1. Responding to the grand challenge of our time

Beate Sjåfjell

1. BEYOND CLIMATE CHANGE

Climate change is frequently referred to as the greatest threat of our time – or even of all times. Certainly climate change is an enormous challenge, and can, if not mitigated sufficiently, threaten the very basis of our existence. However, it also risks becoming a deflection device away from the other environmental, social and economic challenges we face as a global society, with new sustainability initiatives from the European Union also quickly narrowing down to a discussion of how to cut emissions.

This chapter presents and discusses what may more broadly be denoted grand challenge of our time: how to secure the social foundation for people everywhere now and in the future, while staying within planetary boundaries. As we shall see, climate change is just one of four of the currently identified nine planetary boundaries that are transgressed.

The convergence of crises that we face as a global society emphasizes the importance of discussing the role of the market actors: businesses, investors, consumers and the public sector in its many roles as market actor. In spite of all the business initiatives using a sustainability language, status quo remains very much unchanged: ‘business as usual’ continues, and is a very certain path...
towards a very uncertain future. Transport is one of the worst polluters in the world and is often overlooked in discussions on how to achieve more sustainable business. This volume and the research it draws on from the InterTran group at the University of Helsinki are therefore a crucial contribution to the debate.

This chapter is written based on research conducted in the EU-funded project Sustainable Market Actors for Responsible Trade (SMART). Responding to the grand challenge of our time is the overarching aim of the SMART Project, and the combined framework of the planetary boundaries and the social foundation is the starting point for SMART’s analytical approach. In the SMART Project, we see it as a necessary part of academia’s contribution to the implementation of the SDGs, which in themselves, as a linear list of goals without any internal order or prioritization and with intrinsic inconsistencies, do not present an analytically feasible framework nor bring hopes of achieving sustainability through their mere existence.

After outlining and discussing the grand challenge of our time in Section 2, and the significance of market actors in this context in Section 3, the chapter briefly canvasses in Section 4 the law and policy approach to seeking to stimulate market actors to contribute to resolving this challenge – to contribute to sustainability. Section 5 concludes the chapter with reflections on whether we are moving towards policy coherence for sustainability.

2. THE GRAND CHALLENGE OF OUR TIME

2.1 Staying within Planetary Boundaries

The dire status as regards the convergence of environmental crises facing global society is encapsulated in the concept of ‘planetary boundaries’, which was first identified in the ground-breaking article by Rockström and others in 2009, and updated and reaffirmed by Steffen and others in 2015. Planetary
boundaries define global sustainability criteria for critical environmental processes that regulate the stability of the life-support systems on Earth, currently setting out nine parameters of the Earth system to indicate a safe operating space for humanity.¹⁰ According to Steffen and others, human production and consumption are placing us in an increasing or high risk in relation to at least four of the boundaries: climate change; biodiversity;¹° land system change; and the biogeochemical cycles of phosphorus and nitrogen.¹¹

Planetary boundaries as a term used for the limits of our planet is the result of the work of an international multidisciplinary group of environmental scientists, who in 2009 pooled their knowledge of different Earth system processes to inform the world about the space for sustainable action within planetary boundaries.¹² Their work reflects the growing scientific understanding that life and its physical environment co-evolve. This pioneering effort brought together evidence of rising and interconnected global risks in several different contexts where environmental processes are being changed by human activities. The planetary boundaries framework flags a set of sustainability-critical issues. It gives a dashboard of issues where our collective humanity is changing the fundamental dynamics of the Earth system most profoundly.¹³

As a concept, planetary boundaries form the rationale by which new boundaries may be identified and better quantifications or metrics adopted. In line with this, the conceptual framework for planetary boundaries itself proposes a strongly precautionary approach, by ‘setting the discrete boundary value

