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Corporate Purpose, Sustainability and Law

Revisiting Binder, Hopt, and Kuntz (2024)

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Abstract: I discuss the legal implications of corporate purpose and CSR/ESG based on a seminal overview by Binder, Hopt, and Kuntz (2024). Mandatory corporate purpose statements without commitment or enforcement are unlikely to have much of an effect and may be captured by bureaucratic or political interests if they are publicly enforced. However corporate purpose can be supported by private enforcement including purposeful ownership, private verification schemes, alternative corporate forms, or lawsuits for breach of purpose, and the law can do a great deal to facilitate or deter such private ordering. Corporate sustainability is well justified in an age of government failure, but reporting and governance requirements have become excessive and are now being scaled back. Law can do a great deal to make it more realistic and impactful by focusing on the essentials using an elevated materiality standard. Corporate purpose can further help to focus corporate practices for social responsibility and environmental sustainability on relevant (material) issues, for example in non-financial reporting, financial risk management, and supply chain due diligence.

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1. Corporate Purpose, ESG and CSR

The ubiquitous idea that firms are meant to maximize profits¹ or (more precisely) shareholder value² has been challenged in recent years. Corporate purpose has emerged as a serious contender with Professor Colin Mayer³ as a chief protagonist among many others (Polman & Winston 2021,).⁴ The concept of corporate purpose has become so generally accepted that it was endorsed by a majority of US top executives⁵ and became the first item the big 4 accounting firms' recommendations on common standards for sustainability reporting.⁶

1 *Friedman, Milton*, "The Social Responsibility of Business Is to Increase Its Profits", *New York Times* 13 September 1970. <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> (last accessed: 13 January 2026).

2 *Rappaport, Alfred*, *Creating Shareholder Value. The New Standard for Business Performance*, 1986.

3 *Mayer, Colin*, *Prosperity*, 2018; *Mayer, Colin*, *Ownership, Agency, and Trusteeship*, 11 December 2019, () European Corporate Governance Institute – Law Working Paper No. 488/2020, <https://ssrn.com/abstract=3522269> or <http://dx.doi.org/10.2139/ssrn.3522269> (last accessed: 13 January 2026); *Mayer, Colin*, "The future of the corporation and the economics of purpose", *Journal of Management Studies* 58 (2021), 887–901; *Mayer, Colin*, *Capitalism and Crises: How to Fix Them* (Oxford, 2024; online edition. Oxford Academic, 23 Nov. 2023), <https://doi.org/10.1093/oso/9780198887942.001.0001>, last accessed: 16 July 2025.

4 *Edmans, Alex*, *Grow the Pie*, 2020; *Freeman, R. Edward/Martin, Kirsten E./Parmar, Bidhan L.*, *The Power of And: Responsible Business Without Trade-Offs*, 2020; *Gulati, Ranjay.*, *Deep Purpose: The Heart and Soul of High-Performance Companies*, 2022; *Henderson, Rebecca M./van den Steen, Eric J.*, "Why Do Firms Have "Purpose"? The Firm's Role as a Carrier of Identity and Reputation", *American Economic Review*, 105 (2015), 326–330, <https://doi.org/10.1257/aer.p20151072> (last accessed: 13 January 2026); *Polman, Paul/Winston, Andrew*, *Net Positive: How Courageous Companies Thrive By Giving More Than They Take*. Harvard Business Review Press, 2021; *Serafeim, George*, *Purpose + Profit: How Business Can Lift Up the World*, 2022.

5 Business Roundtable, *Statement on the Purpose of a Corporation*, 2020, <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> (last accessed: 13 January 2026).

At the same time, the related idea that companies should serve other stakeholders as well as shareholders⁷ (Freeman 1984) – historically identified with the acronym CSR (corporate social responsibility) – has gained new impetus as it merged with concerns about environmental sustainability and global warming⁸ into the broader concept of ESG (environment, social and governance), most prominently under the tutelage of the UN.⁹

The legal implications of these ideas have only recently begun to be addressed in a systematic way, and the book edited by Binder, Hopt, and Kuntz¹⁰ is a hallmark in this regard. This paper will consider its key findings and how they may influence business law going forward. The overview chapter by Klaus Hopt¹¹ is particularly useful in this regard because it highlights the legal enforcement issues, which take center stage as far as law is concerned. Hopt identifies various possible enforcement mechanisms: (1) self-regulation (market discipline), (2) corporate governance codes, (3) disclosure and auditing; (4) enterprise law (duties and rights of companies and company directors as well as rules on corporate organization); (5) public enforcement (government agencies, public procurement rules, attorney generals), and (6) private enforcement by shareholders and stakeholders.

Instead of “CSR” or “ESG” the paper will use the more general term sustainability. This is both to limit the alphabet soup of acronyms and to reflect the increasing breadth of the term sustainability, for example in the UN’s Sustainable Development Goals, to cover both environmental and social sustainability. Effectively, what

6 World Economic Forum (2020): Toward Common Metrics and Consistent Reporting of Sustainable Value Creation. https://www3.weforum.org/docs/WEF_IBC_ESG_Metrics_Discussion_Paper.pdf (last accessed: 17 February 2026).

7 Freeman, Robert Edward, *Strategic management: A stakeholder approach*, Cambridge University Press (1984).

8 Brundtland, Gro Harlem, *Report of the World Commission on Environment and Development: Our Common Future*, United Nations General Assembly Document A/42/427, https://www.are.admin.ch/dam/en/sd-web/oUREniCte9uh/our_common_futurebrundtlandreport1987.pdf (last accessed: 13 January 2026); Gates, Bill, *How To Avoid a Climate Disaster: The Solutions We Have and The Breakthroughs We Need*, 2021.

9 United Nations Global Compact, *Who Cares Wins: Connecting the Financial Markets to a Changing World?*, 2004, <https://documents1.worldbank.org/curated/en/280911488968799581/pdf/113237-WP-WhoCaresWins-2004.pdf> (last accessed: 13 January 2026).

