european corporate governance institute

Greenwashing as Aspirational Signaling: From Burden to Benefit?

Law Working Paper N° 961/2026
September 2026

Martin Gelter
Fordham University School of Law and ECGI

Julia M. Puaschunder
Economics & Finance Department, International University of Monaco

ECGI Working Paper Series in Law

Greenwashing as Aspirational Signaling: From Burden to Benefit?

Working Paper N° 961/2026
September 2026

Martin Gelter
Julia M. Puaschunder

Abstract

The practice of greenwashing has gained significance given the debate about ESG disclosures on both sides of the Atlantic. While the SEC in the US is no longer pursuing climate-related disclosure rules, the European Union put forward an ambitious agenda including the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). Regardless of whether disclosures are voluntary or mandatory, there is an enforcement gap resulting from limitations on private litigation and only limited effects of reputational sanctions. This article argues that greenwashing may also have social benefits relative to the absence of sustainability disclosures. Greenwashing, especially when it is aspirational rather than outright fraudulent, can be viewed as a gateway to introduce green causes into a corporation's agenda. First, environmentally oriented messaging by the private sector may inspire policymakers to raise corporate standards. Second, social responsibility communication will attract human capital aligned with green and social goals to firms, thus gradually changing corporations from within. Third, greenwashing scandals trigger social attention that reinforces pledges and pushes quality and quantity of greening activities throughout the economy.

Keywords: Capital markets, Corporate Social Responsibility (CSR), Environmental, Social and Governance (ESG), Greenwashing, Climate-related disclosures, Investor activism, Regulatory uncertainty, Socially Responsible Investment (SRI), Corporate Sustainability Reporting Directive (CSRD), Corporate Sustainability Due Diligence Directive (CSDDD)

JEL Classification: F36, G14, G18, G34, K22, K32, M14, Q56

Martin Gelter

Fordham University School of Law and ECGI

Julia M. Puaschunder

Economics & Finance Department, International University of Monaco

Greenwashing as Aspirational Signaling: From Burden to Benefit?

MARTIN GELTER* & JULIA M. PUASCHUNDER**

Forthcoming in: FORDHAM JOURNAL OF CORPORATE AND FINANCIAL LAW (2026)

Abstract: *The practice of greenwashing has gained significance given the debate about ESG disclosures on both sides of the Atlantic. While the SEC in the US is no longer pursuing climate-related disclosure rules, the European Union put forward an ambitious agenda including the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). Regardless of whether disclosures are voluntary or mandatory, there is an enforcement gap resulting from limitations on private litigation and only limited effects of reputational sanctions. This article argues that greenwashing may also have social benefits relative to the absence of sustainability disclosures. Greenwashing, especially when it is aspirational rather than outright fraudulent, can be viewed as a gateway to introduce green causes into a corporation's agenda. First, environmentally oriented messaging by the private sector may inspire policymakers to raise corporate standards. Second, social responsibility communication will attract human capital aligned with green and social goals to firms, thus gradually changing corporations from within. Third, greenwashing scandals trigger social attention that reinforces pledges and pushes quality and quantity of greening activities throughout the economy.*

Keywords: Capital markets, Corporate Social Responsibility (CSR), Environmental, Social and Governance (ESG), Greenwashing, Climate-related disclosures, Investor activism, Regulatory uncertainty, Socially Responsible Investment (SRI), Corporate Sustainability Reporting Directive (CSRD), Corporate Sustainability Due Diligence Directive (CSDDD)

JEL Classification: F36, G14, G18, G34, K22, K32, M14, Q56

Table of Contents

* Fordham University School of Law, 150 W 62nd St, New York, NY, mgelter@law.fordham.edu.
** Economics & Finance Department, International University of Monaco, 45 Rue Grimaldi, 98000 Monaco, Phone +377 680 86 41 33, jpuaschunder@monaco.edu, www.juliapuaschunder.com.

1. Introduction

The idea of aligning social and environmental goals with corporate and financial conduct has a long history and has particularly evolved over the last few decades.[1] Shareholder activism, participatory democracy, and stakeholder engagement have contributed to the growing influence of Environmental, Social, and Governance (ESG) considerations in the corporate world, affecting capital markets. Corporate Social Responsibility (CSR) campaigns foster the social and environmental contributions of business to markets. Environmental catastrophes and political activism have historically triggered pro-environmental investment and divestiture, while the United Nations launched several Responsible Investment principles and campaigns in the early 2000s.

Today, ESG investing has emerged as a significant framework for assessing corporate sustainability performance.[2] ESG criteria enable investors to evaluate companies beyond traditional financial metrics by incorporating factors such as carbon emissions, labor practices, and

[1] Robert J. Campbell, *Art as a Financial Investment*, 10 J. ALTERNATIVE INV. 64 (2008).
[2] ESG INVESTING: CURRENT THEORY AND PRACTICE 3–5 (John Hill ed., 2025).

corporate governance structures, propelled by growing recognition that long-term financial performance is linked to sustainable business practices.

In more recent years, policymakers have introduced disclosure requirements to monitor and track firms' voluntary prosocial and pro-environmental conduct. While mandatory disclosure in accounting and capital markets has historically had the goal of reducing information asymmetries between firms and investors, disclosure requirements have begun to morph into an instrument of soft coercion. Sometimes such mandates follow a 'comply-or-explain' logic, where deviations from a preferred conduct must be explained. This creates pressure to conform or imposes costs to document alongside risks to lay open deficiencies, potentially causing consumer backlash or even litigation.[3] Even where no specific conduct is prescribed, disclosure requirements often create social pressure to enact a socially desirable market conduct.

Recent mandates attempt to go even further. In the United States, the Securities and Exchange Commission (SEC) adopted final climate-related disclosure rules in March 2024 but stayed them weeks later pending litigation.[4] In March 2025, the SEC voted to end its defense of the rules in court; in May 2026, it has proposed to rescind the rules in their entirety.[5]

---

[3] *See generally* Klaus J. Hopt, *Corporate Purpose and Stakeholder Value: Historical, Economic and Comparative Remarks on the Current Debate* 28–29 (EUR. CORP. GOVERNANCE INST., LAW WORKING PAPER NO. 690/2023, 2023).

[4] The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 33-11275, Exchange Act Release No. 34-99678, 89 Fed. Reg. 21,668 (Mar. 28, 2024) (final rule). Order Issuing Stay, Securities Act Release No. 33-11280, Exchange Act Release No. 34-99908 (Apr. 4, 2024) (order staying the rule pending litigation only weeks after adoption).

[5] Press Release, U.S. Sec. & Exch. Comm'n, SEC Votes to End Defense of Climate Disclosure Rules, Release No. 2025-58 (Mar. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-58; Press Release, U.S. Sec. & Exch. Comm'n, SEC Proposes Rescission of Climate-Related Disclosure Rules, Release No. 2026-49 (May 29, 2026), https://www.sec.gov/newsroom/press-releases/2026-49-sec-proposes-rescission-climate-related-disclosure-rules; U.S. Sec. & Exch. Comm'n, Rescission of Climate-Related Disclosure Rules, File No. S7-2026-19, Release No. 33-11421 (May 29, 2026), https://www.sec.gov/rules-regulations/2026/05/s7-2026-19 (comments due Aug. 3, 2026).

The EU remains at the forefront of this movement and has enacted the Corporate Sustainability Reporting Directive (CSRD),[6] which requires disclosures about sustainability issues as part of the company's annual financial statements and is rooted in the principle of 'double materiality' that requires corporate disclosures not only when they are financially material but also for sustainability. The Corporate Sustainability Due Diligence Directive (CSDDD)[7] imposes obligations to identify, mitigate, and report risks in the supply chain – including those involving human rights, climate impact, and forced labor.[8] The EU disclosure architecture also operates through 'sustainable finance' instruments directed at financial market participants and financial products, specifically the Sustainable Finance Disclosure Regulation and the EU Taxonomy Regulation, which aim at improving comparability and countering misleading sustainability claims.[9] After considerable controversy, the Omnibus I package adopted in late 2025 and published in the Official Journal in February 2026 has since narrowed the personal scope of both the CSRD and the CSDDD substantially.[10]

---

[6] Directive 2022/2464, of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, 2022 O.J. (L 322) 15 [hereinafter CSRD].

[7] Directive 2024/1760, of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence, 2024 O.J. (L 1760) 1 [hereinafter CSDDD].

[8] *E.g.*, Fabrizio Cafaggi, Paola Iamiceli & Federica Pistelli, *Compliance and Due Diligence in Global Value Chains: The Emergence of a EU Sustainability Framework in Global Regulation*, *in* DUE DILIGENCE, SUSTAINABILITY AND THE IMPACT ON GLOBAL VALUE CHAIN GOVERNANCE 1, 6 (Fabrizio Cafaggi, Paola Iamiceli & Federica Pistelli eds., 2025).

[9] Regulation 2019/2088, of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, 2019 O.J. (L 317) 1 [hereinafter SFDR], recitals 9–10; Regulation 2020/852, of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, 2020 O.J. (L 198) 13 [hereinafter Taxonomy Regulation], recitals 10–11.

[10] Directive (EU) 2026/470, of the European Parliament and of the Council of 16 December 2025 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards corporate sustainability reporting and corporate sustainability due diligence requirements, 2026 O.J. (L 470) 1 [hereinafter Omnibus I Directive]; *see also* Directive (EU) 2025/794, of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements, 2025 O.J. (L 794) 1 (the "Stop-the-Clock" postponement directive).

Overall, sustainability in corporate and financial markets has evolved from a niche option to a mainstream practice. With widespread expectations that corporations contribute to social good, more pressure is laid on corporations to act responsibly, driving both genuine change and greenwashing practices.[11]

Critics suspect that reporting pressure has created an unprecedented wave of greenwashing within all sectors of the economy. Greenwashing is the corporate practice of disseminating misleading or deceptive information about environmentally responsible corporate conduct.[12] The European Supervisory Market Authority (ESMA), which published an extensive report on the topic in 2024, describes greenwashing as a "practice in which sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, financial product, or financial service, and may mislead consumers, investors, or other market participants."[13]

Greenwashing often involves strategies that misrepresent a firm's environmental practices as more sustainable than they actually are,[14] creating a false illusion that leads to market distortions for investors, consumers, and stakeholders.[15] It discredits market integrity and erodes

---

[11] William S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. BUS. ETHICS 253 (2003); Magali A. Delmas & Vanessa Cuerel Burbano, *The Drivers of Greenwashing*, 54 CAL. MGMT. REV. 64 (2011).
[12] *Greenwashing, n.*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/greenwashing_n (last visited Oct. 1, 2025).
[13] Eur. Sec. & Mkts. Auth., Final Report on Greenwashing (ESMA36-287652198-2699, June 4, 2024), ¶231.
[14] Joe Williams, *Greenwashing: Appearance, Illusion and the Future of 'Green' Capitalism*, 18 GEOGRAPHY COMPASS 1 (2024).
[15] EUR. SEC. & MKTS. AUTH., FINAL REPORT ON GREENWASHING (ESMA36-287652198-2699, June 4, 2024), https://www.esma.europa.eu/sites/default/files/2024-06/ESMA36-287652198-2699_Final_Report_on_Greenwashing.pdf [https://perma.cc/].

public trust,[16] distorting capital allocation and exacerbating information asymmetries between firms and investors.

This article examines the origins of CSR, SRI, and ESG, and how these trends have contributed to a pervasive greenwashing market sentiment in capital markets. These three terms are not used uniformly throughout the literature.[17] We treat CSR as the public's expectation that corporations attend to the social and environmental consequences of their conduct beyond what the law requires. SRI denotes the corresponding category on the investment side, namely the goal of allocating capital based on the social and environmental conduct of the issuer.[18] ESG is often throught to have developed out of CSR but refers more specifically to evaluative criteria how to formally assess corporate conduct in non-financial terms.[19]

We discuss voluntary and mandatory sustainability disclosures and observe two different models of corporate social conduct in the US and Europe. A closer look reveals an enforcement gap rooted in the nature of such disclosures. We argue that 'greenwashing' disclosures may have unexpected benefits – setting international standards, turning the market conversation to environmental issues, and changing corporate culture from within by attracting a prosocial workforce. Our core contribution to the growing literature on greenwashing is therefore two-fold. First, we argue that under the current EU and US disclosure regimes, prohibitions against greenwashing are underenforced. Second, disclosures affected by greenwashing may nonetheless produce socially

---

[16] Richard P. Gregory, *How Greenwashing Affects Firm Risk: An International Perspective*, 17 J. RISK & FIN. MGMT. 526 (2024).
[17] *E.g.*, Marcel Kahan & Edward Rock, *Corporate Governance Welfarism*, 15 J. LEGAL ANALYSIS 108, 113 (2023) (describing ESG as an "imprecisely defined and poorly understood term").
[18] Aaron Timoshanko, *Do shareholders support corporate social responsibility, or should companies 'stick to their knitting'?* 25 J. CORP. L. STUD. 45, 50 (2025) (highlighting the distinction between the two terms).
[19] *E.g.* Thomas M. Madden & Gerlinde Berger-Walliser, *Making Sense of ESG with the SEC*, 25 U. PA. J. BUS. L. 933 (2023); Elizabeth Pollmann, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403, 424 (2024).

valuable signaling, reputational benefits and bomb crater effects[20] that emphasize attention to social and environmental causes. All these implications justify a more nuanced regulatory posture than one rooted in pure deterrence.

