

HEC Paris
in collaboration with
De Gaulle Fleurance

Sustainability Regulations
Summary Report

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For further information please contact:

Bénédicte Faivre-Tavignot (faivretavignot@hec.fr)

Note: This document is non-exhaustive and should only be used for educational purposes

Article I. Climate Policies

Section 1.01 EU Taxonomy

- (a) **Summary:** The EU taxonomy is a classification system that aims to provide a common language and framework for sustainable finance. It was developed by the European Union to help investors, companies, and policymakers identify and invest in sustainable economic activities that contribute to climate change mitigation and adaptation, as well as other environmental objectives. The taxonomy is based on a set of technical screening criteria that define what can be considered an environmentally sustainable economic activity. These criteria cover six environmental objectives: Climate change mitigation, Climate change adaptation, Sustainable use and protection of water and marine resources, Transition to a circular economy, Pollution prevention and control, and Protection and restoration of biodiversity and ecosystems.
- (b) **Criteria:** The classification of an economic activity in terms of sustainability is based on the following four economic activity criteria:
 - (i) Contributes to one of the six environmental objectives.
 - (ii) Does 'no significant harm' (DNSH) to any of the six environmental objectives.
 - (iii) Meets 'minimum safeguards' such as the UN Guiding Principles on Business and Human Rights to not have a negative social impact.
 - (iv) Complies with the technical screening criteria developed by the EU Technical Expert Group.
- (c) **Application:** The taxonomy applies to financial market participants (e.g. banks, insurance companies, pension funds, and asset managers); large public companies (listed on European stock exchanges with more than 500 employees); and public authorities (national and regional government spending & investments)
- (d) **Critical Insights:** While the EU taxonomy is seen as an important tool for promoting sustainability and fighting climate change, it has also faced some criticism. Some of the criticisms of the EU taxonomy include:
 - (i) Complexity: The EU taxonomy is a complex and detailed system, which can make it difficult for businesses and investors to use as its implementation is connected to several legislative and regulatory texts adopted by the European Parliament and the Council to achieve the objectives of the European Commission's Action Plan on Financing Sustainable Growth ("SFDR", "CSRD").
 - (ii) Lack of flexibility: The taxonomy is based on a set of fixed criteria, which means that some sustainable activities or investments that do not meet those criteria may be excluded.
 - (iii) Political influence: Some critics have raised concerns about the potential for political influence in the taxonomy (e.g. Nuclear energy or gas being classified as green).
 - (iv) Inadequate coverage: The taxonomy is currently focused on climate change mitigation and adaptation, and does not yet cover other important sustainability issues, such as social and governance factors.
 - (v) Implementation challenges: Implementing the taxonomy will require significant changes to reporting and disclosure practices by financial market participants, which could be costly and challenging to implement.

Section 1.02 Carbon Markets

- (a) **Summary** Carbon markets are designed to help reduce greenhouse gas emissions by putting a price on carbon. The basic idea is that polluters must pay for the amount of carbon they emit, either by buying credits or permits that allow them to emit a certain amount of carbon or by paying a tax. The money collected from these payments can then be used to invest in clean energy projects or other efforts to reduce emissions.

- (b) **Application:** Carbon markets have been implemented in various regions around the world, including the European Union, California, and China. Participants in regulated markets are required by law to purchase carbon credits or permits to comply with emissions reduction targets. Voluntary market participants purchase carbon credits or offsets to mitigate their greenhouse gas emissions.
- (c) **Critical Insights:**
 - (i) Insufficient emissions reductions: Critics argue that carbon markets do not achieve sufficient emissions reductions to address the scale of the climate crisis, and that they may allow polluters to continue emitting while paying for offsets or credits.
 - (ii) Market failures: Carbon markets can be subject to market failures, such as price volatility and speculation, which can undermine their effectiveness.
 - (iii) Lack of environmental integrity: Carbon credits or offsets generated through carbon markets may not always represent real or additional emissions reductions and may be subject to fraud or double counting.
 - (iv) Inequity: Carbon markets may disproportionately impact low-income communities and developing countries, who may have limited access to resources to participate in the market or to pursue alternative strategies to address emissions reductions.
 - (v) Carbon leakage: Carbon markets may result in carbon leakage, where emissions simply shift from one jurisdiction to another without achieving actual emissions reductions.
 - (vi) Over-reliance: Carbon markets may create a false sense of security and lead to over-reliance on market-based mechanisms, rather than other policy tools such as regulation and investment in clean energy.
 - (vii) Successful case study: California's carbon markets effectively incentivized emissions reductions and fostered clean technology innovation, driving significant progress in combating climate change; and Label Bas Carbon (Low Carbon Label) achieved similar results in France.

