

Corporate Purpose, Sustainability and Law

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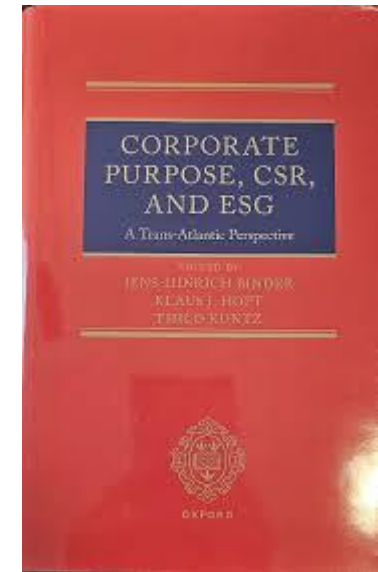
Copenhagen Business School

Background

Interest in corporate purpose and corporate sustainability appear to have peaked

Attrition, criticism and political backlash

Taking stock after the dust has settled:
What is left for corporate law?



Propositions

Purpose and sustainability remain relevant connected topics for corporate law

Purpose regulation is off the table, but corporate law can facilitate (or prevent) private commitment

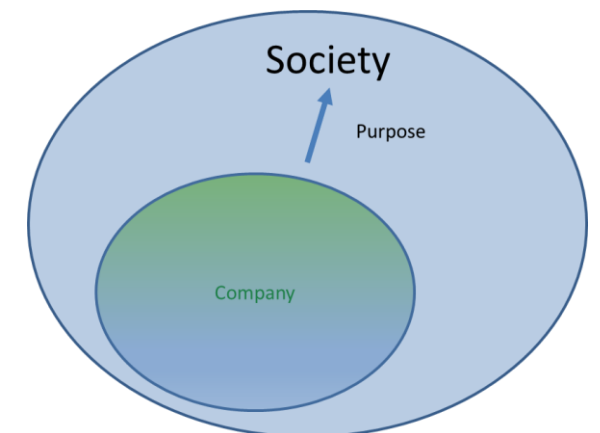
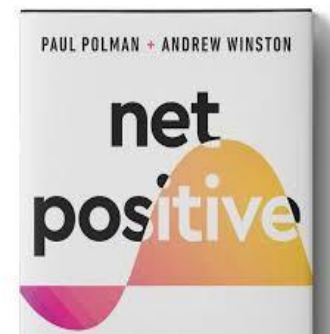
ESG is dead, and sustainability reporting costs need to come down, but sustainability issues will not go away

Sustainability law must be reinvented. Suggestion: focus on materiality and purpose