10 Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG, 2024*, Online edition, Oxford Academic, 19 December 2024, <https://doi.org/10.1093/oso/9780198912576.003.0002> (last accessed: 27 July 2025).

11 Hopt, Klaus J., *Corporate Purpose and Stakeholder Value: Historical, Economic, and Comparative Law Remarks on the Current Debate, Legislative Options, and Enforcement Problems*, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (fn. 12).

used to be termed CSR has now been subsumed under the broad umbrella of sustainability.

The paper is structured as follows. Section 2 provides a brief overview. Section 3 discusses the connection between the two main subjects of purpose and sustainability, arguing that they do in fact belong together. If a corporate purpose is a statement of how a company creates value for society, it makes little sense unless the company makes a (net) positive contribution to its stakeholders including the natural environment.¹² These stakeholder contributions (which may be both positive and negative) are precisely what the concepts of ESG and CSR are intended to address. Corporate purpose also has an important role to play in sustainability. Unless law and regulation somehow manage to address all important externalities, which appears to be completely unrealistic at this point, there is scope for prosocial corporate behaviour that is not necessarily profit maximizing. However, the many social and environmental concerns that companies face can be overwhelming. A single company cannot be expected to solve all the world's problems. The corporate purpose can clarify which problems the company aims to address, and the material costs involved. Purpose can therefore make corporate sustainability tractable.

Given this optimistic assessment of corporate purpose, the relevant question here is what if anything company law can do to facilitate it in a useful way. This is the topic of section 4. Binder, Hopt, and Kuntz¹³ argue persuasively that mandatory purpose statements with public enforcement can be inefficient or dysfunctional. However, the law can facilitate private enforcement mechanisms such as purposeful ownership structures, third party certification and lawsuits for breach of purpose.

Section 5 deals with ESG and CSR. Both concepts have lost much of their allure since Binder et al.¹⁴ envisioned their book project at a conference in 2022. The term ESG was regarded as a way to measure sustainability for business companies but has been discredited by numerous academic studies and political developments. For example, ESG ratings have been shown to be highly unreliable and decoupled from environmental performance. ESG reporting, like the EU corporate sustainability reporting directive (CSRD) has been found to be very expensive and is now being watered down. The term CSR is increasingly identified with cosmetic philanthropy (what we now call greenwashing) rather than meaningful changes to corporate business models. Finally, what used to be regarded as a voluntary activity which began where the law ended has been politicized by the second Trump administra-

¹² Polman, Paul and Winston Andrew, *Net Positive: How courageous companies thrive by giving more than they take*, 2021.

¹³ Binder/Hopt/Kuntz (fn. 12).

¹⁴ Binder/Hopt/Kuntz (fn. 12)

tion and is now subject to a backlash both in the US and Europe. Clearly legal reform is needed. A reorientation based on corporate purpose and materiality may be a possible way forward.

Section 6 concludes. There is a symbiotic relationship between corporate purpose and corporate sustainability. Both can contribute to creating a better world. Obviously neither of them can solve all the world's problems, and there is a limit to how much they can be expected to contribute as stressed so forcefully by Binder, Hopt, and Kuntz.¹⁵ Other solutions are needed, but any positive contribution counts, and law can do a great deal to help. Corporate purpose has to be voluntary to be meaningful, and in a world of radical uncertainty it has to be flexible to be competitive. This means that the concept is inherently unsuited for government regulation. However, law – including company law or more broadly organizational law – can either facilitate or deter voluntary private ordering and enforcement of corporate purpose. Corporate sustainability needs to include financial sustainability to be viable, but some companies have the resources to contribute meaningfully to environmental and social sustainability if they focus on areas where they have a material impact.

2. Taking Stock of Corporate Purpose and Corporate Sustainability

The Binder, Hopt, and Kuntz (2024)¹⁶ book is relatively equally divided in two streams: Corporate purpose and ESG/CSR.

Corporate purpose is regarded with skepticism by most contributors. The editors find corporate purpose reform to be neither simple nor effective (Binder, Hopt, and Kuntz 2024b).¹⁷ Based on a review of theory and empirical evidence, Spamann and Fisher (2024) do not think that corporate purpose “*can live up to the hype*”.¹⁸ They even speculate that concept could be “*an elaborate decoy orchestrated by*

¹⁵ Binder/Hopt/Kuntz (fn. 12).

¹⁶ Binder/Hopt/Kuntz (fn. 12).

¹⁷ Binder, Jens-Hinrich/Klaus J. Hopt/Thilo Kuntz, Corporate Purpose, Corporate Social Responsibility, and ESG: An Introduction to the Trans-Atlantic Dialogue (2024b), in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), Corporate Purpose, CSR, and ESG (online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0001> (last accessed: 27 July 2025).

¹⁸ Spamann, Holger/Jacob Fisher, Corporate Purpose: Theoretical and Empirical Foundations/Confusions, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), Corporate Purpose, CSR, and ESG (online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0003> (last accessed: 27 July 2025).

CEOs, boards, and their lawyers to relieve pressure from regulators and shareholder activists.” Rock (2020) argues against making corporate purpose mandatory for public companies to put a specific business purpose into their charter objectives, although he is more tolerant of private law options to do so voluntarily using private law to govern alternative organizational forms.¹⁹ Osterloh-Konrad (2024) argues that corporations unlike individuals are collectives which cannot have a moral purpose.²⁰ Harwell Wells (2024) explains how US companies were historically bound by a purpose but that the idea was given up as inflexible and impractical, although it is now again being discussed.²¹ Esser and MacNeil (2024) argue that the corporate purpose discussion has been revitalized by ESG, but are “*of the view that mandatory, or even voluntary, purpose statements or amendments to the articles are perhaps not the best way forward.*”²² Corporate purpose in their view is more effectively driven by “levers” like governance or demands by capital providers. The general skepticism follows the widely cited critique of corporate purpose by Paul Davies (2022) and Puchniak (2023).²³ Davies (2022) argues that “*the mandatory, broad purpose requirement will be either (largely) ineffective or (largely) unnecessary.*”²⁴ Puchniak (2023) disregards corporate purpose as “*woke*” and claims that it is entirely useless in Asia, particularly in Japan, where the problem may be excessive attention to stakeholders.²⁵

19 Rock, Edward B, “For Whom is the Corporation Managed in 2020? The Debate over Corporate Purpose”, 1 May 2020, European Corporate Governance Institute – Law Working Paper No. 515/2020, NYU School of Law, Public Law Research Paper No. 20–16, <https://ssrn.com/abstract=3589951> or <http://dx.doi.org/10.2139/ssrn.358995> (last accessed: 13 January 2026).

