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Financial Sustainability: An Analysis of ESMA's Role in Standardization and Transparency

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Introduction

In our contemporary global landscape, the significance of sustainability in financial activities and practices has become increasingly important, driving investors and stakeholders to investigate corporate practices through the lens of environmental, social and governance (ESG) factors.

More than ever, the world is facing various challenges, such as the overuse of natural resources, climate change, biodiversity loss, social issues such as poverty, and the aftermath of what was one of the most impactful and recent crises, the Covid-19 pandemic, is still perceptible and has made it even more important to achieve the Sustainable Development Goals[1]. These pressing crises show how easily vulnerable societies can be, and, therefore, how much important it is to have an economic system that gives opportunities to all, avoiding over-exploiting natural resources.[2]

As the urgency of addressing global challenges intensifies, the intersection of finance and sustainability emerges as a critical element to drive positive change with a lasting impact. For this, by sustainable finance I refer to the financial services that actively support or contribute to the integration of environmental, social and governance factors into business and investment decisions. Their aim is to foster the development of a sustainable society that yields benefits for all individuals involved.

However, the pathway to sustainable finance is fraught with complexities. Even if the integration of sustainability seems theoretically solid and practically necessary, this doesn't mean that it is universally homogeneous and defined.[3] This implies that sustainability practices and standards are not the same everywhere and highlights the absence of a clear and universally agreed-upon set of rules, definitions, and metrics for sustainability in finance as well as consistent and uniform application of them. Indeed, the analysis will highlight the complexities that persist in the standardization, harmonization, and transparency of sustainable finance, ESG ratings, and overall sustainable information. These challenges are primarily due to the lack of universally agreed-upon definitions, and include supervision fragmentation, data quality and availability, risk assessment, limitation in the use of supervisory tools to ensure convergence of supervisory practices, as well as a lack of robust mechanisms to measure the effectiveness of supervisory practices.

In this context, the European Securities and Markets Authority (ESMA) plays an important role, since its guidelines and policies are crucial in integrating ESG factors into financial markets and to enhance transparency, protect investors, and ensure that financial markets contribute to sustainable

[1] https://sdgs.un.org/goals
[2] Swiss Sustainable Investment Market Study, 2021.
[3] J. D. Sachs, "The Age of Sustainable Development", 2015.

development. ESMA, as one of the prominent supervisory bodies within the European Union (EU), holds the potential to exercise considerable influence in shaping standardization and transparency of sustainable finance practices. Furthermore, ESMA's role in regulatory convergence across EU member states can contribute significantly to the uniform application of financial regulations. This convergence effort, through activities like issuing guidelines and draft RTSs and ITSs, helps mitigate disparities in regulatory practices.

Based on this, the aim of this work is to examine how the strategies and guidelines adopted by the European Securities and Markets Authority (ESMA) have contributed to the standardisation and transparency of sustainable finance. This involves detailing ESMA's regulatory functions, responsibilities, and the authority it exercises in the supervision and enforcement of sustainability practices in EU financial markets; and assess how effectively ESMA's commitments have been implemented in practice. By delving into this analysis, the research aims to investigate how ESMA has used its authority to address the lack of standardization, and transparency in sustainable finance practices within the European Union, and how foster coherence and uniformity in the financial markets.

In a nutshell, the prevalence of heterogeneous approaches and non-harmonized standards poses difficulties for issuers of ESG products and instruments seeking to adopt more robust standards. The absence of predefined approaches and standards may lead companies to perceive insufficient incentives for publicly disclosing sustainable financial information, particularly when the immediate benefits are unclear and fail to outweigh associated costs and reputational risks. The absence of standardization stands therefore as a formidable barrier to the widespread adoption of sustainable practices and transparency in related financial information.

The existing scenario is marked by a proliferation of overlapping yet subtly different concepts, all of which can be rooted in the broader concept of sustainability. Such overlap creates a challenging terrain, as several international organizations are involved in sustainability reporting or advocate for sustainable activities. Adding to the complexity is the fact that different countries have different rules about sustainability disclosures. While some countries require companies to report their ESG practices, others make it optional. This results in a lack of consistency and standardization in the information provided by companies operating in different jurisdictions. The coexistence of diverse and non-harmonized standards poses a challenge, affecting the transparency and reliability of information provided by companies engaged in sustainable practices. The absence of uniformity, stemming from varied definitions, reporting practices, and regulatory approaches, has created an environment where the full potential of sustainable investment remains unrealized. In addition, the

investors' limited knowledge about sustainable investments compounds the issue, heightening the risk of the pervasive Greenwashing phenomenon, wherein individuals may invest in products portrayed as genuinely sustainable even if they're not.[4]

Against this backdrop, directives have been issued by both state and European authorities, including the Sustainable Finance Disclosure Regulation (SFDR) which aims to increase transparency in sustainability declarations received by companies in the financial markets.[5] As the financial landscape undergoes a profound shift towards sustainability, the role of regulatory bodies becomes central in fostering a cohesive and standardized environment. Particularly notable is the European Securities and Markets Authority's (ESMA) Sustainable Finance Strategy of 2020, which outlines ESMA's commitment to integrating sustainability considerations into its regulatory and supervisory framework. The 2020 strategy emphasizes the importance of consistency and transparency in ESG disclosures, aiming to protect investors and promote stable financial markets. This underscores the significance of ESMA's role, competencies, and adherence to regulatory principles, especially in addressing the challenges posed by the lack of harmonization in ESG definitions and transparency in sustainable investments.

To reach a solution, we will see that a greater level of transparency, accuracy and standardization of information related to the aspects of sustainability that characterize investments is needed.[6] Addressing the problems associated with sustainable finance requires a holistic approach involving international organisations, regulators, and companies themselves to promote convergence towards common standards and foster a more coherent and transparent environment for sustainable investing.

In the light of the above, the objective of this work will be to examine the role and commitment of the European Securities and Markets Authority (ESMA) in the context of the evolving landscape of the concept of sustainability and its integration into financial activities by companies. This involves detailing ESMA's regulatory functions, responsibilities, and the authority it wields in overseeing and enforcing sustainability practices within financial markets across the EU; and evaluate how ESMA's tasks have been implemented in practice.

The work is structured in three main chapters. In the first chapter, the evolution of the concept of sustainability will be explored, highlighting the challenges associated with the lack of a universal

[4] N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria, M. Taverna, "La finanza per lo sviluppo sostenibile, Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea", 202.
[5] EUROSIF REPORT, "Fostering Investor Impact Placing it at the heart of sustainable finance", 2021.
[6] N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria, M. Taverna, "La finanza per lo sviluppo sostenibile, Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea", cit.

definition of "sustainable investing", the different interpretations and the lack of standardised practices in sustainability information and ESG ratings. By exploring the consequences of having non-uniform ESG factors and reporting frameworks, the chapter will shed light on how these discrepancies can lead to decision-making ambiguity. Therefore, this analysis will underscore the importance of harmonization and supervision in achieving effective sustainability integration. Establishing common standards and practices can enhance transparency, improve comparability, and facilitate more informed decision-making, and supervision, in this context, plays a key role in ensuring compliance with these standards and fostering trust in sustainability disclosures.

The second chapter focuses on ESMA's role and competences. After a brief illustration of the historical factors that influenced the establishment of ESMA. the analysis discusses its statutory tasks, such as investor protection, market surveillance, and risk assessment, and how these responsibilities support sustainable finance. Moreover, ESMA's strategic initiatives will be described and analysed, focusing on the 2020 sustainable finance strategy. A significant part of the chapter will focus on the Meroni doctrine's implications for ESMA's operational autonomy. Indeed, this doctrine establishes the legal boundaries within which ESMA must operate, limiting the extent of discretionary powers that can be delegated to EU agencies. In particular, the Meroni doctrine has a significant impact on ESMA's ability to promote supervisory convergence among national competent authorities in the field of sustainable finance, since it operates mainly through soft law instruments and coordination functions. By supervisory convergence I refer to the harmonisation of supervisory and regulatory practices between the various EU Member States to ensure uniform application of the rules. This will therefore include evaluate how ESMA has managed these constraints and utilized its authority to address the lack of standardization and transparency in sustainable finance.

Finally, the third chapter takes a critical lens to ESMA's work. This assessment will delve into several key issues identified through insights from the Court of Auditors' special report and other analyses. These issues include the limitations of the regulatory tools currently used by ESMA, transparency deficits in investment funds, and inconsistencies in how information is collected and reported by collective investment undertakings. This will help evaluate the work that ESMA has carried out and identify the areas where there may be significant room for improvement.

Chapter 1 - Sustainability In Financial Activities: Conceptual Evolution, Challenges and Eu Supervision

Sustainability, in its broadest sense, has become a fundamental tool to guide the development of financial activities, since it allows to align economic objectives with environmental and social ones. By integrating environmental, social, and governance (ESG) factors into investment decisions, financial activities may contribute to positive environmental and social outcomes, prompting stakeholders, including investors, consumers, and regulators, to prioritize sustainability considerations in their decision-making processes, recognizing that there are long-term risks associated with unsustainable practices, such as climate change, resource depletion, and social inequality.

As sustainability increasingly influences investment decisions and financial strategies, clear and uniformed definitions and metrics should be ensured to both assess and allow the sustainability performance of companies. Without clear definitions and metrics, stakeholders may struggle to compare and evaluate sustainability performances and financial products accurately. Consequently, the possibility of lack of clarity can lead to decisional ambiguity and potential greenwashing, where investments are portrayed as sustainable without meaningful substantiation.

Given the role of sustainability in shaping financial activities, it becomes crucial to explore the different regulatory challenges that emerge about its interpretations, conceptual nuances, and possible obstacles arising from the lack of standardization in sustainability information. Indeed, regulatory issues can arise due to the absence of standardized frameworks for interpreting and reporting sustainability-related information.

Therefore, this chapter aims to provide a comprehensive understanding of the complexities inherent to the integration of sustainability into financial activities. Firstly, I will delve into the key dimensions of sustainability, exploring its conceptual evolution and the various ways in which companies interpret and incorporate sustainability into their operational paradigms. Then, in the following paragraphs, I will conduct an analysis of the different interpretations related to the concept of "sustainable investing", present in the literature, and I will delve into the challenges and implications related to the lack of standardization regarding the ESG factors and the lack of transparency in sustainable information. Finally, in concluding this chapter, I will focus on the role of financial supervision and convergence within the European Union (EU). As the EU evolves towards a dynamic economic and financial union, ensuring the stability, integrity, and harmonisation of financial systems between Member States in the internal market becomes increasingly crucial for promoting a uniform

and sustainable economic growth within the EU. Given the diverse financial landscapes across the 27 Member States, which refer to the fact that each Member State may operate under its own set of financial regulations and supervisory practices, which may differ in terms of stringency, scope, and enforcement mechanisms, EU-level efforts are crucial to ensure consistency, stability, and integrity. This because it may foster competition, facilitate investment, and enhance economic integration, ultimately contributing to the stability of the European Union as a whole. For this reason, I will conclude the chapter by focusing on the role of financial supervision and convergence within the EU.

1.1 Growing Significance of Sustainability and its Conceptual Challenges

In an era that recognizes the challenges posed by climate change, population growth, and globalization, the adoption of sustainable practices has emerged as a crucial and effective response for reducing and mitigating the risks of environmental impact, promoting social equity, ensuring economic resilience and contribute to the well-being of both present and future generations. Moreover, sustainable practices are increasingly viewed as a prerequisite for competitiveness, innovation, and responsible stewardship in a rapidly evolving global landscape.

Companies' commitment to sustainability may enable them to propose and develop solutions which require a greater demand for sustainable technologies and renewable energy sources to address global challenges, potentially contributing to their resolution. The worldwide growth of the population, in particular, puts increasing pressure on natural resources, such as water, soil, and energy, and competition for these resources can lead to social tensions and conflicts, including between social classes that have different needs and expectations. Sustainability can therefore be seen as a mean for addressing inequalities, ensuring a fairer distribution of resources and opportunities. In other words, sustainability has become an essential component for the long-term stability and resilience of companies and financial assets. For this reason, business practices, technologies as well as the size and structure of the population, have undergone and are still undergoing changes that generate new opportunities, but also new risks.[7]

With the emergence of sustainable practices, all the changes generated by economic, social, and environmental factors are considered and integrated into the concepts of economic development, social inclusion, and environmental sustainability, and this is what several financial institutions are doing when considering their investments. If these financial players are increasingly integrating environmental, social and governance considerations into their strategies, they are doing so with the

[7] J. D. Sachs, "The Age of Sustainable Development", cit.

aim of contributing to an economically and environmentally sustainable future. By setting goals on economic, social, environmental and governance issues that the world should follow, sustainable development advocates economic progress and the elimination of situations of imbalance in favour of social solidarity.

On these grounds, it is useful to explore the definition of the concept of sustainability, examining the way in which its sub-concepts of sustainable development, sustainable finance and sustainable investments intertwine and assume relevance in the European and global context. The interconnectedness of these three phenomena is evident in practice. Sustainable investing contributes to the advancement of the Sustainable Development Goals, while sustainable finance acts as a bridge between financial stability and the realisation of a sustainable long-term vision. The latter, instead of focusing exclusively on short-term financial objectives, considers environmental, social and governance aspects, committing to supporting projects and activities that contribute to long-term sustainability.

1.1.1 Sustainable Development

The concept of sustainable development was first introduced by the "Our Common Future" Report[8], published in 1987 by the World Commission on Environment and Development (WCED), commonly known as the Brundtland Commission. According to this Report, sustainable development is defined as one that "meets the needs of the present generation without compromising the ability of future generations to meet their own needs"[9].

Over the years, the definition of sustainable development has focused less on intergenerational needs, giving more attention to the holistic approach, considering all aspects of something together, and thus linking economic development, social inclusion, and environmental sustainability.[10] Intergenerational equity, the need to preserve resources for future generations, is one of the main characteristics that distinguish it from development in the traditional way. However, the only way to achieve this goal is to conceive development as a multidimensional concept that covers economic, social, and environmental aspects. Thus, in this definition, it is recognized the importance of pursuing development that is economically effective, socially equitable and environmentally sustainable in the long term, proposing a balance between these elements. Subsequently, the 1992 United Nations

[8] G. H. Brundtland, "Our Common Future: Report of the World Commission on Environment and Development", 1987.
[9] World Commission on Environment and Development (WCED), 1987.
[10] J. D. Sachs, "The Age of Sustainable Development", cit.

Conference on Environment and Development (UNCED), better known as the Rio Earth Summit, further consolidated the concept of sustainable development and led to the adoption of Agenda 21[11], a global plan of action for the 21st century that integrates the principles of the Brundtland Report. All these declarations and conferences are the result of the global community's awareness of the need to do something to protect the environment without sacrificing economic development.

Sustainable development has thus been consolidated as a principle of international law, contributing to the evolution of international environmental law through the signing of regional agreements and global treaties.[12] Another crucial point has been the 2015 Paris Agreement (COP21), which stands out as the first universal, legally binding agreement outlining a global action plan. At the same time, in 2015, the United Nations adopted the 2030 Agenda[13], which defines 17 goals, namely Sustainable Development Goals (SDGs), divided into 169 Targets, to be achieved by 2030, which aim to address key global challenges such as poverty, food insecurity, health, education and environmental protection. In 2001, the European Union launched its Sustainable Development Strategy, which plays a key role in the 2030 Agenda.[14] The 2019 Green Deal subsequently proposed that by 2050 the EU should commit to zero greenhouse gas emissions. However, to achieve climate neutrality, more investment is needed than funds from the EU budget and public funds in general, which requires the financial system to play a central role, and to achieve this, an appropriate regulatory framework must be put in place that adheres to the information ecosystem.[15] Finally, the EU Climate Law[16] was proposed by the European Commission in March 2020 and formally adopted by the European Parliament and the Council of the European Union on April 21, 2021. Aimed at addressing climate change, and achieving climate neutrality by 2050, it represents a significant step driving the transition towards a carbon-neutral economy and society.

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[11] United Nations (UN), UN Agenda 21, United Nations Conference on Environment & Development, Rio de Janeiro, 1992.

[12] See the Rio Declaration on Environment and Development, Agenda 21 and the Declaration on the Management, Conservation and Sustainable Development of Forests, 1992; the Convention on Biological Diversity, 1993; the Convention on Climate Change, 1994; and subsequent United Nations Conferences.

[13] United Nations (UN), "Transforming Our World: The 2030 Agenda for Sustainable Development", 2015.

[14] Commission of the European Communities, "European Union Sustainable Development Strategy", 2001.

[15] N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria, M. Taverna, "La finanza per lo sviluppo sostenibile, Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea", cit.

[16] 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').

Despite these significant steps, some authors[17] have pointed out that the concept of sustainability as developed in the first agreements was too generic and undefined to serve as a concrete normative basis. In other words, it lacked specificity, which is crucial to clearly guide decision-makers in translating general principles into practical and measurable actions. This limitation is mainly due to the fact that, at the time of the introduction of the concept, economic analysis failed to find a clear definition for sustainability due to its opposition to the traditional economic model.[18] Initially, sustainable development was proposed to address the damage caused by economic growth and the overexploitation of natural resources. Only over time, the concept has undergone changes and expansions, by incorporating the quality of life and by including the balance of economic well-being, social stability, and environmental protection. This has led to the integration of sustainability into financial models step by step. One of the primary ways sustainability has been integrated into finance has been through the consideration of ESG factors in investment decisions, and then this has been accompanied by the proliferation of a range of sustainable approaches, including investing strategies, green bonds and green loans, and the monitoring and assessment of sustainability risks and opportunities associated with investments based on ESG-related information. The key idea is that sustainability can become an integral part of how we manage money and investments, and this is possible thanks to the consideration of money and capital as resources that must be managed responsibly to ensure long-term stability and prosperity. For example, investing in sustainable companies and projects can be seen as a form of "reserve" for the future, which implies on the one hand generating profit, and on the other hand a contribution to the well-being of the environment and society. This function also makes it possible to meet the needs of future generations, allowing sustainable finance to incorporate economic growth that considers the needs of both present and future generations.[19] Only over the years, there has been a growing awareness that the integration of environmental and social considerations into economic processes cannot be separated from the way in which companies and economic actors make decisions. Companies must consider and address climate change as not only a social responsibility challenge, but also a business one, which therefore

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[17] T. Beatley, & K. Manning, "The ecology of place: planning for environment, economy and community", 1998; P.R. Berke, and M.M. Conroy, "Are We Planning for Sustainable Development? An Evaluation of 30 Comprehensive Plans", 2000.

