

Insights & Analyses

Towards Sustainability: The European Regulatory Framework for Green Finance in Real Estate**

Lucio Casalini*

Abstract

The European Union (EU) has recently introduced a series of legislative measures to facilitate access to green finance for households and small to medium-sized enterprises (SMEs). This paper aims to provide an overview of the European legislative framework and recent European Court of Justice (ECJ) cases, while addressing the question of whether green financial products require different regulations from those applicable to conventional (brown) products.

I. Introduction

Current times are characterized by the pressures of climate change and an energy crisis. The legal framework concerning energy consumption and efficiency thus forms a crucial part in regulating financial practices designed to advance environmental well-being (green finance). In the EU, the promotion of energy efficiency within the real estate and construction sectors is of growing importance. Citizens will be asked to invest in energy efficiency improvements to their houses or to purchase energy efficient properties. To this effect, the EU has recently introduced a range of legislative measures with the objective of enhancing access to green finance for households and SMEs.

The aim of this paper is twofold. Firstly, it will examine the pivotal function of green finance in promoting sustainability within the real estate and construction sectors through mortgage loans and retail loans (green loans). Secondly, it will address the question of whether green financial products require regulatory approaches distinct from their conventional or 'brown' counterparts.

To this end, this paper will firstly lay out the general concept of green finance (section II) and will secondly examine the EU legislative framework alongside recent rulings from the ECJ jointly with the European Banking Authority (EBA) 2023 Report (EBA Report) into the European Commission Strategy on retail

** This paper is the result of research conducted with the international project 'ESCOP4Green – Enhancing Sustainable Consumption and Production for the Green Transition' led by Professor Lucia Ruggeri at the University of Camerino. It elaborates and provides bibliographical references to research presented at Johns Hopkins University in Baltimore (USA) during the Conference 'Building Sustainability: The Role of Real Estate'.

* Adjunct Professor in Civil Law at LUISS 'Guido Carli' University (Italy).

lending (sections III and IV). Finally, after highlighting the key role of households and SMEs and problematic purpose of green loans (section V), this paper will conclude with some final remarks (section VI).

II. Green Finance in Real Estate: A General Overview

The EU is currently implementing a comprehensive sustainability strategy. Along with a corresponding *digital* strategy, the sustainability strategy forms part of the so-called ‘twin transition’.¹

The EU’s sustainability strategy emphasizes the integration of sustainability at the core of its economic and legal framework, thereby ensuring growth is achieved collectively in an environmentally responsible way. It aims to achieve the goals set out in the Treaties, namely to:

‘work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment’.²

To this end, a significant legislative process is currently underway to establish an integrated system of sustainability regulations. Put simply, this system is designed to harmonise various areas of law and often disparate economic sectors, creating a unique framework to implement these regulations and to achieve the ambitious goals set out for Europe in this field.³

¹ L. Ruggeri, ‘Which Law for Transition? The Market and the Person in a Prism of Sustainability’, in Ead and K. Zabrodina eds, *Making Production and Consumption Sustainable: A Global Challenge for Legislative Policies, Cases Law and Contractual Practices. Guidelines for Changing Markets* (Vienna: SGEM, 2023), 35, according to which ‘with a reversed methodology, which constitutes an innovation compared to the economic history that characterized past transformation processes, the EU now uses its legislative instrument to encourage and accompany transitions (...). The use of the law to redesign the market structure is based on a broader reflection carried out by the European Commission to achieve a more efficient legislative policy: changing the legislative approach to promote just transitions’. See the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘The European Green Deal’ COM (2019) 640 final (11 December 2019), 22. For the connection between ecological transition, finance, and economy, see G. Giraud, *Illusion financière. Des subprimes à la transition écologique* (Paris: Les Éditions de l’Atelier, 2012), Italian translation: *Transizione ecologica. La finanza a servizio della nuova frontiera dell’economia* (Verona: EMI, 2015), 8 and J. Tirole, *Économie du Bien Commun* (Paris: Presses Universitaires de France, 2016), 12.

