

Faculty of Law, Economics and
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THE „SOCIALLY SUSTAINABLE INVESTMENT“ AS STEPCHILD OF THE EU SUSTAINABLE FINANCE STRATEGY

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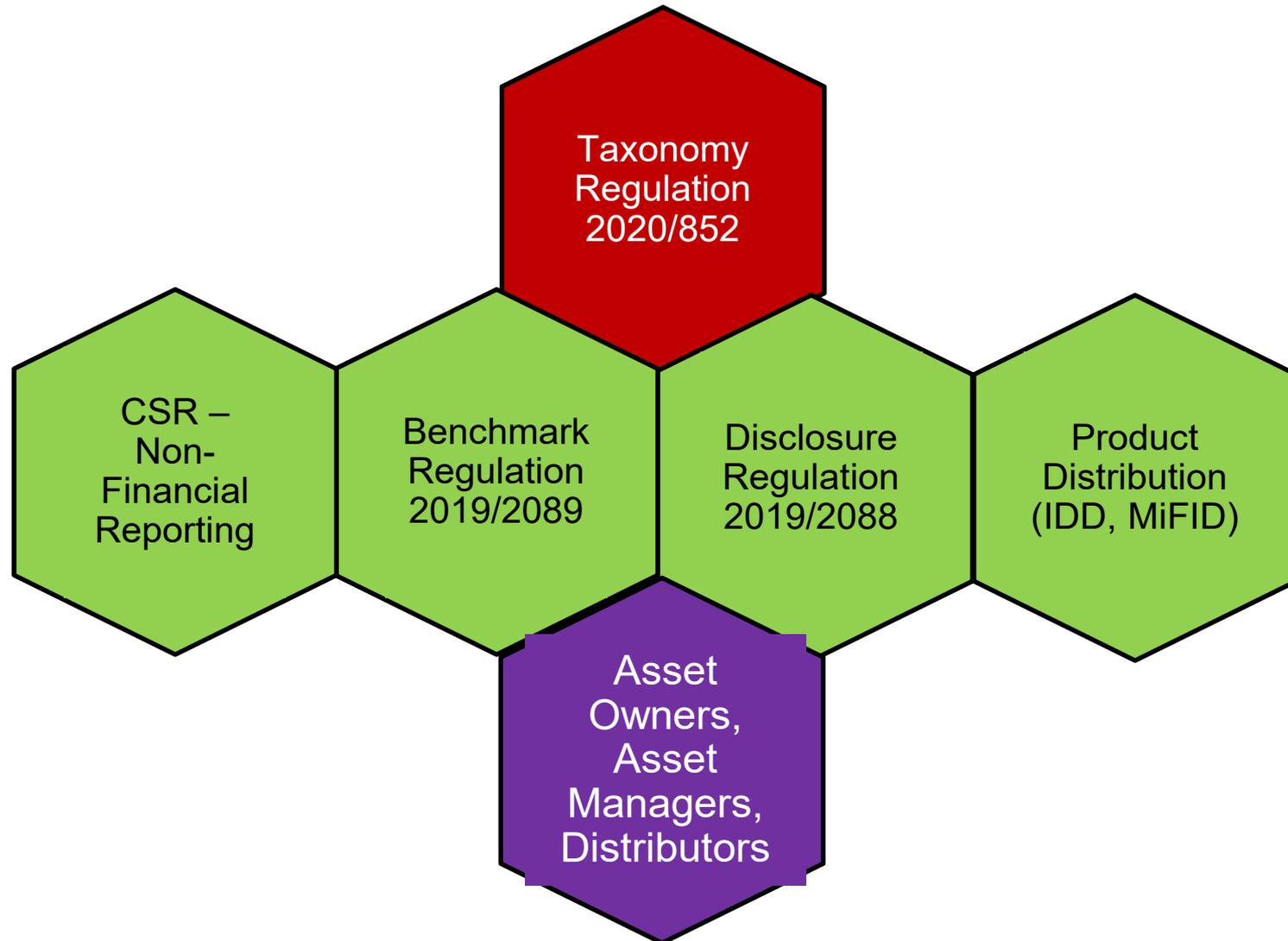
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**BASED ON ZETZSCHE/BODELLINI/CONSIGLIO, THE „SOCIALLY SUSTAINABLE INVESTMENT“ AS
STEPCHILD OF THE EU SUSTAINABLE FINANCE STRATEGY, WORKING PAPER (2021)**