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¹¹ A quantitative global analysis of the extent to which the proposed planetary boundary has been crossed shows that across 65 per cent of the terrestrial surface, land use and related pressures have caused biotic intactness to decline beyond 10 per cent, the proposed ‘safe’ planetary boundary. The authors state that ‘biodiversity intactness within most biomes (especially grassland biomes), most biodiversity hotspots, and even some wilderness areas is inferred to be beyond the boundary’, adding that ‘such widespread transgression of safe limits suggests that biodiversity loss, if unchecked, will undermine efforts toward long-term sustainable development’; Tim Newbold and others, ‘Has Land Use Pushed Terrestrial Biodiversity Beyond the Planetary Boundary? A Global Assessment’ (2016) 353 (6296) Science, 288, DOI: 10.1126/science.aaf2201.

¹² Steffen and others (n 7).

¹³ Rockström and others (n 6), Steffen and others (n 7). See about the background Sarah Cornell, ‘Planetary Boundaries and Business: Putting the Operating into the Safe Operating Space for Humanity’ (draft paper on file with current author).

¹⁴ Cornell (n 11).
at the lower and more conservative bound of the uncertainty range’. This work is a continuous natural-science work-in-progress, as scientists gradually understand more of the complex interactions and feedback mechanisms in the global ecological systems.

The concept of planetary boundaries, or in the terminology of the European Union, the ‘limits of our planet’, sets the outer framework within which the discussion of market actors’ contribution to sustainability should take place. ‘Greener’, or more environmentally friendly production, including transport, is not sufficient – we must reduce the environmental impacts enough to stay within planetary boundaries. This also underlines the need for a life-cycle approach, to transcend the fragmentation of responsibility for environmental impacts per corporation (or per country), where transport may be left out of the lead corporation’s sustainability assessment.

Climate change and biodiversity are denoted as core boundaries, as transgressing any one of them by themselves is enough to push the Earth system out of its current stable state, which so far has constituted a relatively safe operating space for humanity. Researchers are still working to map and understand the complex interactions between planetary boundaries, including how changes in land use (for example to produce biofuel) can impact on both biodiversity and climate change. Humans have an enormous impact on Earth biosystems, and very little understanding of what havoc we are wreaking, or what the consequences will be. As is gradually beginning to dawn on thought leaders in business and finance (albeit still very much limited to climate), this means that decision-makers in business and finance must attempt to understand these complexities in step with scientists, as the financial risks of unsustainability become ever clearer.

13 Rockström and others (n 6).
14 See also Tiina Häyhä and others, ‘From Planetary Boundaries to National Fair Shares of the Global Safe Operating Space — How can the Scales be Bridged?’ (2016) 40 Global Environmental Change 60.
16 Thereby not ignoring the significance of local impacts or the differentiation between planetary boundaries that are global in the sense that the impact depends directly on the magnitude of dimension, and those where the location of the changes matter, not just the overall magnitude. See, Häyhä and others (n 14).
2.2 Securing the Social Foundation

Planetary boundaries constitute only the outer framework within which we must work to understand how to achieve sustainability, and the market actors’ contribution to this. The grand challenge of sustainability lies in securing the social foundation for humanity now and in the future, while staying within planetary boundaries. Kate Raworth has been a driving force for the recognition of the significance of securing human rights and other fundamental social criteria for good lives, with the aim of achieving not just a safe but also a just operating space for humanity.\(^{18}\)

Raworth’s starting point was the social goals submitted by member countries in the process towards the United Nations’ Sustainable Development Goals (SDGs), and she selected the 11 social goals for which there was the greatest consensus. After the SDGs were adopted, Raworth has updated her model, including peace and justice amongst the goals, so that it now encompasses 12 basic goals concerning protection of human rights and fundamental social goals for decent and good lives. The goals have been denoted as the world’s master plan to abolish poverty, mitigate inequality and stop climate change by 2030.\(^{19}\) They include peace and justice, abolishing poverty and hunger, mitigating inequality, promoting good health and education, gender equality, clean water and good sanitary conditions, clean energy, decent work and economic growth, innovation and infrastructure, sustainable cities and societies, responsible consumption and production, mitigating climate change, protecting life on land and in water, and collaboration to achieve these goals.\(^{20}\) These goals encompass protection of both traditional and more recently recognized human rights as well as broader aspirational goals of the global society.