[18] The traditional economic model typically refers to neoclassical economics, which emphasizes economic growth, efficiency, and the allocation of resources based on supply and demand in markets. In this model, the focus is primarily on maximizing production, consumption, and profits without considering the long-term consequences for environmental sustainability or social well-being; N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria, M. Taverna, "La finanza per lo sviluppo sostenibile, Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea", cit.

[19] J. Pezzey, & M. Toman, "Sustainability and its economic interpretations. Scarcity and Growth Revisited: Natural Resources and the Environment in the New Millennium", 2005.

directly affects their commercial activities.[20] This recognises the interdependence between sustainable development and ESG factors in the financial environment.

Moreover, to undermine the specificity and clarity of the definition of sustainable development, there is also the fact that it has been debated in different disciplines, thus leading to multiple interpretations and meanings. Some scholars[21] consider the concept to be a mystification, pointing out that the only known development has been characterized by economic competition and the exploitation of nature, making it meaningless to define it as "sustainable". In addition, there is a lack of consensus on how ecological, economic, and social aspects should interact with each other, highlighting a lack of conceptual clarity.[22] Some may prioritize economic growth over environmental protection or social equity, while others may emphasize the importance of ecological sustainability or social justice, leading to differing perspectives and approaches to sustainable development. Despite these criticisms, the tripartite model of UN Agenda 21, which refers to the three interconnected pillars of sustainable development: economic, social, and environmental, remains dominant in the literature.

1.1.2 Sustainable Finance

The notion of sustainable finance, contrary to that of sustainable development, is even more difficult to identify. Although the 2030 Agenda did not explicitly assign a role to the financial system, the G20 and other bodies have long stressed the importance of market-based mechanisms that foster sustainable and inclusive growth. Moreover, in Europe, the crucial role of the financial system in the ecological transition has been recognized by both the European Commission[23], as part of the initiative of the "European Green Deal", and the European Central Bank (ECB)[24], for its role in managing climate-related risks and promoting sustainable investment practices. For example, financial institutions can issue "green" bonds to raise funds for green projects, such as renewable energy, energy efficiency, or low-emission transportation.

The notion of sustainable finance is constantly evolving, but in general, it refers to a process that takes ESG factors into account in financial decisions, promoting long-term investments in sustainable assets.[25] According to the experts of the High-Level Expert Group on Sustainable Finance in the Final

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[20] E. Scattola, "Sostenibilità e sviluppo sostenibile. Evoluzione del concetto," 2010.
[21] S. Latouche, "Farewell to Growth", 2009; V. Shiva, "Making Peace with the Earth", 2013.
[22] J. Elliott, "An Introduction to Sustainable Development", 2012.
[23] COM (2021) 390 FINAL "Strategy for Financing the Transition to a Sustainable Economy".
[24] https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210125_1~2d98c11cf8.it.html
[25] COM (2018) 97 FINAL "Action Plan: Financing Sustainable Growth", p.2.

Report[26] "Sustainable finance is based on two imperatives. The first is to improve the contribution of finance to sustainable and inclusive growth, as well as to climate change mitigation. The second is to strengthen financial stability by integrating environmental, social and governance (ESG) factors into investment decision-making".

In addition, sustainable finance involves market practices, financial products, and corporate policies that have an impact on the environment, society, and responsible business management. It is strongly associated with a long-term perspective, which means that investors and financial institutions that embrace this philosophy are willing to commit for extended periods and be patient. The idea is that sustainable investments can take time before they fully see the benefits, and therefore a long-term commitment is needed to allow the value of investments to develop and realise over time.[27]

Following this approach, the European Commission defines sustainable finance as one that considers environmental and social factors in the investment decision-making process[28], thanks also to adequate governance of public and private institutions.

The process of developing sustainable finance within the EU is the result of an intense regulatory activity, including but not limited to the European Commission, the European Central Bank (ECB), and the European Securities and Markets Authority (ESMA), aimed at directing financial operators towards the integration of sustainability risks within their investment and advisory processes. The current regulatory framework in support of Sustainable Finance is based on four pillars: "The Sustainable Finance Action Plan"[29] (Action Plan); "The Strategy for Financing the Transition to a Sustainable Economy"[30]; "The European Green Bond Standard – EU GBS"[31]; "The Delegated Act

[26] Final Report by the High-Level Expert Group on Sustainable Finance Secretariat provided by the European Commission, 2018, p.6.

[27] Final Report by the High-Level Expert Group on Sustainable Finance Secretariat provided by the European Commission, 2018, p.9.

[28] COM (2021) 390 FINAL "Strategy for Financing the Transition to a Sustainable Economy", cit.

[29] COM (2018) 97 FINAL "Action Plan: Financing Sustainable Growth".

[30] COM (2021) 390 FINAL "Strategy for Financing the Transition to a Sustainable Economy".

[31] REGULATION (EU) 2023/2631 Of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.

Supplementing Article 8 of the Taxonomy Regulation"[32]. This framework, together with Directives 2014/65/EU48[33] and 2016/97/EU49[34], constitutes the structure strategy for Sustainable Finance.

Although the regulatory framework may appear clear, the presence of many different companies that issue ratings on ESG products contributes to confusion and a lack of clarity in assessing the sustainability of investments and financial practices. Each of these companies has its own criteria for assessing sustainability, which means that the same category of financial products may receive different ratings from different agencies. This lack of consistency makes it difficult for investors and industry players to understand which investments are truly sustainable and which are not. The absence of standardized criteria and methodologies for evaluating ESG factors across different rating agencies leads to regulatory challenges. Additionally, the regulatory landscape for ESG investing varies widely across jurisdictions, leading to regulatory fragmentation and uncertainty. Finally, there is also a definitional ambiguity related to the lack of a clear and universally accepted definition of what constitutes a sustainable investment. Without clear and enforceable rules, operators can interpret sustainable finance in different ways, thus being able to attribute sustainable labels even to financial products that could have a limited impact or even contrary to environmental and social objectives. The combination of these challenges creates a complex scenario that can affect the credibility of sustainable finance, raising concerns about the real sustainability of investments and the need for clearer regulations to guide the sector in a coherent and responsible way.

1.2 ESG Factors and Sustainable Investments

While considering sustainable finance, I've previously highlighted that the investor becomes "responsible" and "sustainable" when selecting securities based on the so-called ESG factors, or Environmental, Social, and Governance factors.

Over the past two decades, there has been a growing interest from individual and institutional investors in socially responsible investing, to the point where institutional change has begun to take place within the securities sector using new standards and methodologies. All this attention to this

[32] C (2021) 4987 final COMMISSION DELEGATED REGULATION (EU) of 6.7.2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities and specifying the methodology to comply with that disclosure obligation.

[33] Directive 2014/65/UE of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2011/61/UE (recast).

[34] Directive (EU) 2016/97 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 January 2016 on insurance distribution (recast).

type of investment has involved the adoption of indicators aimed at assessing the sustainability of funds/companies, with the aim of allowing investors to orient themselves on the financial market; and it is precisely in this context that the phenomenon of the emergence of ESG rating agencies has increasingly occurred. The latter, also referred to as CSR rating agencies or social rating agencies, have joined traditional rating agencies, which, unlike ESG rating agencies, consider aspects related to creditworthiness. Addressing ESG issues has become a point of interest as well as a concern of risk management for investors and companies, which over the past few years have incorporated ESG elements into their corporate strategies contrary to what happened in the early 90s, a period in which most companies were not interested in the topics of Corporate Social Responsibility (CSR) and Socially Responsible Investing (SRI). Initially, in fact, the evaluations focused mainly on ethical and environmental issues. However, standardization was missing, and methodologies were heterogeneous. As interest in sustainability grows, so does the demand for more structured ESG assessments. Rating agencies began to develop more sophisticated methodologies and large databases. Since 2010, there has been greater standardization of ESG methodologies. Global organizations, such as the Global Reporting Initiative (GRI) and the Sustainability Accounting Standards Board (SASB), help set standards and guidelines. The demand for ESG information has become a key factor in the financial markets.

1.2.1 ESG Factors

As it is understood today, the ESG rating is a synthetic assessment framework through which the aspects related to environmental (E), social (S) and governance (G) issues of a company, issuer, fund, or country are analysed and measured. They are three dimensions through which the sustainable commitments of a company or organisation are assessed, in terms of, for example, investments or product purchases. In detail, the criteria that underlie the letter "E" of Environmental evaluate how a company behaves towards the environment in which it is located and the environmental impact in general. The letter "S", on the other hand, is linked to the criteria relating to social impact; In this sense, the relationships with the territory, with people, with customers, with suppliers, with employees and, more generally, with the communities in which it is related or operates, are examined. Finally, the letter "G" is linked to the criteria that promote business management based on good practices and ethical principles; and therefore, factors related to fair remuneration, shareholder rights, financial transparency, and transparency regarding company choices and, respect for minorities.

ESG ratings are developed by agencies that specialize in collecting and analysing data on sustainability aspects. In recent years, the financial market's increasing attention to these issues has

led to a proliferation of ESG rating and rating providers. According to the analysis carried out by European Securities and Markets Authority (ESMA)[35], currently there are 59 ESG rating providers in the European Union. From a business point of view, presenting oneself to the market as a "sustainable company", and therefore having a good ESG assessment, meets the attention and interest of investors who are increasingly attentive to sustainability issues. However, this interest is not the only benefit, but as highlighted by the European Commission[36], a strategic approach to the issue of Corporate Social Responsibility can bring further advantages in terms of risk management, cost reduction, access to capital, customer relations, human resources management and innovation capacity. In addition, there is evidence[37] that there is a correlation between the ESG rating and the cost of capital and, in this case, an inverse correlation, for which the higher the ESG rating, the lower the cost of its capital will be. A low cost of capital improves competitiveness; If there are two companies with the same characteristics and operating in the same market, but one manages to finance itself at a lower cost, over time the latter will gain a competitive advantage over the other, with lower costs and better access to credit.

Despite the good purpose of ESG ratings, an increasingly significant regulatory obstacle is the absence of a shared taxonomy of sustainable activities and standardised terminology for ESG products.[38] Without a universally agreed-upon taxonomy, regulators face challenges in effectively overseeing and regulating ESG investments. This corresponds, upstream, to the absence of a clear definition of what falls within the scope of the E, S and G factors. Unlike the E and G factors, which have more established frameworks for measurement and analysis, the topic is particularly relevant for the S-factor, as it is the most general, broad, qualitative, long-term, and undefined category of sustainability. The S-factor, relating to social issues in the context of corporate sustainability, is an element that is difficult to measure and analyse. In contrast to the E factor (environmental), where common international climate change objectives have been quantified, and the G factor (governance), for which standardised organisational tools can be identified, the S factor is often characterised only qualitatively.

This doesn't mean that the E and G factors don't face their own set of complexities. Indeed, while there are established metrics for certain environmental aspects such as carbon emissions or water usage, measuring overall environmental impact comprehensively can be challenging, since factors like biodiversity loss, ecosystem degradation, and pollution may be difficult to quantify accurately.

[35] ESMA80-416-250, "Call for evidence On Market Characteristics for ESG Rating Providers in the EU", 2022.
[36] European Commission, "REFLECTION PAPER TOWARDS A SUSTAINABLE EUROPE BY 2030", 2019.
[37] D. Ernst, F. Woithe, "Impact of the Environmental, Social, and Governance Rating on the Cost of Capital: Evidence from the S&P", 2024.
[38] J. D. Sachs, "The Age of Sustainable Development", cit.

Parallelly, while there are established governance principles and frameworks (e.g., OECD Principles of Corporate Governance), interpreting and applying these principles can be subjective, since different stakeholders may have varying interpretations of good governance practices, leading to discrepancies in assessments.
However, the challenges in defining and measuring the S factor, are more diverse. Firstly, it is closely related to the concept of corporate social responsibility, involving numerous stakeholders, such as workers and consumers, the local and global communities, which may have different expectations, interests, and priorities regarding social responsibility. In addition, the S factor is strongly influenced by different ethical interpretations, which vary according to the cultural, economic, and legal context of reference. Due to globalization, companies can relocate the activities of companies to areas with lower social standards, they can compromise compliance with minimum principles accepted in the legislation of advanced economies, exposing themselves to reputational and legal risks and sanctions. Over time, the priority focus on the S factor has been overshadowed by the climate emergency and challenges in measuring and comparability of social profiles. Since social impacts are difficult to monetize and qualitative, they are considered marginal and less important than other considerations. The sustainability of the S factor is often limited to charitable initiatives, niche organisations in the third sector and the intervention of public bodies in the face of social emergencies.

However, as suggested by the 2030 Agenda, social factors have different dimensions, the internal one such as human resource management and corporate restructuring, and the external one that can concern local communities, or suppliers and consumers. In this sense, environmental and governance issues also have a social dimension and are themselves components of the S factor. As a result, it is crucial to develop metrics and standards for all factors. These should measure both quantitative and qualitative aspects. Nevertheless, we will see that building sustainable finance metrics presents further problems related to the fact that the data is often incomplete, or not transparent or even untraceable. Between 2002 and 2015, sustainability reporting increased, but the diversity of characteristics of how information is published does not remain uniform and makes comparison difficult.[39] There is still no common standard[40] , however, based on a more recent study[41], it is possible to see improvements regarding non-financial information reporting and it is suggested that greater transparency in information would lead companies to benefit, while increasing stakeholder trust.

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[39] H. Stolowy, & L. Paugam, "The expansion of non-financial reporting: an exploratory study", 2018.
[40] IMF International Monetary Fund, 2019.
[41] E. Hoffmann, & C. Dietsche, & C. Hobelsberger, "Between mandatory and voluntary: non-financial reporting by German companies", 2018.

1.2.2 Sustainable Investment

As far as the definition and identification of sustainable investment is concerned, this presents some critical issues in the international arena. First, sustainable investing (SI) is a fundamental financial perspective, an integral part of sustainable finance. The aim for such investments is to positively contribute to social purposes.[42] This approach is increasingly being promoted by banks and asset managers, who offer products geared towards sustainability, responsibility, and impact.[43] Sustainable investing goes beyond just a financial perspective, as it is believed to play a role in mitigating climate change. In addition, there is a belief that it can contribute to the achievement of the United Nations Sustainable Development Goals.[44] This means that sustainable investments can have a positive impact on crucial issues such as environmental sustainability, reducing social inequalities and access to basic services.

However, the identification of what is considered a sustainable investment depends mainly on the initiative of associations, proven networks and/or supranational organizations. Apart from some national initiatives and the efforts of the European Union, the identification of what is considered sustainable takes place through the voluntary participation of market actors in these initiatives. These private associations and networks, such as the Global Reporting Initiative (GRI) or the Sustainable Accounting Standards Board (SASB), often supported by supranational organisations, are responsible for establishing criteria and standards for defining what constitutes sustainable investment. Market players, such as companies and investors, are encouraged to voluntarily adhere to these standards, thereby demonstrating their commitment to sustainable practices. However, it is important to underline that this voluntary adherence approach makes the process of identifying sustainable activities dependent on the willingness and active participation of market actors. While this approach offers flexibility and direct stakeholder involvement, it can also lead to a lack of uniformity and global standards, making the definition of sustainable investments more subjective and open to different interpretations. Overall, the reliance on initiatives led by associations, networks, and supranational organizations for identifying sustainable investments creates a regulatory problem based on the absence of clear and enforceable regulatory standards.

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[42] S. Hartzmark, & A. Sussman, "Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows", 2017.
[43] https://www.gsi-alliance.org/trends-report-2018/
[44] J. F. Kölbel, F. Heeb, F. Paetzold, & T. Busch, "Can Sustainable Investing Save the World? Reviewing the Mechanisms of Investor Impact", 2020.

Before the introduction of the Taxonomy Regulation (EU Regulation 2020/852)[45], the lack of a uniform definition of what constitutes sustainable investing led to a wide variety of interpretations and practices in the financial sector. Investors could label their products as sustainable without a common basis, leading to confusion and greenwashing risks. In this sense, the Taxonomy Regulation addressed the lack of shared definitions and established a classification system for sustainable economic activities. The Taxonomy Regulation establishes some criteria and common standards for classifying an economic activity as sustainable. These criteria are based on six environmental objectives and include the Do Not Significant Harm (DNSH) principle[46], which prevents sustainable activities from causing significant harm to other environmental objectives. In addition to environmental objectives, the regulation includes minimum social safeguards. This means that activities must comply with certain social standards, such as those outlined in the OECD Guidelines for Multinational Corporations or the International Labour Organization (ILO) conventions for the protection of human rights and workers' rights. Moreover, the criteria established by the Taxonomy Regulation are not static, but they are periodically reviewed and updated to reflect technological developments in the field of sustainability. This allows the addition of new sectors and activities, keeping the system up to date with market developments and new environmental challenges.

Despite this, the clarity of the criteria outlined in the Taxonomy Regulation has been contested by various scholars. Critics such as the sustainability expert Tim Jackson[47] argue that the criteria are complex and subject to interpretation. He suggests that different stakeholders may have varying interpretations of what constitutes environmentally sustainable economic activity, leading to debates and disagreements over specific criteria. Moreover, the environmental policy analyst Vandana Shiva[48] has raised concerns about the scope and coverage of the criteria. She argues that the Taxonomy Regulation may not cover all relevant aspects of sustainability and may overlook certain industries or practices that have significant environmental impacts, and consequently, ensuring comprehensive coverage of sustainability issues across diverse sectors and activities remains a challenge. In addition, technical challenges in defining precise thresholds and indicators for sustainability have been highlighted by scientists such as Johan Rockström.[49] He emphasizes the need for robust scientific

[45] 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.
[46] The DNSH principle is the minimum scheme for all NRRP measures, as specified in Regulation 2021/241 establishing the recovery and resilience facility. In Article 5, "Funding will only go to measures that comply with the 'do no significant harm' principle".
[47] T. Jackson, "Prosperity without Growth: Economics for a Finite Planet", 2009.
[48] V. Shiva, "Earth Democracy: Justice, Sustainability, and Peace", 2005.
[49] W. Steffen, J. Rockström, K. Richardson, T. M. Lenton, C. Folke, D. Liverman, & H. J. Schellnhuber, "Trajectories of the Earth System in the Anthropocene", 2018.

evidence and technical expertise to inform the criteria, particularly in areas where scientific consensus is lacking, or data availability is limited.