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EU Sustainable Finance: Legal Pillars

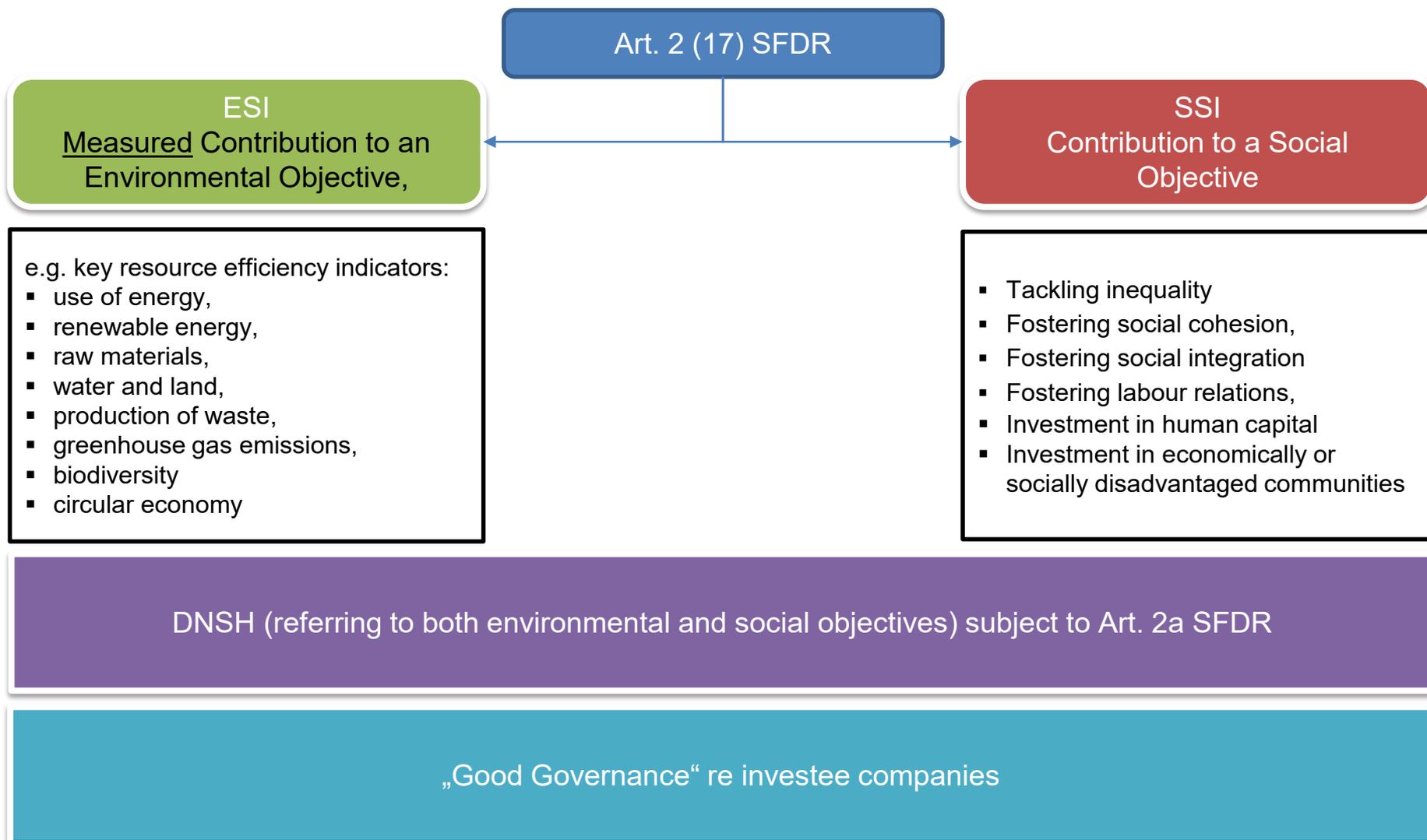


- EC defines sustainable investments as “ESG”
- Analysis: “S” and “G” dimension in EU SF Finance Strategy?
- Inquiry: steps to enhance “S” and “G”

- I. Introduction (+)
- II. The ESG Dimension on the EU Sustainable Finance Strategy
- III. Finding the « S » in ESG: Existing Frameworks
- IV. Policy Considerations
- V. Conclusion

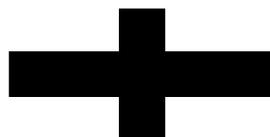
II. The ESG Dimension in the EU Sustainable Finance Strategy

Environmental and Social Sustainable Investments under Sustainable Finance Disclosure Regulation (SFDR)



Environmental Sustainability as defined Art 3 of the EU Sustainability Taxonomy Regulation

Substantial contribution to one environmental objectives (e. carbon neutrality, biodiversity etc. - all defined by the Taxonomy Regulation)



Economics

Does not significant harm (DNSH) **ONLY** re other environmental objectives



Law

Compliance with Minimum Legal Safeguards (Art. 18 Taxonomy Regulation)

OECD Guidelines for
Multinational Enterprises
(supply chain, liability etc.)

UN Principles for
Business and Human
Rights

UN&ILO Minimum Labour
Laws, Work Safety,
Social Insurance

	1. EnvironmentallySI (Taxonomy)	2. EnvironmentallySI (SFDR)	3. Socially SI (SFDR)
Significant contribution to environmental objectives	Yes	No	No
Contribution to environmental objectives	Yes	Yes	No
Contribution to social objectives	No	No	Yes
DNSH under Taxonomy	Yes	Yes	Yes
DNSH under SFDR	Yes	Yes	Yes
Minimum standards under art. 3-18 Taxonomy	Yes	Yes	Yes
Good governance practices investee companies	No	Yes	Yes

Annex I Table 1 - SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS

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Annex I Table 1 (Mandatory Factors)

