolving technological frameworks (Tettamanzi, Gotti Tedeschi, Murgolo, 2024: 27130).

The gradual and incremental development of EU sustainability legislation may also require further reassessment of the subjective scope of sustainability obligations, particularly in the field of corporate due diligence. Although the CSDDD represents a significant step in the juridification of corporate responsibility, its focus on larger undertakings reflects the need to balance effectiveness, proportionality and economic capacity. Questions of global and intergenerational justice may nevertheless require renewed consideration of whether environmental and social risks arising within global chains of activities should escape sustainability obligations solely because of the size or formal structure of the undertaking involved. Future developments may therefore concern not only the substantive scope of sustainability duties, but also the identification of the actors called upon to participate in their shared implementation.

Ultimately, the future constitutional development of the EU ESG agenda will depend less on the multiplication of legislative instruments than on the Union's capacity to construct integrated, dialogical and constitutionally coherent forms of sustainability governance that are both effective and perceived as legitimate. In this context, constitutional dialogue is neither external to the constitutionalisation of sustainable development nor merely corrective of it. It is one of the conditions under which that process can remain legitimate, effective and faithful to the plural structure and rule-of-law foundations of the EU legal order. On that basis, sustainable development may consolidate its place as a genuine component of the constitutional identity of the European Union.

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