20 Osterloh-Konrad, Christine, ESG and the Ethical Dimension, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0008> (last accessed: 27 July 2025).

21 Wells, Harwell, *Corporate Purpose in the United States 1800–2000*, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0009> (last accessed: 27 July 2025).

22 Esser, Irene-Marié/Iain MacNeil, ESG Regulation, CSR, and Corporate Purpose: A UK Perspective, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0007> (last accessed: 27 July 2025).

23 Davies, Paul L., Shareholder Voice, and Corporate Purpose: The Purposeless of Mandatory Corporate Purpose Statements, 1 November 2022, European Corporate Governance Institute – Law Working Paper No. 666/2022, <https://ssrn.com/abstract=4285770> or <http://dx.doi.org/10.2139/ssrn.4285770> (last accessed: 13 January 2026); Puchniak, Dan W., “No Need for Asia to be Woke: Contextualizing Anglo-America’s ‘Discovery’ of Corporate Purpose”, (revised 7 May 2023), RED 4 (2022), 14–21.

24 Davies (fn. 25).

25 Puchniak (fn. 25).

ESG/CSR regulation is regarded as equally problematic. Ho (2024) explains that ESG/CSR regulation in the US is unlikely to mimic the stringent regulations in Europe in part because corporate law in the United States is state rather than federal law.²⁶ Based on Germany's experience with codetermination, Veil (2024) finds the German stakeholder model to be a mixed success and warns that severe conflicts with interests of shareholders and employees, if ESG interest groups were given seats on the supervisory board.²⁷ Binder (2024) examines the implications of corporate purpose and ESG/CSR for directors' duties marking recent EU initiatives as paradigm shift but expects them to be ineffective in protecting stakeholders and to be used evade accountability to shareholders.²⁸ Ferrarini and Siri (2024) analyze the role of soft law and hard law in promoting ESG stewardship by institutional investors and asset managers.²⁹ They remain cautious about its effectiveness because ESG is costly and not associated with higher investor returns. Kumpan (2024) welcomes the EU's voluntary standard for green bonds which are motivated by fear of market fragmentation, but sees no reason for EU regulation since smaller issuers will shy away from green bonds as a financing instrument if the prospectus requirement become too onerous.³⁰ Kuntz (2025) discusses ESG demand-side regulation (regulation of investors) as a new tool complementary to corporate ESG regulation but remains skeptical about its effects because of the multifaceted nature of ESG and investor preferences for financial returns.³¹ Thomas (2024) discusses potential conflict between competition law and sustainability regulation if consumers are not

26 Harper Ho, Virginia, US ESG Regulation in Transnational Context, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0004> (last accessed: 27 July 2025).

27 Veil, Rüdiger, Stakeholder Governance Models and Corporate Interests: Experiences from Germany, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0005> (last accessed: 27 July 2025).

28 Binder, Jens-Hinric, Leading Wherever They Want? CSR, ESG, and Directors' Duties, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0011> (last accessed: 27 July 2025).

29 Ferrarini, Guido/Michele Siri, Stewardship and ESG in Europe, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0012> (last accessed: 27 July 2025).

30 Kumpan, Christoph, Green Bonds and Their New Regulation in the EU, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0014> (last accessed: 27 July 2025).

31 Kuntz, Thilo, ESG Demand-side Regulation—Governing the Shareholders, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), *Corporate Purpose, CSR, and ESG* (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0015> (last accessed: 27 July 2025).

willing to pay for higher prices due to sustainability requirements, but finds it difficult to adjust EU competition law because of its elevated status as part of Treaty on the Functioning of the European Union.³² Admittedly, a few scholars are more sympathetic to the role of ESG and CSR in corporate law. Lipton (2024) argues that it is impossible to preserve corporate governance as a purely investor-oriented space because the rest of society inevitably intrudes.³³ Pietrancosta (2024) describes the EU corporate sustainability due diligence directive (CSDDD) as inspired by the French Duty of Vigilance law noting that that France has increasingly viewed itself as a frontrunner in CSR regulation hoping to inspire others to follow.³⁴ Nevertheless, most scholars are critical.

Altogether, the leading legal scholars contributing to the Binder, Hopt, and Kuntz (2024a) come out as skeptical against both corporate purpose and ESG/CSR.³⁵ To some extent this may reflect the conservatism of jurists and their aversion, but their skepticism with regard to ESG appears prescient in view of the ESG backlash that the world is now experiencing.

3. The Connection between Corporate Purpose and Sustainability

Binder, Hopt, and Kuntz (2024b) do not explain why the concepts of purpose and sustainability (not to speak of CSR and ESG) belong in the same box and should be addressed in the same book. I think that there is in fact a compelling connection between them which I will try to explain below.³⁶

³² *Thomas, Stefan*, Sustainability and Competition Law, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), Corporate Purpose, CSR, and ESG (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0016> (last accessed: 27 July 2025).

³³ *Lipton, Ann M.*, Corporate Purpose and the Blurred Boundaries of Internal and External Governance, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), Corporate Purpose, CSR, and ESG (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0010> (last accessed: 27 July 2025). Top of Form

³⁴ *Pietrancosta, Alain*, The French ‘Duty of Vigilance’ and the European Proposal on Companies’ Due Diligence Duties, in: Jens-Hinrich Binder/Klaus Hopt/Thilo Kuntz (eds.), Corporate Purpose, CSR, and ESG (Online edition, Oxford Academic, 19 December 2024), <https://doi.org/10.1093/oso/9780198912576.003.0013> (last accessed: 27 July 2025).