The article proceeds as follows: Section 2 surveys the history of CSR and SRI, with attention to international differences[21] rooted in corporate governance structures. Section 3 examines the turn to disclosure models for publicly traded corporations; we argue that the emerging US and European disclosure models broadly match the relationship between CSR and corporate governance that have developed in these economies. In terms of terminology, we primarily use the term "ESG disclosure" in this part, given the focus of this term on metrics and the evaluation of corporate conduct. Section 4 defines greenwashing, its motivations, and the enforcement gap. Section 5 argues that greenwashed disclosures may be preferable to the absence of sustainability disclosures. Section 6 concludes.

2. Social considerations in markets: Corporate Social Responsibility (CSR)

2.1. Origins

Markets are not only sites of resource allocation but also social arenas in which norms, values, and responsibilities shape economic outcomes. Corporate social conscientiousness in capital markets is enacted through CSR and SRI, which have grown in the past decades, perpetuated by financial, environmental, and societal crises.

---

[20] On the term, *see infra* note 199 and accompanying text.

[21] Dirk Matten & Jeremy Moon, *"Implicit" and "Explicit" CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility*, 33 ACAD. MGMT. REV. 404, 409 (2008); Gregory Jackson & Androniki Apostolakou, *Corporate Social Responsibility in Western Europe: An Institutional Mirror or Substitute?*, 94 J. BUS. ETHICS 371 (2010).

CSR advocates for the integration of ethics, sustainability, and global governance in market behavior, with roots extending to religious foundations of guilds and early corporations.[22] Political economy has long depicted responsibility as a motivating factor in markets,[23] and social benefits embedded in corporate activities became a selling factor in social market arenas.[24]

In modern times, CSR has flourished in crises. Social responsibility fosters corporate accountability through codes of conduct that reflect the law and moral convictions of society.[25] CSR is the foundation of firms going beyond profit maximization to consider broader stakeholder goals. When business ethics match the corporate culture, work becomes a self-actualizing motivation factor that fosters productivity.[26] Shared social responsibility strengthens group cohesion.[27] CSR-attentive firms are viewed as future-oriented for anticipating regulatory changes, making CSR a competitive advantage.[28] Socially conscientious settings also attract a favorable workforce that finds gratification beyond monetary remuneration.

The main drivers for CSR lie in crises, governance, and stakeholder action. Globalization and digitalization pressured corporations for greater responsibility as transnational corporate

---

[22] Proponents of a social responsibility of corporations sometimes cite chartering by the government as a justification for a corporate purpose transcending mere shareholder interests. *See, e.g.*, John C. Coates IV, *State Takeover Statutes and Corporate Theory: The Revival of an Old Debate*, 64 N.Y.U. L. REV. 806, 813 (1989).
[23] WOLFGANG G. WEBER, PATRIZIA PASQUALONI & CHRISTIAN BURTSCHER, WIRTSCHAFT, DEMOKRATIE UND SOZIALE VERANTWORTUNG: PSYCHOLOGIE UND BERUF (2004).
[24] RALPH SICHLER, AUTONOMIE IN DER ARBEITSWELT: PSYCHOLOGIE UND BERUF (2006).
[25] JUDITH HENNINGFELD, MANFRED POHL & NICK TOLHURST, THE ICCA HANDBOOK ON CORPORATE SOCIAL RESPONSIBILITY (2006).
[26] ANNE COLBY & WILLIAM DAMON, SOME DO CARE: CONTEMPORARY LIVES OF MORAL COMMITMENT (1992); Kathleen Gerson, *Moral Dilemmas, Moral Strategies and the Transformation of Gender: Lessons from Two Generations of Work and Family Change*, 16 GENDER & SOC'Y 8 (2002); Elliot Aronson, *Integrating Leadership Styles and Ethical Perspectives*, 18 CANADIAN J. ADMIN. SCI. 244 (2001).
[27] FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY (1995).
[28] Aronson, *supra* note 26, at 244; FRANK BIERMANN & BERND SIEBENHÜNER, MANAGERS OF GLOBAL CHANGE: THE INFLUENCE OF INTERNATIONAL ENVIRONMENTAL BUREAUCRACIES (2009); ANDRÉ DE WOOT, SHOULD PROMETHEUS BE BOUND? CORPORATE SOCIAL RESPONSIBILITY (2005); HANS LENK & MATTHIAS MARING, WIRTSCHAFT UND ETHIK (1992); DOUG LENNICK & FRED KIEL, MORAL INTELLIGENCE: ENHANCING BUSINESS PERFORMANCE AND LEADERSHIP SUCCESS (2007); JANE NELSON, LEADERSHIP, ACCOUNTABILITY AND PARTNERSHIP: CRITICAL TRENDS AND ISSUES IN CORPORATE SOCIAL RESPONSIBILITY (Harvard Univ., Corp. Responsibility Initiative Rep., 2004).

conduct became increasingly transparent. The 2008 World Financial Recession and the COVID-19 downturn further amplified calls for CSR.

International organizations, including the United Nations through its Millennium Development Goals and Sustainable Development Goals, have been pivotal in integrating social and environmental concerns into corporate activities through frameworks like the United Nations Global Compact (UNGC). These trends increased during the 2000s and 2010s, when the role of institutional investors began to grow. The UN Global Compact (2000), the Principles for Responsible Investment (2006), the Task Force on Climate-related Financial Disclosures (2017), and BlackRock's annual letters from 2018 onward, and the formation of the International Sustainability Standards Board (2023) transformed CSR from a decision largely subject to managerial discretion into a portfolio-level commitment of the world's largest asset managers. This broader cultural shift towards social responsibility in markets helped to elevate mandatory sustainability disclosures.[29]

SRI extends the idea of CSR into the investment sphere, aligning financial returns with social and environmental values. While SRI is conventionally associated with a more explicitly ethical and values-driven perspective, the newer term ESG is typically oriented toward financially relevant factors and risk management, thus allowing comparison across firms.[30] Historically, SRI

---

[29] On the emphasis on the role of institutional invests, *see* U.N. GLOBAL COMPACT, ABOUT THE GLOBAL COMPACT (2000); U.N. PRINCIPLES FOR RESPONSIBLE INVESTMENT, AN INVESTOR INITIATIVE IN PARTNERSHIP WITH UNEP FI AND THE UN GLOBAL COMPACT (2006); TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES, RECOMMENDATIONS OF THE TASK FORCE ON CLIMATE-RELATED FINANCIAL DISCLOSURES (June 2017); LAURENCE D. FINK, A SENSE OF PURPOSE, BLACKROCK ANN. LETTER TO CEOS (JAN. 2018); INT'L SUSTAINABILITY STANDARDS BOARD, IFRS S1 GENERAL REQUIREMENTS FOR DISCLOSURE OF SUSTAINABILITY-RELATED FINANCIAL INFORMATION (June 2023). *But see* Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 100–02 (2020) (describing stakeholderism as a cosmetic intervention that mainly serves the interests of managers by insulating them from shareholders).

[30] Omari Scott Simmons, *Corporate Evolution*, 46 CARDOZO L. REV. 1246, 1251 (2025); *see also* Andreas Engert, *ESG ratings: Guiding a movement in search for itself*, in RESEARCH HANDBOOK IN ENVIRONMENTAL, SOCIAL, AND CORPORATE GOVERNANCE 316 (Thilo Kuntz ed. 2024) (surveying the role of ESG ratings).

can be traced back to ethical investing of religious institutions.[31] The post-World War period saw a rise in SRI, propelled by stakeholder pressure and legislative reforms.[32] Modern SRI evolved in the 1960s from shareholder activism driven by civil rights and social justice movements,[33] and developed through the 1970s with shareholder advocacy and screening practices.[34] Environmental catastrophes in the 1980s triggered a surge in green corporate engagement, with institutional investors increasingly influencing corporate conduct.[35] The 2008 World Financial Recession further developed SRI from a niche market to a mainstream standard, [36] with stakeholders calling for greater transparency and accountability. [37] The COVID-19 crisis confirmed this trend, as markets were tasked with addressing inequality and ensuring sustainable development.[38]

---

[31] Geoffrey Williams, *Are Socially Responsible Investors Different from Conventional Investors? A Comparison Across Six Countries* (Univ. of Bath, Unpublished Working Paper, 2005).
[32] Jill F. Solomon, Aris Solomon & Simon D. Norton, *Socially Responsible Investment in the UK: Drivers and Current Issues*, 27 J. GEN. MGMT. 1 (2002); Russell Sparkes & Christopher J. Cowton, *The Maturing of Socially Responsible Investment: A Review of the Developing Link with Corporate Social Responsibility*, 52 J. BUS. ETHICS 45 (2004).
[33] Luc Renneboog, Jenke ter Horst & Chendi Zhang, *Socially Responsible Investments: Methodology, Risk and Performance* (Tilburg Univ. Ctr. for Econ. Rsch., Discussion Paper No. 2007-2031, 2007); RUSSELL SPARKES, SOCIALLY RESPONSIBLE INVESTMENT: A GLOBAL REVOLUTION (2002).
[34] SOC. INV. F., REPORT ON SOCIALLY RESPONSIBLE INVESTING TRENDS IN THE UNITED STATES: SOCIAL INVESTMENT FORUM INDUSTRY RESEARCH PROGRAM 10-YEAR REVIEW (Jan. 24, 2006); Allison Biller, *Socially Responsible Investing Now Part of the Landscape*, 44 BENEFITS & COMPENSATION DIG. 12 (2007); DOUG BROADHURST, JANE WATSON & JOANNA MARSHALL, ETHICAL AND SOCIALLY RESPONSIBLE INVESTMENT: A REFERENCE GUIDE FOR RESEARCHERS (2003); MYRA ALPERSON, ALICE TEPPER MARLIN, JONATHAN SCHORSCH & ROSALYN WIL, THE BETTER WORLD INVESTMENT GUIDE: ONE HUNDRED COMPANIES WHOSE POLICIES YOU SHOULD KNOW ABOUT BEFORE YOU INVEST YOUR MONEY (1991); MEG VOORHES, THE U.S. DIVESTMENT MOVEMENT: HOW SANCTIONS WORK—LESSONS FROM SOUTH AFRICA (1999); MERRIAM-WEBSTER DICTIONARY (2008), http://merriam-webster.com (last visited Sept. 11, 2025); Steven J. Schueth, *Socially Responsible Investing in the United States*, 43 J. BUS. ETHICS 189 (2003).
[35] Solomon, Solomon & Norton, *supra* note 32, at 1; Sparkes & Cowton, *supra* note 32, at 45.
[36] Alison Kemper & Roger Martin, *After the Fall: The Global Financial Crisis as a Test of Corporate Social Responsibility Theories*, 7 EUR. MGMT. REV. 229, 229–30 (2010).
[37] SOC. INV. F., *supra* note 34.
[38] *See generally* Martin Gelter & Julia M. Puaschunder, *COVID-19 and Comparative Corporate Governance*, 46 J. CORP. L. 557, 606–13 (2021).

2.2. Socially responsible corporate conduct today

As SRI imbues personal values and social concerns into financial investments,[39] by selecting securities not only based on profit and risk, but in regard to social and environmental contributions of the issuing entities, merging stakeholder concerns with shareholder interests.[40] SRI encompasses shareholder advocacy, community investing, and the integration of ESG factors into fiduciary duties by institutional investors, endowments, and pension funds.