The SDGS were adopted in 2015, together with the Addis Ababa agenda for financing sustainable development and the Paris Agreement for mitigating climate change,\(^{21}\) and provide a good basis for higher expectations of public and private market actors alike.

\(^{18}\) Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist* (Chelsea Green Publishing, 2017).

\(^{19}\) See https://www.globalgoals.org/, accessed 29 August 2018.

\(^{20}\) Already the inclusion of economic growth for all countries as a part of the SDGs indicates the lack of a coherent analytical and research-based approach to sustainability, see Beate Sjåfjell, ‘Redefining the Corporation for a Sustainable New Economy’ (n 5).

The research on planetary boundaries and the social foundations has been summarized by Raworth and Rockström together with Melissa Leach. With the adoption of the SDGs, which has given a new impetus to the debate on how to achieve sustainability, the dual concept of planetary boundaries and the social foundation increasingly inspires sustainability discussions around the globe. It is with this perspective that we turn to the SMART research on market actors and their contribution to sustainability.

3. SUSTAINABLE MARKET ACTORS?

Discussing market actors’ contribution to sustainability needs to start with a discussion on whether and how business and finance fit into a sustainable future. This can be rephrased as a question of how to achieve corporate sustainability. Corporate sustainability may be defined as when businesses (or more broadly, economic actors) in aggregate create value in a manner that is (a) environmentally sustainable in that it ensures the long-term stability and resilience of the ecosystems that support human life, (b) socially sustainable in that it facilitates the respect and promotion of human rights and other basic social rights as well as good governance, and (c) economically sustainable in that it satisfies the economic needs necessary for stable and resilient societies.

The order is not random: environmental sustainability, staying within planetary boundaries, constitutes the framework.

Corporate sustainability is a relatively new theme in corporate law and corporate governance. Management literature has long discussed corporate sustainability; however, the approach of the most influential literature in this area has been one of ‘weak sustainability’, resonating with the mainstream approach in economics. In the corporate law and corporate governance literature, where environmental, social and economic sustainability issues are just beginning to make inroads, the approach is often one of discussing the ‘business case’ for sustainability, for internalizing environmental and social impacts in corporate decision-making as far as this has a positive effect on long-term financial corporate performance. Implicitly such an approach is also based on one of ‘weak sustainability’. The position taken in the

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23 This definition of corporate sustainability is from the Research Guide in the SMART project (https://www.smart.uio.no/).

SMART project, is that if it is to be meaningful in identifying how to meet the grand challenge of our time, corporate sustainability must be based on a ‘strong sustainability’ approach, founded on a natural sciences recognition of non-negotiable planetary boundaries within which all human activity must be positioned to ensure a safe operating space for humanity. Indeed, ‘strong’ sustainability could be reformulated as ‘real’ sustainability, as the ‘weak’ version is inherently unsustainable.

With all the sustainability talk in business and finance, one might be forgiven for thinking that we already are on a path towards real sustainability. Unfortunately, there is ample research basis to conclude that we are still on a very certain path towards a very uncertain future. Transgressing four out of nine currently identified planetary boundaries, including both core boundaries, with the unprecedented and ongoing biodiversity loss a very much under-communicated threat to the safe operating space of humanity, we see already in the environmental dimension that we are far from a sustainable state. And while progress has been made on social goals, we are still faced with the horrific reality of tens of thousands of people dying every day for poverty-related reasons. Also, the progress we have made, and the achievement of the social aims of the SDGs themselves, risk being undermined by the increasingly felt impacts – up to now mainly in lowest-income countries – of our transgression of planetary boundaries. This comes in addition to the ongoing exploitation by business and indirectly finance of people across global value chains.