10. Violations of UN Global Compact Principles & OECD Guidelines for Multinationals

11. Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact Principles & OECD Guidelines for Multinationals

12. Unadjusted gender pay gap

13. Board gender diversity

14. Exposure to controversial weapons

Annex I Table 3 - SOCIAL AND EMPLOYEE, RESPECT FOR HUMAN RIGHTS, ANTI-CORRUPTION AND ANTI-BRIBERY MATTERS

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Annex I Table 3 L2 („voluntary factors“)	Framework mentioned in Art. 3/18 TR
1. Investments in companies without workplace accident prevention policies	OECD V, UNGC 3-6
2. Rate of accidents	OECD V, UNGC 3-6
3. Number of days lost to injuries, accidents, fatalities or illness	OECD V, UNGC 3-6
4. Lack of a supplier code of conduct	OECD V
5. Lack of grievance/complaints handling mechanism related to employee matters	OECD V, UNGC 3-6
6. Insufficient whistleblower protection	OECD V, UNGC 3-6
7. Incidents of discrimination	OECD V, UNGC 1-2
8. Excessive CEO pay ratio	OECD V, III, UNGC 3-6
9. Lack of a human rights policy	OECD IV, III, UNGC 1-2
10. Lack of Due Diligence	OECD IV, III, UNGC 1-2
11. Lack of processes and measures for preventing trafficking in human beings	OECD III, IV, UNGC 1-2
12. Operations and suppliers at significant risk of incidents of child labour	OECD III, IV, V, UNGC 1-6
13. Operations & suppliers at significant risk of incidents of forced/ compulsory labour	OECD III, IV, V, UNGC 1-6
14. Number of identified cases of severe human rights issues and incidents	OECD III, IV, UNGC 1-2
15. Lack of anti-corruption and anti-bribery policies	OECD III, VII, UNGC 10
16. Cases of insufficient action taken to address breaches anti-corruption /-bribery laws	OECD III, VII, UNGC 10
17. Convictions / fines for violation of anti-corruption and anti-bribery laws	OECD III, VII, UNGC 10