² Art 3, Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

³ On this point, see G. Perlingieri, ‘“Sostenibilità”, ordinamento giuridico e “retorica dei diritti”’. A margine di un recente libro’ *Il Foro napoletano*, 100, 77-101 (2020), according to which the term ‘sustainability’ is to be understood as the need to adapt legally relevant activities to the overall logic of the legal system. See also Id, ‘In tema di “sostenibilità”’ *Teoria e prassi del diritto*, 1, 167-178 (2024); E. Caterini, *Sostenibilità e ordinamento civile. Per una riproposizione della questione sociale* (Napoli: Edizioni Scientifiche Italiane, 2018), 10; S. Zuccarino, ‘The Principle of Sustainable Development

The realization of such a fundamental transition requires the adequate allocation of private and public financial resources. Consequently, green finance has emerged as a prominent concept of interest, reflecting a growing recognition of the critical role that financial markets and institutions should play in driving sustainable development. This role has been widely acknowledged by several EU legislative acts over the past few years. However, green finance is a multifaceted concept whereby no definition among scholars has been universally accepted. Generally speaking, it encompasses a range of financial practices and instruments designed to advance environmental and social well-being by aligning, *inter alia*, short-term financial decisions with long-term sustainability goals. Along with its semantic derivatives, such as ‘green mortgages’, ‘green loans’, ‘green bonds’ and so on, the term has gained global prominence following significant commentary on the growing importance of environmentally responsible financial practices.⁴

As such, green finance can be defined as a form of finance which effectively considers long-term global environmental and social impacts *vis-à-vis* typical financial risks (credit, maturity, mismatch, liquidity, etc).⁵ This approach aims to achieve a balance between three key objectives: (i) the growth of the financial industry (financial development); (ii) the enhancement of environmental quality (improvement of the environment); and (iii) overall economic progress (economic growth). Accordingly, the EU strategy for green finance outlines three distinct yet interrelated goals: economic growth, environmental sustainability, and financial

within the European Framework. From the European New Green Deal to the Taxonomy for Sustainable Activities’, in L. Ruggeri and K. Zabrodina eds, *Making Production n 1 above*, 65.

⁴ J.D. Sachs et al eds, *Handbook of Green Finance. Energy Security and Sustainable Development* (Singapore: Springer, 2019); D. vjn and W. Schramade, *Principles of Sustainable Finance* (Oxford: Oxford University Press, 2021); B.M. Abdel-Karim and F.X. Kollmer eds, *Sustainable Finance. Herausforderungen und technologische Lösungen für Banken und Finanzdienstleister* (Wiesbaden: Springer, 2022); A. Bem et al eds, *Sustainable Finance in the Green Economy* (Wrocław: Springer, 2022); C. Vargas, *Sustainable Finance Fundamentals* (London: Routledge, 2024); D. Busch et al eds, *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets* (London: Palgrave Macmillan, 2024); F. Annunziata and M. Siri eds, *EU Banking and Capital Markets Regulation: Open Issues of Vertical Interplay with National Law* (London: Palgrave Macmillan, 2025); K. Alexander et al eds, *The Cambridge Handbook of EU Sustainable Finance: Regulation, Supervision and Governance* (Cambridge: Cambridge Univ Press, 2025).

⁵ *Action Plan: Financing Sustainable Growth*, EU COM (2018) 97 final, 2: “Sustainable finance” generally refers to the process of actively considering environmental and social factors in investment decision-making, leading to increased investments in longer-term and sustainable activities. More specifically, environmental considerations refer to climate change mitigation and adaptation, as well as the environment more broadly and related risks (eg natural disasters). Social considerations may refer to issues of inequality, inclusiveness, labor relations, and investment in human capital and communities. Environmental and social considerations are often intertwined, as especially climate change can exacerbate existing systems of inequality. The governance of public and private institutions, including management structures, employee relations and executive remuneration, plays a fundamental role in ensuring the inclusion of social and environmental considerations in the decision-making process’. See E. Agirman and A.B. Osman, ‘Green Finance for Sustainable Development: A Theoretical Study’ *Aurasya Sosyol Ve Ekonomi Araştırmaları Dergisi*, 6, 243-253 (2019).

sector development.

In this context, economic theory identifies two key effects of finance in sustainability matters. Firstly, it can play a role in mitigating the impact of climate change on the economic system and human societies. Secondly, it can be targeted to fund environmentally sustainable economic growth (green growth). Consequently, green growth represents a new economic growth model that integrates environmental sustainability with economic progress, requiring the implementation of financial mechanisms to address the capital requirements of industries.

However, several challenges impede the effective allocation of finances to industries for green growth (green investments). These include *uncertainty*, related to the fact that green investments often rely on intangible assets rather than physical ones; *risks*, because green investments have a long-term growth potential mindset; and *market failures and imbalances of power in transactions*, caused by information asymmetry between investors and green industry companies.⁶

III. European Legal Framework

The EU has enacted a series of legislative measures and initiatives with the objective of encouraging the incorporation of sustainability considerations into financial services, including real estate. These measures are designed to facilitate the transition towards a more sustainable economy, thereby enabling households, SMEs, and large corporations to gain access to sustainable finance.⁷ As will be explained below, the EU has enacted two important legislative measures in recent years.