Why then, with so many thought leaders in business and finance signing up to sustainability, with public procurement being designated now also as a tool for achieving sustainability, and with increasing consumer attention to the environmental and social repercussions of our everyday products, do we still see so much unsustainability in practice?

Multijurisdictional comparative research into the regulatory basis for a dominant legal form for business, the corporation, contributes to explaining this apparent paradox. The research was conducted by the Sustainable Companies Project, which investigated the barriers to and possibilities for a deeper integration of environmental concerns into the decision-making in corporations, and has been further developed in the SMART Project. In the Sustainable

See also (n 9).

The main results of the Sustainable Companies Project are presented in Beate Sjåfjell and Benjamin J. Richardson (eds), *Company Law and Sustainability* (Cambridge University Press, 2015).

The presentation of the results of the corporate law analysis of the Sustainable Companies Project here is based on Beate Sjåfjell and others, ‘Shareholder Primacy: The Main Barrier to Sustainable Companies’ in Sjåfjell and Richardson (eds), ibid.
Companies Project, we chose to focus on environmental sustainability, recognizing that this might be the dimension of sustainability that could be the furthest from corporate decision-making while also being the necessary basis for sustainability as a whole. The main barrier identified was the dominant social norm of shareholder primacy, with its short-termistic narrow focus on maximizing returns for shareholders. As explained further below, it is crucial to distinguish the social norm of shareholder primacy from the legal norm, found notably in the UK, of shareholder value. That this distinction often has not been made is symptomatic for the dominance of the shareholder primacy thinking, also in corporate law doctrine.28

The Sustainable Companies Project investigated core corporate law, through an extensive, comparative analysis of the purpose of the corporation as a matter of law, and the role and duties of the board as well as those of the general meeting. Because of the board’s pivotal role according to corporate law in the strategy-setting and overarching monitoring of the management of the corporation,29 the research focused on the concept of the interests of the corporation to find the scope of the board’s duty and discretion in its supervision and management of the corporation. The regulation, or lack thereof, of corporate groups also formed part of this investigation. Accounting and auditing law was also investigated in a similar comparative approach, allowing for an in-depth analysis into the area of law where broader societal interests, through so-called non-financial or Corporate Social Responsibility (CSR) reporting, has made inroads. While the focus of the Sustainable Companies Project was on environmental externalities, the results are to a great extent transferable to social externalities. Indeed, this work has formed the basis for the ongoing work on a reform proposal to change corporations from within, which fully encompasses the aspects included in the planetary boundaries and social foundation framework.30

28 Ibid.
29 The board is used in this chapter as a general term encompassing the German Aufsichtsrat, the British board of directors and the board as constituted in the Nordic countries. Trying to fit quite different systems, exemplified by the German two-tier variant and the one-tier system of the UK, into one picture of a board level and a management level requires some simplifications, as the German Aufsichtsrat and the UK board of directors are two quite different things, with the German Vorstand (‘management board’) having some similarities with the UK board that the Aufsichtsrat (‘supervisory board’) has not, and vice versa.
30 This idea for a reform proposal was in its first version presented together with Jukka Mähönen on the Nordic level, and thereafter, informed by inspiring discussions in the Sustainable Companies team, as a potential EU law proposal: Beate Sjåfjell and Jukka Mähönen, ‘Upgrading the Nordic Corporate Governance Model for Sustainable Companies’ (2014) 11(2) European Company Law 58. See its further development...
What this research has shown us is that in core corporate law, the possibilities for a shift away from business as usual and on to a sustainable path are larger than one might perhaps have expected beforehand. The mainstream corporate governance debate, which is both informed by and reinforces the shareholder primacy drive, tends to regard maximization of shareholder profit as the sole purpose of corporations. However, this is, as a matter of law to a great extent incorrect, especially understood as society’s purpose with corporations in aggregate. While corporate law in some jurisdictions adheres to shareholder value (the legal concept, which we distinguish from the social norm of shareholder primacy), the underlying rationale for facilitating the corporate form through legislation is always that it is thought to be beneficial for society through its contribution to economic development. No corporate law system insists on boards focusing only on returns for shareholders. All jurisdictions expect boards to ensure legal compliance. We see examples of shareholder value jurisdictions like the UK, expressly stipulating that broader societal concerns should be taken into account. Generally corporate law across jurisdictions also allows boards to integrate environmental externalities beyond legal compliance, at least as far as the business case argument allows – that is as far as the case can be made that this is profitable for the corporation in the long run. Within the current system, corporate law on a comparative basis provides, perhaps, surprising latitude to the board and by extension the management to shape business in a sustainable manner.