³⁵ *Binder, Jens-Hinrich/Klaus Hopt/Thilo Kuntz* (eds.), Corporate Purpose, CSR, and ESG, 2024a (Oxford, 2024; online edition, Oxford Academic, 19 Dec. 2024), <https://doi.org/10.1093/oso/9780198912576.001.0001> (last accessed: 16 July 2025).

³⁶ *Binder/Hopt/Kuntz* (fn. 19).

A corporate purpose can be defined as “*the reason why a corporation exists, what it seeks to do and what it aspires to become*” (The British Academy 2018).³⁷ In principle this could be any purpose (moral or immoral), but the Academy later added the constraint that “*the purpose of business is to solve the problems of people and planet profitably and not profit from causing problems*” (The British Academy 2019).³⁸ Mayer goes on to explain that in his view profits generated by creating problems for society are not true profits since they do not take into consideration the social costs (negative externalities) of the problems they create.³⁹ These costs are not paid by businesses companies (and do not appear in profit and loss statements) but by their stakeholders, and they are precisely emphasized in current discussions of ESG and CSR. A sustainable purpose (which aims to be truly profitable also in a social sense) therefore internalizes externalities and aims to create value for society net of social costs.⁴⁰ In this regard ESG and CSR would seem to be natural complements to corporate purpose.

To be sure, internalizing externalities is a non-trivial problem, which can only be solved if companies are aware of them and can assess their magnitude. Nor can companies realistically be held accountable for the myriad of second order effects they have on society and the natural environment. A simpler, less ambitious definition of corporate purpose as a statement of how the company is useful to society may be more realistic. By focusing on what the company is actually doing at a given point in time, this simpler definition has less scope for “purpose washing” by announcing the intention to do something in the future, but not delivering. Nevertheless, focusing on a corporate purpose that outlines which problems a company aims to solve (for example which of the sustainable development goals it aims to contri-

³⁷ The British Academy, “Reforming business for the 21st century”, 2018, <https://www.thebritishacademy.ac.uk/documents/76/Reforming-Business-for-21st-Century-British-Academy.pdf> (last accessed: 13 January 2026).

³⁸ The British Academy, Principles for purposeful business, 2019, <https://www.thebritishacademy.ac.uk/documents/224/future-of-the-corporation-principles-purposeful-business.pdf> (last accessed: 13 January 2026).

³⁹ Mayer, Colin, “Reflections on corporate purpose and performance”, *European Management Review* 20 (2023), 719–724; Mayer, Colin, *Capitalism and Crises: How to Fix Them*, 2024 (Online edition. Oxford Academic, 23 November 2023), <https://doi.org/10.1093/oso/9780198887942.001.0001> (last accessed: 16 July 2025).

⁴⁰ This follows from the classic definition of sustainability in the Brundtland report (1987) as meeting “*the needs of the present without compromising the ability of future generations to meet their own needs*”. A financially unsustainable company will accumulate losses and ultimately go bankrupt, while a socially unsustainable company detracts from the ability of future generations to meet their own needs and ultimately their ability to survive.

bute to) and accounting for the material effects of doing so may be a workable alternative to stakeholder value confusion.

4. Corporate Purpose and the Law

As many authors (including Spamann and Fisher 2024) note, a concept like “corporate purpose” can have many different meanings, which makes its legal implications difficult to assess.⁴¹ However, regarding this a weakness and using it to criticize the concept is debatable. Of course, there are different definitions of corporate purpose just as there are many different definitions of corporate governance, corporate sustainability, or any other important concept. The definitions reflect particular viewpoints, different political or scientific viewpoints, and debate between them is arguably a healthy sign of an open society (Popper 1945).⁴² In fact, a lack of diversity and disagreement concerning purpose could be regarded as a sign of concept totalitarianism, recalling the earlier ubiquitous assumption that all companies everywhere necessarily maximize profits.

A natural response for further discourse is to focus on a single authoritative source which in this case could be the work of Colin Mayer (2018, 2019, 2021, 2023, 2024) and the British Academy (2018, 2019, 2021).⁴³ This is the approach taken by Binder et al. (2024) and the approach I use in the following.⁴⁴

Rereading Colin Mayer and the British Academy, much of the subsequent criticism directed at corporate purpose is misguided.⁴⁵ In fact, it often appears to be deliberately directed at a “straw man.” In Colin Mayer’s version, the debate about corporate purpose is not about stakeholder vs shareholders, replacing shareholder value with stakeholder value or doing away with shareholder primacy as implied by Binder et al. (2024b) or Rock (2024).⁴⁶ Nor is it a way to reintroduce stakeholder thinking. In the purpose regime envisioned by Mayer and the British Academy, the diffuse obligation to take all stakeholders into consideration emphasized by stakeholder theory is replaced by a more focused corporate purpose (Freeman et al.

41 Spamann/Fisher (fn. 20).

42 Popper, Karl, *The Open Society and Its Enemies*, 1945.

43 Mayer (fn. 5); Mayer, Colin, “Reflections on corporate purpose and performance”, *European Management Review* 20 (2023), 719–724; *The British Academy* (fn. 39, 40); *The British Academy*, “Policy & Practice for Purposeful Business”, 2021, <https://www.thebritishacademy.ac.uk/documents/3462/Policy-and-Practice-for-Purposeful-Business-The-British-Academy.pdf> (last accessed: 13 January 2026).

44 Binder/Hopt/Kuntz (fn. 12).

45 Mayer (fn. 45); *The British Academy* (fn. 45).

46 Mayer (fn. 47); Binder/Hopt/Kuntz (fn. 19); Rock (fn. 21).

2021),⁴⁷ which is ultimately decided by company shareholders (not by stakeholders), and the duty of directors is to maximize profits (albeit profits that internalize externalities) by implementing the purpose.⁴⁸ Finally, there is no presumption in the British Academy reports that corporate purpose should be determined by governments with the exception of regulated industries like public utilities or banks where social concerns are already dominant (Hopt 2024).⁴⁹ Colin Mayer (2024 chapter 5) specifically warns that “*the imposition of purpose statements by government or regulator risks the incursion of politically inspired and bureaucratically managed motives in corporate objectives.*”⁵⁰ Secondary concerns would be who should do the enforcement and how it should take place. Who would be “*purpose police*” and on what grounds should the purpose police decide which purposes are permissible, or whether companies have acted sufficiently in accordance with them? Who could decide in a qualified manner whether or not companies “*profit from producing problems for people and planet*”?