In 2018, the EU established the foundations for a sustainable finance framework as part of its *Action Plan on Financing Sustainable Growth* (the Action Plan)⁸ with the aim to increase the flow of private capital into sustainable investments. The plan proposes that the financial sector should assume a key role in promoting a green economy. It is therefore imperative for private capital to be reoriented towards sustainable investments if sustainable economic growth, financial stability, and the promotion of transparency and long-term thinking (*long-termism*) are to be achieved.⁹

The Action Plan builds upon the recommendations and actions of the High Expert Group on sustainable finance (HLEG) established by the European Commission in 2016 to outline an EU strategy for sustainable finance in its Final

⁶ H.J. Noh, *Green Finance* (Seoul: Park Young Sa, 2012); Id, *Financial Strategy to Accelerate Green Growth* (Tokyo: Asian Development Bank Institute ADBI Working Paper 866, 2018), 1-23.

⁷ M. Aliano et al eds, *Sustainable Finance for SMEs. The Role of Capital for Sustainable and Inclusive Growth* (Berlin: Springer, 2024).

⁸ European Parliament, European Council, European Central Bank, European Economic and Social Committee and Committee of the Regions Communication (EU) Action Plan: *Financing Sustainable Growth* (2018) COM/2018/097, n 5 above.

⁹ This approach is also considered fundamental to the EU's Capital Markets Union (CMU) project.

Report in 2018 (the 2018 Report).¹⁰ The 2018 Report sets forth a number of key recommendations, asserting that sustainable finance is driven by two main needs: (i) addressing society's long-term needs; and (ii) integrating environmental, social, and governance (ESG) factors into investment decisions. Accordingly, the HLEG has put forth a plan comprising eight key recommendations, several general recommendations, and a series of special actions tailored to specific sectors within the financial system.

As previously stated, the EU's primary objective is to promote an environmentally sustainable economy by redirecting capital flows. This redirection means existing socio-economical *inequalities* would need to be addressed, ultimately increasing *efficiency* of production processes and enhancing competitiveness. The EU's objective is based on the general assumption that the financial sector does not sufficiently consider environmental and climate risks and how this lack of consideration impacts the economy. In addition to environmental considerations, the concept of sustainability encompasses the social and economic aspects of development. This includes the need to address human rights (*social sustainability*) and rising regional and global inequalities. Moreover, a significant number of economic studies cited in the Action Plan establish a correlation between rising inequality and constrained economic growth.¹¹ As its final point, the Action Plan addresses the nature of financial investment and its complex relationship with environmental and social concerns. Specifically, it asserts that contemporary financial investments too often prioritize short-term returns (*short-termism*), whereas investments aligned with environmental and social objectives typically necessitate long-termism.

Therefore, the Action Plan emphasizes the need for a crucial shift from short-termism in financial and economic decision-making. To achieve this, it promotes, *inter alia*, greater transparency. Namely, the regulator should enable investors to make more informed social and environmental responsible investment choices.

In 2021, in its Strategy for Financing the Transition to a Sustainable Economy (the 2021 Strategy),¹² the European Commission outlines four policy areas for

¹⁰ Available at <https://tinyurl.com/4ewe4a9v> (last visited 31 January 2026).

¹¹ J.F. Ostry et al, *Redistribution, Inequality, and Growth* (Washington: IMF Staff Discussion Note, 2014), 3. For more references see the Action Plan directly: <https://tinyurl.com/3beuntex> (last visited 31 January 2026).

¹² European Commission Communication of 6 July 2021 on the Strategy for Financing the Transition to a Sustainable Economy (2021), which contains the Proposal for a Standard for European Green Bonds. The European green bond standard (EUGBS) is a voluntary standard to help raise the environmental ambitions of the green bond market. Establishing this standard was an action in the Commission's 2018 Action Plan on financing sustainable growth and is part of the European green deal. It is based on the recommendations of the Technical Expert Group on Sustainable Finance. Once it is adopted by co-legislators, this proposed Regulation will set a gold standard for how companies and public authorities can use green bonds to raise funds on capital markets to finance such ambitious large-scale investments while meeting tough sustainability requirements and protecting investors. This will be useful for both the issuers and investors of green bonds. For example, issuers will have a robust tool to demonstrate that they are funding legitimate green projects

further development. These are: (i) financing the transition to sustainability; (ii) inclusiveness; (iii) financial sector resilience and contribution; and (iv) global ambition.