Considering these issues and given the increasing awareness of environmental issues and the urgency to address climate change, investors, policymakers, and regulators worldwide are seeking clear definitions and standards for green investment. This trend reflects a recognition that without clear definitions and criteria, there's a risk of "greenwashing", and therefore, the push for clear definitions of green investment reflects a desire for transparency, accountability, and integrity in sustainable finance practices Many jurisdictions, as suggested by the Network for Greening the Financial System[50], have introduced similar regulations to ensure that sustainable investments meet accurate standards, promoting investor confidence and contributing to global efforts to address environmental challenges.

1.3 Lack of Transparency and Standardization in Sustainable Information

Having delved into the challenges surrounding uniform concepts and standardized definitions of sustainability, we now turn our focus to another critical issue: the lack of transparency and standardization in sustainable information. Investors recognize the importance of ESG factors in assessing the long-term sustainability and performance of companies. However, the absence of standardized reporting frameworks makes it difficult for investors to obtain reliable and comparable ESG data. Without standardized and transparent ESG information, which are information often requested by investors and the industry in general to assess performance related to ESG issues, companies face challenges in demonstrating their commitment to sustainability and building trust with investors.

Standardization is key to consistently measuring ESG performance and using this information to make investment decisions.[51] Without predefined reporting approaches and standards, the market is unlikely to move spontaneously towards what is termed non-financial disclosure free from the previously mentioned limitations. This is because companies that issue ESG-related products and instruments may not have the motivation to disclose non-financial information or adhere to higher

[50] Network for Greening the Financial System, "Enhancing market transparency in green and transition finance", Technical document, 2022.
[51] R. Eccles, & M. Kastrapeli, & S. Potter, "How to Integrate ESG into Investment Decision-Making: Results of a Global Survey of Institutional Investors", 2017.

standards if they do not see immediate benefits on the other hand that can offset costs and reduce reputational risks.

By "non-financial disclosure" I refer to the disclosure of information by a company or organization that is not financial in nature, but that provides details about its performance and impacts in areas not strictly related to finance. This non-financial information is often related to environmental, social and governance (ESG) issues that affect or are affected by the company's activities. Non-financial disclosure is an essential aspect of companies' sustainability relationship. It includes data and information regarding the environmental impact of business operations, social management practices towards employees and communities, as well as corporate governance and ethical policies. This type of disclosure has become increasingly important in the context of sustainable investing and corporate social responsibility (CSR), as investors, consumers, and other stakeholders seek comprehensive information about companies' sustainability and social impact to make informed decisions. The information contained in the non-financial disclosure may include environmental metrics, such as greenhouse gas emissions, personnel management practices, diversity and inclusion measures, ethical policies, and other considerations relevant to corporate sustainability. Overall, it helps to provide a more complete and transparent view of a company's performance beyond just the financial aspects.

According to Hoffmann et al. (2018)[52], the presence of differences in terms of the quality and detail of the information and in the creation of sustainability documents compromises the usefulness and therefore the disclosure of information for investors. The lack of standardisation is a problem that has not been solved even at the European level, so Directive 2014/95/EU (NFRD) has not adequately addressed this issue, leaving a lot of flexibility to companies and Member States. This lack of clear rules has led to heterogeneity in the disclosure of non-financial information, as evidenced by studies analysing the disclosure of listed companies in different contexts. For example, in Spain[53] and the Netherlands[54], companies present non-financial information unevenly, with significant differences between sectors and thematic areas such as gender equality, environment and human rights. This lack of uniformity makes it difficult for investors and other stakeholders to compare companies' sustainable performance and assess their overall social responsibility.

There are also some difficulties regarding the dissemination of sustainability scores and ratings, as the information used by providers is not very transparent and very different from each other, thus

[52] A. J. Hoffman, "The Next Phase of Business Sustainability", 2018.
[53] Sierra-Garcia et al., in a study on the application of the Directive by Spanish listed companies of IBEX-351, found inconsistencies in disclosure across business sectors, 2018.
[54] The study was conducted by the AFM, which examined the reports on non-financial information published for the first time by the 89 companies required under European law.

creating assessments with a low correlation.[55] Companies that are more likely to devote resources to ESG policies and activities are usually better valued; however, some market participants believe that this does not confirm the fact that they consider ESG factors more. In addition, ESG assessments are not updated frequently enough; in fact, it may happen that they do not contain the changes that the company's business models and opinions on ESG factors undergo. This criticality can be reduced with technological means that allow the processing of a lot of data and information.[56] The development of sustainable investing is also constrained by the trade-off between ESG performance and financial return, due to the higher costs of sustainable investing, and the fact that this creates a risk that asset managers will breach their fiduciary duty.[57] Certain factors, including environmental, social and governance criteria, have an impact on investment returns over the long term, and according to the PRI, UNEP FI and UN Global Compact Report[58], failure to consider them is tantamount to violating the fiduciary duties of asset managers and institutional investors. Considering ESG factors is not only compatible with the fiduciary duties of asset managers, but also serves to make decisions, and the transparency requirements imposed require institutional investors and managers to carry out assessments to verify that ESG criteria are incorporated into investments and how they are incorporated. In this way, it is possible to draw up the information that the regulation requires.

Given the challenges, big players are actively working on a common standard for corporate reporting, especially concerning environmental, social, and governance (ESG) factors. Five international organizations (CDP, Climate Disclosure Standards Board - CDSB, Global Reporting Initiative - GRI, International Integrated Reporting Council - IIRC, Sustainability Accounting Standards Board - SASB) have committed to collaborate with other key players such as IOSCO, IFRS, the European Commission and the International Business Council of the World Economic Forum. The goal is to integrate existing ESG standards with generally accepted financial accounting principles to create a consistent and comprehensive corporate reporting system.[59] These organizations propose an approach called "dynamic materiality"[60], which considers the fact that important ESG issues may change over

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[55] IMF International Monetary Fund, 2019, cit.
[56] N. Linciano, E. Cafiero, A. Ciavarella, G. Di Stefano, E. Levantini, G. Mollo, S. Nocella, R. Santamaria, M. Taverna, "La finanza per lo sviluppo sostenibile, Tendenze, questioni in corso e prospettive alla luce dell'evoluzione del quadro regolamentare dell'Unione europea", cit.
[57] R. Eccles, & M. Kastrapeli, & S. Potter, "How to Integrate ESG into Investment Decision-Making: Results of a Global Survey of Institutional Investors", cit.
[58] Fiduciary Duty in the 21st Century, 2015.
[59] See Joint Statement: Working Together Towards Comprehensive Corporate Reporting, https://integratedreporting.org/news/joint-statement-working-together-towards-comprehensive-corporatereporting/, 2020.
[60] Truvalue Labs, Dynamic Materiality: Measuring what Matters; https://insights.truvaluelabs.com/whitepaper/dynamic-materiality-download, 2020.

time due to the changing socioeconomic environment. The initiative prompted the IFRS Foundation to launch a public consultation in September 2020[61] to create a global standard on non-financial disclosures, suggesting the creation of an International Sustainability Standards Board (ISSB). At the European level, the Directive 2014/95/EU (NFRD)[62] has certainly allowed some flexibility in the choice of standards used for non-financial reporting. The European Commission launched a revision of the NFRD in 2020[63] to address limitations and respond to the growing demand for ESG information from the financial community. The European Financial Reporting Advisory Group (EFRAG) was tasked with developing a European standard for non-financial reporting based on the best practices of existing frameworks, recognising the importance of coordinating European efforts with global initiatives. More specifically, EFRAG was entrusted with creating a European standard for sustainability reporting to provide guidelines and requirements for companies to disclose non-financial information, including environmental and social performance, governance practices, and related sustainability impacts.

To address these challenges, it is crucial to make significant standardization and consolidation efforts. Simplifying the collection, reporting, and analysis of ESG data requires an ongoing effort to reduce complexity and improve consistency in assessments. Despite recent European regulations that aim to improve transparency and the amount of information available, open challenges persist in the lack of consistent frameworks and metrics and thus in insufficient ESG data standardization, information gaps in the availability of ESG-related data, difficulties in understanding the materiality and significance of ESG issues for long-term business performance, and potential labelling and rating issues with the proliferation of ESG labels, ratings, and indices that has led to concerns about inconsistency. Addressing these challenges is essential to promote a more accurate and comprehensive assessment of sustainability in investment practices. The process is still ongoing, but the goal is to create more uniform and consistent non-financial reporting standards globally, making it easier to assess and compare corporate sustainability performance.

[61] IFRS Foundation, "Consultation Paper on Sustainability Reporting", 2020.

[62] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[63] https://ec.europa.eu/newsroom/env/items/676093/en

1.4 Relevance of Financial Stability: Financial Supervision and Harmonisation in the EU

Financial stability is a central goal in the EU policies, underscoring the need for a robust and resilient financial system, particularly in the European Banking Union.[64] Financial sustainability is strictly connected to financial stability and raises crucial questions, particularly regarding the lack of standardisation and clear definitions of ESG factors and sustainable practices. This connection is firstly based on the fact that financial sustainability involves managing environmental and social risks effectively to ensure and enhance the resilience and stability of financial systems. Moreover, by creating long-term value for stakeholders, promoting transparency and accountability in disclosing sustainable information, and addressing systemic risks and externalities, financial institutions can contribute to both financial stability and sustainable development objectives.

In this context, the harmonisation of financial markets and the need for effective financial supervision are essential tools for fostering a resilient, transparent, and inclusive financial system that serves the needs of businesses, investors, and society. This because harmonized regulations and effective supervision help prevent regulatory arbitrage and ensure consistent risk management practices across financial institutions, ultimately enhancing investor confidence and trust in financial institutions, and encouraging capital investment. On the other hand, both the European Green Deal and the EU Climate Law, introduced as part of the first one, set out bold commitments for the EU, including the goal of becoming the first climate-neutral continent by 2050 and reducing greenhouse gas emissions by 55% by 2030. To achieve these goals, significant investments are needed, estimated at around €350 billion per year by 2030 for energy systems alone.[65]

The concept of financial stability within the primary law of the European Union (EU) presents a certain vagueness that requires a more in-depth analysis to understand what drives it and how it can be achieved. Specifically, when referring to the concept of financial stability within the primary law of the EU, we can look to several provisions in the Treaty on the Functioning of the European Union (TFEU) that establish the legal basis for financial regulation and supervision in the EU, such as Article

[64] G. Lo Schiavo, "Financial stability as a new founding and supranational objective of European Union law and policies", 2024.

[65] European Commission, 2020.

127 TFEU[66]; Article 114 TFEU[67]; Article 119 TFEU[68]; Article 123 TFEU[69]; Article 136 TFEU[70]. These provisions do not explicitly define financial stability, but they establish the legal framework for promoting and safeguarding financial stability within the EU. Article 127 TFEU can be understood as an explicit reference to financial stability in EU primary law. This article assigns to the European Central Bank (ECB) the task of contributing to the stability of financial markets, but without clearly specifying the instruments available to the ECB to achieve such stability. Looking at the negotiations that led to the adoption of Article 127TFEU, financial stability was initially considered a primary task of the European System of Central Banks (ESCB). However, following opposition from some Member States during the Maastricht negotiations, financial stability has been relegated to a non-primary task. The non-core tasks of the ESCB, including financial stability, remain open to the definition of concrete instruments that the ECB can use to contribute to such stability. In fact, Article 127 TFEU is not the only reference to financial stability in the Treaties. Article 136 TFEU allows Member States to establish stability mechanisms for the euro area but is mainly considered to be declaratory in nature. The concept of financial stability, therefore, emerges as an autonomous and certainly fundamental objective within EU law and policies, with a broader meaning than the specific provisions of the Treaty. Although it is not explicitly defined in EU primary law, its centrality has emerged strongly, especially during and following the financial crisis. The Court of Justice of the European Union (CJEU) has explicitly recognised the role of financial stability in its case law, for example in the Pringle[71], ESMA[72] and Ledra Advertising[73] cases. In these cases, the CJEU affirmed the importance of financial stability within the euro area and upheld the legality of the European Stability Mechanism (ESM), stating that it contributes to safeguarding the stability of the euro area and emphasized the importance of financial stability as a legitimate objective of EU financial regulation and supervision. Moreover, it is not only the responsibility of the ECB, but involves the entire EU institutional complex. Other institutional actors contribute to the management and maintenance of financial stability, requiring a systematic analysis of this concept in the context of the

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[66] This article establishes the primary objective of the European Central Bank (ECB) to maintain price stability within the euro area.

[67] This article provides the legal basis for the harmonization of laws and regulations within the internal market, including financial services.

[68] This article empowers the European Parliament and the Council to adopt measures aimed at ensuring the stability of the financial system.

[69] This article prohibits the European Central Bank (ECB) from directly purchasing debt instruments issued by EU member states, thereby safeguarding the central bank's independence and preventing monetary financing of governments, which could jeopardize financial stability.

[70] This article addresses the establishment of a legal framework for enhanced cooperation in the area of the common currency, the euro.

[71] Case C-370/12.

[72] Case C-270/12.

[73] Case T-289/13.

EU political-legal system. Both harmonisation and supervision are useful instruments to ensure financial stability. While harmonization establishes common rules and standards, European supervision provides the oversight and enforcement mechanisms necessary to ensure compliance and safeguard financial stability within the EU. Together, these preventive regulatory instruments contribute to the integrity of European financial markets.

1.4.1 Harmonisation

As anticipated, the importance of harmonization in the context of EU law and policies is undeniable for the promotion of financial stability at the supranational level. The term harmonisation itself implies the substitution of rules directly applicable at supranational level for the expense of divergent national rules.[74] In the financial sector, harmonisation is essential to standardise rules and limit financial risks in an integrated manner, thus contributing to financial stability. Supranational harmonisation offers benefits such as legal certainty, integration of the internal market, guidance of the behaviour of regulated entities and the creation of essential conditions for compliance with the rules at supranational level. However, the existence of some regulatory areas that are not yet subject to maximum harmonisation leave room for national discretion and flexibility between Member States, representing a challenge for maximising financial stability as a supranational objective in Europe.
In the area of sustainable finance, sustainable investments and ESG criteria there is no harmonisation at European level, and this creates difficulties for financial stability and the effectiveness of the sustainable regulatory framework in general. Member States have implemented different approaches and heterogeneous regulations regarding ESG standards and sustainable investment practices. This lack of harmonization creates uncertainty for market participants and investors, who face different rules depending on the country in which they operate. The lack of harmonisation can lead to a kind of 'regulatory competition' between Member States, where some countries may adopt less stringent standards to attract investment. This can undermine overall efforts to establish uniform ESG and sustainable finance standards across Europe. Regulatory diversity can hamper the free movement of capital and investment within the single market, creating inefficiencies and hampering the goal of an integrated European financial market. Lack of harmonisation can lead to a lack of coherence in the sustainable regulatory framework. This could weaken the EU's overall efforts to address global challenges such as climate change and environmental sustainability. Without common and unified rules, there is a risk of "greenwashing", i.e. the misleading presentation of investments as sustainable without complying with actual standards. This undermines investor confidence and can lead to

[74] C. Barnard, “The Substantive Law of the EU”, 2016.

incorrect investment decisions based on misleading information. The lack of harmonisation can pose a challenge for financial stability, as sustainable investments and ESG risk management need to be managed in a coherent and integrated way to ensure the resilience of the European financial system.

1.4.2 Supervision

European supervision is the second preventive regulatory instrument to ensure financial stability. The term 'supervision' refers to the exercise of monitoring and controlling the addressees of rules adopted by regulation. Supervision is seen as an essential tool to ensure financial stability at supranational level. It should be noted that the ECB plays the role of supranational supervisory prudential authority in the banking union, while the Commission is involved in the surveillance of Member States' economic policies in economic governance. Supervision is crucial to generate legal certainty and transparency on the activity and risks of market participants or public entities. A strong application of this instrument can lead to a uniform and appropriate application of regulation throughout the legal system. The supranational approach to supervision can overcome divergent approaches related to national political dimensions.

Overall, financial supervision ensures that financial institutions operate in accordance with regulations and standards that promote sustainability. This involves developing specific regulations to assess and manage climate and environmental risks in investment portfolios to ensure a transition to sustainable economic activities. At the same time, the convergence of financial markets is essential to create a system where financial operators can operate cohesively, reducing disparities between the various European markets. Convergence fosters the creation of a single and sustainable capital market by helping to promote coherence and efficiency in the allocation of financial resources. Both are but key elements in the pursuit and maintenance of supranational financial stability.

In this context, managing the challenges highlighted earlier requires robust mechanisms to ensure consistency and transparency in financial regulations. The European Securities and Markets Authority (ESMA) plays a significant role, having been established to contribute to the creation of a more stable and harmonised financial system within the European Union. By working with national competent authorities to develop and harmonise standards, procedures, and methodologies for the supervision of financial markets, it aims to ensure a uniform application of financial regulations. Moreover, by enhancing transparency in the application of financial regulation, ESMA contributes to building investor confidence and market integrity, addressing challenges associated with potential inconsistencies and uncertainties in the regulatory landscape.

In the next chapter, a detailed analysis of ESMA's role will delve deeper into its efforts to promote consistency and transparency in the application of financial regulations across the EU, shedding light on its possible contributions.

Chapter 2 - The European Agencies: Role and Evolution of the European Securities and Markets Authority (ESMA) in EU Finance

The establishment and implementation of the European Securities and Markets Authority (ESMA), as part of the European Supervisory Authorities (ESAs), is of crucial importance in the European Union (EU) landscape, as it holds significant powers to regulate and supervise the EU's financial markets.