New instruments, including Green New Deal frameworks and climate finance, reflect the integration of social and environmental safeguards into standard financial structures. Empirical studies have shown a positive correlation between strong ESG performance and improved risk-adjusted returns.[41] ESG funds tend to be crisis-robust, as investors opt for them for non-monetary purposes and tend not to sell off ESG-focused stocks during downturns.[42] As a result, ESG considerations are becoming integrated into mainstream investment decision-making across global markets.[43]

A significant issue is, however, whether ESG investment decisions are made on a sound and comparable basis. Empirical research has documented that the leading ESG ratings agencies often disagree with each other substantially: The scores assigned by the six major rating agencies exhibit a pairwise correlation of only about 0.54, far less than similar correlations among credit

---

[39] Schueth, *supra* note 34, at 189–94.
[40] Reinhard Steurer, *The Role of Governments in Corporate Social Responsibility: Characterising Public Policies on CSR in Europe*, 43 POL'Y SCI. 49, 49–72 (2010).
[41] Gunnar Friede, Timo Busch & Alexander Bassen, *ESG and Financial Performance: Aggregated Evidence from More Than 2000 Empirical Studies*, 5 J. SUSTAINABLE FIN. & INV. 210, 210–33 (2015).
[42] JULIA M. PUASCHUNDER, ADVANCES IN BEHAVIORAL ECONOMICS AND FINANCE LEADERSHIP: STRATEGIC LEADERSHIP, WISE FOLLOWERSHIP AND CONSCIENTIOUS USERSHIP IN THE DIGITAL CENTURY (2022).
[43] Philipp Krüger, *Corporate Goodness and Shareholder Wealth*, 115 J. FIN. ECON. 304, 304–29 (2015).

ratings.[44] However, as we will argue below, even a noisy signal may be socially valuable, especially when diversified institutional investors use them in portfolio-wide engagement strategies.[45]

2.3. Contrasting models

The United States and Europe represent two distinct models of CSR due to cultural, legal, political, and institutional framework conditions. Scholars have observed that in the US, CSR is more explicitly stated and promoted by corporations,[46] while in Europe, it is more institutionalized and expected by the public.[47] These two models are consistent with a deeper understanding of comparative corporate governance: firms on both sides of the Atlantic may engage in similar levels of CSR, but for different reasons. We suggest that the divergence in the regulation of sustainability disclosures that has emerged in recent years follows the same pattern.

2.3.1. United States

CSR in the US is historically grounded in voluntary corporate actions rather than mandated frameworks.[48] American companies frame CSR around philanthropy, community engagement, and environmental sustainability, tied to brand reputation and consumer demands. This might appear to

[44] Florian Berg, Julian F. Kölbel & Roberto Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings*, 26 REV. FIN. 1315, 1316–18 (2022) (documenting average pairwise correlation of 0.54 across six major raters, compared with roughly 0.99 for major credit-rating agencies). *see also* Florian Berg, Julian F. Kölbel, Anna Pavlova & Roberto Rigobon, *ESG Confusion and Stock Returns: Tackling the Problem of Noise*, NBER WORKING PAPER No. 30562 (Oct. 2022) (tackling the difficulty of identifying correlations between ESG ratings).
[45] *See* Jeffrey N. Gordon, *Systematic Stewardship*, 47 J. CORP. L. 627, 648-58 (2022) (arguing that diversified institutional investors should aim at reducing portfolio-level systematic risks, including climate risks, rather than firm-specific risks); Madison Condon, *Externalities and the Common Owner*, 95 WASH. L. REV. 1, 3–9 (2020) (suggesting that diversified investors have incentives to push for emissions reduction due to portfolio risk). For a skeptical perspective, *see* Marcel Kahan & Edward B. Rock, *Systematic Stewardship with Tradeoffs*, 48 J. CORP. L. 497 (2023).
[46] Matten & Moon, *supra* note 21, at 404.
[47] *Id.*
[48] *Id.*

contradict the stereotype of American shareholder wealth maximization juxtaposed with a European stakeholder perspective.[49]

In the US, ownership structure was characterized by the 'separation of ownership and control',[50] resulting in 'strong managers and weak owners.'[51] The resulting collective action problems gave rise to agency theory[52] and corporate governance debates from the 1970s onwards.[53] Political scientists have suggested that firms were dominated by a manager-worker coalition in the 1950s and 60s, in part because firms were relatively worker-friendly without an explicit legal mandate.[54] This arrangement is probably best explained by theories emphasizing the board's role in balancing the interests of groups with different bargaining power relative to the firm.[55]

The historical dominance of managerialism in US corporate governance matches the characterization of American CSR as 'explicit.' Firms exhibited socially responsible conduct

---

[49] *E.g.*, Lawrence A. Cunningham, *Commonalities and Prescriptions in the Vertical Dimension of Corporate Governance*, 84 CORNELL L. REV. 1133, 1135–43 (1999).

[50] ADOLF A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 90 (1932).

[51] MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE XIII–XVI (1994).

[52] Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976). On the rise of agency theory *see, e.g.*, RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION 316 (2007).

[53] Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950–2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465, 1518–20 (2007) (describing the rise of the idea of the "monitoring board").

[54] PETER A. GOUREVITCH & JAMES SHINN, POLITICAL POWER AND CORPORATE CONTROL: THE NEW GLOBAL POLITICS OF CORPORATE GOVERNANCE (2005). For the example of retirement plans, see, e.g., Steven Sass, *The Development of Employer Retirement Income Plans: From the Nineteenth Century to 1980*, *in* OXFORD HANDBOOK ON PENSIONS AND RETIREMENT INCOME 76, 86 (Gordon L. Clark & Alicia H. Munnell eds., 2007); RICHARD A. IPPOLITO, PENSION PLANS AND EMPLOYEE PERFORMANCE: EVIDENCE, ANALYSIS, AND POLICY 10–29 (1997) (discussing how DB plans were used to create an implicit contract between employers and employees that resulted in low turnover); Martin Gelter, *The Pension System and the Rise of Shareholder Primacy*, 43 SETON HALL L. REV. 909, 922–23 (2013).

[55] *See generally* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999) (developing a theory where the board balances the interest of different stakeholder groups to protect their rents); *see also* Gordon, *supra* note 53, at 1514 n.187; Harwell Wells, *Shareholder Power in America, 1800–2000: A Short History*, *in* RESEARCH HANDBOOK ON SHAREHOLDER POWER 13, 24 (Jennifer G. Hill & Randall S. Thomas eds., 2015) (describing increasing shareholder power and changing corporate governance in the 1980s).

largely to build their brands, matching traditions of voluntarism and the ‘corporate welfare state.’ This branding-driven approach reflects an explicit CSR notion within a shareholder-primacy model, featuring market-driven, bottom-up initiatives tied to reputation and competitiveness.

Shareholder primacy forces US corporations to adopt CSR as a strategic tool for differentiation: given the right market pressures, firms will be generous to stakeholders to enhance profitability. This has enabled US firms to drive the global CSR discourse through voluntary initiatives and corporate-led campaigns.

2.3.2. Europe

CSR in Europe has traditionally been described by scholars as ‘implicit’.[56] Rather than explicitly taking responsibility for social issues as a market signal, Continental European firms have traditionally engaged in social contributions through informal networks embedded in cultural, economic, and political institutions of the respective countries. Arguably, these structures are more historically aligned with the aristocratic roots of business and a more dominant role of governments.[57]

Modern CSR in Europe stems from traditions of social democracy and welfare states, where firms pursue CSR as a historically-grown normative obligation to society, not only as a competitive advantage.

This perspective matches comparative corporate governance. Compared to the US and UK, Continental European jurisdictions were often characterized by concentrated ownership, often

[56] Matten & Moon, *supra* note 21, at 407.
[57] Ugo Pagano, *The Evolution of the American Corporation and Global Organizational Biodiversity*, 35 SEATTLE U. L. REV. 1271, 1279–90 (2012) (tracing concentrated ownership structures to aristocratic roots in society).

resulting in domination by controlling shareholders.[58] This may be linked to political forces strengthening labor institutions; if these undermine board monitoring, concentrated ownership persists to compensate.[59] The resulting 'control-oriented' (insider) financial system contrasts with the 'arm's length' (outsider) system of the US and UK.[60] Control-oriented systems rely on networks in which banks, large shareholders, and sometimes governments take a significant role.[61] These two types manifest two different socio-economic models: 'liberal' capitalist systems and 'coordinated' capitalist systems.

Liberal systems organize economic activity along market transactions, while coordinated systems are based on networks of interest groups.[62] Labor law backs up worker bargaining power more strongly in the latter,[63] resulting in a system in which large shareholders commit to corporate investment.[64]

---

[58] *See, e.g.*, Marco Becht & Ailsa Röell, *Blockholdings in Europe: An International Comparison*, 43 EUR. ECON. REV. 1049, 1051–52 (1999); Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 54 J. FIN. 471 (1999); Mara Faccio & Larry H.P. Lang, *The Ultimate Ownership of Western European Corporations*, 65 J. FIN. ECON. 365, 379–80 (2002); GOUREVITCH & SHINN, *supra* note 54, at 18; PEPPER D. CULPEPPER, QUIET POLITICS AND BUSINESS POWER 31–32 (2011); Wolf-Georg Ringe, *Changing Law and Ownership Patterns in Germany: Corporate Governance and the Erosion of Deutschland AG*, 68 AM. J. COMP. L. 493, 496–98 (2015).
[59] Mark J. Roe, *Political Preconditions to Separating Ownership from Corporate Control*, 53 STAN. L. REV. 539, 542 (2000); MARK J. ROE, POLITICAL DETERMINANTS OF CORPORATE FINANCE 162 (2003); *see also* GOUREVITCH & SHINN, *supra* note 54.
[60] *E.g.*, Erik Berglöf, *A Note on the Typology of Financial Systems*, *in* COMPARATIVE CORPORATE GOVERNANCE: ESSAYS AND MATERIALS 151, 159–64 (Klaus J. Hopt & Eddy Wymeersch eds., 1997); ALAN DIGNAM & MICHAEL GALANIS, THE GLOBALIZATION OF CORPORATE GOVERNANCE 64 (2009); Christian Leuz, *Different Approaches to Corporate Reporting Regulation: How Jurisdictions Differ and Why*, 40 ACCT. & BUS. RSCH. 229, 236–37 (2010); *see also* Reinhard H. Schmidt & Marcel Tyrell, *Financial Systems, Corporate Finance and Corporate Governance*, 3 EUR. FIN. MGMT. 333, 334 (1997); Martin Gelter, *The Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance*, 50 HARV. INT'L L.J. 129, 176–81 (2009).
[61] Berglöf, *supra* note 60, at 159–64.
[62] *See generally* Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism*, *in* VARIETIES OF CAPITALISM 1, 8–9 (Peter A. Hall & David Soskice eds., 2001); RICHARD W. CARNEY, CONTESTED CAPITALISM 3 (2010) (both discussing the distinction between the two types of capitalism).
[63] Roe, *Political Preconditions*, *supra* note 59, at 552; Marcello Belloc & Ugo Pagano, *Co-Evolution of Politics and Corporate Governance*, 29 INT'L REV. L. & ECON. 106, 107 (2009).
[64] *See, e.g.*, Gelter, *supra* note 59, at 176–81; Belloc & Pagano, *supra* note 63, at 107; Mark J. Roe & Massimiliano Vatiero, *Corporate Governance and Its Political Economy*, *in* THE OXFORD HANDBOOK OF CORPORATE GOVERNANCE 56, 67–70 (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2018).

We have elsewhere described such structures as 'corporate embeddedness.'[65] In European systems, firms are embedded in networks of long-term relationships. Large shareholders have long-term investment ties, making capital less fickle, and their non-diversified position creates incentives to ensure corporate survival – whether the key investor is a government, family shareholder, or industrial group.

Rajan and Zingales have described relationship-based financial systems as providing 'intertemporal cross-subsidies.'[66] Firms engage in CSR not to fulfill short-term market pressures, but because they are part of a larger network within the country's social compact, matching Europe's stakeholder-oriented approach to corporate governance.

The EU and individual member states have established strong employment and labor laws[67] (including board-level employee representation[68]), consumer protection, data privacy, and environmental regulation. The binding frameworks and reporting obligations enacted in recent years reflect a political culture that views corporations as embedded social actors. Europe thus institutionalizes CSR as part of corporate accountability to society at large.

2.3.3. Comparison

CSR practices diverge significantly between the US and Europe. In the US, CSR is primarily explicit and voluntary, reflecting shareholder primacy, with companies adopting CSR strategically

---

[65] Gelter & Puaschunder, *supra* note 38, at 585–89.

[66] Raghuram Rajan & Luigi Zingales, *Which Capitalism? Lessons from the East Asian Crisis*, 11 J. APPLIED CORP. FIN. 40, 42 (1998).

[67] *See, e.g.*, Leo E. Strine, Jr., *The Soviet Constitution Problem in Comparative Corporate Law: Testing the Proposition That European Corporate Law Is More Stockholder Focused Than U.S. Corporate Law*, 89 S. CAL. L. REV. 1239, 1251–54 (2016); Gelter, *supra* note 59, at 171–73.

[68] *See, e.g.*, Luca Enriques, Henry Hansmann, Reinier Kraakman & Mariana Pargendler, *The Basic Governance Structure: Minority Shareholders and Non-Shareholder Constituencies*, *in* THE ANATOMY OF CORPORATE LAW 79, 90–91 (Reinier Kraakman et al. eds., 3d ed. 2017); Jens Dammann & Horst Eidenmüller, *Codetermination: A Poor Fit for U.S. Corporations*, 2020 COLUM. BUS. L. REV. 870, 880.

for competitive advantage and brand reputation. In Europe, CSR is more strongly institutionalized within legal frameworks and stakeholder-oriented governance, treating corporate responsibility as a normative obligation aligned with public policy.