Not even the skeptics (e. g., Binder, Hopt, and Kuntz 2024b, Spamann and Fisher 2024, Rock 2024, Davies 2022) appear to dispute that a company purpose may in some cases play a valuable role in corporate governance or society in general.⁵¹ What is being debated then is the much more limited question of whether companies should be obliged or encouraged to publish their purposes and how they should be held accountable for what they publish. In agreement with the British Academy (2021), Mayer (2021) proposes that “*Company law should require firms to specify and implement whatever purposes they deem appropriate.*”⁵²

As Binder, Hopt, and Kuntz (2024) indicate there are several reasons why such mandatory purpose statements might not be a good idea.⁵³ Both Spamann and Fisher (2024) and Rock (2024) argue that there is insufficient empirical evidence to justify requiring them for all companies.⁵⁴ Harwell Wells (2024) explains how the concept was historically given up as impractical in the US.⁵⁵ Davies (2022) argues that “*the mandatory, broad purpose requirement will be either (largely) ineffective*” if in-

47 Freeman, R. Edward, et al. *The Power of And: Responsible Business Without Trade-Offs*, Columbia University Press, 2020. *JSTOR*, <https://doi.org/10.7312/free18850> (last accessed: 25 February 2026)

48 Mayer (fn. 47); The British Academy (fn. 47); *Freeman/Martin/Parmar* (fn. 6)

49 *The British Academy* (fn. 45); *Hopt* (fn. 13).

50 Mayer (fn. 5).

51 *Binder/Hopt/Kuntz* (fn. 19); *Spamann/Fisher* (fn. 20); *Rock* (fn. 21); *Davies* (fn. 25).

52 *The British Academy* (fn. 45); *Mayer* (fn. 5).

53 *Binder/Hopt/Kuntz* (fn. 12).

54 *Spamann/Fisher* (fn. 20); *Rock* (fn. 21).

55 *Wells* (fn. 23).

vestors do not agree “or (largely) unnecessary” if they do.⁵⁶ To this we can add other counterarguments.

Authenticity. To be meaningful and effective, a corporate purpose arguably requires that the company’s managers, directors, and employees identify with it and that its shareholders endorse it. In other words, a company purpose must be authentic. If it is not voluntary and companies are forced to produce a purpose statement against their will, they will most likely only pay lip service to it and regard it as a compliance exercise. This invites “purpose washing” and “purpose gaming.”

Prior experience. Without additional requirements, mandatory purpose statements might not make much a difference. In many countries (including Denmark, Norway, Sweden, and Germany), where companies are obliged to state “objectives” in their articles of association, the statements they make are so broad as to be virtually meaningless. In order to retain as much flexibility as possible, they may for example state that the purpose is to engage in “commercial activities” or in “manufacturing or trade.”

Flexibility. In a world of radical uncertainty (Kay and King 2020), corporate purpose needs to change from time to time.⁵⁷ If purpose statements can be changed at will, they have less commitment value. Spamann and Fisher (2024) home in on corporate purpose as a commitment mechanism and argue that it can create value under incomplete contracting.⁵⁸ However, in a world of radical uncertainty (Kay and King 2020), where incomplete contracts are inevitable, unwavering commitment (which is easy to replicate by a simple contract) can be deadly.⁵⁹ Flexibility agility or even anti-fragility (Taleb 2012)⁶⁰ is needed, which is why purpose must be about more than commitment, namely the ability to be flexible and stay the course at the same time and to do so in a trustworthy manner.⁶¹ Moreover, if we accept that corporate purpose is about *profitable* solutions to the problems of people of planet, the tradeoff between profitability and the public good emphasized by Spamann and Fisher (2024) is beside the point.⁶²

A less onerous alternative to mandatory purpose statements may be corporate governance codes, as Klaus Hopt (2024) mentions in his catalogue of legal options.⁶³ A corporate governance code requires companies to react to a recommendation to

⁵⁶ Davies (fn. 25).

⁵⁷ Kay, John/Mervyn A. King, *Radical Uncertainty: Decision-making Beyond the Numbers*, 2020.

⁵⁸ Spamann/Fisher (fn. 20).

⁵⁹ Kay/King (fn. 58).

⁶⁰ Taleb, N. N., *Antifragile: Things that gain from disorder*, Random House, 2012.

⁶¹ Can not be found in references

⁶² Spamann/Fisher (fn. 20).

⁶³ Hopt (fn. 13).

state a purpose on a comply or explain basis as the UK⁶⁴ and Denmark⁶⁵ have already done. Corporate purposes of this kind are not enforced by regulators or the legal system, although they may presumably be used as evidence in court proceedings. Breach of purpose is sanctioned only by market reactions, for example by investors, who sell their shares, or by damage to a company's reputation.

A third approach envisioned by Mayer (2024, chapter 5) is a duty of directors to ensure compliance with the company purpose, which would be another example of purpose enforcement through company law. However, holding directors legally responsible requires meaningful purpose statements in sufficient detail to decide whether or not directors have complied with them. Company directors will therefore often prefer broad and vague purpose statements, for which they face little personal liability.