Tasked with improving investor protection, promoting stable and orderly financial markets, and ensuring the integrity of the financial system, ESMA plays a key role in monitoring the European financial landscape.[75] In addition, this mandate has been further emphasized through its recent commitment into green finance, a critical area under the current EU sustainability agenda.[76]

To better understand the scope and role of ESMA's authority, it is essential to consider the Meroni doctrine[77]. Indeed, this foundational legal principle from EU jurisprudence aims to restrict the delegation of discretionary powers that might create new policy.

Considering its recent expanding role in green finance and evaluating their compatibility with the Meroni doctrine, the chapter will focus on analysing ESMA's powers and practices. By examining ESMA's powers and evolution, it will be analysed how the Authority's involvement in sustainable finance aligns with its regulatory mandate and the objectives of the EU. Ultimately, the aim is to shed light on what role ESMA can play in filling the standardization and regulatory gap in sustainable finance and whether it has taken action to improve the situation. Therefore, this involves, more precisely, examining how ESMA addresses the challenges of interpreting and applying sustainability concepts in the financial sector, as well as evaluating the tools it has implemented to promote greater uniformity and transparency in investment practices.

Based on the words of the European Commission[78], European Agencies, such as ESMA, are set up to deal with specific and complex issues at European level and play a key role in promoting regulatory coherence in the areas of their competence.[79] This further means that they set common standards and

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[75] See Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

[76] A. Spendzharova, "Becoming a Powerful Regulator: The European Securities and Markets Authority (ESMA) in European Financial Sector Governance", 2017.

[77] E. Howell, "The Evolution of ESMA and Direct Supervision: Are there Implications for EU Supervisory Governance?", 2017.

[78] European Commission, "EU Agencies," https://ec.europa.eu/info/departments/communications-networks-content-and-technology_en

[79] J. F. Alberti, "The Agencies of the European Union", 2014; E. Chiti, "The emergence of a community administration: the case of European agencies", 2000.

guidelines that aim to reduce divergences between Member States and foster a uniform application of EU rules. In addition, they work to ensure the effectiveness of policies by providing in-depth analysis and technical advice to the EU institutions and Member States, and play a key role in transparency and accountability, ensuring that the European institutions operate in accordance with democratic principles and in the public interest. [80] Since we are navigating sustainable finance, we come closer to a specific category of EU Agencies, i.e. the European Supervisory Authorities, which are responsible for regulating and supervising EU financial markets. They play a primary role in ensuring the stability and integrity of these markets, while promoting long-term responsible financial practices that complement environmental, social and governance considerations.

As far as the analysis structure is concerned, the historical, legal, and economic context that led to the creation of the European agencies will be firstly examined. As the emergence of European agencies reflects the evolution of the European integration process and the expansion of the European Union's competences in a wide range of areas[81], whereby, with the increase in transnational challenges and the need to address complex and specialised issues, the European agencies have been established to provide an effective and coordinated response at European level, It is essential to consider and analyse the historical, legal and economic context in which they developed. With European integration Member States have been called upon to transpose and implement EU legislation into their national laws, and in many cases, this has required the establishment of national agencies in charge of applying and enforcing EU law at national level, acting as a bridge between EU law and national law, and ensuring consistency and uniformity in the application of European rules.

To better understand the scope and boundaries of ESMA's powers in regulating EU financial markets, the identification of the autonomous nature of the EU agencies and their limits is a further point of analysis that will be addressed in this work. By examining the autonomous nature of EU agencies and their legal framework, this shall provide insights into the extent to which ESMA can act independently and effectively in promoting sustainable finance while adhering to EU laws and regulations. This is reminiscent of the Meroni doctrine, which lays down the criteria for determining whether an administrative authority has a sufficient degree of autonomy to act independently of the executive, without having to be subject to direct control by a higher authority. The application of the Meroni doctrine is therefore particularly relevant for understanding the nature and role of EU agencies, as these entities are often invested with a significant degree of decision-making autonomy within their specific competences.

[80] J. F. Alberti, "The Agencies of the European Union", cit.
[81] J. F. Alberti, "The Agencies of the European Union", cit.

Finally, by delimiting ESMA's role in the regulation and standardisation of rules and practices, especially in the field of sustainable finance, ESMA's 2020 strategy on sustainable finance[82] will be analysed, looking at the objectives, initiatives and tools implemented to promote the convergence and transparency of sustainable investment practices in the EU. It will assess whether and how ESMA's strategy contributes to the convergence of sustainable investment practices in the European Union.

2.1 Conceptualising European Agencies: Evolution and Definition

The formal establishment of European agencies dates back to the 1970s, when the European Centre for the Development of Vocational Training (CEDEFOP)[83] and the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)[84] were established, but has accelerated significantly since the 1990s, when the European Environment Agency (EEA)[85] and the European Training Foundation (ETF)[86] were established. These early agencies were primarily tasked with providing technical support and advice, as well as conducting research and providing analysis on specific topics of expertise. This acceleration has been characterized by an unstoppable and partly unplanned spread to date, as it has occurred in response to emerging needs and new challenges that have arisen over time, rather than being the result of a specific strategy from the beginning. [87]

Since the 2000s, even more agencies were created than in the previous decade. This phenomenon has often been referred to as a process of "agencification"[88] compared to the proliferation of independent authorities observed in many industrialized states since the 1980s. Between 2002 and 2004, six major agencies were created: the European Food Safety Authority (EFSA)[89], the European Maritime Safety Agency (EMSA)[90], the European Aviation Safety Agency (EASA)[91], the European Network and Information Security Agency (ENISA)[92], the European Centre for Disease Prevention and Control

[82] ESMA22-105-1052.
[83] Council Regulation (EEC) No 337/75 of 10 February 1975 in OJ L 39, 13 February 1975.
[84] Council Regulation (EEC) No 1365/75 of 26 May 1975 OJ L 139, 30 May 1975.
[85] Council Regulation (EEC) No 1210/90 of 7 May 1990, OJ L 120, 11 May 1990.
[86] Council Regulation (EEC) No 1360/90 of 7 May 1990, OJ L 131, 23 May 1990.
[87] J. F. Alberti, "The Agencies of the European Union", cit.
[88] E. Chiti, “The emergence of a community administration: the case of European agencies”, cit.
[89] Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002, OJ L 31, 1 February 2002.
[90] Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002, OJ L 208, 5 August 2002.
[91] Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002, OJ L 240, 7 September 2002.
[92] Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004, OJ L 77, 13 March 2004.

(ECDC)[93] and the European Railway Agency (ERA)[94] . In all these cases, in addition to the tasks of research, analysis and data collection, and coordination of national administrations, there is also the explicit provision for consultancy activities at the service of the Commission and the other Community institutions.

The European Commission itself has contributed to this proliferation, seeking to institutionalize European agencies to emphasize their technical and scientific importance in decision-making and ensure their political neutrality in their day-to-day operations. [95] However, EU agencies have followed a different path than many national bodies created in line with the theories of New Public Management[96]. While national agencies tended to have strong and general-purpose regulatory powers over several areas, EU agencies focused on specific areas of competence and worked in a complementary way to the Commission and national governments. They have been generally designed as tools to respond to a new economic vision, introducing greater flexibility and adaptability in public policies and regulation, to promote economic efficiency and competitiveness. From an economic model strongly focused on the redistribution of wealth and macroeconomic stabilization, we have moved to one that bases much of its intervention in the economy on the regulation of markets, to combine public interests with the freedom of enterprise. [97] This change marked a departure from the traditional ministerial structure, introducing a new governance paradigm characterised by greater autonomy and specialisation of the agencies. Indeed, the classic ministerial structure had limitations, both from the point of view of competences, since its ability to manage problems that required specialized knowledge of the sector was limited, and from that of institutional credibility, since the ministries were perceived as institutions distant from citizens or influenced by particular political interests.

As far as the definition is concerned, the notion of agency varies greatly from one country to another, and each Member State has adopted the new ideas of economic policy in a way that is tailored to its specific needs and national contexts, implementing the same reform demands in its own legal system

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[93] Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004, OJ L 142 of 30 April 2004.
[94] Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004, OJ L 164 of 30 April 2004.
[95] Communication from the Commission COM (2002) 718 fin. of 11 December 2002, Framework of Regulatory Agencies, in particular p. 2, 6.
[96] C. Hood, "A public management for all season, in Public Administration", 1991; C. Hood e M. Jackson, "The New Public Management: a recipe for a disaster?", in D. Parker e J. Handmer (curated by), "Hazard Management and emergency planning: perspectives on Britain", 1992; R. Rhodes, "Understanding governance", 1997. New Public Management theories are a set of principles and approaches that aim to improve the efficiency and effectiveness of the public sector, taking cues from private sector management practices.
[97] See G. Majone, "From the positive to the Regulatory State: Causes and consequences of Changes in the Mode of Governance", 1997.

in different ways. There is no definition of "European Union agency", either in the Treaties or in secondary legislation. Moreover, they do not constitute institutions of the Union, as they are not included among the bodies expressly included in the list of art. 13(1) TEU, nor among those to whom the same article, in paragraph 4, confers advisory functions. With the subsequent entry into force of the Treaty of Lisbon, the term "bodies, offices and agencies" of the Union appears in several places in the Treaties, but under no circumstances are the agencies expressly provided for, nor is their function or the rules for their creation defined.

In several cases, the Commission tried to propose definitions for agencies as part of the negotiations to harmonise them. In the first attempt, with the 2002 Communication on the framework of regulatory agencies[98], the Commission introduced a distinction between executive agencies and regulatory agencies. The former were only marginally addressed, as a regulation was published shortly afterwards[99] which resolved the identification problems, although it did not offer an explicit definition of "executive agency". The latter have been described as bodies tasked with actively participating in the executive function, contributing to the regulation of an area. Subsequently, in 2005, the Commission proposed a specific definition for regulatory agencies, limited to bodies established under the former Community pillar, defining them as "autonomous legal entities established by the legislative authority to participate in the regulation of a sector at European level and in the implementation of a community policy".[100] In the end, it was agreed that there was no urgent need to have a uniform definition of "agency"; on the contrary, the European institutions undertook to standardise the name of several existing organisations through the common wording of "European Union agency for..." [101].

Nevertheless, the term 'agency' is used generically to include all bodies set up for the purpose of reforming public administration.[102] Similarly, in doctrine[103], the term has often been associated specifically with agencies created in the United Kingdom under the Next Steps program[104]. Based on

[98] Communication from the Commission of 11 December 2002, Framework for regulatory agencies, COM (2002) 718 fin, p. 3.

[99] Council Regulation (EC) No 58/2003 of 19 December 2002, OJ L 11, 16 January 2003.

[100] Draft Interinstitutional Agreement on the framework of regulatory agencies, presented by the Commission on 25 February 2005, COM (2005) 59 final.

[101] Joint Statement by the European Parliament, the Council of the European Union and the European Commission on decentralised agencies, 19 July 2012.

[102] Rapporto OCSE "Distributed Public Governance – agencies, authorities and other governamental bodies", Parigi, 2002, p. 33.

[103] Rapporto OCSE "Distributed Public Governance – agencies, authorities and other governamental bodies", cit., p. 31.

[104] Efficiency Unit, "Improving Management in Government: The Next Steps", (known as 'Rapporto Ibbs'), 1988; next steps agencies are bodies governed by public law, composed of public officials, employed by a ministry but kept distinct from it from a management and budgetary point of view, responsible for carrying out operational tasks for the implementation of policies chosen by the Ministry.

this generally accepted or widespread conception, the doctrine has developed an ideal model comprising three key concepts: structural disaggregation, autonomy in financial and budgetary management, and the contractualization of relations with other state institutions. This model suggests that agencies should be separated from ministries into separate entities, with their own legal personality and entrusted with operational or executive tasks. In addition, they should enjoy autonomy in the management of human and financial resources, as well as establish contractual relationships with the government to regulate the objectives to be achieved and the rewards awarded.

2.1.1 The Reasons Behind the Establishment of European Agencies

The establishment of the individual European agencies in the various sectors was motivated by specific needs and objectives arising from the expansion of the competences of the European Union. The process of European integration, as anticipated, has had a significant impact on the creation of agencies at national level, and for three main reasons. Firstly, it has helped to promote the so-called regulatory state model[105], encouraging competition between companies, and encouraging the abandonment of state monopolies and interventionist policies at European level. Secondly, the European Union has increased the presence of independent authorities in national legal systems, as Community legislation has required the establishment of such authorities in certain areas, such as the protection of personal data, electronic communications, energy, competition, and aviation safety, to ensure compliance with European rules. There are many examples in which EU law requires that it be implemented by bodies with certain characteristics of autonomy, independence, and technical competence. The principle of indirect administration under international law[106], for example, as also enshrined in Article 291(1) TFEU, underlines the preference for an indirect approach to the implementation of EU law through national bodies. Similarly, the principles of subsidiarity, proportionality and sincere cooperation highlight the need to respect the autonomy and competences of the Member States in the implementation of Union law. Finally, even in areas where EU law does not require the establishment of independent authorities, the presence of European agencies in the EU regulatory landscape has pushed national authorities to model themselves on a similar structure, creating operational networks involving social partners and national authorities to address transnational challenges more effectively. [107]

[105] G. Majone, "The Rise of the Regulatory State in Europe", in R. Baldwin, C. Scott, and C. Hood (eds), "A Reader on Regulation", 1998.
[106] TFEU, Article 291(1) of the Treaty on the Functioning of the European Union.
[107] E. Chiti, "European Agencies: Unity and Decentralization in Community Administrations", cit.

If we search for an overall reason behind the agencification process, it tends to link the creation of the European agencies precisely to that period in the 1970s and 1980s when the EU was faced with a series of new challenges and responsibilities, which made it necessary to set up specialised bodies to deal with specific issues in areas such as the environment, the environment energy, transportation, food security, and so on. [108] In particular, EU agencies were created to address situations in which the decision-making process among EU member states becomes stuck or unable to progress because of disagreements between them. Thus, by providing specialized skills, these agencies support European integration by developing harmonization and coordination practices among Member States.[109] Moreover, according to Shapiro[110], EU agencies were designed as a neo-functionalist experiment. They aimed to indirectly integrate Europe by creating Europe-wide communities of expertise, whose technical knowledge transcends intergovernmental politics.

In many countries, therefore, administrative bodies have been set up with the main purpose of meeting two basic needs. The first was to have the technical and scientific knowledge and skills necessary to regulate markets effectively, carrying out regulatory, monitoring, technical advice functions, providing independent expertise. The second was to ensure that market liberalisation policies were implemented efficiently without undue influence, and without favouring former public monopolistic enterprises and without outside interference, even in the presence of changes in government administration. By reducing political influence, the enforcement of EU law becomes less susceptible to variations. This enhances consistency in the implementation of EU law, as it allows EU institutions to delegate operational functions and focus on core tasks. The decision to establish EU agencies is thus based on a low degree of distributional conflict and the unpredictability of the distributional consequences of delegating authority to an EU body. Agencies give Member States collective agenda-setting power while transferring decision-making authority to the supranational level. This allows the Commission to formally enact agency recommendations, and the Parliament gains oversight powers over regulation by European agencies in sectors that were previously beyond their reach.

Other factors can also contribute to defining the political momentum for the establishment of EU agencies, with crises being the most powerful driving force so far. Crises, by disrupting the ordinary structures of institutional interests, create unpredictable conditions that necessitate significant institutional and regulatory reforms, and these reforms aim to restore or further develop the credibility

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[108] J. F. Alberti, "The Agencies of the European Union", cit.
[109] M. Simoncini, "Administrative Regulation Beyond the Non-Delegation Doctrine. A Study on EU Agencies", 2018.
[110] M Shapiro, "The Problems of Independent Agencies in the United States and the European Union", 1997.

of the European Union. [111] However, the establishment of EU agencies does not mean that national regulatory powers are replaced by a supranational administration. EU agencies are autonomous entities that help to mediate interests and resolve conflicts between Member States and EU institutions. However, they are not fully independent regulators because they lack the authority for independent adjudication and rulemaking.[112] One reason for this limitation is the legal framework, particularly the Meroni doctrine. According to Majone[113], the European administrative culture has developed within the constraints of the EU's political system. This, along with the legislative approach to integration, which relies on national enforcement of EU policies, prevents EU agencies from having broad regulatory tasks and responsibilities.

2.2 The European Supervisory Authorities: ESMA – Functions and Structure

In the context of the financial sector, agencification has led to a significant restructuring of the institutional framework of financial supervision at European level. [114] This change was marked by the establishment of the European Supervisory Authorities (ESAs) as part of the European System of Financial Supervision (ESFS). Previously, financial supervision was mainly the responsibility of national authorities, which could lead to regulatory discrepancies and difficulties in coordinating financial policies between Member States. However, during the 2008 financial crisis, it was seen that this decentralised structure was not sufficient to ensure financial stability, paving the way for the centralisation of regulatory powers at EU level. [115] Thus, to remedy this situation, three ESAs were set up to harmonise and coordinate financial supervision at European level and, namely, the European Banking Authority (EBA)[116], which is responsible for supervising and regulating the European banking sector; the European Securities and Markets Authority (ESMA)[117], in charge of supervising and regulating the EU's financial markets; and the European Insurance and Occupational Pensions

[111] G Majone, "The Credibility Crisis of Community Regulation", 2000.
[112] M. Simoncini, "Administrative Regulation Beyond the Non-Delegation Doctrine. A Study on EU Agencies", cit.
[113] G. Majone, "The New European Agencies", cit.
[114] I. Bajakić & M. Božina Beroš, "Examining agency governance in the European Union financial sector – a case-study of the European Securities and Markets Authority", 2017.
[115] C. Wyplosz, "The issue of centralisation-decentralisation", 2015.
[116] Regulation No 1093/2010 of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, henceforth EBA Regulation.
[117] Regulation No 10935/2010 of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJEC, L.311/84 of 15 December 2010, henceforth ESMA Regulation.

Authority (EIOPA)[118], which is responsible for supervising and regulating the insurance and occupational pensions sector in the EU. The legal basis upon which the ESAs were established is Article 114 TFEU, which is generally used as the main legal basis for internal market harmonisation or approximation of laws.