As is evident from the state of unsustainability we are in, corporate boards in aggregate clearly do not choose environmentally friendly, low-carbon options within the realm of the business case, let alone challenge the outer boundaries of the scope to pursue profit in a sustainable manner by going beyond the

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33 This is supported for the institutional investors by the report ‘Resource Efficiency and Fiduciary Duties of Investors’, Final Report, ENV.F.1/ETU/2014/0002, DG Environment, produced by Ernst & Young Cleantech and Sustainability Services (France) on behalf of the European Commission (hereinafter EY Report).
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business case. This is because of the overriding social norm of shareholder primacy, which, supported by management remuneration incentives and other drivers, dictates that board and senior managers are the ‘agents’ of the shareholders and should maximize returns to shareholders as measured by the current share price. This social norm, which is so pervasive that it has become a legal myth, leads to an extremely narrow, short-term, focus on maximization of returns to shareholders.

The barrier to corporate sustainability posed by the shareholder primacy norm is exacerbated by the chasm between corporate law’s approach to corporate groups and the dominance and practice of such groups. While corporations are ‘creatures of national law’, corporate groups are transnational, making a holistic regulation of heterogeneous groups across national borders extremely difficult. The parent company’s tight control of the group in practice is perversely matched by the limited legal possibilities for holding the parent company liable for subsidiaries’ environmental and social transgressions. Financial instruments give possibility for corporate control that may be outside corporate law’s definitions of corporate groups, rendering even the limited scope for corporate group responsibility unlikely. This is further exacerbated by the possibility for and use of contractual means of control of global value chains, with the shift from corporate governance to governance through contract thus reinforcing the trend towards pulverisation of responsibility for the

34 The lack of cases challenging the boundaries for how far corporate boards can go in promoting long-term sustainability in their decision-making, is a striking feature in the multijurisdictional comparative analysis presented in Sjåfjell and others, ‘Shareholder Primacy: The Main Barrier to Sustainable Companies’ (n 27).


36 As repeatedly emphasized by the Court of Justice of the European Union, see Case 81/87 The Queen v HM Treasury and Commissioners of Inland Revenue, ex parte Daily Mail and General Trust plc. (Daily Mail) [1988] EU:C:1988:456, para 19: ‘companies are creatures of the law’ and ‘exist only by virtue of [...] national legislation which determines their incorporation and functioning’; repeated inter alia in Case C-208/00 Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC) (Überseering) [2002] EU:C:2002:632, para 81.


impacts of transnational business.\textsuperscript{39} The OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights are notable examples of attempts at regulating this fragmented picture through voluntary means.\textsuperscript{40} While indicating and also in themselves potentially strengthening a shift in society’s attitude to business, the impact is at the time of writing limited, with legislators and regulators on international, regional and domestic levels hesitant to introduce enforceable and stringent regulation.

With the shareholder primacy drive thus left mainly unchecked, the resulting general practice of corporations is detrimental to those affected by environmental degradation, violation of human rights and economic exploitation today and to the possibility for future generations to fulfil their own needs. It is also damaging to the interests of corporations and of shareholders with more than a very short-term perspective on their investment, including institutional investors such as pension funds and sovereign wealth funds. A rising number of investors today allege a broader and more long-term focus, including pension funds, which per definition have a very long-term perspective. However, what may be referred to as socially responsible investing is still a fringe movement,\textsuperscript{41} and institutional investors are generally caught up in a system where misguided efforts at promoting efficiency and maximizing value have led to short-term return requirements that exacerbate the narrow, short-term effect of the shareholder primacy drive.\textsuperscript{42} While many institutional investors appear to recognize that they in the long run will see detrimental effects of failing to properly consider broader issues, notably climate change, they are under increasing pressure to maximize returns for beneficiaries in a context of persistently low yields and interest rates.