Corporate Purpose

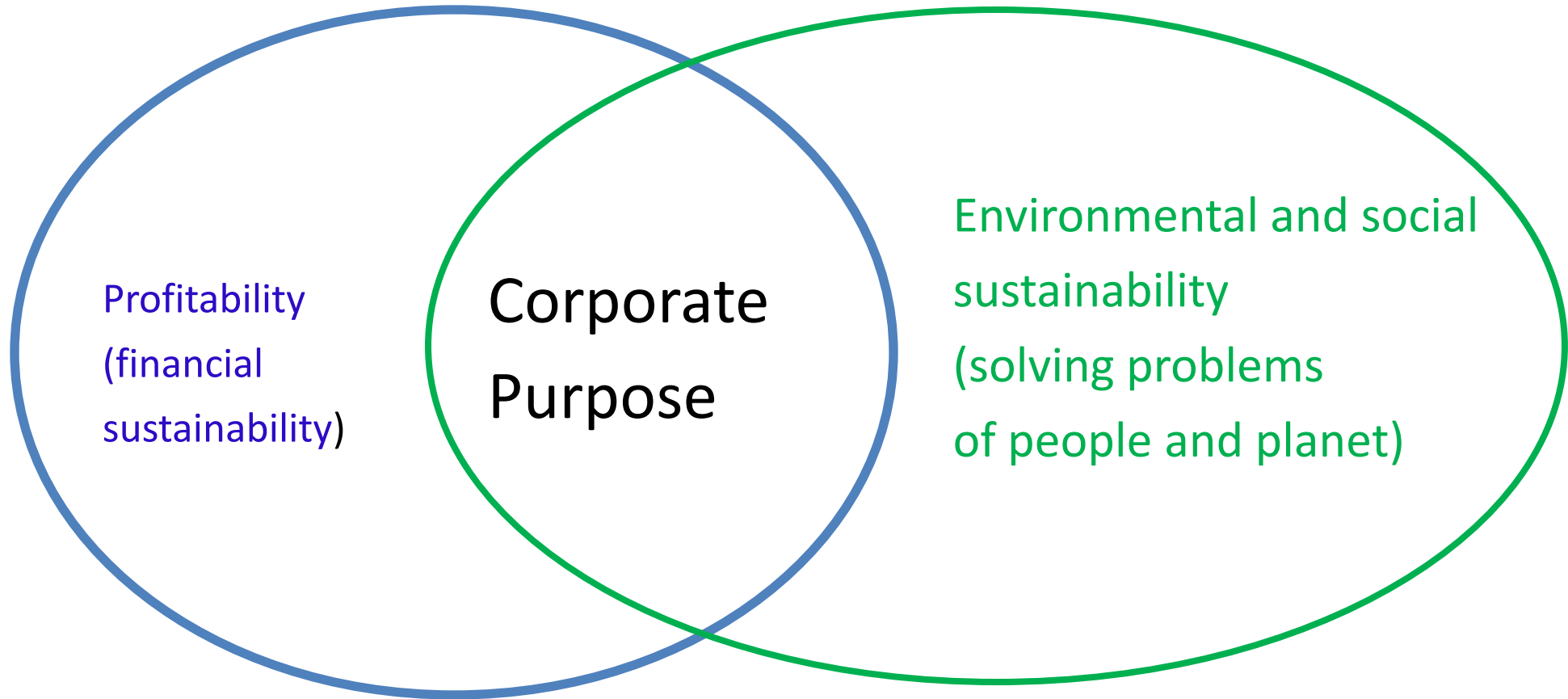
Corporate Purpose

- Almost all large companies now state a purpose
- A meaningful corporate purpose explains how the company contributes to society
- This makes little sense unless the contribution is "net positive"
- => including costs and benefits of externalities (environmental and social costs)



Purpose and Sustainability

- *“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).*
- =>
- *“The purpose of business is to solve the problems of people and planet profitably and not profit from causing problems” (The British Academy 2019).*



Purpose examples

- **Slogan.** Our Purpose. “Creating brighter lives for all (Henkel)
- **No. 1.** From the outset, Bernard Arnault gave the Group a clear vision: **to become the world leader** in luxury, with a philosophy summed up in its motto “Passionate about creativity“ (LVMH).
- **The purpose is the product.** “The purpose of ArcelorMittal is ‘Inventing smarter steels for a better world.’”.
- The purpose is to serve the **customer**: Our purpose is to reimagine medicine to improve and extend people's lives. (Novartis)
- **Product+.** We continuously develop our products and services to **create value for our customers and to support sustainable societies and the well-being and safety of people** (Volvo).
- **Sustainability.** We are driven by our purpose: to make sustainable living commonplace (Unilever)

Purpose Statements

Eurostoxx 600 excluding finance and utilities

	%	N
Slogan (hot air)	21.8%	93
No. 1 (the world leader)	6.1%	26
Product	15.5%	66
Customers	23.5%	100
Product +	16.2%	69
Sustainability	14.8%	63
All purposes	98.2%	417
NA	1.8%	8
Grand total	100%	425

Does Purpose Matter?
Examining Purpose Statements of the Largest European Companies¹
Steen Thomsen²
Center for Corporate Governance
Copenhagen Business School
and ECGI
Anne Sanders³
University of Bielefeld

Mandatory purpose regulation?

- Political capture
- Bureaucracy
- Impractical
- Ineffective
- Unnecessary
- Inauthenticity
- Irrelevant
- Woke
- => Rejected

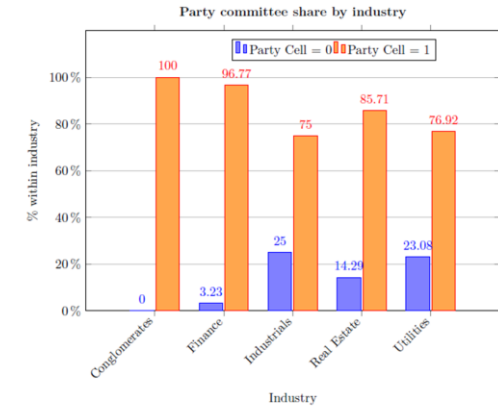
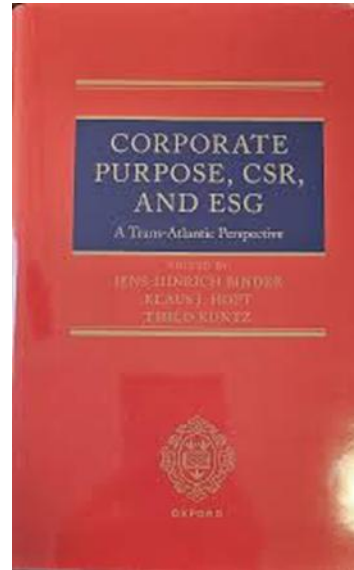


Figure 2: Party committee prevalence across industries for the 100 largest A-share issuers by market capitalization. Conglomerates (n=1, 100% Party); Finance (n=31, 96.77% Party); Industrials (n=48, 75.00% Party); Real Estate (n=7, 85.71% Party); Utilities (n=13, 76.92% Party). Party committee defined as charter reference to Party organization (党组织, 党支部, 党委) or sequencing provisions. Percentages represent within-industry shares. Sample covers charters from 2010-2025.