A fourth solution is private enforcement through purposeful ownership. Foundations and non-profit associations (such as some financial mutuals) are legally bound to comply with their purpose. When they own companies, "enterprise foundations" (Thomsen and Kavadis 2022) or "enterprise associations" provide a stronger commitment to corporate purpose than is possible in companies with transient ownership, while the corporate purpose can be flexible within the limits set by the foundation.⁶⁶ The nonprofit structure implies that their board members are not incentivized by profit and cannot gain by breach of purpose. When they own companies, foundations can therefore credibly play a role as purpose guardians of their companies. Foundation and association law can facilitate this role by enabling the creation of ownership structures that are allowed to play a role as active owners of business companies and by recognizing responsible business ownership as a socially useful purpose rather than a means to an end. However, in many European countries, foundation law insists that owning a company is not a legitimate founda-

64 The UK corporate governance code section 1.B states the principle that "*The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are all aligned.*" and Provision 2: "*The board should assess and monitor culture and how the desired culture has been embedded. Where it is not satisfied that policy, practices, or behaviour throughout the business are aligned with the company's purpose, values and strategy, it should seek assurance that management has taken corrective action.*"

65 The Danish recommendations on corporate governance, recommendation 2.1.1 states: "*The Committee recommends that the board of directors in support of the company's statutory objects according to its articles of association and the long-term value creation considers the company's purpose and ensures and promotes a good culture and sound values in the company. The company should provide an account thereof in the management commentary and/or on the company's website.*"

66 Thomsen, Steen/Nikolaos Kavadis, Enterprise Foundations: Law, Taxation, Governance, and Performance, *Annals of Corporate Governance* 6 (2022), 227–333, <http://dx.doi.org/10.1561/109.00000031> (last accessed: 13 January 2026).

tion purpose which implies a barrier to the use of enterprise foundations as purpose guardians (Sanders and Thomsen 2023).⁶⁷

A fifth solution is private enforcement by third party monitoring such as US public benefit corporations (Dorff 2017) or the French sociétés à mission (Segrestin and Levillain 2023) where a certification body or a firm specific board of purpose guardians monitor purpose compliance.⁶⁸

A sixth solution is private enforcement through courts. Koh (2024) finds examples of private enforcement of company law in the public interest through lawsuits filed by public spirited private organizations in Japan.⁶⁹

5. Corporate Sustainability and Law

There are many definitions of corporate sustainability in literature. Here we will use an adapted version of Gro Harlem Brundtland's classic definition as *"the degree to which a company's activity is sustainable financially, environmentally and socially meaning that its activities conserve or enhance the welfare of future generations."*⁷⁰ Financial sustainability is a necessary condition for corporate sustainability. Without it, a company will run out of cash and be unable to continue for long. Without environmental and social sustainability, the company will degrade natural or social resources and in the long term undermine its own existence. An unsustainable company will therefore not produce *"profitable solutions to the problems of people and planet."* More sustainable companies will do less damage and be able to survive longer. They may even get to be net positive (Polman and Levy 2021) and build environmental or social resources over time.⁷¹

The increasing social attention to sustainability and to corporate sustainability in particular is motivated by the perception that modern societies produce outcomes that are not sustainable, for example carbon emissions, rapidly declining biodiversity, or economic inequality.⁷² The traditional role for government in market economies has been to set the rules under which businesses companies operate

⁶⁷ Sanders, Anne/Thomsen, Steen (eds.), *Enterprise Foundation Law in a Comparative Perspective*, 2023.

⁶⁸ Dorff, Michael B., "Why public benefit corporations", *Delaware Journal of Corporate Law* 42 (2016), 77; Segrestin, Blanche/Levillain, Kevin, "Profit-with-purpose corporations: Why purpose needs law and why it matters for management", *European Management Review* 20 (2023), 733–740.

⁶⁹ Alan K. Koh, "Enforcing Corporate Purpose: Comparative Approaches", *University of Pennsylvania Journal of International Law* 45 (2024), 833–891.

⁷⁰ Brundtland (fn. 10).

⁷¹ Polman/Levy (fn. 6).

⁷² Schoenmaker, Dirk/Schramade, Willem, *Principles of Sustainable Finance*, 2019.

using environmental law, labour law, consumer protection law, tax law and other policy instruments, but not to intervene directly in business decisions.

However, in recent years, policy makers around the world have enacted laws and regulations focused on promoting, not only sustainability in general, but corporate sustainability. In the US most of this takes place at state level (Ho 2024) such as California's climate-related financial disclosures and greenhouse gas (GHG) emissions reporting (Vogel 2019), but also surface in a (now abolished) proposal by the Securities and Exchange Commission (SEC) to standardize climate-related disclosures.⁷³ In the EU, there has been a flurry of European sustainability regulations such as the green taxonomy for financial institutions, the corporate sustainability reporting directive (CSRD), the corporate sustainability due diligence directive (CSDDD) and the sustainable corporate governance initiative, which was withdrawn after strong opposition from academia and business.

In 2024-2025 the tide turned to a strong pushback against sustainability regulation both in the US and the EU. In Donald Trump's second term, the US has withdrawn from the Paris agreement⁷⁴, rescinded the Endangerment Finding⁷⁵ that climate change is a serious social problem, announced plans to overturn a rule that allows pension funds to consider ESG factors⁷⁶, issued an executive order to end diversity, equity and inclusion programs in US government and among government suppliers⁷⁷. In the EU, environmental regulation is being scaled back by the Omnibus proposal⁷⁸, which announces "*far-reaching simplification in the fields of sustainable finance reporting, sustainability due diligence and taxonomy.*"⁷⁹ The proposal is motivated by the declining European competitiveness highlighted in the Draghi report (European Commission 2024).⁸⁰ The simplification now seems likely to involve

73 Harper Ho (fn. 28); Vogel, David, "Promoting sustainable government regulation: what we can learn from California", *Organization & Environment* 32 (2019), 145–158.

74 <https://www.congress.gov/crs-product/R48504>. (last accessed: 13 January 2026).

75 <https://www.epa.gov/newsreleases/epa-releases-proposal-rescind-obama-era-endangerment-finding-regulations-paved-way> (last accessed: 13 January 2026).

76 <https://greencentralbanking.com/2025/06/06/trump-administration-to-drop-esg-rule-for-pension-funds/> (last accessed: 13 January 2026).

77 <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/> (last accessed: 13 January 2026).

78 https://commission.europa.eu/publications/omnibus-i_en (last accessed: 13 January 2026).