This negative impact of shareholder primacy is partly within the scope of the law and partly as a result of violation of the law. The former, the negative impact that is within the scope of the law, is a result of the corporations and the shareholders exploiting the scope the law gives them to maximize short-term

\textsuperscript{39} J. Salminen, ‘Sustainability and the Move from Corporate Governance to Governance Through Contract’, in Beate Sjåfjell and Christopher M. Bruner (eds), \textit{Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability} (Cambridge University Press, forthcoming 2019), Ch 5.


\textsuperscript{41} Benjamin J. Richardson, ‘Financial Markets and Socially Responsible Investing’ in Sjåfjell and Richardson (eds) (n 26), 226–73.

\textsuperscript{42} In spite of, for example, the EY report (n 33), confirming that institutional investors are allowed to take broader societal concerns.
returns through an externalization of environmental and social concerns, by using loopholes and grey areas and taking advantage of the lack of international regulation of business. The negative impact as a result of violation of the law is an aspect that is often missed in the CSR debate, which speaks about what business and finance should do beyond the law, presupposing legal compliance that is not always present. Talking about what business and investors should do beyond the law serves as a deflection device away from the lack of legal compliance, which may serve to explain also the faith in more reporting requirements as a mechanism, rather than starting with – or complementing reporting requirements with – proper supervision and enforcement of the rules and standards that already are in place. It also reflects a persistent belief that markets will self-correct through pressure from investors and corrections to share price where there is misconduct or failure to disclose material information. This is not to say that legal compliance would suffice, which it clearly would not – but compliance with the law is a necessary prerequisite to corporate sustainability.

What then are policy-makers doing to encourage sustainable market actors?

4. LAW, POLICY AND (LACK OF) COHERENCE

We certainly do have an overarching legal and policy basis for achieving corporate sustainability, both on the international level, through environmental and human rights treaties, and, of course, the SDGs themselves. On the EU level, sustainable development is recognized as an overarching objective at a high political level as well as in the EU Treaties.43 However, a fundamental transition away from ‘business as usual’ and on to a sustainable path requires a comprehensive reassessment of how these legislative and policy goals are carried out. We need policy coherence for sustainability, with a cross-cutting approach that dismantles the silos that keep various sectors in regulatory bubbles, where there appears to be little or no recognition of their role in achieving overarching goals, nor an understanding of how the narrow pursuit of the path-dependent sector goals undermine the achievement of sustainability.44


Instead, what we currently have is a lack of coherent or coordinated legislative initiatives aimed at regulating the market actors to promote a shift to sustainability. The compartmentalized approach to regulation that still informs legislators and policy-makers allows for a continued path dependency, lack of vision and holistic approaches in modern politics, and strong lobbyism by certain parts of business and finance to not change ‘business as usual’. In this regulatory picture, for example, environmental issues are assumed to be taken care of by environmental law, greenhouse gas emissions are regulated through carbon quotes and taxes, employee issues by labour law. This ignores the regulatory impact of other areas of law on compliance with, for example, environmental law, the issues with lack of enforcement in Europe and notably in lowest-income countries in other parts of the world, and that corporate sustainability will require guiding market actors even to go beyond legal compliance. Further barriers to effective regulation of business and finance to ensure their contribution to sustainability include, as mentioned above, that while companies are creatures of national law, business and finance are transnational, and international law is fragmented and often reflects the difficulties of finding a common approach in the global community of states. Corporations are able to exploit this, through pulverisation of accountability and responsibility by structuring their business across often opaque and complex global value chains.