Communist Party Organizations in Chinese Firms

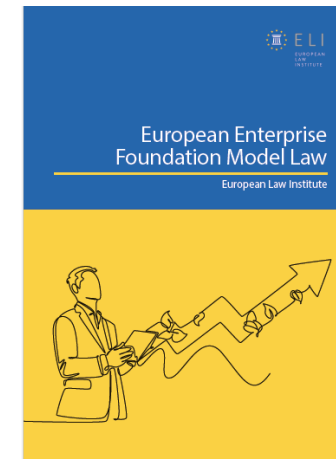
Martin Conyon¹ and Lerong He²

¹Bentley University, USA

²State University of New York at Geneseo

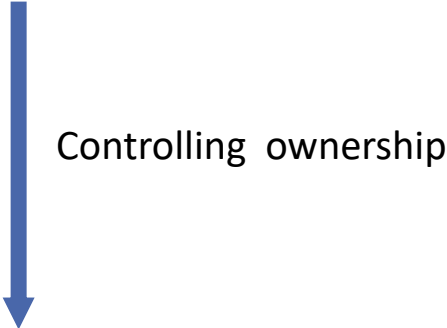
Private law solutions

- Director liability for breach of purpose
- Corporate liability for breach of purpose
- Purposeful ownership (enterprise foundations/associations, perpetual purpose trusts)
- Certification (B corps, societees a mission)
- German steward ownership





Must-have
Legally binding
Usually broad statements
focused on philanthropy
and business ownership



Very broad (meaningless) objectives
Can be changed at will
Recent corporate purpose statements
(not legally binding)

Corporate sustainability

Corporate Sustainability

- The degree to which a company's activity is sustainable financially, environmentally and socially (i.e. including externalities):
- the degrees to which its activity conserves or enhances the welfare of future generations
- Failure of the first-best solution – government intervention
- Second best solutions: companies engage, often in partnerships
- A diffuse, unmanageable obligation

- => materiality
- => corporate purpose

Sustainability law

- Sustainable corporate governance
(director liability, supply chain due diligence, sustainability committees, sustainability incentives, climate plans.....)



- Disclosure of sustainability risks



- Reporting
EU Corporate sustainability reporting directive: 1144 items
Omnibus pushback
Man on the moon moment is over



Council signs off simplification of sustainability reporting and due diligence requirements to boost EU competitiveness

With a view to boosting EU competitiveness, the Council has today agreed to a simplification of the sustainability reporting and due diligence requirements for companies. This legislation will apply to the European corporate sustainability reporting (CSRD) and corporate sustainability due diligence (CSDD) by reducing the reporting burden and fixing the trade down effect of obligations on smaller companies.

The Council's final decision package reduces complexity and unnecessary details, cuts red tape and saves businesses and stakeholders time. Finally, the companies that remain subject to CSRD will be able to opt with the aim to boost EU competitiveness, especially in a constantly changing geopolitical framework.

ESG

- Term invented by the asset management industry
- Extremely popular
- No scientific base
- Challenged by critical finance research
- Paradoxical effects on carbon emissions and other environmental indicators

RESEARCH ARTICLE

Business Strategy and the Environment WILEY

Greenwashing, carbon emission, and ESG

Sirimon Treepongkaruna^{1,2} | Hue Hwa Au Yong³ | Steen Thomsen⁴ | Khine Kyaw⁵

OPINION

ESG Is Beyond Redemption: May It RIP.

— October 23, 2023

As seen in: Financial Times



By Aswath Damodaran

Born in sanctimony, nurtured with a decade, but it is now facing a r

The problems of investing with a assessing what it measures, whi

ESG started as a measure of gov for responsible investing, with si ranned up its salespeople recov



ESG is Dead, Be True and Fair Instead

Colin Mayer



REUTERS World Business Markets Sustainability Legal Breakingviews Technology Live

Environment

BlackRock's Fink says he's stopped using 'weaponised' term ESG

By Isha Binnie

June 26, 2023 10:10 PM GMT+2 Updated 2 months ago



The institutions endorsing this report are convinced that in a more globalised, interconnected and competitive world the way that **environmental, social and corporate governance issues** are managed is part of companies' overall management quality needed to compete successfully. Companies that perform better with regard to these issues can increase shareholder value by, for example, **properly managing risks, anticipating regulatory action or accessing new markets, while at the same time contributing to the sustainable development** of the societies in which they operate. Moreover, these issues can have a **strong impact on reputation and brands**, an increasingly important part of company value.