European law influences US practices,[69] while US innovation and brand-driven global CSR campaigns also shape European corporate agendas. As we will discuss in the next part, these macro-level divergences map onto the disclosure regimes emerging from the two systems. While federal disclosure requirements have stalled in the US, the EU has produced a more centralized sustainability reporting regime. A more regulatory approach in Europe persists, with the EU's CSRD reinforcing corporate accountability. As for transatlantic influences, European regulatory leadership may pressure US companies toward standardized practices, while US market-driven initiatives continue to influence European corporations.

3. The legal enshrinement of sustainability disclosures

Both in the United States and in Europe, recent years have seen a trend away from directly mandating corporate conduct toward disclosure requirements.[70] The reason why disclosure, rather than direct sustainability mandates, have become popular, is likely the result of the difficulty of legislating in this area. This is true for at least two reasons.

First, it is challenging to define prosocial corporate conduct legally. There is a constant risk of over- and underinclusivity, resulting in the persistent need to update legislation or regulation. As critics of stakeholder perspectives on corporate law have long recognized, broad

[69] On the regulatory influence of EU law worldwide, see generally Anu Bradford, *The Brussels Effect*, 107 NW. U. L. REV. 1 (2012).

[70] *See* John Armour, Luca Enriques & Thom Wetzer, *Mandatory Corporate Climate Disclosures: Now, but How?*, 2021 COLUM. BUS. L. REV. 1085, 1108 (arguing in favor of mandatory disclosure instead of regulation); Sebastian Steuer & Tobias H. Tröger, *The Role of Disclosure in Green Finance*, 8 J. FIN. REGUL. 1, 3 (2022) (describing disclosure requirements as a regulatory tool employed by European policymakers).

'prosocial' mandates are likely to amplify managerial discretion and power rather than induce pro-social corporate conduct.[71]

Second, mandatory disclosures are likely politically more feasible. Large firms may see them as a compromise that imposes only a minor burden, whereas activists may view them as a first step toward pushing corporate conduct toward becoming more social.[72]

In concurrence with disclosure as a substitute for substantive regulation, we can identify a shift in the goal of disclosure requirements. While disclosures in general were historically concerned providing investors with information about sustainability-created risks, now the goal is to motivate firms to conduct themselves in a sustainability-compliant manner.

3.1. United States: From the SEC to California

As a matter of principle, disclosures relating to climate change and ESG are not new, and firms have always been required to disclose risks relating to these areas. Among other issues, the Management Discussion and Analysis (MD&A), which is a required part of an issuer's financial reports, must address "any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."[73] Nevertheless, after several years of discussion, in March 2024, the SEC adopted rules requiring extensive climate-related disclosures, including the impact of severe weather events

---

[71] FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 38 (1991); Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 444, 447–49 (2001); *see also* Barnali Choudhury, *Social Disclosure*, 13 BERKELEY BUS. L.J. 185, 206 (2016) (noting that disclosure may be more acceptable because it interferes less with the shareholder orientation of corporate law).

[72] Steuer & Tröger, *supra* note 70, at 3; Margaret Ryznar & Karen M. Woody, *A Framework on Mandating Versus Incentivizing Corporate Social Responsibility*, 98 MARQ. L. REV. 1667, 1669–74 (2015) (discussing the complementary roles of regulation and disclosure).

[73] 17 C.F.R. § 229.303(b)(2)(ii). *See* U.S. Sec. & Exch. Comm'n, Rescission of Climate-Related Disclosure Rules, Release No. 33-11421, File No. S7-2026-19 (May 29, 2026), at 33 (pointing out that these requirements persist even without climate-specific disclosure rules).

and, for certain filers, the quantity of greenhouse gas emissions.[74] In its final form, the rules required disclosure of Scope 1 and Scope 2 emissions, but omitted mandatory disclosure of Scope 3 emissions.[75] Thus, disclosures would have included direct emissions and indirect emissions from purchased energy, but not other emissions along the issuer's supply chain.

While this reduction compared to the original plans was already a reaction to criticism, the SEC's promotion of this agenda has come to a halt. Facing litigation, the SEC voluntarily stayed the implementation of the rules in April 2024.[76] When the Fifth Circuit vacated the SEC's approval of NASDAQ's similarly motivated diversity disclosure rules in December 2024,[77] this cast further doubt on the legality of climate disclosure mandates. In the current political environment, the SEC is unlikely to pursue these rules further.[78] In March 2025, the Commission voted to end its defense of the rules,[79] after which the Eighth Circuit Court of Appeals held the proceedings in abeyance. In May 2026, the SEC proposed rescission of the rules.[80] But it is possible that the SEC will pick

---

[74] The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21,668 (Mar. 28, 2024). On the background and debate on these rules, see Lisa M. Fairfax, *Dynamic Disclosure: An Exposé on the Mythical Divide Between Voluntary and Mandatory ESG Disclosure*, 101 TEX. L. REV. 273, 314–15 (2022).

[75] *E.g.*, Dhruv Aggarwal, *The Political Carbon Cycle* 34 (EUR. CORP. GOVERNANCE INST., LAW WORKING PAPER NO. 816/2024, 2024); Stavros Gadinis, *Dissonance in Climate Disclosure: The SEC, EU, California, and ISSB Regimes* 16 (2024) (unpublished manuscript), https://ssrn.com/abstract=4828188. These categories are originally defined in WORLD RES. INST. & WORLD BUS. COUNCIL FOR SUSTAINABLE DEV., THE GREENHOUSE GAS PROTOCOL: A CORPORATE ACCOUNTING AND REPORTING STANDARD (rev. ed. Mar. 2004). The SEC rules define Scope 1 emissions as "direct GHG emissions from operations that are owned or controlled by a registrant" and Scope 2 emissions as "indirect GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling that is consumed by operations owned or controlled by a registrant." 89 Fed. Reg. at 21,915.

[76] 89 Fed. Reg. 25,804 (Apr. 12, 2024).

[77] All. for Fair Bd. Recruitment v. SEC, 125 F.4th 159 (5th Cir. 2024).

[78] Luca Enriques, Alessandro Romano & Andrew F. Tuch, *Sustainability Assurance* 5 (EUR. CORP. GOVERNANCE INST., LAW WORKING PAPER NO. 871/2025, 2025).

[79] Press Release, U.S. Sec. & Exch. Comm'n, SEC Votes to End Defense of Climate Disclosure Rules, Release No. 2025-58 (Mar. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-58.

[80] State of Iowa v. SEC, No. 24-1522 (8th Cir. Sept. 12, 2025) (holding consolidated petitions in abeyance while the Commission reconsiders the challenged rules); U.S. Sec. & Exch. Comm'n, Rescission of Climate-Related Disclosure Rules, File No. S7-2026-19, Release No. 33-11421 (May 29, 2026), https://www.sec.gov/rules-regulations/2026/05/s7-2026-19; *see also* Sean J. Griffith, *What's "Controversial" About ESG? A Theory of Compelled Commercial Speech Under the First Amendment*, 101 NEB. L. REV. 876 (2023) (arguing that the rules would exceed the SEC's authority).

up the project again if the political tide turns.[81] The constitutional backdrop of this litigation are prior decisions of the Supreme Court, particularly the D.C. Circuit's decision finding the SEC's conflict-minerals disclosure rule in violation of the First Amendment to the extent it required issuers to characterize their products as not "DRC conflict free."[82] SEC disclosure mandates may be unconstitutional when they require the speaker to adopt a controversial moral or political characterization instead of merely providing factual information material to investment decisions.[83]

Meanwhile, California is implementing its own climate disclosure laws, which are in some ways more far-reaching than the federal rules would have been. The Climate Corporate Data Accountability Act requires the disclosure of Scope 1, 2 and 3 emissions.[84] While Scope 1 and 2 emissions will be required to be disclosed in early 2026 (for 2025), Scope 3 disclosures will first be mandated for publication early in 2027 (for 2026).[85] In addition, the Climate-Related Financial Risk Act requires the disclosure of climate-related financial risks and measures to mitigate them.[86] Both acts apply to companies doing business in California and exceeding certain revenue thresholds. These rules will likely have considerable extraterritorial effects, as revenues for purposes of the threshold are measured worldwide and not just in California.[87]

---

[81] Enriques, Romano & Tuch, *supra* note 78, at 5.
[82] Nat'l Ass'n of Mfrs. v. SEC, 800 F.3d 518, 530-31 (D.C. Cir. 2015).
[83] *See* Griffith, *supra* note 80 (arguing that the ESG disclosure agenda is largely forclosed by First Amendment doctrine); *contra* George S. Georgiev, *The Market-Essential Role of Corporate Climate Disclosure*, 13 U.C. DAVIS L. REV. 2105 (2023) (suggesting that ESG disclosure mandates can be constitutional).
[84] Climate Corporate Data Accountability Act, S.B. 253, 2023–2024 Reg. Sess. (Cal. 2023).
[85] Gadinis, *supra* note 75, at 32.
[86] Climate-Related Financial Risk Act, S.B. 261, 2023–2024 Reg. Sess. (Cal. 2023).
[87] Gadinis, *supra* note 75, at 32; Roza Nurgozhayeva & Dan W. Puchniak, *Corporate Purpose Beyond Borders: A Key to Saving Our Planet or Colonialism Repackaged?* 30 (EUR. CORP. GOVERNANCE INST., LAW WORKING PAPER NO. 744/2023, 2023). Moreover, California has enacted the AB 1305, the Voluntary Carbon Market Disclosures Act, which requires detailed disclosures of the methodology underlying claims relating to carbon neutrality and emissions reductions. Cal. Health & Safety Code §§ 44475–44475.2.

California's efforts are not necessarily representative of US states as a whole. To the contrary, there has been an anti-ESG backlash across the country. Since 2021, many US states have considered or adopted legislation restricting the use of ESG criteria by public pension funds and state contractors. Texas's Senate Bill 13 (2021)[88] and Florida's House Bill 3 (2023)[89] are the most prominent examples, although Texas's law was struck down on First Amendment grounds by a federal district court and is now on appeal.[90]

Moreover, California's legislation may also not survive constitutional challenge. While the Central District of California denied the Chamber of Commerce's motion for a preliminary injunction in August 2025,[91] the Ninth Circuit granted an injunction pending appeal as to SB 261 in November 2025, while the SB 253 emissions-disclosure regime remains in effect.[92]

3.2. European Union Law

The EU has been a global leader in mandating sustainability and climate-related disclosures,[93] featuring varying environmental governance practices across member states.[94]

---

[88] Act of June 14, 2021, ch. 529, 2021 TEX. SESS. LAW SERV. (codified at TEX. GOV'T CODE §§ 809.001–.057, 2274.001–.003).

[89] Act of May 2, 2023, ch. 2023-28, 2023 FLA. SESS. LAW SERV.

[90] American Sustainable Business Council v. Hegar et al, No. 1:2024cv01010 - Document 50 (W.D. Tex. 2026),

[91] Chamber of Commerce of the U.S. v. California Air Resources Bd., No. 2:24-cv-00801-ODW (PVCx), 2025 WL __ (C.D. Cal. Aug. 13, 2025) (denying preliminary injunction against both statutes).

[92] Chamber of Commerce v. California Air Resources Bd., No. 25-5327 (9th Cir.), order of Nov. 18, 2025 (granting injunction pending appeal as to SB 261); Cal. Health & Safety Code § 38532 (Climate Corporate Data Accountability Act, SB 253); Cal. Pub. Res. Code § 71203 (Climate-Related Financial Risk Act, SB 261).

[93] Wolf-Georg Ringe & Alperen Gözlügöl, *A Critique of EU Policymaking on Sustainable Corporate Governance and Finance*, 4 REVUE EUROPÉENNE DU DROIT 127, 127 (2022).

[94] *E.g.*, Choudhury, *supra* note 71, at 192; Maria Lucia Passador & Federico Riganti, *Less Is More in the Age of Information Overload*, 15 N.Y.U. J.L. & BUS. 567, 579–80 (2019).

The 2014 Directive on Non-Financial Reporting (NFRD)[95] already required large companies to disclose information on ESG topics, though requirements remained relatively general.[96] This policy was strengthened with the Corporate Sustainability Reporting Directive (CSRD) of 2022,[97] which applies to a larger number of companies and expands mandatory reporting standards and aligns them with the EU's sustainability goals. It is part of a broader legislative sustainable-finance package including the SFDR, which mandates customer-oriented disclosures in the financial services sector, and the Taxonomy Regulation, which establishes a common classification scheme for environmentally-sustainable activities.[98] The latter is particularly important to the EU's anti-greenwashing goals because it sets forth criteria for when an economic activity may be treated as environmentally sustainable.[99]

The CSRD imposes detailed reporting obligations regarding various issues, including greenhouse gas emission targets and stakeholder impacts.[100] The management report must discuss the impact on ESG matters, human rights, anti-corruption, sustainability, the 1.5°C temperature reduction goal, as well as greenhouse gas emission targets for 2030 and 2050, among other

---

[95] Directive 2014/95, 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, 2014 O.J. (L 330) 1.