The ESAs have been fully operational since January 2011. Today, the European Financial Market Supervisory Authorities represent the most relevant case of participation in the regulatory function. Since, among the European Financial Market Supervisory Authorities, the European Securities and Markets Authority (ESMA) stands out as the most powerful agencies, in the following sections, we will delve into an analysis of ESMA's functions, structure, and limits, assessing the extent to which ESMA operates autonomously and effectively in fulfilling its regulatory mandate.

2.2.1 ESMA Functions

Regulation 1095/2010[119] constitutes the legal basis that sets out ESMA's tasks and objectives. ESMA works closely with national supervisory authorities, aiming to harmonise the application of financial regulations across the EU. The primary objectives are to improve the functioning and transparency of the internal market through effective regulation and supervision, to improve supervisory coordination and to prevent regulatory arbitrage, and to ensure stability by assessing different risks in a timely manner (Article 1(5)). To this end, although it does not have general regulatory powers to enforce directly vis-à-vis the Member States, it actively contributes to the development of common regulatory and supervisory practices, providing opinions to the European Union institutions and drawing up guidelines, recommendations, guidelines and draft regulatory and implementing technical standards.[120] Among the number of significant tasks, the power to take individual decisions in emergency situations, to investigate and address breaches of EU law, to assist in cross-border disputes between national regulatory authorities (NRAs) and to supervise credit rating agencies are certainly noteworthy.

Finally, as anticipated, ESMA plays an important role in facilitating the connection between national supervisory authorities and the bodies responsible for the drafting and interpretation of international

[118] Regulation No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, henceforth EIOPA Regulation.

[119] Regulation (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), mending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, (OJ L 331, 15.12.2010, p. 84).

[120] Article 8, paragraph 1, European Regulation 1095/2010.

accounting standards. ESMA has a role that we can define as "interpreting" international accounting standards, which means that it can send requests for interpretation to IFRIC[121] on issues that are problematic or require additional clarification. In addition, ESMA prepares letters of comment on IFRIC's drafts, proposing amendments and expressing its opinion on various issues related to the interpretation of international accounting standards.

Finally, based on Regulation no. 513/2011[122], the Authority is qualified as the sole supervisory institution for rating agencies. The legal basis is once again Art. 114 TFEU, the same one previously used to outline the European supervisory system with shared responsibilities between the national and European levels, according to the logic of subsidiarity. Similarly, ESMA has been granted similar supervisory powers for trade repositories. Under Regulation No. 648/2012 (European Market Infrastructure Regulation - EMIR)[123], ESMA has been empowered to supervise trade repositories. Trade repositories are entities that collect and maintain the records of derivatives contracts, as required by EMIR. In addition to its supervisory role over rating agencies and trade repositories, ESMA's powers have been extended to the supervision of external reviewers in EU bonds by Regulation No. 2023/2631[124]. This regulation empowers ESMA to oversee and supervise external reviewers of EU bonds to ensure compliance with relevant regulations and standards; to assess and monitor the eligibility of external reviewers and approve their activities within the EU; and enforce sanctions and penalties on external reviewers for any breaches of regulations.

2.2.2 ESMA Structure

Currently, ESMA has 308 employees and a strong governance structure which includes several bodies. First, a Board of Supervisors (BoS), which is responsible for guiding and directing the work of the Authority, as well as issuing opinions, reports and advice to the EU institutions, and a Management Board (MB), which ensures that the Authority carries out its mission in accordance with the ESMA Regulation. There is also a chairperson, representing the Authority, and an Executive Director, who is responsible for the day-to-day operation, including staff matters. Finally, there is a

[121] The IFRIC (International Financial Reporting Interpretations Committee) is a body that is part of the IASC foundation that has the task of monitoring the correct application of the principles by providing additional interpretations that can facilitate their understanding.
[122] Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies.
[123] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties, and trade repositories.
[124] Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.

Board of Appeal, which is responsible for advising ESMA on the implementation of its powers. The Board of Supervisors is made up of the Chairs of the regulatory authorities of the 27 Member States of the Union, as well as observers (without voting rights) from Iceland, Liechtenstein, Norway, and others appointed by the European Commission. A representative of the European Banking Authority, a member of the European Insurance and Occupational Pensions Authority, and a member of the European System of Financial Supervision are also members. All ESMA members, whether they have different roles, shall operate without being influenced by any EU country or other institutions, because their main objective is to protect the interests of the European Union. This setup is designed to protect the interests of the European Union and ensure that ESMA operates independently and impartially. However, potential conflicts of interest may arise due to the dual role of BoS members, as they may have obligations to their respective national authorities as well as to ESMA. The presence of representatives from Member States on the management boards of EU agencies serves as a link to tailor the measures of these agencies. This can help in finding more sustainable regulatory solutions that take into account the diversification of national contexts.[125] However, the effectiveness of these vertical accountability mechanisms, which connect members of the management boards with corresponding national institutions, is not entirely clear. Empirical research has not provided conclusive findings on whether these mechanisms have de jure (legal) or de facto (in practice) effects.[126] The presence of national representatives on the management boards can also hinder EU agencies' autonomy, leading to delays in the exercise of agencies' powers in favour of more concerted measures, which may not be as effective. This is because decisions may be influenced by the diverse interests and priorities of Member States.

ESMA's varied structure allows the agency to carry out its functions through a series of cross-checks, i.e. involving different parts of its organisation, before the programmes are published. In addition, thanks to the use of external staff, ESMA can consider multiple points of view. This approach promotes investor protection and ensures an effective and efficient accounting enforcement system.

[125] M. Simoncini, "EU Agencies in the Internal Market: A Constitutional Challenge for EU Law", 2018.
[126] M. Buess, "European Union agencies and their management boards: an assessment of accountability and democratic legitimacy", 2015.

2.3 The Meroni Doctrine and its Constraints on ESMA's Powers

Under EU law, the assignment of regulatory powers to European agencies is subject to constitutional restrictions stemming from the so-called Meroni doctrine.[127] This doctrine originates from a case dating back to 1958, which establishes limits and conditions for the delegation of administrative powers by higher authorities to subordinate entities. The doctrine has been developed in two distinct rulings of the CJEU: Meroni and Romano[128]. The latter has consolidated the Meroni doctrine, stating that administrative bodies not recognized in the Treaties of the European Union cannot issue acts of a binding normative nature, on the contrary, such bodies can only provide not legally binding recommendations or guidelines. This means that only the institutions officially recognised in the Treaties can take legally binding decisions within the framework of the European Union, thus ensuring that there is coherence and legitimacy in the actions taken by administrative authorities.

The issue of delegating certain tasks to European agencies is closely linked to the Meroni doctrine, but also to the concept of institutional balance and the principle of conferral, on which the doctrine itself is based. Initially, delegation was prohibited as any conferral of powers could jeopardise the balance of power between the institutions of the European Union.[129] Furthermore, article 2 TEU, which states that the Union is founded, among other values, on democracy, and Article 10 TEU, which states that the functioning of the Union is based on representative democracy, reinforce the importance of ensuring that decisions within the EU framework are made by institutions with democratic legitimacy. By restricting the ability of non-institutional bodies to issue legally binding decisions, the Meroni doctrine ensures that decisions within the EU are made by institutions representing the democratic will of the EU citizens. This, overall, raises the question of how the delegation of certain tasks from the Treaty-based European institutions to the European agencies is democratically legitimate.

2.3.1 The case Meroni v. High Authority

During the 1950s, groups known as "ferrous scrap equalization bodies" were established within the European Coal and Steel Community (ECSC) with the aim of controlling the prices of ferrous scrap metal. These bodies were tasked with keeping the prices of these materials low. However, over time, it was found that these bodies were unable to carry out their task of price regulation effectively.

[127] C 9-56, Meroni & Co., Industrie Metallurgiche, S.p.a v. High Authority of the European Coal and Steel Community,1958.
[128] C-98/80 Romano, 1981.
[129] K. Lenaerts, “Regulating the regulatory process: ‘delegation of powers’ in the European Community”, 1993.

Therefore, the responsible higher authority, to ensure more effective control over ferrous scrap prices, decided to set up a mandatory system for all companies involved in the ferrous scrap market, which was to be managed by the existing agencies in Brussels, albeit under the strict supervision of a high authority.

In this context, Meroni, a company involved in the ferrous scrap market, decided to challenge the decision of the High Authority which was adopted in application of Decisions Nos 22/54 of 26 March 1954 and 14/55 of 26 March 1955 establishing machinery for the equalization of ferrous scrap imported from third countries. As a result, the Court of Justice of the European Union (CJEU) examined whether the High Authority had correctly delegated administrative powers to the Brussels agencies and, if so, under what circumstances such delegation can be considered legitimate.

In the above-mentioned case of Meroni v. High Authority[130], two important principles were laid down to be respected in the case of delegation of powers. First, the entity giving the powers cannot give more powers than it has. This means that the delegating entity cannot transfer authority that it does not possess or that exceeds the limits of its competence. Secondly, the delegation must be decided explicitly, not taken for granted. In other words, the delegating entity must make an explicit and clear decision regarding the delegation of powers and cannot presume that this is implicitly permitted or required. In addition, the Court distinguished between two types of powers that can be delegated: "clearly defined executive powers", the exercise of which can be reviewed based on objective criteria set by the delegator, and "discretionary powers", which entails greater freedom of assessment. Thus, the Court concluded that the first type is fine because it is specific and can be revised. The second type, which involves a wide range of discretion, is problematic because it transfers responsibility.

These constraints imposed by the EU Court of Justice on delegation, known as the Meroni doctrine, have had a significant impact on the definition and application of the powers of European agencies[131]. Indeed, by establishing the rules on how one entity can delegate powers to another, the Court limited the ability of European agencies to exercise regulatory powers, providing that the delegation of competences should be limited to implementing tasks, excluding the possibility of granting regulatory powers to entities lacking democratic legitimacy and a solid legal basis in the EU Treaties. [132] It follows that it is the institutional balance that must be safeguarded. A delegation of discretionary

[130] 9/56 and 10/56 Meroni & Co., Metallurgical Industries, SAS and High Authority of the European Coal and Steel Community, cit.
[131] S. Griller, A. Orator, “Everything under control? The "way forward" for European agencies in the footsteps of the Meroni doctrine”, 2010.
[132] M. Simoncini, “The quasi-regulatory powers of European agencies: the decisions of the European Securities and Markets Authority (ESMA)”, 2020.

powers to bodies other than those established by the Treaty to exercise them or to supervise the exercise of those powers within the framework of their respective powers would infringe those safeguards.

In the light of the above, the principle laid down in the Meroni case can be summarised as follows: provisions conferring specific powers on the Community may constitute a sufficient legal basis for the creation of bodies with legal personality, provided that: (a) the establishment of such bodies is necessary to achieve the objectives for which the powers have been conferred on the Community; (b) no tasks are delegated which require an effective margin of discretion.

2.3.2 The application of the Meroni Doctrine on ESMA

The application of the Meroni doctrine in the case of ESMA has helped to define the limits and conditions under which the agency can exercise its regulatory powers. In particular, ESMA must exercise its powers only within a specific regulatory framework that circumscribes the conditions under which it can be exercised. This implies that the agency must necessarily act in accordance with the rules and principles laid down in the Treaties and laws of the European Union and must not encroach on the adoption of political choices reserved to the legislator.

Consequently to the Meroni doctrine, the Court of Justice of the European Union (CJEU) has recognised ESMA's power to intervene in the functioning of the financial market in situations that may pose a threat to the proper functioning and integrity of the markets, as well as to the stability of the Union's financial system.[133] However, it also recognised the possibility of judicial remedies against ESMA's general acts, thereby providing a mechanism through which interested parties can challenge ESMA's decisions before the competent judicial authorities. This ensures adequate judicial review and protection over ESMA's exercise of regulatory powers, ensuring that its actions comply with the principles of legality and proportionality.

Within the boundaries established by the Meroni doctrine, ESMA has been recognised as an agency with significant administrative powers, such as the supervision of short selling, the adoption of recommendations and guidelines for financial sector operators, and the participation in the non-legislative regulatory activity of the European Commission which, although they do not have an immediate legal regulatory nature, or although they do not have the character of binding or coercive

[133] M. Simoncini, "The quasi-regulatory powers of European agencies: the decisions of the European Securities and Markets Authority (ESMA)", cit.

legal rules or regulations, they influence the functioning of financial markets substantially, giving them a key role in market regulation.

The reform of the Financial Market Supervisory Authorities, enshrined in Regulation 2019/2175/EU[134], has further strengthened ESMA's powers, giving it an increasingly central role in the regulation and supervision of the European financial sector. In essence, ESMA's decisions and activities in the areas mentioned above enable the agency to significantly influence the regulation and functioning of financial markets, shaping the European financial landscape.
The innovations described suggest a relaxation of the Meroni doctrine[135], certainly made possible by the identification of guarantees in the delegation of powers that entail a certain degree of discretion. This means that, while maintaining the principle of non-delegation of regulatory powers to bodies lacking democratic legitimacy, it recognises the need to grant a margin of discretion to ensure the effective exercise of administrative responsibilities.

The recognition of ESMA's role as a regulator of financial markets has been further consolidated and confirmed by the case of United Kingdom v. European Parliament and Council of the European Union[136], also known as ESMA Short Selling Case.
The ESMA Short Selling case concerned ESMA's ability to intervene in the financial market to settle short selling of debt securities, i.e. financial transactions in which an investor sells a security that he does not yet own, hoping to be able to buy it later at a lower price and thus make a profit. However, the issue raised in the case did not directly relate to the short selling itself, but rather to the question of ESMA's competence and powers in adopting such regulatory measures.

In response to that question, the powers exercised by ESMA were considered to be compatible with the system of the Treaties and the principle of institutional balance because they were exercised within a precise regulatory framework which circumscribes the conditions under which they can be exercised for the adoption of technically based decisions. Moreover, by the Treaty, by the Treaty of Lisbon, the introduction of safeguards to ensure the review of administrative liabilities requiring a certain margin

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[134] Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds.
[135] J. Pelkmans e M. Simoncini, “Mellowing Meroni: How ESMA can help build the single market”, 2014.
[136] C-270/12, United Kingdom v European Parliament and Council of the European Union.

of discretion, the Court found in Articles 263 and 277 TFEU[137] in the field of judicial actions sufficient reasons to make ESMA's activity compatible with the system of the Treaties. Traditionally, EU agencies cooperate with Member States and EU institutions by providing technical advice on regulatory decisions. However, the intensity of their powers has increased in recent years, challenging their traditional role under EU law, and paving the way for potential changes in the future. As EU agencies' powers have strengthened, new scenarios for their development have emerged. This includes the possibility of them becoming more autonomous bodies with new competences. Enhanced participation in the rule-making process, stronger standardization practices, and selected regulatory powers have changed the nature of EU agencies. This evolution may lead to them having a wider scope and potentially becoming more involved in independent regulation.

The ESMA short selling case and subsequent developments, such as the Banco Popular cases, have highlighted the evolving nature, still nowadays, of the Meroni doctrine and the recognition of EU agencies' constitutional status within the EU legal framework. This evolution underscores the autonomous development of the EU legal order while also emphasizing the need for accountability and legitimacy in the exercise of EU agencies' powers. The ESMA case, indeed, demonstrated that while the Court of Justice of the European Union (CJEU) didn't entirely dismiss the Meroni doctrine, it softened its severity. Subsequently, the ruling of the Banco Popular case further defined the scope and limitations of EU agencies' powers. The cases demonstrated the willingness of the EU courts to uphold the decisions of EU agencies, provided they act within the boundaries of their mandate and respect fundamental rights.[138] The evolution of the EU's constitutional framework allows for the development of supranational administrative organizations. This development is not solely at the discretion of the Member States but is facilitated by the EU legislator's functional autonomy, within the boundaries set by the Treaties.[139]

[137] Article 263 allows proceedings to be brought before the Court of Justice of the European Union to challenge the legality of legal acts of the European Union (EU); Article 277 TFEU is the expression of a general principle which guarantees any party the right to challenge, with a view to obtaining the annulment of a decision of direct and individual concern to it, the validity of previous acts of the Community institutions, which, although not in the form of a regulation, constitute the legal basis of the contested decision, if the party was not entitled to bring, under Article 263 TFEU, an action brought against those acts, the consequences of which it thus suffers without being able to seek their annulment.
[138] M. Simoncini, "Il meccanismo di risoluzione unico: il caso del Banco Popular", 2023.
[139] M. Simoncini, "EU Agencies in the Internal Market: A Constitutional Challenge for EU Law", cit.

2.4 ESMA's Role in Convergence: A look at the Sustainable Finance Strategy

ESMA has the potential, stemming from EU legislation, to play a key role in promoting financial convergence within the EU through the harmonisation of financial supervision regulations and practices across Member States. This means that ESMA works to ensure that the rules and procedures applied in the various European financial markets are consistent and compatible with each other.

As part of this process, called as "accounting enforcement"[140], its task is to develop regulatory guidelines for individual national enforcers and to propose accounting rules or additions to existing ones. This task is useful for creating an integrated and uniform financial environment in which market participants can operate without cross-border barriers.

In other words, ESMA promotes convergence by establishing guidelines and recommendations for national regulatory authorities, facilitating coordination and exchange of information between them, and contributing to the strengthening of cooperation between Member States in financial supervision.[141] These documents, guidelines, recommendations, and technical standards are published on its website[142]. In this way, the national bodies responsible for the enforcement of accounting regulations should follow and implement all the content of the guidance issued by ESMA. Indeed, according to paragraphs 37 and 38 of the "Guidelines on enforcement of financial information"[143], the supervisory system is managed by the individual Member State establishing national authorities, but these authorities cooperate closely with ESMA.

In addition to financial convergence, ESMA plays an active role in promoting sustainable finance within the EU. Since the sustainable finance objective includes the continuous integration of sustainability-related factors and supervisory and risk control issues, ESMA is committed to ensure that investments comply with sustainability principles. To this end, ESMA has developed a sustainable finance strategy[144] that aims to integrate ESG criteria into the decision-making processes of investors and financial institutions. This strategy includes guidelines on sustainable investment practices, as well as monitoring and evaluating financial assets to ensure compliance with ESG standards. Giving a clear understanding of this strategy, can therefore, be seen as useful, considering the purpose of this study to evaluate the challenges regarding the lack of standardisation of the concept of sustainability in finance and the lack of transparency in ESG ratings, and the measures put in place by the European Security and Markets Authority to address them.

