



# Embedding sustainability in legal studies

Alessio Bartolacelli  
*University of Macerata - Italy*



# First of all...

What area are you investigating?

Menti.com code 4846 9787

What's the subject of your investigation?

Menti.com code 4412 6857

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# What are we talking about...

Sustainability: what is this?

Menti.com code 1453 6771

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# Sustainability

The problem is this: sustainability has a difficult definition as it is a blurred concept

The currently most convincing idea: "securing **social foundations** within **planetary boundaries**" (Sjåfjell & Bruner, 2020)

Dimensions:

- **E**nvironmental (planetary boundaries)
    - pollution
    - climate change
    - biodiversity preservation
    - waste of water
    - ocean acidification
    - ...
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# Sustainability

- **Social** (social foundations)
  - gender equality
  - social equality
  - peace and justice
  - healthcare
  - food, housing
  - energy
  - education, work, transportation
  - ...
- [- **Governance** (*how?*)]
  - both private (corporate), and public

**ESG** ► **SDGs** (UN Agenda 2030)

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# Sustainable Development Goals (Agenda 2030)



<p><b>1</b> NO POVERTY</p>	<p><b>2</b> ZERO HUNGER</p>	<p><b>3</b> GOOD HEALTH AND WELL-BEING</p>	<p><b>4</b> QUALITY EDUCATION</p>	<p><b>5</b> GENDER EQUALITY</p>	<p><b>6</b> CLEAN WATER AND SANITATION</p>
<p><b>7</b> AFFORDABLE AND CLEAN ENERGY</p>	<p><b>8</b> DECENT WORK AND ECONOMIC GROWTH</p>	<p><b>9</b> INDUSTRY, INNOVATION AND INFRASTRUCTURE</p>	<p><b>10</b> REDUCED INEQUALITIES</p>	<p><b>11</b> SUSTAINABLE CITIES AND COMMUNITIES</p>	<p><b>12</b> RESPONSIBLE CONSUMPTION AND PRODUCTION</p>
<p><b>13</b> CLIMATE ACTION</p>	<p><b>14</b> LIFE BELOW WATER</p>	<p><b>15</b> LIFE ON LAND</p>	<p><b>16</b> PEACE, JUSTICE AND STRONG INSTITUTIONS</p>	<p><b>17</b> PARTNERSHIPS FOR THE GOALS</p>	



# It usually implies...

... a **long-term approach**, as the consequences only can be appreciated in the long run

- let's consider this from the firm/community point of view

Long-term also deals with **replicability** by future generations

- impact on the environment (not only)
- possibility for future development (social)

Firms and enterprises are **encouraged** (not bound, or at least not necessarily) to act sustainably by

- **reputation**
  - **public policies** (awarding regulation)
  - specific shareholders/investors **beliefs**
-



# How to deal with sustainability?

A holistic approach is needed: the EU roadmap

- **Substantive rules at national level**
    - To be coordinated
  - **European rules for the development of a sustainable single market...**
    - Public/private law
  - **...and for the sustainable development outside Europe**
    - Public international law
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# The EU and the Sustainability

No definition of sustainability, but several references to sustainable development

## Treaty on the European Union:

Preamble:

[The Member States are] “**DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development** and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields”

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# Sustainable development...

## Art. 3.3

The **Union shall establish an internal market**. It shall **work for the sustainable development of Europe** based on balanced economic growth and price stability, a highly competitive **social market economy**, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall **combat social exclusion and discrimination**, and shall **promote social justice and protection**, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall **respect its rich cultural and linguistic diversity**, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

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# Sustainable development...

Art. 3.5

In its **relations with the wider world**, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. **It shall contribute to** peace, security, **the sustainable development of the Earth**, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

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# ...and sustainable investment

No definition of such principles...

...but a legal definition of «sustainable investment» and of «sustainability factors is present»

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

Finance? Yes

Just finance? In spite of the black letter of the law (“For the purposes of this Regulation, the following definitions apply”), I’d say no: several cross-references

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# ...and sustainable investment

Art. 3(17)

'**sustainable investment**' means an **investment** in an **economic activity** that contributes to an **environmental objective**, as **measured**, for example, by key resource efficiency **indicators** on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, **or** an **investment** in an **economic activity** that contributes to a **social objective**, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, **provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices**, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance;

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# ...and sustainable investment

Art. 3(24)

'sustainability factors' mean **environmental, social and employee matters**, respect for **human rights, anti-corruption and anti-bribery matters**.