[96] Steuer & Tröger, *supra* note 70, at 9.

[97] CSRD, *supra* note 6.

[98] SFDR, *supra* note 7; Taxonomy Regulation, *supra* note 9.

[99] Taxonomy Regulation, supra note 9, arts. 3–4, recitals 11–12. *See*, in particular, art. 3 (providing that an economic activity is environmentally sustainable only if it contributes to certain objectives, does not harm certain other objectives, and meets certain minimum standards and technical screen criteria set forth in the Directive).

[100] *See* Gaia Balp & Giovanni Strampelli, *Institutional Investor ESG Engagement: The European Experience*, 23 EUR. BUS. ORG. L. REV. 869, 883 (2022).

environmental topics.[101] The reporting entity must describe the "due diligence process implemented … with regard to sustainability matters."[102]

The Accounting Directive,[103] as amended by the CSRD, features the principle of 'double materiality.' Both in the US and Europe, securities law traditionally defines materiality with reference to pricing. In the US, the standard turns on whether a reasonable investor would consider the information important. In EU market-abuse law, the concept of inside information turns on price sensitivity; other EU disclosure regimes, including prospectus and periodic-reporting rules, use related but not identical materiality concepts.[104]

"Double materiality" supplements *financial materiality* with *impact materiality*, where each can trigger a disclosure requirement by itself.[105] *Impact materiality* is identified with effects of corporate conduct on ESG matters, including human rights, anti-corruption, sustainability, interest of stakeholders and greenhouse gas emissions targets for 2030 and 2050.[106] Among other things, all firms (except micro undertakings) that are public interest entities (such as publicly traded firms or banks) must cover, in their description of the business model and strategy, "the plans of the undertaking, including implementing actions and related financial and investment plans, to

---

[101] Council Directive 2013/34, of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, 2013 O.J. (L 182) 19 [hereinafter Accounting Directive], art. 19a(2)(a) (as amended by CSRD, *supra* note 6).
[102] Accounting Directive, *supra* note 101, art. 19a(2)(f)(i) (as amended by CSRD).
[103] *Id.*
[104] In the United States, see TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); Basic Inc. v. Levinson, 485 U.S. 224 (1988). For price sensitivity in EU market-abuse law, see Regulation (EU) No 596/2014, art. 7(1)(a), 2014 O.J. (L 173) 1; Case C-19/11, Geltl v. Daimler AG, ECLI:EU:C:2012:397 (June 28, 2012). For a comparative overview see, e.g., Martin Gelter, *Global Securities Litigation and Enforcement*, *in* GLOBAL SECURITIES LITIGATION AND ENFORCEMENT 3, 66-68 (Pierre-Henri Conac & Martin Gelter eds., 2019); in the context of sustainability disclosures Armour, Enriques & Wetzer, *supra* note 59, at 1108–09; Virginia Harper Ho, *Climate Disclosure Line-Drawing & Securities Regulation*, 56 U.C. DAVIS L. REV. 1875, 1889–90 (2023).
[105] *E.g.*, Federico Mezzanotte, *Corporate Sustainability Reporting: Double Materiality, Impacts, and Legal Risk*, 23 J. CORP. L. STUD. 633, 635 (2023).
[106] CSRD, *supra* note 6, recital 29; Hopt, *supra* note 3, at 32.

ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C …, and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities."[107]

The EU Commission is tasked with adopting Sustainability Reporting Standards.[108] The IFRS Foundation created the International Sustainability Standards Board (ISSB) in 2021 to establish a 'global baseline of sustainability disclosures.'[109] The EU Commission adopted European Sustainability Reporting Standards (ESRS) in 2023 based on work by EFRAG,[110] relying on standards from ISSB and GRI (Global Reporting Initiative).[111] While ISSB standards focus on financially material sustainability-related risks and opportunities, the ESRS implement the CSRD's double-materiality approach. ESRS require an assessment of impact materiality for Scope 1, 2 and 3 emissions.[112]

The disclosure requirements of the CSRD will be supplemented by the Corporate Sustainability Due Diligence Directive (CSDDD),[113] which requires certain firms to identify, mitigate, and report risks in their supply chain – including those involving human rights, climate impact, and forced labor. The CSDDD extends firm responsibility beyond the corporate group to suppliers and licensees along the firm's value chain, including on an international level.[114] The CSDDD

---

[107] Accounting Directive, *supra* note 101, art. 19a(2)(a)(3) (as inserted by CSRD art. 1(4)).
[108] Accounting Directive, *supra* note 101, art. 29b (as inserted by CSRD art. 1(8)).
[109] INT'L SUSTAINABILITY STANDARDS BD., ABOUT THE INTERNATIONAL SUSTAINABILITY STANDARDS BOARD (2025), https://www.ifrs.org/groups/international-sustainability-standards-board/ (last visited Sept. 30, 2025).
[110] Commission Delegated Regulation 2023/2772, of 31 July 2023, Supplementing Directive 2013/34/EU of the European Parliament and of the Council as Regards Sustainability Reporting Standards, 2023 O.J. (L 307) 1.
[111] Maria Eduarda Lessa & Mariana Pargendler, *Climate Disclosure in the Global South* 8 (EUR. CORP. GOVERNANCE INST., LAW WORKING PAPER NO. 868/2025, 2025).
[112] Commission Delegated Regulation 2023/2772, annex I, ESRS 1 §§ 3.2–3.5, 2023 O.J. (L 307) 1; Mezzanotte, *supra* note 105, at 641–42; Lessa & Pargendler, *supra* note 111, at 8.
[113] CSDDD, *supra* note 7.
[114] CSDDD, *supra* note 7, arts. 3(1)(g), 5, 6.

mandates internal due diligence systems to identify and mitigate such risks.[115] These are defined in terms of international conventions relating to human rights, sustainability, environment, climate change, and labor rights.[116]

The CSDDD applies to large EU firms[117] and some non-EU firms exceeding activity thresholds,[118] exporting standards that influence multinationals globally. While formally distinct from the CSRD, the CSDDD's requirements target similar information-gathering processes.[119] It may help CSRD enforcement: due diligence requirements may force a compliance culture with spillover effects on reporting, supported by public enforcement.[120] Thus, it may indirectly incentivize compliance with reporting duties.[121]

Following the Draghi report criticizing perceived overregulation, the European Commission proposed the so-called "Omnibus I Directive." After considerable controversy, the final text entered into force on March 18, 2026.[122] The directive narrows the personal scope of the CSRD to EU undertakings exceeding both 1,000 employees on average and €450 million in net turnover,[123]

---

[115] CSDDD, *supra* note 7, arts. 5–11 (setting out due diligence obligations to identify, prevent, mitigate, and bring to an end adverse human rights and environmental impacts in the company's own operations, subsidiaries, and value chains).

[116] CSDDD, *supra* note 7, art. 3(1)(b)–(c), annexes I & II (listing international conventions and instruments, including ILO conventions, the Paris Agreement, and others, as the basis for defining adverse impacts).

[117] For definitions, see CSDDD, *supra* note 7, art. 2(1).

[118] CSDDD, *supra* note 7, art. 2(2). On possible extraterritorial effects, see Luca Enriques, Matteo Gatti & Roy Shapira, *How the EU Sustainability Due Diligence Directive Could Reshape Corporate America*, 78 STAN. L. REV. 241 (2026).

[119] CSDDD, *supra* note 7, art. 6 (requiring group-wide due diligence processes and policies); CSRD, *supra* note 6, art. 19a(2)(f) (requiring disclosure of due diligence processes).

[120] CSDDD, *supra* note 7, arts. 24–25 (requiring Member States to establish supervisory authorities).

[121] Nurgozhayeva & Puchniak, *supra* note 87, at 20 ("The EU's Corporate Sustainability Due Diligence Directive, discussed below, provides teeth to the CSRD.").

[122] Directive (EU) 2026/470, of the European Parliament and of the Council of 24 February 2026, amending Directives 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards corporate sustainability reporting and corporate sustainability due diligence (Omnibus I), 2026 O.J. (L 470) 1. for the legislative history, see European Parliament Legislative Train, First Omnibus Package on Sustainability — Proposal Amending CSRD and CSDDD (adopted by Parliament Dec. 16, 2025; Council final approval Feb. 24, 2026).

[123] Omnibus I Directive, art. 2(1) (amending Accounting Directive, art. 3(1) to require more than 1,000 employees on average and net turnover exceeding €450 million).

which may remove more than 80 percent of the companies from the CSRD's scope.[124] The CSDDD's value-chain definition is similarly narrowed: rather than encompassing the full upstream and downstream chain, due diligence obligations now focus principally on direct (Tier-1) business partners, with requirements to investigate deeper tiers only where specific risks are identified.[125] The combined effect is a substantial retrenchment compared to the original requirements of the CSRD and CSDDD.

3.3. A shift in purpose

These ESG disclosure requirements pursue a different purpose than traditional capital markets disclosure, which aims to mitigate information asymmetries and reduce agency cost.[126]

Sustainability disclosure pursues a change of economic conduct toward environmental goals for a greater public purpose, partially independent of whether shareholders directly benefit.[127] The mechanism uses disclosure to set prosocial incentives. The principle of double materiality itself, specifically impact materiality, illustrates this: if issues are only impact material, they must be important for a specific non-financial goal. Disclosure creates pressure by making impacts visible, internalizing some costs through negative publicity.

---

[124] European Commission, Questions and Answers on Simplification Omnibus I and II (Feb. 26, 2025) (estimating that the proposed simplification package would remove about 80 percent of companies from CSRD scope). The actual number is likely higher because the final directive's thresholds are even higher than those in the draft at the time.
[125] Omnibus I Directive, *supra* note **Error! Bookmark not defined.**, art. 4(2) (amending CSDDD art. 2(1)(a)).
[126] *E.g.*, Christian J. Meier-Schatz, *Objectives of Financial Disclosure Regulation*, 8 J. COMP. BUS. & CAP. MKT. L. 219, 221–22 (1986); NICHOLAS L. GEORGAKOPOULOS, THE LOGIC OF SECURITIES LAW 63–64 (2017); Luca Enriques, Gerard Hertig, Reinier Kraakman & Edward Rock, *Corporate Law and Securities Markets*, *in* THE ANATOMY OF CORPORATE LAW 243, 248 (Reinier Kraakman et al. eds., 3d ed. 2017); Gelter, *Global Securities Litigation*, *supra* note 104, at 13–14.
[127] Choudhury, *supra* note 71, at 190; Christopher M. Bruner, *Corporate Governance Reform and the Sustainability Imperative*, 131 YALE L.J. 1217, 1254 (2022) (both noting how disclosure requirements direct managerial focus on a particular issue).

More directly, the recitals of the CSRD explicitly refer to the European Green Deal and Sustainable Finance Agenda, which use disclosure to channel capital flows toward purportedly sustainable activities.[128] Recitals and Commission communications repeatedly stress that sustainability reporting is a tool to "reorient" investment and corporate strategy toward climate neutrality by 2050.[129]

Firms must report on how sustainability matters are integrated into their strategy, governance, and business models,[130] backed by assurance requirements.[131] They must describe "the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain,"[132] necessitating information-gathering from businesses along the supply chain.[133]

Mere disclosure can also incentivize more 'sustainable' conduct. Disclosure as encouragement was already the policy of the corporate governance movement, when pro-investor norms were enshrined in codes using 'comply-or-explain.'[134] If the semi-strong efficient capital markets hypothesis[135] applies, directors interested in share prices will be encouraged to comply because such information affects the stock price.

---

[128] *E.g.*, CSRD, *supra* note 6, recitals 1–2.
[129] CSRD, *supra* note 6, recital 2; *see generally* Steuer & Tröger, *supra* note 70, at 3 ("The European Commission's ultimate objective here is nothing less than tweaking the whole financial system in a new direction by stimulating market participants' assumed appetite for 'green' financial instruments."). The SFDR is concerned with heterogeneous sustainability transparency practices across the internal market, which may distort end-investor decision-making. SFDR, *supra* note 7, recitals 9–10.
[130] Accounting Directive, *supra* note 101, art. 19a(2)(a) (as amended by CSRD).
[131] *Infra* notes 178–184and accompanying text.
[132] Accounting Directive, *supra* note 101, art. 19a(2)(f)(2) (as amended by CSRD).
[133] *See* Cafaggi, Iamiceli & Pistelli, *supra* note 8, at 6 (discussing the involvement of stakeholders in information-gathering).
[134] Klaus J. Hopt, *Comparative Corporate Governance: The State of the Art and International Regulation*, 59 AM. J. COMP. L. 1, 11–14 (2011).
[135] *E.g.*, JOHN ARMOUR, DAN AWREY, PAUL DAVIES, LUCA ENRIQUES, JEFFREY N. GORDON, COLIN MAYER & JENNIFER PAYNE, PRINCIPLES OF FINANCIAL REGULATION 102 (2016).