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[140] A. Quagli, P. Ramassa, "The enforcement of accounting information", 2018.
[141] [HYPERLINK "https://www.esrb.europa.eu/shared/pdf/de_larosiere_report_it.pdf"]
[142] https://www.esma.europa.eu/
[143] Esma32-50-218.
[144] ESMA22-105-1052 https://www.esma.europa.eu/document/strategy-sustainable-finance

2.4.1 ESMA's Regulatory and Supervisory Enhancements

The European Securities and Markets Authority (ESMA) possesses delegated powers to draft technical standards and issue guidelines and recommendations to ensure consistent interpretation and application of EU law. According to Griller and Orator, which have developed a taxonomy to classify EU agencies based on the European Commission's framework[145], which sorts agencies according to the nature and extent of the powers they wield. They identify four distinct types of agencies: ordinary agencies; pre-decision-making agencies; genuine decision-making agencies, in which the ESAs, and thus ESMA, are covered; and rule-making agencies. This classification system categorizes agencies based on the specific types and scopes of the regulatory tools and authority they possess, providing a clear structure to understand the varying levels of influence and operational capacity across different EU regulatory bodies. Moreover, using the Griller and Orator perspective[146], ESMA's powers can be categorized into functions aligned with three major functional roles: regulatory functions, supervisory functions, and efforts towards transparency and standardization.

As far as the regulatory functions are concerned, ESMA is responsible for developing regulatory and implementing technical standards, critical for the uniform application of EU law. This involves formulating guidelines and recommendations to harmonize financial supervision requirements among Member States. Guidelines and recommendations are not legally binding. However, it should be emphasised that they produce a standardisation effect.[147] For example, the guidelines on enforcement concerning published supervision information assess whether national authorities meet ESMA's expectations. Moreover, it involves issuing guidelines and opinions to foster supervisory convergence, geared towards assessing sustainability considerations. These directives, indeed, ensure that sustainability risks are uniformly assessed and managed across the EU.

As far as the supervisory functions are concerned, with its extensive supervisory powers, ESMA enhances financial oversight by direct supervision, gaining supervisory powers over entities like credit rating agencies[148] and trade repositories[149], moving from national-based to a centralized European framework; and enhancing coordination among national authorities to eliminate cross-

[145] See COM (2002)718, para 2; COM (2005)59, para 7.2.

[146] S. Griller, A. Orator, "Everything under control? The "way forward" for European agencies in the footsteps of the Meroni doctrine", cit.

[147] M. Simoncini, Administrative Regulation Beyond the Non-Delegation Doctrine. A Study on EU Agencies, Hart Publishing, cit.

[148] See Regulation 513/2011/EU of the European Parliament and the Council of 11 May 2011 amending Regulation (EC) 1060/2009 on credit rating agencies [2011] OJ L 145/30.

[149] See Regulation 648/2012/EU of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, art 55 ff [2012] OJ L 201/1.

border barriers and improve supervision. ESMA also conducts EU-wide stress tests and scenario analyses to assess financial entities' resilience in a transitional economy.
Finally, ESMA addresses challenges in aligning sustainability concepts with finance by enforcing international financial reporting standards and ensuring accurate and reliable corporate reporting to maintain investor trust and market integrity, and enhancing transparency and reliability of Environmental, Social, and Governance (ESG) ratings, crucial for informed investor decisions.

The categorization of ESMA's new powers illustrates, therefore, an enhancement of its regulatory scope, particularly in integrating sustainability into financial oversight. These powers shall facilitate a more unified regulatory approach across the EU, aiming to foster a stable, transparent, and sustainable financial system. This adaptive regulatory expansion supports ESMA's role in aligning European financial markets with broader socio-economic goals, including climate change mitigation and sustainable development. The subsequent section of this analysis will focus specifically on ESMA's strategic initiatives under its sustainable finance agenda, examining in detail how the Authority's expanded regulatory and supervisory capabilities are being utilized to foster a robust and sustainable financial system.

2.4.2 ESMA 2020 Sustainable Finance Strategy

In line with the revision of the ESMA Regulation[150], which gives it additional responsibilities and tasks in the area of sustainable finance, ESMA plays a role in ensuring that the information provided to investors is accurate, comprehensive and transparent, thus helping to create a more sustainable and responsible investment environment. This means, first and foremost, taking ESG factors into account in all its activities and monitoring and assessing both market developments and ESG-related risks.

By recognising the importance of giving legal dignity to sustainable investments that have a positive impact on both the environment and society, ESMA has published a strategic plan aimed at providing greater clarity and transparency in the legal and regulatory framework of sustainable finance. This strategy, especially considering the revisions to the ESMA Regulation, expands ESMA's responsibilities and showcases its commitment to integrating Environmental, Social, and Governance (ESG) factors comprehensively within its regulatory framework. Examining this strategy will therefore be useful to understand which actions the agency has fixed and taken to set clear and standardized guidelines to promote and ensure the integration of the ESG criteria in the EU financial sector.

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[150] Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019, cit.

The Sustainable Finance Strategy was published on 06/02/2020. First, the strategy, by including the adoption of guidelines on sustainable investment practices, aims to contribute to the standardization of information on sustainable investments, and thus, providing investors and financial institutions with a common framework for assessing and understanding sustainability-related risks and opportunities. As also highlighted in the technical reports sent by ESMA to the European Commission for the integration of sustainability factors and risks in the MiFID II, AIFM and UCITS directives[151], the aim of the agency is to identify, by the two-year period 2020-2021, harmonized technical standards, as well as transparency and due diligence obligations to prevent the risk that certain projects, presented to the market as sustainable, do not actually have the relevant characteristics.

Among ESMA's main priorities, it intends to complete the regulatory framework on transparency obligations through the Information Regulation[152], working with other authorities such as the EBA and EIOPA to develop joint technical standards.

Thus, starting in 2020, ESMA has intended to implement the Guidelines on Credit Rating Transparency. [153] This means that ESMA directly oversees the application of these guidelines by credit rating agencies to ensure greater transparency and consistency in credit assessment processes. Subsequently, starting from 2022, ESMA has implemented the new climate transition and decarbonisation benchmarks provided for by EU Regulation 2019/2089[154]. These indices are used to assess financial instruments subject to ESMA's direct supervision, providing a more complete picture of financial sustainability.

Moreover, the strategy includes the addition of a chapter dedicated to sustainable finance in ESMA's Trends, Risks and Vulnerabilities Report, with a focus on indicators related to green bonds, ESG investments and emissions trading. By integrating a chapter dedicated to sustainable finance, ESMA further aimed to promote transparency and to provide comprehensive information on developments in the field of financial sustainability, thus contributing to better decision-making by investors and financial institutions.

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[151] ESMA, "Final Report, ESMA technical advice to the European Commission on integrating sustainability risks and factors in MiFID II", 30 Aprile 2019; e ESMA, "Final Report, ESMA technical advice to the European Commission on integrating sustainability risks and factors in the UCITS directive and AIFMD", 30 Aprile 2019.

[152] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on disclosure of sustainable investment activities and the sustainability performance of investors. This regulation, also known as the "SFDR" (Sustainable Finance Disclosure Regulation), sets out provisions on the information that financial sector operators must provide in relation to the integration of environmental, social and governance (ESG) factors into their investment activities. The full text of the regulation is available on the official website of the European Union at: https://eur-lex.europa.eu/eli/reg/2019/2088/oj

[153] ESMA33-9-320, "Final Report Guidelines on Disclosure Requirements Applicable to Credit Rating Agencies", 18 luglio 2019.

[154] Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.

Finally, ESMA has established a Coordination Network on Sustainability (CNS), composed of experts from national regulatory and financial supervisory authorities and ESMA staff, supported by a stakeholder advisory working group. These experts are individuals with specific expertise in the field of financial analysis. The aim of this network is to facilitate the exchange of knowledge, the development of coherent guidelines and practices, and the promotion of effective and cohesive oversight of sustainable finance in the European Union.

In light of the above, ESMA has demonstrated its commitment to incorporating sustainability within its regulatory purview. The agency aimed to improve the transparency and reliability of information in sustainable finance, ensuring that financial products marketed as sustainable genuinely meet stringent environmental and social standards, to mitigate risks associated with mislabelled sustainable investments. Additionally, ESMA has seek to enhance convergence of supervisory practices across EU member states, ensuring consistent application of sustainability standards. The agency also aimed to increase consideration of sustainability-related risks for investors, ensuring that investment decisions adequately reflect potential environmental and social impacts. Furthermore, ESMA focused on improving coordination among national regulators to foster a cohesive approach to sustainable finance and enhance market integrity.

Consequently, the subsequent chapter will take a critical lens to ESMA's strategic initiatives, focusing on evaluating the implementation and effectiveness of these measures. The aim will be to assess whether ESMA’s actions have helped to solve challenges in the integration of sustainability, and to determine the extent to which this strategy has been implemented and has achieved the intended outcomes in practice.

Chapter 3 - Analysis of the Progress of the Sustainable Finance Strategy and ESMA's Actions: Achievements, Challenges and Future Directions

The European Securities and Markets Authority (ESMA) has been working, in particular with its Sustainable Finance Strategy launched in 2020, in setting several key objectives to improve transparency, standardisation of information and the effectiveness of supervision of sustainability-related risks and opportunities in European financial markets.

Building upon the role and functions of ESMA, this chapter aims to evaluate how the strategies and guidelines adopted by ESMA have contributed to the standardisation and transparency of sustainable finance.

Based on the European Commission reports[155] and the 2022 European Court of Auditors (ECA) special report[156], I will examine how ESMA has exercised its supervisory and regulatory powers to promote a more sustainable financial framework.

The Commission report on the operation of the European Supervisory Authorities (ESAs)[157] has been indeed prepared with the aim of providing a detailed assessment of the functioning and performance of the European Supervisory Authorities (ESAs). The report examines specific initiatives taken by ESMA to improve transparency in financial markets, such as the publication of annual reports on the costs and performance of retail investment products.

Similarly, the Court of Auditors' special report of 04/2022[158] examines the activities of the European Securities and Markets Authority (ESMA), with a focus on the effectiveness of ESMA's tools in promoting regulatory and supervisory convergence in the EU, improving the transparency of investment funds, and standardising the collection and reporting of sustainability-related information.

3.1 State of Play of the Sustainable Finance Strategy: ESMA's Work

A few years after the introduction of the Sustainable Finance Strategy, it is useful and essential to consider the progress of the set objectives, identifying the measures implemented and analysing the challenges still present. This section aims to evaluate the measures implemented by ESMA,

[155] Report From the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), 2022.
[156] Court of Auditors Special Report, "Investment funds: EU actions have not yet generated a true single market for investors' benefit", 04/2022.
[157] Report From the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), cit.
[158] Court of Auditors Special Report, "Investment funds: EU actions have not yet generated a true single market for investors' benefit", cit.

highlighting the successes achieved, and analysing the persistent challenges. Initially, the evaluation will provide an overview of the key actions and initiatives undertaken by ESMA to integrate sustainability into financial activities. Subsequently, it will delve into specific critical issues that have surfaced, including regulatory gaps, enforcement challenges, and discrepancies in ESG reporting standards. By conducting this analysis, the section seeks to achieve two main goals. First, to assess the impact of ESMA's actions in promoting sustainable finance; and second, to identify areas that require further enhancement.

Overall, we can acknowledge that ESMA has made significant progress in developing guidelines to provide a common framework for assessing and understanding sustainability-related risks and opportunities, albeit with some challenges. [159] In particular, ESMA has published technical documents for the integration of ESG factors into the MiFID II, [160]AIFM[161] and UCITS[162] directives, aimed at improving the transparency and consistency of ESG information. However, as noted in the Court of Auditors special report, divergences in ESG reporting practices persist across different Member States and sectors, hampering full standardisation of information. These divergences can, indeed, make it difficult for investors to make clear and informed comparisons between different sustainable investment opportunities.

Secondly, as ESMA has worked with the European Commission to integrate ESG factors into existing directives, promoting transparency, and preventing the risk of greenwashing, this interaction has included the identification of harmonised technical standards and transparency and due diligence obligations by the period 2020-2021.[163] The aim is to ensure that financial products presented as sustainable met ESG criteria. ESMA has introduced guidelines on the integration of ESG factors into investment and risk management processes. One notable initiative, in this regard, is ESMA's role in promoting green bonds, as highlighted by the Commission’s report. ESMA has contributed to the development of the EU Green Bond Standard, which provides a robust framework for issuers to label their bonds as green. This standard ensures transparency and uniformity in green bond issuance,

[159] H. Stolowy, and L. Paugam, “Sustainability Reporting: Is Convergence Possible?”, 2023.
[160] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast).
[161] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
[162] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).
[163] COM (2021) 798 final FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Supervisory Data Strategy in the EU Financial Services Sector.

aiming to increase investor confidence and market integrity. Additionally, the Sustainable Finance Disclosure Regulation (SFDR)[164], which ESMA oversees, requires financial market participants to disclose how they integrate ESG risks in their decision-making processes, enhancing transparency for investors. However, despite these efforts, we will see that the adoption and implementation of these standards vary across Member States, creating inconsistency and variability in the application of ESG regulations, which can undermine the overall effectiveness of the strategy and investor confidence in sustainable financial products.

Thirdly, ESMA has worked for the inclusion of a chapter dedicated to sustainable finance in its reports on trends, risks, and vulnerabilities[165]. These annual reports represent crucial tools for tracking progress and identifying areas for improvement, however, the lack of up-to-date data reduces the relevance of these reports to some extent, and access to timely and accurate data remains a persistent challenge.[166] As proved by the Court of Auditors, the ability of ESMA to provide a current and relevant view of sustainability-related risks and opportunities is limited by the quality and timeliness of the available data.

Finally, convergence of supervisory practices is another issue that deserves attention. Despite efforts to develop common guidelines and standards, differences in the way they are applied and supervised across Member States can create a level playing field in financial supervision. This hampers the overall effectiveness of regulatory measures and undermines ESMA's ability to ensure consistent and uniform supervision of the sustainable financial market across the EU.

In summary, the standardisation of ESG reporting practices, consistency in the application of regulations across Member States, the improvement of data quality and timeliness, and the convergence of supervisory practices are areas that need further attention, and that will be explored in more detail in the following paragraphs.

[164] 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.
[165] https://www.esma.europa.eu/esmas-activities/risk-analysis/risk-monitoring
[166] D. Varani, D. Lunetta, D. Di Martino, "ESG Regulation: state of the art and future prospects", 2022.

3.2 Uniformity of Supervision and Standardization: ESMA's Instrument Limitation

One of the main objectives of the Sustainable Finance Strategy has been to promote common supervisory practices that consider environmental, social and governance (ESG) risks. Thus, ESMA has worked in recent years to establish a framework that promotes a common supervisory culture, which is key to ensuring consistency across all National Competent Authorities (NCAs). Supervisory convergence can be considered not as a "single approach", but rather as a uniform and effective application of the same rules for similar risks. To better explain, this means that supervisory convergence doesn't imply using just one method or technique universally, instead, it emphasizes the coherent and effective implementation of common principles, rules, and practices across different supervisory bodies to handle similar risks in a comparable manner.[167] The overall objective is to seek comparable regulatory and supervisory outcomes. The de Larosière report already highlighted the importance of convergence for EU financial markets[168], and subsequently in 2014 the International Monetary Fund (IMF), the Commission and the Parliament published reports on the functioning of the European system of financial supervision. These reports recognised ESMA's contribution to the creation of a single European rulebook, although it was suggested that more attention should be paid to supervisory convergence.[169] The Commission also underlined the need for more effective and uniform supervision to exclude the possibility of regulatory arbitrage and that ESMA, in this regard, should play a key role in promoting the integration of capital markets.[170]

If we analyse ESMA's work considering this objective, and in particular in the period following the publication of the Sustainable Finance Strategy, it emerges that the Authority has intensified its activity in favour of convergence, creating a framework that allows it to adopt a more risk-based approach. A significant development in this regard is the adoption and implementation of a "heat map" of risks and vulnerabilities in the Strategy.[171] This tool has enabled ESMA identifying key areas and sectors that require more focused, risk-based supervision, despite some limitations related to the reporting of non-uniform policy applications and divergent practices among Member States. By highlighting these critical areas, ESMA allocates its resources more effectively, ensuring that its supervisory efforts are both targeted and efficient.[172]

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[167] J. M. Van Straalen, "Supervisory convergence on the EU Capital Markets Union: a new incentive for strengthening the supervisory architecture", 2017.
[168] Report of the High-Level Expert Group on Financial Supervision in the EU, 25 February 2009.
[169] ESMA Strategic Orientation 2016-2020, ESMA/2015/935, page 3.
[170] COM (2017)292 FINAL, 8.6.2017, section 4.1.
[171] See ESMA22-105-1052 https://www.esma.europa.eu/document/strategy-sustainable-finance
[172] Court of Auditors Special Report, "Investment funds: EU actions have not yet generated a true single market for the benefit of investors", cit.

In addition, ESMA has worked to harmonise supervisory practices across Member States, contributing at least in part to greater consistency in supervisory practices at European level, through some initiatives both external and internal to the Authority. During the Covid-19 crisis, for example, ESMA coordinated the application of supervisory forbearance[173] and market disclosure rules, demonstrating flexibility and speed in the use of its supervisory powers.[174] In addition, the establishment of a CCP Supervisory Committee within ESMA has improved the supervision of CCPs in the EU, contributing to a more centralised and coherent approach.[175] Finally, ESMA proposed a number of initiatives to develop a metadata dictionary in the financial markets sector to identify redundant reporting requirements and improve data harmonisation and standardisation.[176]

While ESMA has moved in the right direction in improving supervisory efficiency, it has faced significant challenges in promoting effective and uniform convergence of supervisory practices across National Competent Authorities (NCAs).
First, the issue is that if NCAs do not consistently adopt ESG integration guidelines, they risk limiting the effectiveness of the sustainable finance strategy in taking an approach that is not only targeted, but coherent and homogeneous across the EU. In this sense, however, NCAs supervise investment funds and their managers, as well as investment firms and other financial intermediaries, based on harmonised national laws, rather than based on uniform standards, and therefore, legal obligations and regulatory practices may still differ from one Member State to another. As we pointed out, although national laws are harmonised, there are still no uniform standards applied in all Member States.