Endorsing institutions

The report is the result of a joint initiative of the following companies:

- ABN Amro
- Aviva
- AXA Group
- Banco do Brasil
- Bank Sarasin
- BNP Paribas
- Calvert Group
- CNP Assurances
- Credit Suisse Group
- Deutsche Bank
- Goldman Sachs
- Henderson Global Investors
- HSBC
- Innovest
- ISIS Asset Management
- KLP Insurance
- Morgan Stanley
- RCM (a member of Allianz Dresdner Asset Management)
- UBS
- Westpac

Note: Throughout this report, the pronoun "We" refers to the endorsing institutions listed above and not to the individuals that have contributed to producing this report.

ESG Research

STANFORD CLOSER LOOK SERIES



STANFORD CLOSER LOOK SERIES



SEVEN MYTHS OF ESG

BY DAVID F. LARCKER, BRIAN TAYAN, AND EDWARD M. WATTS
NOVEMBER 4, 2021

HARVARD | BUSINESS | SCHOOL

ESG: Hyperboles and Reality

George Serafeim

ESG Investing: Why Here? Why Now?

Jonathan R. Macey, Yale Law School; Research Fellow at the Law & Economics Center at Antonin Scalia Law School, George Mason University

OCTOBER 2021

Review of Finance, 2022, 1315–1344
<https://doi.org/10.1093/rof/rfac033>
Advance Access Publication Date: 23 May 2022

OXFORD

Aggregate Confusion: The Divergence of ESG Ratings*

Florian Berg¹, Julian F. Kölbl^{1,2}, and Roberto Rigobon¹

¹MIT Sloan, USA, ²University of Zurich, Switzerland

ESG RATINGS

A COMPASS WITHOUT DIRECTION

BY DAVID F. LARCKER, LUKASZ POMORSKI, BRIAN TAYAN, AND EDWARD M. WATTS
AUGUST 2, 2022



ORIGINAL ARTICLE | Open Access | CC BY

The end of ESG

Alex Edmans

Is History Repeating Itself? The (Un)Predictable Past of ESG Ratings

European Corporate Governance Institute – Finance Working Paper 208/2020

59 Pages · Posted: 5 Nov 2020 · Last revised: 1 Sep 2021

[Florian Berg](#)

Massachusetts Institute of Technology (MIT) - Sloan School of Management

[Kornelia Fabisik](#)

University of Bern; Frankfurt School of Finance & Management

[Zacharias Sautner](#)

Frankfurt School of Finance & Management; European Corporate Governance Institute (ECGI)

The Future of Emissions

Jules H. van Binsbergen[†] and Andreas Brögger[†]

October 14, 2022

Reforming sustainability law

Reporting cost must come down
50% of green transition costs?

⇒ Elevated materiality standards

- * Company size
- * Energy use and carbon emission
- * Sector and area regulation

⇒ Technology and scale dominate

- * Subsidies and protection

⇒ Purpose and focus



Conclusion

- Purpose and sustainability are symbiotic topics that are likely to endure
- Purpose is private, but organizational law can enable commitment
- ESG is not working
- Sustainability law needs to focus on materiality and purpose



Slogan: Henkel

- Our Purpose: Creating brighter lives for all



No. 1 - LVMH

- From the outset, Bernard Arnault gave the Group a clear vision: to become the world leader in luxury, with a philosophy summed up in its motto "Passionate about creativity".



Product

- The purpose of ArcelorMittal is 'Inventing smarter steels for a better world'.



Customers (users) - Novartis

- Our purpose is to reimagine medicine to improve and extend people's lives.



Product+ Volvo

- Every company exists for a reason – it has a purpose. Our solutions to global challenges are driven by our mission to drive prosperity through transport and infrastructure solutions, and our vision to be the most desired and successful transport and infrastructure solution provider in the world. We continuously develop our products and services to create value for our customers and to support sustainable societies and the well-being and safety of people.



Sustainability Purpose - Unilever

- We are driven by our purpose: to make sustainable living commonplace

Sustainability Purpose - Unilever

- We are driven by our purpose: to make sustainable living commonplace



Company Purpose Evolves

- Purpose 0.0
Aspirations... "for a better world"
- Purpose 1.0
"The purpose is the product"
- Purpose 2.0
"The purpose is to create value for costumers"
- Purpose 3.0
"The purpose is to create value for shareholders and society through our products while paying attention to stakeholders and the environment"
- Purpose 4.0 Net positive
"Value creation net of private and social cost"