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# So, sustainability would deal (at least...)

With:

- **Environmental:**
    - use of energy
    - renewable energy
    - raw materials (circular economy!)
    - water and land
    - production of waste
    - greenhouse gas emissions
    - impact on biodiversity
    - circular economy,
-



# So, sustainability would deal (at least...)

- **Social:**
    - tackling inequality
    - fostering social cohesion, social integration and labour relations,
    - human capital
    - economically or socially disadvantaged communities,
  - **Governance:**
    - sound management structures
    - employee relations
    - remuneration of staff
    - tax compliance;
-



# So, sustainability would deal (at least...)

- With a key principle:
    - provided that such investments do not significantly harm any of those objectives
  - This deals with the **holistic approach to sustainability**: different things come together
    - So, not just environmental sustainability (even if it is the one with more chances to be measured)
      - EU Taxonomy Regulation
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# How to approach sustainability?

Basically, two possible streams

- Investigating sustainability *per se* (sustainable legal provisions or tools)
- Using sustainability as an interpretation criterion

The former is more a “stainproof compartment” approach  
social enterprises, public procurement, and so on...

The latter is more inspiring: and it is applicable to almost every legal (and non-legal) area

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# A few examples

In Public Law:

- Sustainability and national Constitutions: how is sustainability possible?  
Is it a tackled issue?
  - Environmental Law for both public and private players
    - Circular economy regulation
  - Competition Law and promotion of sustainability
  - Public procurement law
  - ...
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# A few examples

In Private Law:

- Company Law
    - Directors' duties
    - Disclosure of sustainability reporting
    - Reserved quotas in the board
  - Financial Law
    - Green/sustainable bonds, impact finance
    - Bank loans
  - Private Law in general
    - Associations and community interest
    - Common goods
  - Agriculture/Food Law
    - EU Green Deal...
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# A few examples

- EU and International Law
    - Treaties on human rights
    - Treaties on pollution
    - ...
  - Procedural Law
    - Rights of the parties in the trial
    - Support for un wealthy parties
    - Rules of conduct of the trials
    - ...
  - Legal Philosophy
  - Comparative studies
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# Some practical examples...

- ...coming from two recent books
  - Bartolacelli & Sagatiene (eds), *Law and sustainability. Perspectives for Lithuania and Beyond*, MRU 2023
  - Bartolacelli, *The Prism of Sustainability*, Editoriale Scientifica, forthcoming

Sustainability issues in the national Constitutions

AI for ESG – Interaction between sustainability and digitalisation and the relevant regulatory framework

Embedding sustainability in International Investment Agreements – the sustainable terms included in the classic models for the agreements and their effective reliability

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# Some practical examples...

Sustainability and labour –decent work, and the role of hard law

Big data, privacy and sustainability – Processing big data people's right to privacy?

Urban regulations and sustainability...

Revitalising ghost towns by means of sustainability...

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# Some practical examples...

Commercial contractual relations and sustainability clauses – New principles and old frameworks

Product quality guarantee and sustainable consumption – How hard law on warranty and more sustainable behaviour regarding consumers' consumption choices

Remote participation to company boards and meetings as a driver for more sustainable companies

Institutional investors, choices on long termism

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# Some practical examples...

The very concept of corporation and the inclusion of sustainability

Directors' duties in the value chain...

The European Green Deal...

Environmental crimes,,,

Sustainable criminalisation...

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# What's important...

- Is to remind the dialogue between Law and other sciences, always when possible
  - Biology
  - Medicine
  - Engineering
  - ...

By this way, you can use sustainability in law as a way to establish a dialogue also with other fields

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# The risk

- Is that you are not going in depth with your legal investigation, to follow other streams of research
- Combining theoretical and practical profiles in a well-reasoned way

And you? How might sustainability be embedded in your current research?

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