In addition, it can be observed that the ESG reporting of measurable data and metrics related to company's performance, especially regarding environmental and social aspects, may be interpreted differently by different rating agencies.[177] To promote common supervisory practices, ESMA works to standardise the criteria and methodologies used in ESG assessment. As a result, the presence of non-uniform criteria can complicate the convergence of supervisory standards, as the interpretation

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[173] ESMA24-450544452-2207. The European Securities and Markets Authority (ESMA) has issued a Public Statement on the Treatment of Forbearance Practices in IFRS Financial Statements of Financial Institutions.
[174] N. Moloney & C. Pierre-Henri, "EU Financial Market Governance and the Covid-19 Crisis: ESMA's Nimble, Responsive, and Speedy Response in Coordinating National Authorities through Soft-Law Instruments", 2020.
[175] R. Canini, "Central Counterparties are Too Big for the European Securities and Markets Authority (Alone): Constructive Critique of the 2019 CCP Supervision Regulation", 2021.
[176] ESMA Data Strategy 2023-2028, https://www.esma.europa.eu/sites/default/files/2023-06/ESMA50-157-3404_ESMA_Data_Strategy_2023-2028.pdf
[177] Court of Auditors Special Report, "Investment funds: EU actions have not yet generated a true single market for the benefit of investors", cit.

of ESG data can vary widely between different EU member states.[178] The absence of uniform criteria for ESG assessment, therefore, complicates the comparability of ratings between different agencies. As a result, NCAs may find it difficult to oversee ESG practices in a consistent manner if rating agencies use different approaches, undermining supervision and creating uncertainty in the market.[179]

Although the Authority has worked to harmonise supervisory practices across Member States, contributing in part to greater consistency in supervisory practices at European level, there are still some discrepancies in supervisory practices between EU Member States. In particular, ESMA faces two main challenges that hinder the achievement of full convergence of supervisory practices in the EU. The first challenge relates to the limitations in the use of the supervisory tools at its disposal. Although ESMA has introduced guidelines and regulations to improve the standardisation of ESG information, the effectiveness of these tools is often reduced. The second challenge is the limitations in assessing its impact on the convergence of supervisory practices, so ESMA needs to develop more effective metrics and methodologies to monitor and assess the effect of its initiatives on supervisory practices at national level and ensure that these initiatives are truly promoting greater consistency and consistency in the application of ESG standards.

3.2.1 Limits in ESMA's Use of Supervisory Tools

The success of the Sustainable Finance Strategy and its standardisation objectives, also depend largely on the supervisory tools available to ESMA to ensure compliance. ESMA's enforcement of guidelines is primarily based on the "comply and explain" mechanism, a regulatory approach where firms are expected to adhere to specific guidelines or, if they choose not to comply, they must provide a clear and reasoned explanation for their non-compliance.

The Authority has a set of tools designed to promote convergence in financial supervision in the European Union, which can be categorised into three main groups: regulatory, enforcement and evaluative/corrective tools.[180]

Regulatory tools include guidance and FAQ spaces, guidance documents provided by ESMA to clarify regulations and provide answers. Supervisory seminars and networks between national competent authorities are also used for training and information exchange, which help to prepare authorities for full compliance with European regulations. Enforcement instruments include supervisory opinions, statements, and instructions, which are formal communications to provide

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[178] Bank of Italy, "ESG factors in the financial system: the role of supervision Ned Community ESG risks in the bank-business relationship", 2022.

[179] H. Stolowy, and L. Paugam, “Sustainability Reporting: Is Convergence Possible?”, cit.

[180] https://www.esma.europa.eu/it/informazioni-sullesma

specific interpretations or directives on how laws should be applied. They also include thematic studies to assess the application of the regulations and identify areas for improvement, as well as coordinated initiatives between different authorities to ensure the uniform application of the regulations. Finally, the assessment/corrective tools include the Union's strategic supervisory priorities, which indicate which areas require more supervisory attention for the current year or future periods. They also include peer reviews between national authorities to ensure that all authorities adopt and comply with high standards of supervision and practices for mediation and conflict resolution between national competent authorities regarding the interpretation or application of Union law.

What is relevant in this context is that the combined use of these instruments aims at greater uniformity and efficiency in European financial supervision, promoting a fair and transparent market environment, which are crucial elements of ESMA's Strategy, and more generally for the stability of the EU financial system.

However, the central problem lies in the limited effectiveness of these instruments in ensuring the convergence of financial supervision in the European Union. Despite the extensive arsenal of tools at ESMA's disposal, there is potential for more robust use of its powers to enhance regulatory convergence and compliance.

a) Regulatory Tools

ESMA uses guidelines and regulations as primary tools to standardize supervisory practices across the EU. The guidelines, for example, are designed to guide National Competent Authorities (NCAs) towards uniform oversight practices, but present challenges in terms of compliance and measuring effectiveness.[181] The "comply or explain" mechanism, as said, allows NCAs to choose whether or not to adopt the guidelines, simply by notifying ESMA of their decision.[182] Although ESMA publishes updated compliance tables, this does not ensure the effective application of the guidelines, and therefore does not ensure a uniform level of financial supervision.[183] Consequently, since investors and other market participants rely on consistent regulatory practices to assess risks and make

[181] Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), cit.
[182] N. Moloney, "The European Securities and Markets Authority and Institutional Design for the EU Financial Market - A Tale of Two Competences: Part (1) Rulemaking", 201.
[183] P. Hubkova, "Limiting or Empowering? Soft Rulemaking of the European Supervisory Authorities and Its Impact on National Administrative Authorities", 2023.

informed decisions, non-compliance in adherence to guidelines can lead to reduced investor confidence in the regulatory environment.

In addition, NCAs are required to submit annual reports on the adoption of ESMA's guidelines, and ESMA publishes compliance tables to track adherence. These reports provide transparency but often lack detailed assessments of actual compliance. Despite this, ESMA has rarely assessed actual compliance, suggesting a lack of systematic and continuous mechanisms to measure the effectiveness of the guidelines. There is often no systematic follow-up to verify the accuracy of the reported compliance.[184] It will be useful, as suggested by the ECA, to conduct more frequent and detailed audits of NCAs to assess their compliance with ESMA guidelines and implement stricter reporting frameworks requiring NCAs to submit regular, detailed reports on their compliance activities and the implementation of ESMA guidelines.

b) Enforcement and Corrective Tools

ESMA's enforcement tools include supervisory opinions, statements, and instructions to ensure consistent application of laws. Mediation initiatives and the procedure for breaches of Union law, while effective tools in resolving disputes, are also rarely used. Formal procedures have been adopted only in isolated cases, restricting their impact as a way to prevent non-compliance or address system-wide issues.[185] For example, in 2018, ESMA initiated a formal breach procedure against the Danish Financial Supervisory Authority (FSA) for its inadequate supervision of Danske Bank's Estonian branch, which was involved in a major money-laundering scandal. This was one of the few instances where ESMA exercised its power to investigate and act on a breach of Union law.[186]

Similarly, peer reviews and corrective tools, which are tools designed to identify and correct divergences in supervisory practices and enforcement of EU law, appear to be implemented in a limited manner. For instance, ESMA's peer reviews are typically conducted every few years rather than annually, delaying the identification and correction of supervisory discrepancies. The peer review on the application of guidelines on product governance requirements under MiFID II, for example, was conducted several years after the guidelines were introduced, which delayed the identification of inconsistencies in implementation among NCAs. While these reviews have the potential to capture not only the degree of convergence in supervisory practices, but also the overall supervisory capacity of each NCA, they have rarely been used, which may limit their ability to

[184] N. Moloney, "The Age of ESMA: Governing EU Financial Markets", 2018.
[185] P. Conac, "The Breach of Union Law Procedure and the European Supervisory Agencies (ESAs): An Effective Tool Suffering from an Expectation Gap", 2021.
[186] E. Bjerregaard & T. Kirchmaier, "The Danske Bank Money Laundering Scandal: A Case Study", 2019.

provide rapid and effective solutions at the systemic level.[187] The limited application of these assessment and corrective tools therefore underlines a continuing challenge for ESMA in its role as European financial supervisor. ESMA has a comprehensive arsenal of tools at its disposal, but these tools are under-utilized, while they could enhance its effectiveness in ensuring consistent supervisory practices across the EU.

As suggested by the Court of Auditors[188], the current situation requires a rethinking of the tools used by ESMA to promote convergence. ESMA should consider more stringent and systematic measures to ensure that the guidelines are not only adopted but lead to a consistent supervisory practice across the EU. This means including continuous monitoring of NCAs' compliance, using data analytics to track adherence to guidelines in real-time, and developing more reporting requirements for NCAs to provide more detailed and frequent updates on their compliance status. Incentives for compliance, should also be considered, such as additional support and resources, in technical assistance, training, and access to best practice networks, to NCAs that consistently comply with guidelines, and recognition programs to publicly acknowledge NCAs that demonstrate high levels of compliance and effective supervisory practices, enhancing their reputation and encourage others to follow suit. In addition, it may be necessary to consider the introduction of incentives or sanctions to ensure greater adherence to the guidelines by NCAs. Similarly, it is essential to develop more robust and continuous mechanisms for the verification of compliance and for the evaluation of the effectiveness of the guidelines. This can include to conduct regular impact assessments to evaluate how well the guidelines are achieving their intended outcomes, and make necessary adjustments based on these evaluations.

3.2.2 Limits in Assessing its Impact on Convergence

ESMA presents several obstacles in measuring the effectiveness of its actions and assessing its impact on the convergence of supervisory practices in the European Union.[189] Although it has implemented annual work programmes that set goals, those goals are generally descriptive of planned activities rather than geared towards specific, measurable outcomes. The objectives outlined in the work programmes tend to focus on the activities to be carried out, rather than on the concrete results

[187] A. Spendzharova, "Becoming a Powerful Regulator: The European Securities and Markets Authority (ESMA) in European Financial Sector Governance", 2017.
[188] Court of Auditors Special Report, "Investment funds: EU actions have not yet generated a true single market for the benefit of investors", cit.
[189] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), cit.

expected.[190] This approach makes it difficult to quantify the extent to which ESMA contributes to reducing divergences in financial supervision between member states.

This issue also applies to the case of the 2020 Sustainable Finance Strategy. ESMA has undertaken several initiatives to promote transparency and integration of ESG criteria in the financial sector, however, the lack of specific and measurable objectives makes it difficult to assess the real impact of these initiatives in achieving convergence of supervisory practices across different EU Member States.

What emerges is that these difficulties arise mainly from operational and technical limitations. As we will see in the next paragraph, ESMA depends on national competent authorities (NCAs) to obtain data and information on supervisory practices. National Competent Authorities (NCAs) often face human, technical and financial resource limitations, which affect their ability to participate effectively in coordinated supervision at European level, and this limits the effectiveness of ESMA's initiatives, including those for ESG integration.[191] However, even when NCAs share data, it can vary significantly in terms of format, detail and quality. This heterogeneity makes it difficult for ESMA to aggregate and analyse data in a consistent and comparable manner.

In addition, the UCITS Directive[192], on the harmonisation of the regulation of investment funds across the European Union, while ensuring a uniform level of investor protection and promoting market transparency and efficiency, does not explicitly require NCAs to share data with ESMA, and this creates information gaps.

Finally, ESMA currently lacks well-developed methodologies to measure the impact of its initiatives on supervisory practices.[193] Without adequate impact assessment tools, it is difficult to determine whether ESMA's initiatives are improving the convergence of supervisory practices.

To overcome the difficulties in measuring the effectiveness of its initiatives, ESMA should therefore consider setting clear and verifiable objectives that reflect not only the activities but also the desired impacts on supervisory practices; or invest in technologies that enable more effective monitoring and data collection to analyse the impact of policies and practices.

Despite this obstacle, it is worth acknowledging that the dialogue and sharing of experience between the different supervisors on technical proposals for the integration of sustainability risks into the

[190] N. Moloney, "The Age of ESMA: Governing EU Financial Markets", cit.

[191] C. Buttigieg, "EU regulation and supervision of securities business: a critical analysis of the challenges faced by the National Competent Authorities of small EU and EEA EFTA Member States", 2020.

[192] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).

[193] Communication from the Commission, A Strategy for Financing the Transition to a Sustainable Economy, COM (2021) 390 final.

MiFID, AIFMD and UCITS Directives is nevertheless a significant step forward.[194] These exchanges, often facilitated through different activities, discussions, and joint initiatives on specific cases, are crucial for the development of a common supervisory culture. Through regular meetings and exchanges of information, ESMA has developed training programmes to improve NCAs' skills in assessing ESG risks and overseeing sustainability practices, thus working towards the adoption of common approaches, and improving supervisory assessment itself.[195]

Overall, these measures do not fully solve the problem of assessing the impact of its initiatives, but they do promote greater convergence of supervisory practices, although the lack of effective tools to measure the impact of these initiatives is still an obstacle. To achieve full convergence of supervisory practices across the EU, ESMA should address the limitations in the application of these tools. Enhanced enforcement, consistent data collection, and regular impact assessments are essential for ESMA to effectively implement the Sustainable Finance Strategy and promote a uniform and sustainable financial framework in the EU.

3.3 Transparency Issues in Investment Fund Disclosure

ESMA has introduced and used several measures to improve transparency, including the publication of annual reports on the costs and performance of retail investment products[196], as well as the implementation of the Single European Electronic Format (ESEF). The latter, in particular, has been used for the presentation of annual financial reports, through the XBRL (Extensible Business Reporting Language). Even though the ESEF (European Single Electronic Format) is part of the European Union's Transparency Directive,[197] the obligation to use the ESEF has applied since the 2021 financial statements to all equity and bond issuers operating in EU regulated markets. Its implementation was therefore a step forward in the transparency of financial relations in the EU.

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[194] H. Stolowy, and L. Paugam, "Sustainability Reporting: Is Convergence Possible?", cit.

[195] M. Driessen, "Sustainable Finance: An Overview of ESG in the Financial Markets", 2021.

[196] https://www.esma.europa.eu/esmas-activities/risk-analysis/risk-monitoring; see as examples https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1710_asr_performance_and_costs_of_eu_retail_investment_products.pdf ; https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1677_asr_performance_and_costs_of_eu_retail_investment_products.pdf

[197] DIRECTIVE 2013/50/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements relating to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council, on the prospectus to be published when securities are offered to the public or admitted to trading, and Commission Directive 2007/14/EC laying down detailed rules for the application of certain provisions of Directive 2004/109/EC.

Listed companies will benefit from increased operational efficiencies, while investors and other stakeholders will benefit from greater accessibility and comparability of financial data.

ESMA's annual reports, on the other hand, are intended to provide investors with a clear and comprehensible overview of the costs and performance of retail investment products and are part of ESMA's broader initiatives to ensure that consumers have access to accurate and transparent information on the financial products offered.
However, these tools still face significant limitations. Firstly, there is a lack of adequate disaggregation of costs, which means that costs are reported by asset class (such as shares, bonds, etc.) and by type of management (such as active or passive management), but not by country of distribution, which makes it difficult as costs vary between different countries within the European single market. Without proper disaggregation, it is difficult to assess the impact of the single market on reducing cost differences between different EU Member States. This is a significant problem because one of the objectives of the single market is precisely to harmonise costs and improve transparency.
In addition, the reports are based on data that is more than one year old, limiting the relevance and timeliness of the information provided to investors. To better explain, ESMA's reports are based on data that dates back more than one year before publication, and this means that the information provided to investors may not be current, limiting its usefulness for making informed investment decisions. The lack of up-to-date data reduces the relevance of the information, as market conditions and the performance of investment products can change significantly in a short period of time.

A further challenge arises in the variability of reporting and the quality of information provided to investors across EU Member States, even though there are minimum requirements set out in the UCITS Directive.[198] As evidenced by the cost reporting and integrity of the information in the Key Investor Documents (KIIDs),[199] the costs reported are often incomplete or may be misleading. For example, transaction costs, which can account for a significant portion of total expenses, are not always included in the calculation of the incidence coefficient of total expenses. This can make the overall costs appear lower than they actually are, misleading investors. Introduced in 2011, the KIID is intended to provide clear and non-misleading information, however, the quality of the information is often challenged, as is the case with information on past performance that does not include essential data on the appropriate benchmark, which limits investors' ability to make informed assessments.

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[198] B. Giner, “Sustainability reporting: Some challenges from and for the European Union”, 2022.
[199] Directive 2009/65/EC on UCITS IV and Commission Regulation 583/2010 introduced the Key Investor Information Document (KIID); See also Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC as regards key investor information.

In parallel, the UCITS Directive lays down minimum requirements for the content of information documents and requires UCITS to publish prospectuses, annual and semi-annual reports, but leaves national authorities some discretion as to the content of these documents. This can lead to inconsistent reporting between Member States, undermining investors' ability to obtain a clear and homogeneous view.

Despite the goal of providing sufficient information, it remains difficult for investors to get an overall view and compare available products. The European Parliament has called for the development of independent, web-based comparison tools to facilitate more informed decisions by retail investors.[200] As we also pointed out[201], the lack of transparency and effective reporting among NCAs continues to hamper ESMA's work. This is also crucial for sustainable finance, where transparency in ESG risks and opportunities is key to informing investors and promoting a fair and sustainable financial market.

3.3.1 The Role of ESMA Guidelines and Alternative Performance Measures

ESMA's Guidelines on Alternative Performance Measures (APMs)[202] appear to be a positive contribution to efforts to promote greater transparency and accuracy in the financial information provided to investors.[203] Although they are part of a broader effort to improve financial transparency and have not been implemented as a direct consequence of the Sustainable Finance Strategy, they align closely with its objectives of transparency and integrity of financial markets, and they contribute by ensuring that the financial metrics used to report sustainability-related performance are transparent, reliable, and comparable. Originally issued in 2015, and then updated after 2020 to reflect new market’s needs, ESMA's guidelines require companies that use alternative performance measures (APMs) in their financial reporting to provide clear explanations of what these measures are, how they are calculated and why they are material, significantly contributing to improving transparency and understanding by investors.