Section 1.03 Carbon Taxes

- (a) **Summary:** A carbon tax is a policy instrument that puts a price on carbon emissions to incentivize emissions reductions. It works by levying a tax on each unit of carbon emitted, either directly on emitters or on the products or services associated with those emissions.
- (b) **Application:** Carbon taxes have been implemented in several countries and regions around the world. Some examples include:
 - (i) Sweden: Sweden implemented the world's first carbon tax in 1991. The tax is applied to all fossil fuels used in transport, heating, and industry, and the revenue is used to fund climate and energy programs.
 - (ii) Norway: Norway also has a carbon tax on fossil fuels, which was introduced in 1991. The tax has a high rate per ton of CO₂ emitted and has been credited with helping to reduce Norway's greenhouse gas emissions.
 - (iii) Switzerland: Switzerland introduced a carbon tax in 2008, which is applied to fuels used for heating and transport. The revenue is used to fund climate and energy programs, as well as to reduce other taxes.
 - (iv) Canada: Canada has implemented carbon taxes in several provinces, including British Columbia, Alberta, and Quebec. The tax is applied to fossil fuels and the revenue is used for a variety of purposes, including to fund clean energy and climate programs.
 - (v) European Union: The European Union has a carbon pricing system, which includes a carbon tax on some industrial sectors. Currently there is a proposal that would require importers of certain carbon-intensive goods to pay a levy on their imports corresponding to the charge imposed on comparable domestic industries under the EU ETS.
 - (vi) South Africa: South Africa has implemented a carbon tax on greenhouse gas emissions from certain sectors, including electricity generation, mining, and manufacturing.
- (c) **Critical Insights:** Some criticisms of Carbon Taxes include:
 - (i) Regressive impact: Critics argue that carbon taxes can have a regressive impact on low-income households and communities, as they may bear a disproportionate burden of the tax. This is because lower-income households spend a larger share of their income on energy and other goods that are subject to the tax.

- (ii) **Competitiveness concerns:** Some industries and businesses may argue that a carbon tax puts them at a disadvantage relative to their competitors in other countries where there is no such tax. This can lead to concerns around competitiveness and potential job losses.
- (iii) **Limited scope:** Carbon taxes may not address all sources of emissions and may not be effective in certain sectors or regions where there are few alternatives to high-emitting activities. For example, in some regions, there may be limited access to public transit or alternative sources of energy, making it more difficult for individuals and businesses to reduce their carbon footprint.
- (iv) **Political feasibility:** Carbon taxes can be politically challenging to implement, as they may face opposition from industries and individuals who are impacted by the tax (e.g. France's gilets jaunes). This can make it difficult for policymakers to build support for the policy, especially in countries or regions where there is limited public awareness or support for climate action.
- (v) **Complex design:** Carbon taxes can be complex to design and implement, requiring careful consideration of the appropriate price level, revenue use, and other design features. This can create administrative challenges and can also lead to unintended consequences if the tax is not well-designed.

Section 1.04 Corporate Sustainability Directive (CSRD)

- (a) **Summary:** The CSRD is a European Union law that requires large companies operating in the EU to report on their sustainability and social responsibility practices. The directive applies to companies with more than 250 employees and requires them to report on a range of sustainability topics, including environmental impacts, social and human rights impacts, and anti-corruption and bribery practices. The goal of the directive is to increase transparency and accountability among companies, and to encourage them to adopt more sustainable business practices.
- (b) **Critical Insights:** Proponents argue that it will increase transparency and comparability of sustainability information, which can help investors and other stakeholders make more informed decisions. They also believe it will encourage companies to take sustainability more seriously and integrate it into their business strategies. Critics, on the other hand, argue that the proposed regulation may lead to additional costs and burdens for companies, particularly smaller ones. They also express concerns that the reporting requirements may not be flexible enough to accommodate the diverse reporting needs of different sectors and regions. The EFRAG's sustainability reporting standards, which will be adopted by delegated acts in June 2024, took into account existing standards and frameworks for sustainability reporting and accounting to facilitate their harmonization. EFRAG worked closely with the ISSB, the CDP and the GRI for instance.