The first policy area is dedicated to the establishment of a more inclusive sustainable finance framework, highlighting the important role of households and SMEs in the process. In this respect, the 2021 Strategy promotes facilitated access to green loans and mortgages as finance tools to support sustainable financing by households and SMEs.¹³

To illustrate, green loans can assist households and SMEs to enhance the energy efficiency of their buildings, such as transitioning to more environmentally sustainable heating sources.¹⁴ Another way is the establishment of energy communities, which are spreading in Europe, particularly in Italy, as a result of the Clean Energy Package adopted in 2019 by the EU. It is made up of numerous legislative acts, among which is the Directive 944/2019/EU on the electricity market and Directive 2001/2018/EU on the promotion of the use of energy from renewable sources. The package is the first successful attempt to integrate energy and climate policies at the EU level.¹⁵

The year 2023 represents a significant turning point for the sustainable financial sector. The EU's significant legislative action made a profound impact on the sector. The EU's actions were designed to address the ambiguities contained in the national legislative frameworks, the lack of expertise, especially regarding tendering procedures, and competition between loans and grants. Accordingly, in 2023, the EU adopted two important measures: firstly, the EU Directive no 1791 of the European Parliament and of the Council (adopted on 13 September 2023)

aligned with the EU taxonomy. Moreover, investors buying the bonds will be able to assess more easily, compare and trust that their investments are sustainable, thereby reducing the risks posed by greenwashing. The new EUGBS will be open to any issuer of green bonds, including companies, public authorities, as well as issuers located outside the EU. There are four key requirements under the proposed framework: (i) Taxonomy-alignment: the funds raised by the bond should be allocated fully to projects that are aligned with the EU taxonomy; (ii) Transparency: full transparency on how the bond proceeds are allocated through detailed reporting requirements; (iii) External review: all European green bonds must be checked by an external reviewer to ensure compliance with the Regulation and taxonomy alignment of the funded projects; (iv) Supervision by the European Securities Markets Authority (ESMA) of reviewers: external reviewers providing services to issuers of European green bonds must be registered with and supervised by the ESMA. This will ensure the quality of their services and the reliability of their reviews to protect investors and ensure market integrity.

¹³ M. Francesca, 'Inclusione finanziaria e modelli discriminatori. Note introduttive sugli epigoni della discriminazione razziale', in Id and C. Mignone eds, *Finanza di impatto sociale. Strumenti, interessi, scenari attuativi* (Napoli: Edizioni Scientifiche Italiane, 2020). The Author highlights the 'cost' of social rights, that is, how the correct functioning of social systems and especially the ambition to pursue sustainability objectives require organizations and structures that depend on selective investments of scarce resources.

¹⁴ See M.I. Feliu Rey, 'Toward a New and Sustainable Era of the Building Sector: Building Information Modelling (BIM)', in L. Ruggeri et al eds, *Sustainable Legal Infrastructures: Comparative Responses Across Cultures and Systems* (Napoli: The Italian Law Journal Special Issue, 2024), 211.

¹⁵ An interesting Italian example of renewable energy community is analyzed in L. Casalini, 'Legal Profiles of the First Renewable Energy Community in Rome, "Le Vele": Rethinking Energy for a Social and Urban Regeneration', in L. Ruggeri and K. Zabrodina eds, *Making Production* n 1 above, 407.

on energy efficiency (and amending EU Regulation no 955 of 2023),¹⁶ and secondly, the Amendments adopted by the European Parliament (on 14 March 2023) on the Proposal for a Directive (of the European Parliament and of the Council) on the energy performance of buildings (EPBD).¹⁷

IV. The Interplay Between Public and Private Sectors

Both the private and public sector have a key role in addressing the financial and sustainable adaptation needs of vulnerable communities. Namely, they are able to significantly contribute to the planning, development, and implementation of climate adaptation strategies through sector-specific expertise, financing, technology, efficiency, and entrepreneurship.¹⁸

In particular, green mortgage and retail loans have the potential to transform the economy and reduce carbon emissions, thereby advancing sustainability. Thus, EU Member States should adjust their applicable national legislation and develop supporting measures to facilitate the uptake of green mortgage and retail loans, as well as systematic data collection.¹⁹

In EU countries, public financing supports the direct costs associated with household renovations. Moreover, access should be facilitated to obtain affordable bank loans, dedicated credit lines, or fully publicly financed renovations. Financial incentives in the form of grants or guarantees must consider revenue-based parameters when allocating financial support with the objective of prioritizing vulnerable households and individuals residing in social housing. Member States should develop dedicated schemes on energy efficiency renovations, particularly financial measures, and should ensure that every national financial support plan incorporates dedicated amounts for vulnerable households corresponding to their

¹⁶ European Parliament and Council Directive 2023/1791/EU of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 [2023] OJ L231/2023.