In particular, ESMA guidelines[204] have contributed to improving the transparency of financial information and investor protection, as demonstrated by the adoption of alternative performance

[200] European Parliament resolution of 8 October 2020 on further developing the Capital Markets Union: improving access to capital market finance, in particular for SMEs, and increasing the participation of non-professional investors (2020/2036(INI)).
[201] Court of Auditors Special Report, “Investment funds: EU actions have not yet generated a true single market for the benefit of investors”, cit.
[202] https://www.esma.europa.eu/document/esma-guidelines-alternative-performance-measures-1
[203] Court of Auditors Special Report, “Investment funds: EU actions have not yet generated a true single market for the benefit of investors”, cit.
[204] ESMA35-43-3448.

measures. Alternative Performance Measures (APMs) are financial indicators that are different from traditional financial metrics (such as net income, operating income, etc.) used by companies to provide a more complete and detailed view of their financial performance, in line with the objective of the sustainable finance strategy to increase the transparency of ESG information. [205] Indeed, these guidelines have introduced alternative performance measures that have contributed to greater clarity and accuracy in the information provided to investors, reducing information asymmetry in the financial market.[206] In fact, APMs provide investors with more detailed information about the financial performance of companies, going beyond traditional numbers. This includes, for example, indicators such as EBITDA[207] (Earnings Before Interest, Taxes, Depreciation, and Amortization) which offers a clearer view of operating cash flow and supports investors in making more informed and sustainable decisions.

Companies are now required to regularly report APMs in their financial communications, such as annual and semi-annual reports. This ensures that the information is always up-to-date and available to investors.[208] Regular APM reporting ensures a continuous view of companies' financial performance, helping investors monitor trends over time and make more informed decisions.

ESMA's guidelines on APMs therefore represent a significant step towards greater transparency and understanding of financial information. However, to fully achieve the objectives of the 2020 Sustainable Finance Strategy, it is necessary to address the constraints related to cost breakdown, updating of data and the availability of independent comparison tools.

3.4 Lack of Uniformity in the Collection and Reporting of Risk Information

The EU's 2020 Sustainable Finance Strategy placed a strong emphasis on managing environmental, social and governance (ESG) risks, and in this context, ESMA's assessment and monitoring of systemic risk were key objectives to ensure sustainable financial stability.[209] Systemic risk[210] refers to the possibility of a disruption in the financial system that could have serious negative consequences

[205] Court of Auditors Special Report, “Investment funds: EU actions have not yet generated a true single market for the benefit of investors”, cit.
[206] V. F. Manzillo, A. Giannozzi, G. Vittorioso, O. Roggi, “ALTERNATIVE PERFORMANCE MEASURES: AN ASSESSMENT AFTER ESMA GUIDELINES, 2019.
[207] https://www.headvisor.it/ebitda-earnings-before-interests-tax-depreciation-and-amortization
[208] V. F. Manzillo, A. Giannozzi, G. Vittorioso, O. Roggi, “ALTERNATIVE PERFORMANCE MEASURES: AN ASSESSMENT AFTER ESMA GUIDELINES”, cit.
[209] See ESMA22-105-1052 https://www.esma.europa.eu/document/strategy-sustainable-finance
[210] https://www.bankpedia.org/termine.php?lingua=it&c_id=23720-rischio-sistemico

for the internal market and the economy.[211] In other words, it is the risk that problems in one part of the financial system could spread and cause instability on a broader level.
The European Securities and Markets Authority (ESMA) is responsible for cooperating with the European Systemic Risk Board (ESRB).[212] Created in 2009, the ESRB is responsible for the macro-prudential oversight of the EU financial system to prevent or mitigate systemic risks. This collaboration involves the development of standardised criteria for identifying and measuring systemic risk, which can help identify which market participants (such as banks, investment funds, etc.) could pose a significant threat to financial stability.

ESMA has made certain progress in the assessment and monitoring of systemic risk, contributing to the objectives of the 2020 Sustainable Finance Strategy.[213] The introduction of alternative performance measures has indeed improved transparency and understanding of systemic risks, and ESMA's actions have helped to reduce the information asymmetry by providing more detailed and accurate data on financial risks. ESMA’s development of stress tests, i.e. simulations that test the resilience of market participants in crisis scenarios, is worthy of particular consideration, as these tests help to understand how financial operators would react to difficult economic conditions and whether they would be able to withstand such conditions without causing instability to the financial system. While no specific prudential stress tests were initially conducted[214], ESMA has intensified this activity in recent years to assess the resilience of investment funds and identify potential vulnerabilities.[215] In addition, as we will see in more detail in the next section, after 2020, ESMA has intensified its efforts for a more systematic follow-up of the results of stress simulations. In November 2020, the results related to the liquidity risk of the funds were shared with the national competent authorities (NCAs), and a follow-up plan was agreed to monitor the actions taken by the NCAs.[216]

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[211] See also Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.
[212] [HYPERLINK “https://www.esrb.europa.eu/home/html/index.it.html”]
[213] B. Giner, “Sustainability reporting: Some challenges from and for the European Union, cit.
[214] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), cit.
[215] Court of Auditors Special Report, “Investment funds: EU actions have not yet generated a true single market for the benefit of investors”, cit.
[216] https://www.bankingsupervision.europa.eu/press/publications/annual-report/html/ssm.ar2020~1a59f5757c.it.html

3.4.1 ESMA's Challenges in Data Collection and Management

Effective monitoring of systemic risks and risks to investors depends largely on the availability and collection of adequate data. The data must be sufficiently detailed to allow precise analysis, and accurate and reliable to ensure its validity. In addition, to be able to compare risks between different countries, data must be collected and reported in a standardised manner, as differences in formats or levels of detail can hinder comparison and benchmarking. In other words, the lack of consistency in the data collected (understood as diversity in formats, levels of detail, etc.) makes it difficult to carry out a comparative analysis and obtain an integrated view of risks.

In this context, ESMA faces several challenges in the collection and management of UCITS data, which limited its ability to effectively monitor systemic risk and conduct stress tests.[217]
Unlike the AIFM (AIFMD),[218] which clearly specifies reporting requirements for AIFM, the UCITS Directive[219] does not provide for a harmonised EU-wide framework for reporting. This has led to divergent practices among national competent authorities (NCAs) in terms of frequency, coverage and detail of the data reported. Differences in reporting practices between NCAs make the data collected not comparable across countries. This limits ESMA's ability to carry out analyses at European level and assess systemic risk in a uniform manner. The UCITS Directive, as mentioned above, does not explicitly require NCAs to share the data collected with ESMA. Therefore, while ESMA may require such data to fulfil its tasks, this procedure requires the approval of the Board of Supervisors and is therefore only used on an exceptional basis.

Despite the difficulties, in May 2020, the ESRB recommended that ESMA address the liquidity risk related to investment funds.[220] In response, ESMA used the stress simulation framework to assess liquidity risks and shared the results with the NCAs.
As anticipated, ESMA has adopted a systematic follow-up plan to monitor the actions taken by NCAs based on the results of stress simulations. NCAs provided follow-up reports, improving transparency and cooperation. In 2021, ESMA conducted a survey of 10 NCAs to assess their UCITS data collection practices.[221] This survey confirmed the diversity of reporting regimes and highlighted the need for more consistent and direct access to data.

[217] Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), cit.
[218] Directive 2011/61/EU on alternative investment fund managers.
[219] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (*UCITS*) (recast).
[220] ESRB Recommendation on liquidity risks in investment funds (ESRB/2020/4).
[221] https://www.dirittobancario.it/art/direttiva-sulle-attivita-ammissibili-oicvm-esma-sulla-revisione/

In addition, in 2021, the European Commission proposed a revision of the Alternative Investment Fund Managers (AIFM) and Undertakings for Collective Investment in Transferable Securities (UCITS) Directives, as part of the Capital Markets Union package.[222] This revision, provisionally agreed by the co-legislators in September 2023, aims to make the reporting framework less complex and less burdensome for the investment fund industry and helps.

Assess the implementation of ESMA's 2020 Sustainable Finance Strategy and its capability to promote greater transparency in ESG disclosures. In this sense, the revision of the AIFM and UCITS Directives supports this objective by making the reporting framework clearer and less burdensome, facilitating the collection of ESG data.
The aim of the revision is to reduce complexity and administrative burden for investment fund managers by introducing a more streamlined and uniform reporting framework, which facilitates both the delivery of data and its analysis. In addition, as various conceptual misalignments have been found in recent years that complicate data collection and interpretation, the revision aims to address these misalignments by improving the consistency and clarity of the information collected. This is crucial for integrating ESG criteria and monitoring the adoption of sustainable practices.[223] By improving information sharing and simplifying the reporting framework, the review helps reduce information asymmetry among investors and provide a more comprehensive view of investment fund performance, including ESG aspects.

ESMA will thus be tasked with assessing the implementation of the new framework to improve data collection from alternative investment fund managers (AIFMs), and will work to harmonise reporting requirements for UCITS, ensuring that data is collected in a consistent and comparable manner at European level.

[222] https://www.consilium.europa.eu/it/press/press-releases/2024/02/26/capital-markets-union-council-adopts-new-rules-on-alternative-investment-fund-managers-and-plain-vanilla-eu-investment-funds/#:~:text=Le%20modifiche%20alla%20direttiva%20sui,Commissione%20il%2025%20novembre%202021.
[223] TRV Risk Monitor, ESMA Report on Trends, Risks and Vulnerabilities, No. 2, 2022.

Conclusion

The analysis carried out in this work has first confirmed how sustainability has become an essential component in financial activities, influencing investment decisions through the integration of environmental, social and governance (ESG) factors. The European Union has adopted a comprehensive approach to sustainable finance, primarily driven by the Sustainable Finance Action Plan,[224] which aims to redirect capital flows towards sustainable investments, manage financial risks arising from climate change and other sustainability-related issues, and foster greater transparency and long-termism in financial and economic activities.

Through the exploration, in the first chapter, of the development of the concept of sustainability in financial activities, we have noted the lack of standardized definitions and metrics for sustainability, and thus, we have emphasized the importance of harmonisation and supervision within the EU to achieve both effective sustainability integration and maintain financial stability.

Within this framework, regulators, such as ESMA, play a crucial role in the enforcement of ESG factors in finance by setting standards, monitoring compliance, and ensuring transparency. The role and tools of the European Securities and Markets Authority (ESMA) in promoting financial sustainability through the standardization and transparency of sustainable financial practices in the European Union has been therefore highlighted in the second chapter. More precisely, the Authority exercises a range of regulatory and supervisory powers designed to enhance the stability and integrity of financial markets. These include rule-making powers in implementing technical standards, guidelines, and recommendations; supervisory powers on specific entities, such as credit rating agencies and trade repositories; enforcement powers to investigate and address breaches of EU law, including the ability to impose fines and sanctions; and advisory powers through which give opinions and advice to EU institutions on legislative and regulatory matters.

In addition, ESMA works closely with national supervisory authorities to harmonize the application of financial regulations across the EU, contributing to the development of common regulatory and supervisory practices, issuing guidelines and recommendations, and providing technical standards.

As highlighted in the research, the most significant instrument that ESMA has introduced is the Sustainable Finance Strategy 2020, which represents ESMA's efforts to integrating sustainability considerations into its regulatory and supervisory activities, enhance the transparency and

[224] COM (2018) 97 FINAL, Action Plan: Financing Sustainable Growth.

comparability of ESG disclosures, develop methodologies for assessing ESG risks, and promote the alignment and convergence of supervisory practices across the EU.

The second chapter also discussed the implications of the Meroni doctrine on ESMA, which restricts the delegation of discretionary powers to EU agencies. Although the Meroni doctrine imposes significant limitations on ESMA's ability to exercise broad discretionary powers, the Authority has nevertheless sought to overcome these limitations by issuing not legally binding guidelines and recommendations and collaborating with other national authorities and the promotion of harmonised supervisory practices. As its responsibilities have increased, it has therefore acquired greater capacity to intervene and supervise the financial markets.

ESMA has proven to have a significant impact in addressing the challenges related to the lack of harmonisation and transparency of sustainability information. Through the implementation of strategies such as the "Sustainable Finance Strategy 2020", it has worked to promote the convergence and consistency of sustainable investment practices, thereby strengthening investor confidence and market integrity.
It has published technical documents for the integration of ESG factors into the MiFID II, AIFM and UCITS directives, which specify how investment firms should incorporate ESG factors into their sustainability assessment, with the aim of improving the transparency and consistency of information. These technical documents are integrated into the directives through regulatory amendments and updates, which are then transposed into national law by Member States.
It has also included a chapter dedicated to sustainable finance in its annual reports on trends, risks, and vulnerabilities, providing an overview of developments in the field of sustainable finance. The Commission itself has also acknowledged ESMA's progress in promoting transparency through the publication of annual reports on the costs and performance of retail investment products.[225] The implementation of the Single European Electronic Format (ESEF) format for the submission of annual financial reports, for example, has improved the transparency and comparability of financial information among listed companies in the EU. Finally, the introduction of stress tests to assess the resilience of investment funds in crisis scenarios has allowed for an improved understanding of systemic sustainability-related risks.

However, as the analysis has showed, the impact of these efforts remains, in some respects, still limited, and several challenges persist. There appears to be persistent supervisory fragmentation, stemming in part from differences in the adoption and implementation of EU directives across

[225] Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), cit.

Member States, which affects the uniformity and effectiveness of the regulatory landscape. The diversity of ESG reporting definitions and practices across different EU Member States creates a complex environment that can hinder the full potential of sustainable investing. One of the main challenges that emerged in this regard was the lack of uniformity in data collection and management among national competent authorities (NCAs). Similarly, differences in the application and supervision of the guidelines between Member States continue to make financial supervision uneven, undermining the overall effectiveness of ESMA's enforcement powers.

In addition, the work has identified that ESMA lacks robust mechanisms to measure the effectiveness of supervisory practices. One of the main problems in ensuring the effectiveness of ESMA's supervisory practices is the "comply or explain" mechanism provided for in the ESMA Regulation, for which ESMA's guidelines are not legally binding, allowing National Competent Authorities (NCAs) not to adopt them by notifying them of their motivated decision. Although ESMA requires annual reports from NCAs on the adoption of the guidelines, it rarely assesses their actual compliance, limiting the measure of their effectiveness. This means that while NCAs report on whether they have adopted the guidelines, ESMA does not consistently evaluate how well these guidelines are being implemented in practice. The absence of specific and measurable objectives further complicates the evaluation process, making it difficult to quantify the effectiveness of ESMA's actions.

Similarly, we have highlighted that ESMA doesn’t fully utilize the range of supervisory tools at its disposal to ensure the convergence of supervisory practices. Despite having several instruments designed to promote harmonization, such as mediation procedures, breach of Union law procedures, peer reviews, and corrective tools, their application has been limited. For instance, mediation procedures and breaches of Union law were found to be rarely used. Peer reviews and corrective tools too, while designed to identify and correct divergences, are implemented in a limited manner, reducing their ability to provide effective and timely solutions. This underutilization of available supervisory tools means that ESMA misses opportunities to enforce more uniform and effective supervision across Member States, leading to persistent fragmentation and variability in the implementation of EU financial regulations.

One of the most pressing issues highlighted is the need to improve risk assessment and systemic risk management in the investment fund sector. Transparency issues in investment fund disclosures remain problematic. ESMA's guidelines on alternative performance measures and other disclosure requirements are not uniformly adopted, leading to discrepancies in how information is presented to investors. This inconsistency not only hampers investor decision-making but also affects market confidence in ESG-labelled products. Additionally, the lack of uniformity in the collection and

reporting of risk information by collective investment undertakings presents significant challenges for conducting comprehensive risk assessments and stress tests. Although ESMA has initiated some measures such as stress tests, the follow-up and use of these simulations has been inadequate.
The lack of up-to-date and high-quality data further limits ESMA's ability to accurately monitor, assess, and report information of sustainability-related risks and opportunities, which reduces the relevance of ESMA's annual reports. Current data collection practices are not only disjointed, but also insufficiently detailed, impacting the ability to conduct thorough stress tests and monitor risks.

In light of the above, the work concludes that while ESMA has made important strides in enhancing the regulatory environment for sustainable finance, significant challenges remain. To address them, it would be useful to strengthen the convergence of supervisory practices through more binding guidelines and stricter monitoring of their uptake by NCAs. A possible suggestion could be to revise ESMA Regulation to strengthen the effectiveness of the guidelines and recommendations, by transforming some of ESMA's guidelines, such as those on transparency requirements, into legally binding rules for all NCAs, reducing the discretion of national authorities in their transposition, or by strengthening the "comply or explain" mechanism, requiring NCAs to provide not only a detailed justification for not adopting the guidelines, but also a concrete plan to achieve the same goals through alternative means. Similarly, more effective metrics and methodologies should be developed to monitor and assess the effect of ESMA's initiatives on the convergence of supervisory practices at national level. Currently, the lack of specific and measurable objectives makes it difficult to quantify the effectiveness of ESMA's actions.

Furthermore, it's imperative to emphasize the role of NCAs in supporting the convergent application of norms and practices, especially given their dual role as both national authorities and members of the Board of Supervisors of ESMA. By actively participating in ESMA's decision-making processes, NCAs can advocate for the adoption of standardized practices and promote harmonization within their jurisdictions, and for this, it should be recognised their role in promoting convergence of supervisory practices by encouraging mutual assessments among NCAs to identify areas for improvement and ensure all national authorities meet high supervision standards. Additionally, providing ongoing feedback to ESMA on challenges and successes in guideline implementation can contribute to overall regulatory framework enhancement.

Finally, what also emerges from the analysis is the need for more up-to-date and high-quality data to improve the relevance of ESMA's annual reports and to provide a current view of sustainability-related risks and opportunities. Implementing a standardized data collection system across Member States would be essential for facilitating benchmarking and enabling more detailed and reliable stress

tests. This approach would significantly improve the ability to monitor systemic risks and ensure a more cohesive and transparent regulatory environment.

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