This principle applies only with modifications to sustainability disclosures given impact materiality: sustainable practices may be of interest even without affecting market prices. While the CSRD recitals claim that such disclosures increasingly have a financial impact,[136] double materiality underscores that this will not always suffice. Impact materiality, however, decouples the disclosure obligation from the price mechanism. Incentives may instead stem from reputational pressure – managers not wishing to appear as environmental offenders, making disclosures independent of whether shareholders directly benefit. The incentive to act therefore stems not only from price but from the reputational pressure that visible, sustainability-oriented commitments generate, provided reports are scrutinized by the business press,[137] social media, NGOs, and climate-focused investors.[138] So far, evidence on behavioral change is limited.[139]

4. Greenwashing

4.1. Definition and motivations

Despite the advantages of CSR and SRI, corporations often adopt CSR rhetorically without substantive changes, using it as a marketing tool. With regulatory pressure increasing and digitalization making corporate conduct more transparent, greenwashing has become a widespread market practice.[140]

---

[136] CSRD, *supra* note 6, recitals 9–10.

[137] *See, e.g.*, Stavros Gadinis & Amelia Miazad, *Corporate Law and Social Risk*, 73 VAND. L. REV. 1401, 1426, 1432–33 (2020) (discussing reputational incentives).

[138] CSRD, *supra* note 6, recital 9.

[139] *See* Francesca Cuomo, Silvia Gaia, Claudia Girardone & Stefano Piserà, *The Effects of the EU Non-Financial Reporting Directive on Corporate Social Responsibility*, 30 EUR. J. FIN. 726 (2024) (finding that firms subject to the Non-Financial Disclosures Directive were more likely to publish separate CSR reports).

[140] *E.g.*, European Commission Press Release IP/21/269, Screening of Websites for "Greenwashing": Half of Green Claims Lack Evidence (Jan. 28, 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269 (finding that 42% of environmental claims reviewed were potentially deceptive or misleading); Ellen Pei-Yi Yu, Bac Van Luu & Catherine Huirong Chen, *Greenwashing in Environmental, Social and Governance Disclosures*, 52 RSCH. INT'L BUS. & RFIN. 101192 (2020).

Greenwashing describes when a company misleads consumers, investors or the public about environmental benefits.[141] The term combines 'green' and 'whitewashing' – the deliberate concealment of incriminating facts about corporate conduct. Greenwashing is related to window-dressing, which manipulates financial statements to make them appear better than they are.[142] While window dressing manipulates financial metrics, greenwashing exaggerates environmental or social claims.[143]

The goal is to disguise conduct that is not as socially desirable as portrayed.[144] Techniques include manipulating expense timing,[145] cosmetic report adjustments without meaningful improvements,[146] and prioritizing shareholder focus at the expense of stakeholders.[147] Unverified use of terms like 'eco-friendly' or 'sustainable,' vague statements,[148] overemphasis of minor green

---

[141] *E.g.*, Laufer, *supra* note 11, at 254; Miriam A. Cherry, *The Law and Economics of Corporate Social Responsibility and Greenwashing*, 14 U.C. DAVIS BUS. L.J. 281, 284 (2014).
[142] Cherry, *supra* note 141, at 282.
[143] Paul M. Healy & James M. Wahlen, *A Review of the Earnings Management Literature and Its Implications for Standard Setting*, 13 ACCT. HORIZONS 365, 365–83 (1999); PLANETTRACKER, THE GREENWASHING HYDRA: CORPORATE SUSTAINABILITY REPORTS AND THE DANGER OF SYMBOLIC COMPLIANCE 45–47 (2023).
[144] Thomas P. Lyon & A. Wren Montgomery, *The Means and Ends of Greenwash*, 28 ORG. & ENV'T 223, 223–49 (2015); Laufer, *supra* note 11, at 253–61. For window dressing and financial impression management, see Doris M. Merkl-Davies & Niamh M. Brennan, *Discretionary Disclosure Strategies in Corporate Narratives: Incremental Information or Impression Management?*, 26 J. ACCT. LITERATURE 116, 116–96 (2007); Doris M. Merkl-Davies, Niamh M. Brennan & Stuart McLeay, *Impression Management and Retrospective Sense-Making in Corporate Narratives: A Social Psychology Perspective*, 24 ACCT., AUDITING & ACCOUNTABILITY J. 315, 315–44 (2011).
[145] Katherine Schipper, *Earnings Management*, 3 ACCT. HORIZONS 91, 91–102 (1989); Patricia M. Dechow & Ilia D. Dichev, *The Quality of Accruals and Earnings: The Role of Accrual Estimation Errors*, 77 ACCT. REV. 35, 35–59 (2002); Dennis M. Patten, *Exposure, Legitimacy, and Social Disclosure*, 10 J. ACCT. & PUB. POL'Y 297, 297–308 (1991) (showing that firms delay or downplay environmental impacts to reduce negative investor reaction).
[146] Delmas & Burbano, *supra* note 11, at 64–87; Charles H. Cho, Matias Laine, Robin W. Roberts & Michelle Rodrigue, *Organized Hypocrisy, Organizational Façades, and Sustainability Reporting*, 40 ACCT., ORGS. & SOC'Y 78, 78–94 (2015) (showing how firms use symbolic reporting adjustments to create the appearance of responsibility without substantive change).
[147] *E.g.*, Zohar Goshen & Assaf Hamdani, *Will Systematic Stewardship Save the Planet?*, 70 VILL. L. REV. 467, 495 (2025) ("Managers might respond to investor pressure to reduce emissions by adopting measures that appear to reduce carbon emissions without significantly affecting profits.").
[148] TERRACHOICE, THE SINS OF GREENWASHING: HOME AND FAMILY EDITION (2010) (defining misleading environmental claims through vague wording ["sin of vagueness"], irrelevant statements ["sin of irrelevance"], and unsubstantiated self-labelling).

initiatives while causing environmental harm,[149] and strategic deflection from critical topics are all features of greenwashing.[150] A lack of transparency – failing to provide measurable data or third-party verification – remains standard,[151] while cancel culture has become an effective counter-movement through customer boycotts.[152]

That said, not all greenwashing is necessarily intentional or fraudulent. Often, greenwashing is aspirational in nature, where a firm publicly commits to or overstates sustainability goals that it genuinely intends to pursue but is not yet in a position to deliver, whether because it lacks the resources, the operational capacity, or a fully worked-out plan. 'Greenwishing' does not always mean that firms intend to deceive investors, but that they are actually on track toward those goals.[153] Instead, firms respond to external pressure with statements oriented towards sustainable conduct that turn out to be hard to follow up on.[154] The social costs of this form of greenwashing are likely less severe than in the case of outright fraud.

From a capital markets perspective, greenwashing creates information asymmetries that distort investment decisions and misallocate capital. The proliferation of sustainability indices and

---

[149] Laufer, *supra* note 11, at 253–61; Lyon & Montgomery, *supra* note 144, at 223–49 (discussing selective overstatement of environmental achievements to distract from ongoing harmful practices).

[150] Tobias Hahn & Marcus Lülfs, *Legitimizing Negative Aspects in GRI-Oriented Sustainability Reporting: A Qualitative Analysis of Corporate Disclosure Strategies*, 123 J. BUS. ETHICS 401, 401–20 (2014) (identifying "topic avoidance" and "emphasis shifting" as CSR communication tactics to distract from negative impacts).

[151] Christopher Marquis, Michael W. Toffel & Yanhua Zhou, *Scrutiny, Norms, and Selective Disclosure: A Global Study of Greenwashing*, 27 ORG. SCI. 483, 483–504 (2016) (demonstrating how firms strategically withhold verifiable environmental data to avoid accountability); *see also* Delmas & Burbano, *supra* note 11, at 64–87 (discussing transparency gaps as a core feature of deceptive CSR communication).

[152] Faye Howe, *Is Cancel Culture the Secret Driving Force for Sustainable Business?*, THE GOWN AT QUEEN'S UNIVERSITY BELFAST (Jan. 27, 2022), https://thegownatqub.wordpress.com/2022/01/27/is-cancel-culture-the-secret-driving-force-for-sustainable-business/.

[153] Charlotte Villiers, *Greenhushing as Strategic Silence: A Disturbing Twist for Stakeholder Engagement and Sustainable Business*, 23 EUR. COMPANY & FIN. L. REV. 1, 10 (2026); Andreas Rasche, *The concepts of greenwashing and greenhushing*, in EXPERT ESSENTIALS 1 (Sam de Silva et al., forthcoming).

[154] Rasche, *id.*, at 3; Amjad Ali & Jajraj Gupta, *What Truly Drives Greenwashing? A Systematic Literature Review*, WORKING PAPER 5 (2026), at https://ssrn.com/abstract=6745338.

ESG ratings, combined with methodological inconsistency and ratings arbitrage, has transformed markets into greenwashing arenas, perpetuating moral hazard.[155] Greenwashing contributes to suboptimal investment choices[156] and adds complexity to decision-making.[157] It raises serious liability concerns, increasing uncertainty if demasked as an industry-wide practice.[158]

Regulatory attention may crowd out capacities for genuine sustainability, leading to welfare losses. Consumers willing to pay a premium for sustainability are misled, and caught greenwashing incidents demoralize the workforce and undermine investor confidence.[159]

Assessing social responsibility is complex due to inconsistent ESG metrics and limited transparency. Standardized sanction mechanisms are missing, and developing nations may prioritize economic growth over social investment, creating global asymmetries and regulatory arbitrage.[160]

4.2. The greenwashing enforcement gap

In light of problems with greenwashing in the market, existing legal mechanisms generally provide inadequate remedies and weak deterrence. In general, the overall accountability and missing sanction mechanisms account for challenges of greenwashing that arise under voluntary

---

[155] The EU Taxonomy Regulation, *supra* note 9, arts. 3–4, recitals 11–12 (establishing criteria for environmentally sustainable economic activities and noting the need to reduce greenwashing and fragmentation by applying common criteria).

[156] Tianxiang Li, Xian Shu & Gaoke Liao, *Does Corporate Greenwashing Affect Investors' Decisions?*, 67 FIN. RSCH. LETTERS A 105877 (2024).

[157] NINA GEHRING & ARTURO MORENO, AN EXPLORATION OF GREENWASHING RISKS IN INVESTMENT FUND DISCLOSURES: AN INVESTOR PERSPECTIVE (2023), https://rpc.cfainstitute.org/sites/default/files/-/media/documents/article/industry-research/greenwashing-report.pdf.

[158] Dan Wu & Xueyan Zuo, *Curbing Financial Greenwashing: Policy Tools, Legal Mechanisms, and Market Integrity*, 103 INT'L REV. ECON. & FIN. 104480 (2025).

[159] Guanghui Miao, Guang Chen, Feng Wang & Abhrajit K. Das, *The Effect of Corporate Greenwashing on Employees' Environmental Performance: Person–Organization Values Fit Perspective*, 15 SUSTAINABILITY 3498 (2023).

[160] Diane A. Desierto, *Shifting Sands in the International Economic System: "Arbitrage" in International Economic Law and International Human Rights*, 49 GEO. J. INT'L L. 1019, 1019–52 (2018).

and mandatory sustainability disclosure regimes.[161] Both in the US and the EU, there are multiple avenues for enforcement, including public regulators. In the US, these include the Federal Trade Commission,[162] the SEC, and state attorneys general acting under consumer protection statutes, and state-law regimes that incorporate environmental marketing standards.[163] In Europe, enforcement mechanisms includes national regulators, ESMA and the other European Supervisory Authorities in the financial sector, statutory auditors and assurance providers under the CSRD,[164] and the CSDDD's civil-liability mechanism,[165] as well as consumer litigation.[166] Voluntary gatekeeping mechanisms – such as rating agencies – play a role on both sides of the Atlantic. However, empirical work suggests that firms can engage in "rating arbitrage," namely by optimizing ESG disclosures for the methodologies of particular ESG raters, exploiting divergences among rating providers to secure favorable scores from at least one rater without genuinely improving underlying performance.[167]

---

[161] Emily Strauss, *Climate Change and Shareholder Lawsuits*, 20 N.Y.U. J.L. & BUS. 95, 99 (2023) (noting the rarity of climate-related shareholder litigation); *but see* Fairfax, *supra* note 74, at 303 (noting hopes that mandatory ESG disclosures will increase liability risks in the case of misstatements).

[162] Federal Trade Commission Act § 5, 15 U.S.C. § 45; Guides for the Use of Environmental Marketing Claims, 16 C.F.R. pt. 260; Federal Trade Commission, Environmental Claims: Summary of the Green Guides, https://www.ftc.gov/business-guidance/resources/environmental-claims-summary-green-guides (visited June 25, 2026).