Section 1.05 International Sustainability Standards Board (ISSB)

- (a) **Summary:** Following COP 26 Emmanuel Faber was appointed as Chair of ISSB; the consolidation of the Climate Disclosure Standards Board (CDSB) and the Value Reporting Foundation (which included the Integrated Reporting Framework and the SASB Standards) into the IFRS Foundation; and the publication of prototype general disclosures and climate disclosure requirements developed by the Technical Readiness Working Group

- (b) **Critical Insights:** Proponents believe that the creation of a new sustainability standards board would help to address the lack of consistency and comparability in sustainability reporting, which can hinder the ability of investors and other stakeholders to make informed decisions. They also argue that the ISSB's focus on global standards would help to reduce the fragmentation and confusion caused by the proliferation of different reporting frameworks and initiatives. Critics, however, have raised concerns about the potential for the ISSB to create additional regulatory burdens for companies, particularly smaller ones. They also worry that the standards-setting process may be influenced by political considerations or the interests of stakeholders, rather than being solely focused on the needs of investors and other users of sustainability information. The main difference between ISSB and EFRAGS' standards is the double materiality principle (considering financial and non-financial data equally).

Section 1.06 Additional laws

- (a) **B-Corp** certification is a rigorous and comprehensive evaluation process that measures a company's social and environmental impact, as well as its commitment to ethical and sustainable business practices. The certification is administered by the non-profit organization B Lab, and is designed to ensure that companies meet high standards of social and environmental performance, accountability, and transparency.
- (b) **The United Nations Global Compact (UNGC)** is a voluntary initiative launched by the United Nations in 2000 to encourage businesses and organizations to adopt sustainable and socially responsible policies and practices. The UNGC is based on 10 principles in the areas of human rights, labour, environment, and anti-corruption, and provides a framework for businesses to align their operations with universal principles on human rights, labour, environment, and anti-corruption. To participate in the UNGC, companies must make a commitment to implementing the 10 principles in their operations and report on their progress annually. The UNGC also provides resources and support to companies to help them implement sustainable practices and advance their sustainability goals.
- (c) **La loi PACTE** (Plan d'Action pour la Croissance et la Transformation des Entreprises) is a French law that was passed in May 2019 with the aim of promoting economic growth and transforming businesses. The law includes several measures to encourage companies to adopt more sustainable and socially responsible practices. One of the key provisions of the law is the creation of a new legal status for companies called "entreprise à mission" (mission-driven company), which requires companies to define a social or environmental mission and to integrate that mission into their corporate governance and decision-making processes. The law also encourages companies to adopt more sustainable practices by requiring them to report on their social and environmental impact and to establish a "raison d'être" (purpose) that goes beyond maximizing shareholder value. While the "raison d'être" has witnessed a strong enthusiasm with a large number of companies adopting a purpose, the success is more mitigated for the "entreprise à mission" since this status remains rare among listed companies.
- (d) **Science-Based Targets initiative (SBTi)** is a partnership between CDP (formerly the Carbon Disclosure Project), the United Nations Global Compact (UNGC), World Resources Institute (WRI), and the World Wide Fund for Nature (WWF) that provides a framework for companies to set science-based targets to reduce their greenhouse gas (GHG) emissions in accordance with 2°C or 1.5°C scenarios based on the IPCC projections.
- (e) **Carbon Pricing Leadership Coalition (CPLC)** is a partnership of governments, businesses, and civil society organizations that advocates for the use of carbon pricing as a tool to address climate change.

- (f) **Sustainable Stock Exchanges (SSE)** initiative encourages stock exchanges to promote sustainable investment and disclosure of environmental, social, and governance (ESG) information.
- (g) **OECD Guidelines for Multinational Enterprises:** provides voluntary recommendations to multinational enterprises (MNEs) regarding responsible business conduct. The overall objective of the guidelines is to promote responsible business practices that contribute to sustainable development and economic growth while minimizing negative impacts.

Article II. Biodiversity

Section 2.01 Protocol Nagoya

Summary: The Nagoya Protocol is a legally binding international agreement under the United Nations Convention on Biological Diversity (CBD) that was adopted in Nagoya, Japan, in 2010 and entered into force in 2014. The objective of the protocol is to promote the fair and equitable sharing of benefits arising from the utilization of genetic resources. The protocol requires that access to genetic resources be based on prior informed consent and that the benefits arising from the utilization of those resources be shared in a fair and equitable way. The protocol also requires countries to establish national legal frameworks for access to genetic resources and to ensure that any research or commercial use of those resources is carried out in accordance with those frameworks.

Section 2.02 Article 29

- (a) **Summary:** Article 29 of the energy-climate law aims to clarify and strengthen the extra-financial transparency system of market players to build sustainable finance. The article also supplements the European law in force in 3 areas: climate, biodiversity, and the integration of environmental, social and governance (ESG) factors in risk management.