In 2011, hope was inspired by the much lauded paradigm shift of the EU Commission’s definition of Corporate Social Responsibility in its Commission Communication of 2011–2014, from what businesses do on a voluntary basis to responsibility of the business for its impact on society, which has not been updated or followed up – besides the so-called Non-Financial Reporting Directive, which is insufficient in itself to achieve the necessary transition.45

So-called non-financial reporting has become a regulatory tool of choice not only for the EU but also for national legislators world-wide, in a desire to influence corporations and their investors to take corporate sustainability issues more into account. Inspired by ideas based on reflexive theory, the compromise solution between those wishing to regulate corporations’ environmental and social performance more strictly and those who do not, is asking...
corporations to report on what they are doing.\textsuperscript{46} In spite of good intentions and much hard work in this area, reporting requirements are insufficient to influence corporations and their investors. Much reporting remains left to voluntary and discretionary measures, leading to risks of corporate capture, lack of comparability, lack of consistency and uncertainty in benchmarking.\textsuperscript{47} Notably, the EU non-financial reporting requirements, while they may be perceived as an intermediary step towards the internalization of social and environmental impacts, currently lack the scope and the necessary verification requirements to be a real game-changer.\textsuperscript{48}

This is in spite of an increasing call for regulation by business also and a desire among investors to be able to channel their investments in a sustainable direction. Attempts to use institutional investors as drivers for sustainable business may be seen both in the emergence of stewardship codes, and, inspired by these codes, the reforms of the EU Shareholder Rights Directive and the IORP Directive.\textsuperscript{49} These are aimed at the shareholders, to mitigate the negative impacts of the narrow and short-term shareholder primacy drive, by encouraging them to be more active in a long-term and sustainability-focused manner, and disclose any policies they may have.\textsuperscript{50} These initiatives may be compared to the tentative introduction, aimed at the companies, of CSR into corporate governance codes for listed companies.\textsuperscript{51} They suffer from the same limitations of not confronting shareholder primacy but rather expecting

\textsuperscript{46} Charlotte Villiers and Jukka Mähönen, ‘Accounting, Auditing and Reporting: Supporting or Obstructing the Sustainable Companies Objective?’ in Sjåfjell and Richardson (eds) (n 26).
\textsuperscript{47} Ibid.
through incremental improvements to transform ‘business as usual’ into something environmentally, socially and economically sustainable. Also, the lack of relevant, reliable, verified and comparable sustainability information from companies constitutes a filter between investors wishing to invest in sustainable and potentially interesting businesses.\(^52\)

What now in 2018 gives some room for hope is the Sustainable Finance Initiative of the European Commission. Building on the reports of the High Level Group of Experts it appointed in 2016, the Commission has, in its Action Plan for the Financing of Sustainable Growth,\(^53\) drawn up a range of relatively ambitious goals.\(^54\) It is encouraging both in that it firmly brings the area of finance into the sustainability discourse – an important step in dismantling the path-dependent compartments in which economic areas like business and finance have been firmly entrenched – discussing not only voluntary measures but also potentially hard core duties, and that it also opens up the possibility for integrating sustainability into the duties of the corporate board generally (not limited to financial institutions). The latter is in line with the findings of the multijurisdictional comparative research cited above in Section 3, and the ongoing work with developing a SMART Sustainable Governance Model to integrate sustainability into corporate governance.\(^55\)

However, the Action Plan on Financing Sustainable Growth is also discouraging in two crucial aspects. Firstly, the Action Plan does not seem to recognize the concept of planetary boundaries, not even referring to the EU terminology of ‘limits of our planet’\(^56\) – indicating that the compartmentalization between the relevant EU Commission Directorates General, DG Environment and DG Fisma,\(^57\) seems to be very much still present. The Action Plan does not use the words ‘limits’ or ‘boundaries’ in any form, and refers rather generically and

\(^{52}\) Beate Sjåfjell, ‘Bridge over Troubled Water’ (n 30).