[163] *E.g.*, Cal. Bus. & Prof. Code §§ 17580–17580.5 (California Environmental Marketing Claims Act, incorporating environmental marketing standards and substantiation requirements);

[164] CSRD, supra note 6, arts. 1(13), 3(14) (amending the Accounting Directive and Audit Directive to require assurance over sustainability reporting); Council Directive 2006/43, of the European Parliament and of the Council of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Accounts, 2006 O.J. (L 157) 87, [hereinafter Audit Directive] art. 26a (as amended by CSRD).

[165] CSDDD, art. 29.

[166] *See* Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, 2024 O.J. (L 825) 1 (creating minimum standards enabling consumers to sue companies making certain environmental claims and unsubstantiated future-performance assertions).

[167] *See* Berg et al., *Aggregate Confusion*, *supra* note 44, at 1338-42 (documenting rating-shopping possibilities because of divergent ratings); Pollmann, *supra* note 19, at 440 (discussing the risk of sustainability arbitrage).

Across jurisdictions, a key issue is private enforcement, where there is arguably an enforcement gap between financial and sustainability reporting. The reason is that private litigation is often a major instrument of enforcement; where private suits are difficult to bring, deterrence is weaker. Looking first at the United States, materiality is a requirement for private litigation, both under Section 11 of the Securities Act[168] and under Rule 10b-5 under the Securities Exchange Act.[169] Sustainability disclosures are often included in forward-looking statements because they necessarily project into the future, which allows issuers to take advantage of statutory safe harbors.[170] Disclosure must be material in the traditional sense for an action to be brought.[171] Moreover, pure omissions without a specified duty to disclose are not actionable under Rule 10b-5, which may further limit liability for ESG disclosures.[172] There is a gap where information only exhibits 'impact materiality' but is not necessarily financially material. Moreover, under the 'puffery' doctrine, courts often consider overly optimistic statements immaterial,[173] which will likely often apply to sustainability disclosures.[174]

While plaintiffs may argue that greenwashed disclosures were material for both traditional and impact purposes, overall enforcement will be lower compared to traditional disclosure issues. In the United States, the SEC's antifraud authority targets material misstatements; absent an operative sustainability disclosure mandate, public enforcement largely tracks private

[168] Securities Act of 1933 § 11(a), 15 U.S.C. § 77k(a) (establishing strict liability with a due diligence defense if a registration statement "contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading"). *See* Luca Enriques, Alessandro Romano & Andrew F. Tuch, *Green Gatekeepers*, 109 MINN. L. REV. 609, 672 (2024).
[169] 17 C.F.R. § 240.10b-5 (2024); *e.g.*, Basic Inc. v. Levinson, 485 U.S. 224 (1988).
[170] Securities Act of 1933 § 27A, 15 U.S.C. § 77z-2; Securities Exchange Act of 1934 § 21E, 15 U.S.C. § 78u-5.
[171] Enriques, Romano & Tuch, *supra* note 168, at 672–74 (noting the limiting effect of the materiality requirement on sustainability litigation).
[172] Macquarie Infrastructure Corp. v. Moab Partners, L.P., 601 U.S. 257 (2024).
[173] *In re* Petrobras Sec. Litig., 116 F. Supp. 3d 368, 381 (S.D.N.Y. 2015).
[174] James J. Park, *ESG Securities Fraud*, 58 WAKE FOREST L. REV. 1149, 1154, 1165–69 (2023).

materiality constraints. State-level anti-ESG statutes further complicate incentives, amplifying legal uncertainty.

The overall picture is similar in Europe, even if there are nuances in definitions and 'impact materiality' triggers a disclosure mandate. Both in Europe and in the US, damages actions generally require cognizable injury; in cases of pure impact materiality, plaintiffs will – by definition – not be able to show loss, thus limiting private remedies.[175] Even if injunctive relief is available, in the absence of potential financial gain from litigation, private parties have few incentives to even investigate misstatements.[176] In addition, leaving enforcement to the member states creates considerable uncertainty about the effectiveness of deterrence.[177]

EU law seeks to mitigate enforcement gaps by mandating third-party assurance.[178] Member States must require statutory auditors to provide assurance on sustainability reporting,[179] expressing an opinion on compliance with reporting standards.[180] This takes the form of a 'limited assurance engagement,'[181] assessing whether there are material misstatements.[182]

Member States may also permit "independent assurance services provider" separate from auditors (but with equivalent qualifications) to provide an opinion about sustainability reporting pursuant to the CSRD.[183] Whether assurance will result in compliance sufficient deterrence remains

---

[175] In the context of greenwashing, see, e.g., Strauss, *supra* note 161, at 131; Enriques, Romano & Tuch, *supra* note 78, at 3.
[176] Strauss, *supra* note 161, at 141.
[177] *See* Mezzanotte, *supra* note 105, at 657–62 (discussing inconsistency in enforcement); *see also* Thomas M.J. Möllers, *European Green Deal: Greenwashing and the Forgotten Good Corporate Citizen as an Investor*, 28 COLUM. J. EUR. L. 203, 231–32 (2022) (discussing inadequate and unharmonized enforcement).
[178] CSRD, *supra* note 6, recitals 13–14 (noting the need for "effective auditing practices").
[179] Audit Directive, *supra* note 164, at art. 26a(1) (as amended by CSRD).
[180] Accounting Directive, *supra* note 101, art. 34(1)(aa) (as amended by CSRD).
[181] *Id.*
[182] Mezzanotte, *supra* note 105, at 659–60.
[183] Accounting Directive, *supra* note 101, art. 34(4) (as amended by CSRD).

to be seen; it will be part of a broader enforcement architecture that has historically been uneven in the EU.[184]

Enriques, Romano and Tuch have argued that reputational constraints crucial for gatekeeper mechanisms – such as auditing[185] – are weaker for sustainability assurance: accuracy is harder to assess, and investors do not face private costs if disclosures are false.[186] This is true mainly when disclosures are only impact material; when financially material, they affect investor wealth. Consequently, reliability may depend on the CSDDD, which establishes regulatory oversight and requires internal compliance bureaucracies.[187] The CSDDD's due diligence processes can indirectly improve CSRD disclosures, potentially enhancing compliance and making greenwashing more difficult through stronger internal oversight.[188] In sum, these enforcement mechanisms leave a substantial gap between formal disclosure obligations and the practical likelihood that a greenwashed disclosure will be detected and sanctioned.

5. Is greenwashing actually a problem?

Contemporary literature on greenwashing condemns the practice of corporations misrepresenting their environmental impacts and sustainability efforts.[189] Misleading consumers undermines trust

---

[184] Ringe & Gözlügöl, *supra* note 93, at 129 (criticizing uneven enforcement of the Directive on Non-Financial Disclosures).
[185] *See generally* Reinier H. Kraakman, *Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy*, 2 J.L. ECON. & ORG. 53 (1986); JOHN C. COFFEE, JR., GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE 325 (2006); Andrew F. Tuch, *The Limits of Gatekeeper Liability*, 74 WASH. & LEE L. REV. ONLINE 619, 636 (2017); Martin Gelter & Aurelio Gurrea-Martínez, *Addressing the Auditor Independence Puzzle: Regulatory Models and Proposal for Reform*, 53 VAND. J. TRANSNAT'L L. 787, 796 (2020) (all discussing gatekeepers' reputational incentives).
[186] Enriques, Romano & Tuch, *Green Gatekeepers*, *supra* note 168, at 644–45.
[187] *Supra* notes 113–121and accompanying text.
[188] Accounting Directive, *supra* note 101, art. 19a(2)(f) (as amended by CSRD).
[189] Karim Feghali, Roy Najem & Beverly Dawn Metcalfe, *Greenwashing in the Era of Sustainability: A Systematic Literature Review*, 9 CORP. GOVERNANCE & SUSTAINABILITY REV. 18, 18–31 (2025); Menno D.T. de Jong, Karen M. Harkink & Susanne Barth, *Making Green Stuff? Effects of Corporate Greenwashing on Environmental Performance*

in corporations and, with this, stability in capital markets and financial systems.[190] Greenwashing is viewed critically because it deceives consumers who genuinely want to make responsible choices.[191] Cynicism evolves from discovering that companies are not truly operating as expected.[192] The resulting public mistrust in the corporate world percolates negatively in financial markets and society. It could also lead to general reactance to make green choices and trigger a phenomenon called "green fatigue" – the tiring of going green with economic actions.[193] As a consequence, even sustainably operating firms could face scorn, and discredited environmental conduct could reemerge in the wake of negative spillover effects.[194]

In general, information asymmetries in the wake of greenwashing information misrepresentation widen, which distorts market competition. When companies pretend to be sustainable,

---

Perceptions, 32 J. BUS. & TECH. COMM. 77 (2017); Athanasios Persakis, Theofanis Nikolopoulos, Ioannis C. Negkakis & Athanasios Pavlopoulos, *Greenwashing in Marketing: A Systematic Literature Review*, INT'L REV. PUB. & NONPROFIT MKTG. (forthcoming 2025); Richard Chambers & Katherine Tyler, *Developments in Regulatory and Private Action Against Greenwashing*, OXFORD BUS. L. BLOG (Apr. 17, 2023), https://blogs.law.ox.ac.uk/oblb/blog-post/2023/04/developments-regulatory-and-private-action-against-greenwashing; Paul Pears, Tom Baines & Olivia Williams, *Greenwashing: Navigating the Risk*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 24, 2023), https://corpgov.law.harvard.edu/2023/07/24/greenwashing-navigating-the-risk/.

[190] GEORGE A. AKERLOF & ROBERT J. SHILLER, PHISHING FOR PHOOLS: THE ECONOMICS OF MANIPULATION AND DECEPTION (2015); ORG. FOR ECON. CO-OPERATION & DEV. [OECD], CONSUMER POLICY TOOLKIT 19–24 (2010); Commission Staff Working Document, *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices*, at 45–47, SWD (2016) 163 final (May 25, 2016).

[191] TERRACHOICE, *supra* note 125, at 3–6; Delmas & Burbano, *supra* note 11, at 64–87.

[192] Zheng Yang, Thi Thu Huong Nguyen, Hai Ninh Nguyen, Thi Thanh Nhan Nguyen & Thanh Tu Cao, *Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review*, 21 J. BUS. ECON. & MGMT. 1486 (2020).

[193] Constantinos N. Leonidou & Dionysis Skarmeas, *Gray Shades of Green: Causes and Consequences of Green Skepticism*, 144 J. BUS. ETHICS 401, 401–15 (2017); Gergely Nyilasy, Harsha Gangadharbatla & Angela Paladino, *Perceived Greenwashing: The Interactive Effects of Green Advertising and Corporate Environmental Performance on Consumer Reactions*, 125 J. BUS. ETHICS 693, 693–707 (2014); Lois A. Mohr, Dogan Eroğlu & Pam Scholder Ellen, *The Development and Testing of a Measure of Skepticism Toward Environmental Claims in Marketers' Communications*, 32 J. CONSUMER AFFS. 30, 30–55 (1998); Delmas & Burbano, *supra* note 11, at 64–87 (discussing how greenwashing leads to widespread loss of trust in eco-labels and messaging); Sergio Braga, María P. Martínez, Carlos M. Correa, Rosana C. Moura-Leite & Daniel Silva, *Greenwashing Effect, Attitudes, and Beliefs in Green Consumption*, 54 RAUSP MGMT. J. 226 (2019).

[194] Dongxiao Wang & Thomas Walker, *How to Regain Green Consumer Trust After Greenwashing*, 15 SUSTAINABILITY 14436 (2023); M. Prasanthi, *Greenwashing vs. Green Marketing: Consumer Perceptions and Brand Trust*, 2 J. MKTG. & SOC. RSCH. 251 (2025).

they can gain similar reputational benefits at a lower cost than those that invest honestly in greening initiatives. This creates the wrong market incentives: deception is rewarded, and authenticity is penalized. Those who notice the wrong incentives and gratification of cheaters prospectively become cynical and build reactance to the entire idea of environmentalism encroaching on the corporate and financial spheres.

As for the deed of environmental progress, corporations that pretend to step in where governments and communities fail, for example, deter motivation to enact positive change bottom-up on other accounts and discourage stakeholders from pushing for a greening of the economy. Greenwashing in this sense sends wrong signals that placate the concerned public with fake progress towards greening the economy against a backdrop of actual environmental destruction. As a consequence, policymakers and the public may be discouraged from fighting environmental destruction, thereby delaying societal improvements and setting off irreversible environmental lock-ins. Delays in policy change and environmental reform could, for example, have critical implications for climate change and biodiversity loss. In all of this, greenwashing directly stifles environmental improvements and societal progress. A false sense of a greening economy and societally meaningful corporate action thus hinders true societal advancement and imposes welfare losses that may go unnoticed.

Overall, greenwashing poses legal and ethical risks. In addition to securities law, consumer protection laws may also play a role.[195] Scholars and policymakers condemn greenwashing because it causes direct harm in markets by distorting them, erodes public trust, delays real sustainability efforts and exploits environmental values for profit without true accountability at this

[195] Cherry, *supra* note 141, at 288; Enriques, Romano & Tuch, *Green Gatekeepers*, *supra* note 168, at 668.

moment. However, in reality, there are potential contemporary benefits of greenwashing for consumers, markets, and governments, which typically go unnoticed.