Section 2.03 Other regulations / certifications:

- (a) **UN Treaty on marine biodiversity (“BBNJ Treaty”):** The new legally binding international instrument on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction, known as “BBNJ” or “Treaty of the High Seas”, was agreed on 4 March 2023, following conclusion of the fifth round of treaty negotiations at the United Nations headquarters in New York, United States. It aims at protecting the ocean, tackle environmental degradation, fight climate change, and prevent biodiversity loss.
- (b) **Convention on Biological Diversity (CBD):** This international treaty was adopted in 1992 and aims to promote the conservation and sustainable use of biodiversity, as well as the fair and equitable sharing of benefits arising from the use of genetic resources.
- (c) **European Union Biodiversity Strategy:** This strategy, which was adopted in 2020, sets out a comprehensive framework for the conservation and restoration of biodiversity in the European Union, with specific targets for the protection of species and habitats, the reduction of pollution, and the promotion of sustainable agriculture and forestry.
- (d) **EU Habitats Directive:** This directive provides for the conservation of natural habitats and wild fauna and flora in the EU. It requires member states to designate protected areas, such as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), and to develop management plans for these areas. Companies operating within or near these areas are required to comply with the relevant conservation objectives and avoid or mitigate any adverse impacts on the protected habitats or species.

- (e) **Endangered Species Act (ESA):** This US law, which was passed in 1973, provides for the protection of threatened and endangered species, and prohibits the taking, possession, sale, or transport of these species without a permit.
- (f) **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):** This international treaty, which was adopted in 1973, regulates the international trade in wildlife and plants to ensure that it does not threaten the survival of species in the wild.
- (g) **Forest Stewardship Council (FSC) Certification:** This certification system, which was established in 1993, provides a framework for the responsible management of forests, including the protection of biodiversity, the conservation of endangered species, and the maintenance of ecological processes.
- (h) **Marine Stewardship Council (MSC) Certification:** This certification system, which was established in 1997, provides a framework for the sustainable management of marine resources, including the protection of biodiversity, the conservation of fish stocks, and the reduction of environmental impacts.

Article III. Natural Resources

Section 3.01 RE2020

- (a) **Summary:** "La RE 2020" is a French regulation that aims to improve the energy and environmental performance of new buildings in France. It stands for "Règlementation Environnementale 2020," which translates to "Environmental Regulation 2020."
- (b) **Application:** The RE 2020 applies to all new buildings in France, including residential, commercial, and public buildings. It will come into effect on January 1, 2022, and will replace the previous regulation, the RT 2012. The RE 2020 is part of France's broader efforts to address climate change and reduce its greenhouse gas emissions.
- (c) **Criteria:**
 - (i) Reduce greenhouse gas emissions: The RE 2020 aims to reduce greenhouse gas emissions from buildings by 40% compared to the previous regulation.
 - (ii) Increase energy efficiency: The regulation sets new energy performance requirements for buildings, which are stricter than those in the previous regulation. Buildings must achieve a minimum level of energy performance to be allowed to be built.
 - (iii) Promote the use of renewable energy: The RE 2020 encourages the use of renewable energy in buildings by requiring that new buildings produce a minimum amount of renewable energy on-site.
 - (iv) Encourage sustainable building practices: The regulation requires that new buildings be constructed using sustainable materials and practices to reduce their environmental impact.

Section 3.02 EU Waste Framework Directive

- (a) **Summary:** The EU Waste Framework Directive aims to promote the circular economy by reducing the amount of waste generated and increasing the amount of waste that is recycled or reused. It sets targets for the reuse, recycling, and recovery of different waste streams, including natural resources such as minerals and metals.

Section 3.03 EU Timber Regulation

- (a) **Summary:** The EU Timber Regulation is designed to prevent the sale of illegally harvested timber and promote the sustainable use of forests. It requires companies to ensure that the timber and timber products they sell in the EU have been legally harvested and traded.

Section 3.04 EU Circular Economy Action Plan:

- (a) **Summary:** The EU Circular Economy Action Plan sets out a comprehensive strategy for promoting a circular economy in the EU. It includes measures to improve the sustainability of products, reduce waste, and promote the reuse and recycling of resources.

Section 3.05 Others

- (a) **Product-specific regulations:** Many countries have product-specific regulations that promote resource efficiency and reduce waste. For example, the EU Eco-design Directive sets requirements for the energy efficiency of energy-related products, while the EU Battery Regulation aims to promote the reuse and recycling of batteries.