⇒ Certain aspects of OECD Guidelines disregarded

- Consumer interests (OECD VIII)
- Science Technology (OECD IX)
- Competition (OECD X)
- Taxation (OECD XII)

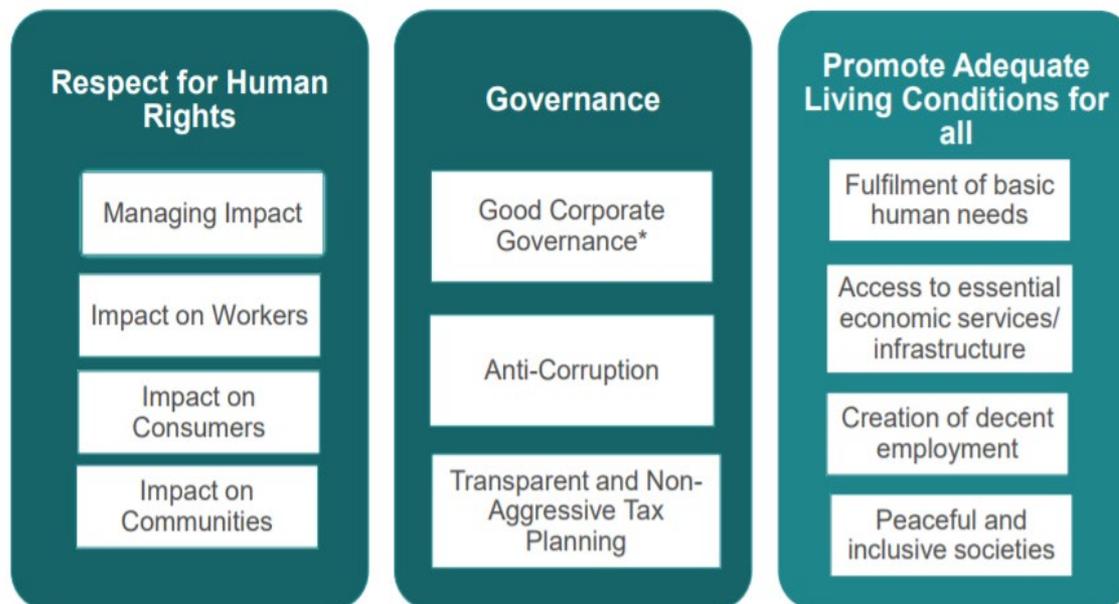
⇒ Disregarded parts: promotion of social goals

- ⇒ ESI => DNSH to social factors.
- ⇒ Until Social Taxonomy: no truly Socially Sustainable Investment.
- ⇒ Investments to flow into ESI and leave the SSI aside.
- ⇒ Benefits for environment at the costs of the social dimension?
- ⇒ How to get 'S' (social) into the EU Sustainable Finance Framework?

III. Finding the « S » in ESG

SSI Objectives by EU Sustainable Finance Platform

- Social objectives for a Social Taxonomy and Article 2 (17) SFDR
- Governance not separated from Social but part of “S”
- Social objectives inconsistent with Annex I L2 SFDR



Source: EU Platform on Sustainable Finance

Art. 2 (17) SFDR

SSI

Contribution to a Social Objective

1. Tackling inequality
2. Fostering social cohesion
3. Fostering social integration
4. Fostering labor relations
5. Investment in human capital
6. Investment in economically or socially disadvantaged communities

What do we need to meet the criteria of art. 2 (17) SFDR ?