\(^{53}\) Unfortunately named – it would been much better to keep it as ‘Sustainable Finance’ rather than indicating economic growth is the end target.


\(^{55}\) Beate Sjåfjell, ‘Bridge over Troubled Water’ (n 30).

\(^{56}\) Decision No. 1386/2013/EU (n 15).

vaguely to environmental and social issues.\textsuperscript{58} Secondly, and interlinked with that point, although starting out with general sustainability language, when the Action Plan gets concrete in its recommendations, it focuses on climate change. The first proposals as follow-up of the Action Plan show a mixed picture: the proposed taxonomy of sustainable investment targets, which in itself has the potential to be a breakthrough for investments being channelled to sustainability, is fortunately broader than climate, also including water and marine resources, protection of healthy ecosystems, prevention and control of pollution, and transition to the circular economy, including material recycling and waste reduction.\textsuperscript{59} However, it does not include reference to all planetary boundaries, nor does it say anything about the social dimensions. Other proposals concentrate only on carbon.\textsuperscript{60} This is in line with the Action Plan, which explicitly says on at least one point that the initiative should start out with climate change, indicating that it thereafter could be broadened to other sustainability issues.\textsuperscript{61} That implies, however, that we have an abundancy of time to deal with other environmental and social issues, which we clearly do not.

5. TOWARDS POLICY COHERENCE?

Policy coherence for sustainability is clearly needed if we are to be able to adequately respond to the grand challenge. The issue of transport and logistics highlights the lack of policy coherence in current approaches, first in the sense that transport and logistics are the physical links in the extremely opaque and complex global value chains of goods that typically have their starting point in one of the lowest-income countries, are sold in Europe at a price that leaves most of the value in the hands of lead businesses involved, and may very

\textsuperscript{58} COM(2018) 97 final (n 54).


\textsuperscript{61} ‘Therefore, the Commission proposes to proceed with a step-by-step approach, starting with a taxonomy on climate change mitigation and adaptation activities and some environmental activities. As a second step, the taxonomy will cover remaining environmental and social activities, recognising that one aspect of sustainability must not be detrimental to other related risks or objectives’, COM(2018) 97 final (n 54) section 2.1.
well end up in lowest-income countries as polluting and unmanaged waste. Transport and logistics also underline the lack of policy coherence through their non-inclusion in initiatives that specifically aim to promote sustainability. In addition to those canvassed in Section 4 above, which do not specifically include transport, the EU’s Public Procurement Directives of 2014, which, while aiming to ensure that public procurement is also a tool for sustainability, have neglected to properly incorporate transport. This is also an issue with the EU’s Circular Economy Package. Hopefully this volume, with its focus on transport and logistics in a sustainability context, will contribute to bringing these issues into the broader debate – it is sorely needed.

It remains to be seen whether the Sustainable Finance Initiative will be a strong enough driver for sustainable business and finance that it, together with other business, finance, legislative and policy initiatives, leads to the fundamental transformation that needs to take place over the next few years. In the best case, the SDGs, despite their shortcomings, may turn out to be what sparks the development that leads to policy coherence for sustainability. The adoption of the SDGs have led to a greater attention to sustainability, and more sustainability talk, than their predecessor, the Millennium Goals, were anywhere close to doing. On the EU level, the adoption of the SDGs appears to be bringing the question of policy coherence from the niche area of policy coherence for development (PCD), belonging to the small PCD unit of DG Devco, and onto the grand stage of the European Commission and its work on implementation the SDGs. The Sustainable Finance Initiative in itself may be a sign of this.

What we may, hopefully, be seeing is the beginning of the necessary holistic integration in all areas. Responding to the grand challenge of our time will also require interdisciplinary and transdisciplinary efforts, where we, instead of competing to present the one answer, must work together to assemble an as-good-as-necessary regulatory mix – a jigsaw puzzle for sustainability. For that to happen, we must work together in unprecedented ways; across and beyond academia. And we must do so quickly.

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