Article IV. Social Issues & Human Rights

Section 4.01 Duty of Vigilance:

- (a) **Summary:** The Duty of Vigilance is a legal obligation, created by the law n° 2017-399 of 27 March 2017, for certain large companies to identify and prevent human rights abuses, environmental harm, and health & safety hazards within their operations and supply chains. The law applies to companies headquartered in France that have more than 5,000 employees in France, or more than 10,000 employees worldwide, as well as their subsidiaries and regular suppliers and subcontractors.
- (b) **Application:** Under the Duty of Vigilance law, companies are required to establish a vigilance plan that identifies and prevents the risks of human rights abuses, environmental harm, and health & safety hazards associated with their operations and supply chains. The plan must be made publicly available and must be updated annually. The law also provides for civil liability for companies that fail to establish a vigilance plan or fail to implement it properly. Victims of human rights abuses, environmental harm, or health & safety hazards can seek damages from the company in court.
- (c) **Critical Insights:** Proponents argue that it is a necessary tool for holding companies accountable for their human rights and environmental impacts and promoting greater corporate responsibility. They believe that the Duty of Vigilance can help to prevent or mitigate harms resulting from corporate activities and can provide a means of redress for affected individuals or communities. Critics, however, argue that the Duty of Vigilance can create additional regulatory burdens for companies, particularly smaller ones. They also express concerns that the legal concept may be too vague or broad, which could lead to confusion and legal uncertainty for companies. Some also worry that the Duty of Vigilance could be used as a tool for political or ideological purposes, rather than being focused solely on protecting human rights and the environment. In two decisions of 28 February 2023, the French competent court (Tribunal Judiciaire de Paris) has rejected the claims launched by NGOs against TotalEnergie for violation of the Duty of Vigilance law, what has fuelled commentaries about the lack of efficiency of the law.
- (d) **Examples:**
 - (i) BNP Paribas sued over Duty of Vigilance by 3 NGOs ([link](#))
 - (ii) Total Energy lawsuit over Duty of Vigilance dismissed after 2 years ([link](#)).

Section 4.02 Tariff Act

- (a) **Summary:** The Tariff Act establishes the legal framework for the imposition of tariffs and other trade restrictions, such as quotas and embargoes, on imported goods. It also provides for the enforcement of trade laws, including provisions for the collection of duties and penalties for violations. The Act has been amended several times over the years, with the most recent amendment in 2015 by the Trade Facilitation and Trade Enforcement Act, which added provisions prohibiting the importation of goods produced with forced or child labour. This amendment is commonly known as the "Section 307" prohibition.

Section 4.03 Others

- (a) **Corporate Due Diligence and Corporate Accountability Directive (CDDCA/ CSDDD):** A directive, which is still under negotiation, would require all large companies operating in the EU to conduct due diligence on their social and environmental impacts and to address any adverse impacts identified. Under the proposed CDDCA, companies would be required to identify and prevent human rights abuses, environmental harm, and health & safety hazards within their operations and supply chains. The due diligence process would involve mapping the company's value chain, assessing risks, and taking measures to address any adverse impacts identified. An EU wide harmonization in this area can be seen as becoming pressing to the extent that various countries (e.g. France, Germany) have adopted their own laws with diverging scope and thresholds of application.
- (b) **Universal Declaration of Human Rights:** Adopted by the United Nations General Assembly in 1948, the Universal Declaration of Human Rights outlines the fundamental rights and freedoms that all human beings are entitled to, regardless of race, gender, nationality, religion, or any other status. It serves as a foundation for many subsequent human rights treaties and conventions.
- (c) **International Covenant on Civil and Political Rights:** One of the two core human rights treaties adopted by the United Nations, the International Covenant on Civil and Political Rights (ICCPR) aims to protect civil and political rights such as freedom of speech, religion, and assembly, as well as the right to a fair trial and protection from torture and discrimination.
- (d) **International Covenant on Economic, Social and Cultural Rights:** The other core human rights treaty adopted by the United Nations, the International Covenant on Economic, Social and Cultural Rights (ICESCR) aims to protect economic, social, and cultural rights such as the right to work, education, and healthcare.
- (e) **The draft UN Guiding Principles on Business and Human Rights:** A set of principles that outline the roles and responsibilities of states and companies in ensuring respect for human rights in business activities. The principles include the need for companies to conduct due diligence to identify and prevent potential human rights abuses in their operations and supply chains. This new UN legal instrument is still in draft and review phase but signals the elevation of the topic on the international scale.