- a) Social Objectives
- b) Social Metrics

Art. 2 (17) SFDR

SSI

Contribution to a Social Objective

Social Objectives	Examples of metrics*
1. Tackling inequality	Percentage of female employees/executives
2. Fostering social cohesion	Human Rights Concerns Controversies
3. Fostering social integration	Percentage of clients below poverty line
4. Fostering labor relations	Collective Bargaining and Union Labor Controversies
5. Investment in human capital	Reliance on Highly Skilled Workforce
6. Investment in economically or socially disadvantaged communities	Social Impacts on Communities Controversies

**Source: examples of social factors measured in MSCI ESG rating and other indicators used in microfinance.*

Framework example for social taxonomy: a 3-step-approach



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E.g. **score** 1-10

- 1-3: **bad: DNSH (+)**
- 4-6: neutral
- 7-10: **good: promotion (+)**

E.g. Any indicator linked to a social objective > 3 not to impact negatively any other objective

E.g. Also: add scoring system for environmental DNSH
Two layer DNSH test required!

*Source: examples of social factors measured in MSCI ESG rating and indicators used in microfinance.

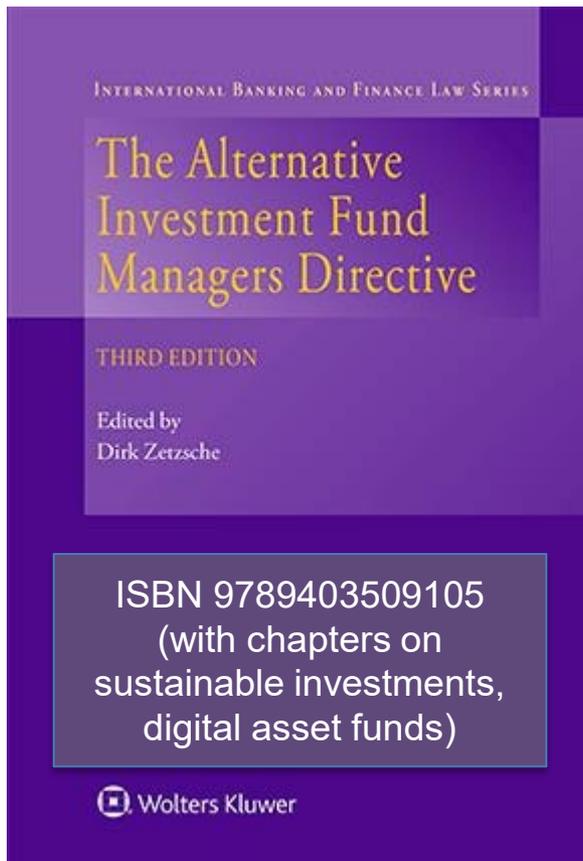
IV. Policy Considerations

- Distinction truly ESI ↔ SSI of the essence: granular approach allows for sectorial promotion investing (MF!)
 - Scoring systems for SSI factors to be based on impact investing.
 - Ensure that „SSI“ not the same as „unprofitable SSI“
 - Ensure sufficient data before ‚mandating‘ SSI Taxonomy compliance re risk management, remuneration, organization of intermediaries
- ⇒ Learn from ESI Taxonomy: Regulation in the Dark

V. Conclusion

- “S” dimension under-emphasized in EU SF Strategy
- Low priority of “S” dimension barrier to certain impact investments
- Disalignments between the DNSH SFDR principle and the Taxonomy Regulation’s DNSH principle
- Steps forward
 - Develop “SSI Taxonomy” based on criteria of Art. 2 (17) SFDR
 - Three step score: DNSH / neutral / contribution to social objective
 - Use experience with impact investing for scoring methodology

Thank you!



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