Condemning greenwashing too quickly appears unfavorable from multiple perspectives: in general, there is a trade-off between a pure profit focus and the phased introduction of additional ethical concerns.[196] While responsible investments can reduce volatility risk and be more crisis-robust than the overall market, SRI can undermine shareholder value and impose a burden by prioritizing social goals, raising an extra layer of concern.[197] Under these circumstances, the case for greenwashing appears to strengthen. The concept of impact materiality in EU law helps explain why even imperfect or aspirational disclosures can serve a constructive role. Because it encourages firms to develop transition plans and concrete actions toward a sustainable economy, it institutionalizes a forward-looking commitment to the public. An aspirational disclosure that overstates current performance operates within the logic of impact materiality because it commits the firm to a credible trajectory without necessarily distorting market prices. It directs managerial attention to topics that would otherwise be neglected and makes it harder for firms to renege on such public commitments. In addition, there are measurement problems since social and environmental agendas are not the primary concern of corporations. Thus, even if corporations want to provide information accurately, it may entail risks of accidental greenwashing and substantial costs to obtain the right information, analyze and display it correctly, and ensure its accuracy. From this perspective, condemning greenwashing too quickly may result in a loss of full market potential due to lean

---

[196] JULIA M. PUASCHUNDER, ADVANCES IN BEHAVIORAL ECONOMICS AND FINANCE LEADERSHIP: STRATEGIC LEADERSHIP, WISE FOLLOWERSHIP AND CONSCIENTIOUS USERSHIP IN THE DIGITAL CENTURY (2d ed. 2022); in the EU, see in particular Directive 2024/825, of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition, 2024 O.J. (L, 6.3.2024).
[197] *Id.*

operations. Meeting green communication with suspicion of greenwashing, based on accidental errors, may result in unjustified allegations and cancellations. Strict enforcement and significant penalties would thereby punish those who made accidental mistakes. Smaller firms with lower budgets may also be more prone to this kind of accidental greenwashing, given that they typically have fewer resources to provide proper environmental accounting and documentation. In light of this discrepancy, the greenwashing enforcement gap may be beneficial because it reduces the negative consequences of legal error.

To address greenwashing in an organized way that lifts up the entire market, attention should be paid to firms' capabilities to report and engage in greening activities. Pressure to become green and reporting standards should not exclude or marginalize small and medium enterprises that may operate on tighter budgets than large-scale corporations. Size thresholds for reporting obligations can discriminate against smaller firms, given their lower budgets to report and adapt. As the dispute over the CSRD, CSDDD and the new Omnibus Directive limiting these instruments shows, finding the right balance is difficult.[198]

In general, the introduction of some firms setting the bar for environmental standards has the positive effect of prompting other companies to follow suit to reap similar customer rewards, mainly derived from market segmentation and marketing prospects to appeal to greening advocates. So greenwashing at least draws some corporate attention to pressing issues of the day and connects corporations with the wider stakeholders. Even when compiling a misleading or exaggerated report, executives must be aware of societal trends and social demands related to environmental affairs and climate change. The reporting requirement establishes vigilance over policies

[198] Enriques, Gatti & Shapira, *supra* note 98, at 292–95.

and creates a need for corporate leadership to engage in dialogue with politicians, journalists, and activists.

In addition, widespread greenwashing behavior promises to lift entire industries to more ethical conduct and sets a positive signal to other markets and cultures. Mandatory sustainability disclosure implicitly compels firms to articulate their environmental impact, thereby reshaping market expectations and social norms. Even greenwashed statements and reports direct attention to environmental topics, which allows for benchmarking and cross-pollination but also inspires industry professionals in other areas and along the corporation's international supply chain. Reporting followed by subsequent quality checks by critical customers will create incentives for corporations to engage in greenwashing. Initially, corporations engaged in aspirational greenwashing may only be exaggerating their greening efforts in response to reporting standards and expectations of the public. But over time, and under public scrutiny, mere pretense may give way to real action, leading to changes in relevant real-world outcomes if the firm genuinely intends to close the gap between claim and conduct. There such an intention is absent, public scrutiny functions as detection and deterrence rather than as a ratchet toward genuine reform. Therefore, even if firms start their journey toward environmentalism with a pretense of being green, their path will eventually lead to genuine impact, since customers are well-equipped to mobilize against firms that pretend or exaggerate. Employees who were attracted by the corporate image will change institutions from within. Greenwashing may first appear to be an easy way out of onerous reporting requirements. Still, it may eventually help to get firms on board with environmental discussions that then turn to more serious action, with accountable results owed to the right employees thanks to stakeholder scrutiny and activism.

Lastly, greenwashing triggers public scrutiny that may cause scandals. Despite the social costs of scandals to companies and society, scandals produce public discourse that draws attention to contested ethical terrain. Scandals therefore have a purifying function in society. In line with empirical evidence from tax psychology, the bomb crater effect refers to publicized scandals or enforcement action that extends its psychological influence beyond the directly implicated tax-payer, affecting the perceptions and compliance behavior of unrelated taxpayers.[199] Similar to reputational spillover in organizational psychology, the public exposure of social failures may elicit greater accountability, institutional reforms and behavioral deterrence if restoration of trust is sought after. In all of this, greenwashing holds the potential to lift entire industries to a more environmental level – if met with public scrutiny and outcry of failure to comply and subsequent restoration of trust that changes social norms and corporate actions.

Overall, one can conclude that, even if greenwashed, corporate environmental statements and reporting direct attention to sustainability issues, thereby changing the conversation and inducing customers to care and monitor corporate conduct to weed out those who pretend. Over time, as the greenwashing trend continues to rise, corporations will also learn more about consumers' preferences through their exhibited actions and become more serious in their endeavors due to public scrutiny and trial-and-error-fueled dialogues. It is thus perhaps just a matter of time before greenwashing has paved the way to credible action and results.

Greenwashing companies will also attract a deeply caring workforce that will likely have a prosocial attitude, which can help with various corporate and financial endeavors. Getting ethical

[199] James Alm & Benno Torgler, *Culture Differences and Tax Morale in the United States and in Europe*, 27 J. ECON. PSYCH. 224 (2006); Bruno S. Frey & Benno Torgler, *Tax Morale and Conditional Cooperation*, 35 J. COMP. ECON. 136 (2007).

labor on board with corporate missions can be a powerful competitive advantage. Those who align with social goals are likely also cooperative team players who find meaning and self-actualization in their work beyond financial remuneration, if greenwashing signals the ability to implement change. Greenwashing may thus bestow a positive image on a corporation and motivate the work-force to contribute to larger goals beyond pure monetary gains, which may boost companies' worker performance, even if it is not true. This is the case because greenwashing may first attract a prosocial and environmentally conscientious workforce that then generates a prosocial actual climate within the corporation that is also attentive to the latest trends and resource-conscientious operations. Then, once the workforce learns about potential greenwashing in corporate conduct, the hope is that an ethical workforce will correct greenwashing activities, and therefore corpora-tions will change for actual greening over time. Attracting social and environmental workers in this scenario makes the case that the workforce will be the one that truly helps the organization improve its social and environmental contributions, even if the corporate board was, in the past, skeptical about the pay-off of greenwashing. An increasingly pro-environmental workforce will thus gradu-ally change the corporate culture to the better. In following through their green plans that may have – at first – been mere exaggerations and unrealistic goals, an environmentally-conscientious work-force may correct greenwashing over time by infusing honesty into the process and eventually implementing rigorous plans.

Lastly, one has to acknowledge that, for the time being, greenwashing seems to be a common practice that, if irrational and inefficient, would not have gained such ground and traction as it already has. The right time and language, corporate culture, and maybe even critical theory strategies to undermine shareholder-oriented discourse to insert green topics into corporate practice may improve greenwashing performance in the future. As long as the enforcement gap persists, greenwashing seems to light the way to at least a more informed debate. As a second-best outcome, it will continuously inspire other aspirational goals and ambitious common dreams that may be fulfilled in the future.

6. Conclusion

Over the past decades, the convergence of CSR, SRI and ESG frameworks has transformed the operational and ethical foundations of corporate management and capital markets. Yet the proliferation of sustainability narratives has simultaneously generated a phenomenon of market distortion in greenwashing, which is often portrayed as major challenge to the credibility and integrity of the transition towards sustainable capitalism.

The history and evolution of CSR, SRI, and ESG in Europe and the US strengthen the insights gained from the evidence surveyed in this article, which demonstrates that the tension between voluntary ethical conduct and mandatory sustainability regulation is not simply a policy matter. In the EU, an extensive legal framework is being implemented, while in the US, the regulatory pendulum oscillates – the SEC's halted climate-disclosure rules underscore the fragility of environmental regulation under policy uncertainty. State-level initiatives such as California's may generate de facto national standards through extraterritorial reach.

The corporate reaction to pressure from consumers and governments, but also international standardization governance has not led to an effective policy response to greenwashing. In fact, it is widely acknowledged that both voluntary and mandatory sustainability disclosures suffer from an enforcement gap, regardless of whether the respective legal framework relies on the double materiality principle or not.

Paradoxically, for now greenwashing may hold utility and social welfare gains. While greenwashing is typically condemned as deceptive and ethically corrosive, this article has suggested that it may also perform constructive functions within the evolving architecture of sustainable capitalism. Greenwashing operates as a transitional mechanism via a rhetorical bridge between unsustainable practices and emerging norms of environmental stewardship. Even when corporate sustainability claims exaggerate or misrepresent, they nonetheless signal the salience of environmental values and reaffirm social norms to contribute to the diffusion of sustainability discourse and genuine practice across sectors and jurisdictions.

This performative dimension parallels what sociologists describe as the civilizing function of hypocrisy: by publicly affirming ideals they fail to meet, actors reinforce those ideals and invite scrutiny that may induce genuine reform.[200] Greenwashing thereby implicitly shapes consumer expectations and attracts a workforce oriented towards ethical ideals. Once embedded within corporate cultures, such internal constituencies may naturally follow their norms and thereby change a corporation through day-to-day practice.

Greenwashing will also press stakeholders to demand substantive alignment between claims and the conduct they experience and witness. Social media will help in getting the word out and scrutinizing misconduct that does not stand for what was promised.

In this sense, greenwashing may be interpreted not solely as deception but also as aspirational signaling. Greenwashing therefore leverages into a preliminary step in a broader process of collective moral learning within modern markets. It can introduce environmental considerations into corporate agendas that would otherwise remain neglected, thereby socializing capitalism through its own contradictions.

---

[200] DAVID RUNCIMAN, POLITICAL HYPOCRISY: THE MASK OF POWER, FROM HOBBES TO ORWELL AND BEYOND (2008).

Effective mitigation of greenwashing and soft transitioning away from greenwashing will require stronger enforcement and a cultural shift in investor responsibility. Institutional investors can integrate due diligence rigorously into portfolio management, acknowledging systemic risks posed by global warming.[201] When customers also back honest greening and steer attention to greenwashing incidents, stewardship and greening transition can happen on a broad-based level that is meaningful for this generation and the following.[202]

Economic theory underscores that information integrity is a public good. Markets function efficiently only when participants share reliable information. The social cost of misinformation, be it financial fraud or environmental misrepresentation, may justify regulatory intervention. However, excessive regulation may stifle innovation and impose disproportionate burdens on smaller enterprises. A balanced approach requires proportionate regulation, gradual enforcement and supportive capacity-building, particularly for small and medium-sized enterprises navigating complex reporting demands.

Behavioral and cultural analyses could help understand how managers, investors and consumers interpret sustainability information. The psychology of moral self-presentation, reputational anxiety and self-actualization needs at work are areas suggested for future research to illuminate why greenwashing persists and how corporations are transformed through the greenwashed corporate image. Understanding these goals and their deeper meaning but also conflicts between them may illuminate why greenwashing persists despite reputational risks and how corporations are transformed through the greenwashed corporate image in the long run.

---

[201] On ESG-oriented institutional investor action because of cross-portfolio effects, see Madison Condon, *Externalities and the Common Owner*, 95 WASH. L. REV. 1 (2020); Jeffrey N. Gordon, *Systematic Stewardship*, 47 J. CORP. L. 627, 652–54 (2022).

[202] BENJAMIN J. RICHARDSON, FIDUCIARY LAW AND RESPONSIBLE INVESTMENT: IN NATURE'S TRUST (2013).

Ultimately, greenwashing is the most prevalent outcome in our contemporary redefinition of the relationship between capital and greater societal good. The challenge for policymakers, investors and citizens alike is to transform sustainability from a narrative of virtue into a system of verifiable practice. If that transformation succeeds, greenwashing will have served an unexpected historical function as the imperfect messenger that ushered capitalism into ecological and ethical attention.

About ECGI