79 https://commission.europa.eu/document/download/0affa9a8-2ac5-46a9-98f8-19205bf61eb5_en?filename=COM_2025_80_EN.pdf (last accessed: 13 January 2026).

80 *European Commission*, The future of European competitiveness. Part A | A competitiveness strategy for Europe (Draghi-Report), 2024, https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en (last accessed: 13 January 2026).

exempting most small and medium-sized companies from many rules and reducing the number of items that large companies have to report on.

While the US ESG pushback is partly motivated by denial of climate change and other sustainability problems, the European pushback is motivated by economic costs that reduce the competitiveness of European businesses. Under the EU's Corporate Sustainability Reporting Directive (CSRD)⁸¹, companies were required to report on around 1144 data points as defined by the European Sustainability Reporting Standards (ESRS), although the exact number would depend on a company's double materiality assessment. The provision and auditing of all this information is extremely costly since most of it is not obtainable directly from company financial records but must be estimated based on environmental indicators like various kinds of energy consumption, air and water emissions, waste, related effects on animal and plant populations, land use in addition to socioeconomic measures like diversity, work injuries or inequality. Auditors have estimated that the costs of preparing sustainability reports are similar or greater than the costs of preparing financial reports, which include both audit costs and the costs incurred by corporate accounting and finance functions.

Clearly, law and regulation can do a great deal to reduce these costs, for example by limiting reporting requirements to indicators that have a material impact on companies or their environment using an elevated materiality threshold. Since materiality is industry and firm specific, there is no need to force a one-size fits all on design on the entire population of forms. For example, carbon emissions are material in energy companies, but less so in pharmaceuticals. It does not take much imagination to see how a corporate purpose focused on the company's core business can function as a compass guiding its sustainability reporting as well as its sustainability strategy.

imilarly, the Corporate Sustainability Due Dilligence Directive (CSDDD)⁸² establishes a corporate due diligence duty to identify and address potential and actual adverse human rights and environmental impacts in the company's own operations, their subsidiaries and, along their entire value chain. In the complex global supply chains of modern business this is practically impossible and extremely costly. It is also unreasonable to make companies responsible for activities they are not aware of and have no control over.

⁸¹ See https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en (last accessed: 13 January 2026).

⁸² See https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en (last accessed: 13 January 2026).

The skepticism against ESG regulation conveyed by contributors to the Binder, Hopt, and Kuntz (2024)⁸³ book thus appears prescient. The assumption that disclosure or governance regulation will drive corporate sustainability is debatable, particularly when compared to the direct effects of prices and profitability. Recent sustainability improvements appear to be attributable to technical progress that have made electric vehicles, solar cells, and wind energy economically competitive (The Economist 2024).⁸⁴ In other words, corporate sustainability is driven by the price mechanism rather than by sustainability law and regulation. It is telling that China has emerged the global superpower in green technology including electric vehicles, solar cells, and wind energy without European style regulation.⁸⁵

ESG has been heavily criticized and even declared dead by influential scholars like Damodaran⁸⁶ and Colin Mayer.⁸⁷ The term was proposed as a measure of sustainability by 15 large asset managers including Goldman Sachs in a report to the UN (UN 2004). The Economist (2022) argues it was a self-servicing instrument invented by an increasingly competitive asset management industry to be able to raise fees with more specialized and less transparent products. ESG investment is often based on ESG ratings, which score companies on Environmental, Social, and Governance issues in misleading ways (Thomsen 2023).⁸⁸ Berg, Koelbel and Rigobon (2022) find that ratings of different rating agencies are inconsistent.⁸⁹ Berg, Fabisik and Sautner (2021) document retrofitting of ratings by a leading rating agency (Refinitiv/Asse4) that constructs an artificial correlation of ratings with historical returns.⁹⁰ The in-

⁸³ Binder/Hopt/Kuntz (fn. 12).

⁸⁴ *The Economist*, The Energy transition will be much cheaper than you think, 14 November 2024. <https://www.economist.com/interactive/briefing/2024/11/14/the-energy-transition-will-be-much-cheaper-than-you-think> (last accessed: 13 January 2026).

⁸⁵ See for example *Michael Wang's* article for the World Economic Forum (2024): <https://www.weforum.org/stories/2025/07/chinas-green-transformation/#:~:text=Fast%20forward%20a%20dozen%20years,arduous%20journey%20any%20less%20complex> (last accessed: 13 January 2026).

⁸⁶ See <https://www.stern.nyu.edu/experience-stern/faculty-research/esg-beyond-redemption-may-it-rip> (last accessed: 13 January 2026).

⁸⁷ See <https://www.ecgi.global/publications/blog/esg-is-dead-be-true-and-fair-instead> (last accessed: 13 January 2026).

⁸⁸ *Thomsen, Steen*, “Sustainable Corporate Governance. An Overview and an Assessment”, 25 May 2023, Available at SSRN: <https://ssrn.com/abstract=4459225> or <http://dx.doi.org/10.2139/ssrn.4459225> (last accessed: 13 January 2026).

⁸⁹ *Berg, Florian/Kölbel, Julian F./Rigobon, Roberto*, “Aggregate Confusion: The Divergence of ESG Ratings”, *Review of Finance* 26 (2022), 1315–1344, <https://doi.org/10.1093/rof/rfac033> (last accessed: 13 January 2026).

⁹⁰ *Berg, Florian/Fabisik, Kornelia/Sautner, Zacharias*, “Rewriting History II: The (Un)Predictable Past of ESG Ratings”, *Electronic Journal* 2020, <https://doi.org/10.2139/ssrn.3722087> (last accessed: 13 January 2026).

formation content in the ratings is so low that former SEC chair Jay Clayton warned about them (Financial Times 2020).⁹¹ Binsbergen and Brøgger (2022) show that lower emissions have historically predicted higher E ratings, but higher E ratings have predicted higher, not lower, emissions.⁹² They conclude that “by following these subjective ratings, investors may have inadvertently allocated their money to firms that pollute more, not less.”⁹³ Larcker, Tayan, and Watts (2022) argue that there is no general agreement about the purpose of ESG, which makes it impossible to construct generally accepted ratings.⁹⁴ The implication is that ESG is inherently political, and that ESG ratings express a political opinion rather a professional assessment, which makes it less surprising that it became so politicized during the second Trump administration. Larcker, Pomorski, Tayan and Watts (2022) review a range of ESG measurement problems and conclude that ESG is “*a compass without direction*”.⁹⁵ The term ESG has become so controversial that even Larry Fink – the CEO of Blackrock, the world’s largest asset management company, who used to be an ESG proponent – has now dropped it stating that “*I don’t use the word ESG any more, because it’s been entirely weaponised ... by the far left and weaponised by the far right,*”

Thus, ESG has become a controversial concept. In contrast the term sustainability has scientific foundations, at least as far as environmental sustainability is concerned, and is recognized as such under the name “sustainability science” (e.g., de Vries 2023). It seems likely to outlast ESG.

6. Conclusion

Corporate purpose and corporate sustainability are symbiotic concepts that are likely to have a lasting impact. If a corporate purpose states how the company creates value for society, this is only meaningful if the company actually makes a positive contribution or in sustainability jargon that it is “net positive” (Polman and

⁹¹ Chris Flood, “SEC chair warns of risks tied to ESG ratings”, The Financial Times 28 May 2020, <https://www.ft.com/content/2c662135-4fd3-4c1b-9597-2c6f8f17faed> (last accessed: 13 January 2026).

⁹² van Binsbergen, Jules H./Brøgger, Andreas, “The Future of Emissions”, 7 October 2022, <https://ssrn.com/abstract=4241164> or <http://dx.doi.org/10.2139/ssrn.424116> (last accessed: 13 January 2026).

⁹³ van Binsbergen/Brøgger (fn. 92).

⁹⁴ Larcker, Davis F./Tayan, Bryan/Watts, Edward M., “Seven myths of ESG”, European Financial Management, 28 (2021), 869–882, <https://doi.org/10.1111/eufm.12378> (last accessed: 13 January 2026).

⁹⁵ Larcker, David F./Pomorski, Lukasz/ Tayan, Brian/ Watts, Edward, “ESG Ratings: A Compass without Direction.”, Rock Center for Corporate Governance at Stanford University Working Paper Forthcoming, 2022, <https://ssrn.com/abstract=4179647> (last accessed: 13 January 2026).

Levy 2021).⁹⁶ Like corporate purpose, corporate sustainability requires companies to be net positive both financially, environmentally, and socially because depletion of financial, natural, or social capital must eventually come to an end. Moreover, since no single company can solve all the world's problems, it makes sense for companies to identify which problems they mainly address or in other words what purpose they serve.

Law can facilitate both corporate purpose and corporate sustainability through various means, but in both cases extensive public intervention appears to be problematic (Binder, Hopt, and Kuntz 2024).⁹⁷ Mandatory purpose statements are likely to be ineffective unless they are enforced, and public enforcement by a purpose regulator risk subordinating private businesses to political interests. However, the law can do a great deal to facilitate voluntary private solutions. One example is enterprise foundations in which a foundation owns a company and acts as a guardian of its purpose. Another example is the increasingly popular French *société à mission*, in which a purpose board monitors whether a company delivers on its purpose commitments. A third example could be the German and Dutch steward ownership proposals (Sanders and Neitzel 2025),⁹⁸ in which shareholders create a legally binding asset lock that prevents purpose dilution.⁹⁹ When combined with multiple share classes, purpose guardians may be able to veto a decision that breaches a company purpose.

The law can facilitate corporate sustainability and make it more realistic, for example by limiting reporting requirements and governance obligation to sustainability issues that are material to their core business. 1144 items or even 114 indicators cannot all be material. The number could probably for most companies be reduced to 20–30 items or less. Governance requirements could be limited to issues which companies are able to influence rather than to increasingly complex global supply chains. Corporate incentives can be influenced by tax law, for example carbon taxes or the tax credits that were effectively used in the US inflation reduction act.

What corporate law cannot do in a market system is to force companies to ignore profitability and price signals, at least not without great cost. Reporting, dis-

⁹⁶ Polman/Levy (fn. 14).

⁹⁷ Binder/Hopt/Kuntz (fn. 12): Obviously, this does not mean that government policy to achieve environmental sustainability – for example carbon taxes – are irrelevant or ineffective, but rather that government intervention in corporate sustainability (the way companies address sustainability) appear to be unlikely to succeed.

⁹⁸ Sanders, Anne and Neitzel, Noah [italics], Steward Ownership – Concept, Potential and Implementation in Germany and the Netherlands (March 14, 2025). Available at SSRN: <https://ssrn.com/abstract=5178366> or <http://dx.doi.org/10.2139/ssrn.5178366> (last accessed: 25 February 2026)

⁹⁹ Source can not be found in references.

closure of directors' duties to consider sustainability will matter little if the economic incentives are unchanged. Hence the skepticism voiced in the Binder, Hopt, and Kuntz (2024) book, for example Binder's argument that including sustainability in director's duties will not be effective in protecting stakeholders.¹⁰⁰

Similarly, Ferrarini and Siri's conclusion that neither soft law nor hard law can increase ESG stewardship by institutional investors and asset managers because ESG is costly and not associated with higher investor returns (Ferrarini and Siri 2024).¹⁰¹ Or Kumpan's observation that EU regulation of green bonds would be unproductive since smaller issuers will shy away from green bonds if the prospectus requirement become too onerous (Kumpan 2024).¹⁰² Or Kuntz's skepticism about ESG demand-side regulation of investors because they will ultimately prioritize financial returns. Or Thomas' observation that consumers may not be willing to pay higher prices due to sustainability requirements (Thomas 2024).¹⁰³

Nonetheless, sustainability concerns are unlikely to go away anytime soon. Corporate sustainability and corporate purpose can play a meaningful role in addressing them, and the law can facilitate it.

100 *Binder/Hopt/Kuntz* (fn. 12).

101 *Ferrarini/Siri* (fn. 23).

102 *Kumpan* (fn. 32).

103 *Thomas* (fn. 34).