¹⁷ European Parliament Amendments adopted on 14 March 2023 on the Proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings [2023] TA/2023/0068. See K. Zabrodina, 'The Energy Performance of Mixed-use Buildings in Italy and in the United States. Treatment Criteria and Tools for Financing Energy Adaptation', in L. Ruggeri et al, *Sustainable Legal Infrastructures* n 4 above, 195.

¹⁸ C. Nkwaira and H.M. Van der Poll, 'An Exposition of the Gap between Public Sector and Private Sector Participation in Green Finance' *Risks*, 12(7), 103 (2024); R.H. Ansah and S. Shahryar, 'Green Economy: Private Sectors' Response to Climate Change' 28 *Environmental Quality Management* 3, 63-69 (2019); G. Desalegn and A. Tangl, 'Enhancing Green Finance for Inclusive Green Growth: A Systematic Approach' *Sustainability*, 14(12), 7416 (2022).

¹⁹ This point regarding data collection is particularly interesting in light of the recent adoption of several acts by the EU and, in particular, the recent Artificial Intelligence (AI) Act. The AI Act is another highly anticipated regulatory act in Europe more globally since it is the first comprehensive act and regulatory framework on AI. European Parliament and Council Regulation 2024/1689/EU of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828.

needs. National energy efficiency funds may be used to finance dedicated schemes and plans.

From this perspective, the role of the public sector and governments in the interplay with the private sector is powerful, overcoming the traditional dichotomy between the public and private sectors in this field.²⁰ Governments all over the world typically face budget constraints and bureaucratic inefficiencies, making continuous and efficient funding from government sources difficult. Nevertheless, public actors should provide financial support to green industries, at least during the initial stages of their development.

Finally, to align financial markets with the underlying needs of the global economy, both transparency and a long-term vision in economic activities are crucial. The aforementioned EU regulations highlight the necessity for private entities to have a significant role in the green transition. As such, it can be argued that there is a need for private sector involvement to achieve public interests. It has been argued that this evaluation of the role of individuals in achieving common goals is convincing, forming the basis of the principle of horizontal subsidiarity which supports the 'autonomous initiative of citizens' in pursuing common objectives.²¹

V. European Commission Strategy on Retail Lending and the European Banking Authority (EBA) Report

Green finance, which includes a broad range of financial services and products designed to promote environmental sustainability, can be facilitated through various legal instruments. Among these, bank lending to households and SMEs is of particular importance.²²

²⁰ F. Maisto, 'Subsidiarity and the New Frontiers of Freedom of Contract' *The Italian Law Journal*, 731 (2021).

²¹ For the Italian legal system, see P. Perlingieri, 'La sussidiarietà nel diritto privato' *Rassegna di diritto civile*, II, 687 (2016), who says that a clear demarcation between negotiating autonomy and initiative pursuant to Art 118 of the Constitution cannot be supported. On the contrary, it is the same negotiating autonomy that finds its foundation in subsidiarity. Art 118 of the Constitution explicitly recognizes autonomy as an initiative and an act of impulse, which thus finds in itself the capacity for self-regulation and that of regulation with external relevance. In other words, Art 1322 of the Italian Civil Code and Art 118 of the Constitution are not separated. See also F. Maisto, 'Subsidiarity' n 20 above, 13; Id, *L'autonomia contrattuale nel prisma della sussidiarietà orizzontale* (Napoli: Edizioni Scientifiche Italiane, 2016), 128; R. Carleo, 'La sussidiarietà nel linguaggio dei giuristi', in M. Nuzzo ed, *Il principio di sussidiarietà nel diritto privato* (Torino: Giappichelli, 2014), 3; A.E. Caterini, 'A Bottom-Up Financial Strategy for a Sustainable Society' *The Italian Law Journal*, 58 (2023) who says that the principle of horizontal subsidiarity establishes the 'autonomous initiative of citizens' in the pursuit of general interests, implementing the value-person. This concept allows citizens' participation in the legal system and through negotiation autonomy. In addition, Art 43 of the Italian Constitution establishes the possibility of reserving or transferring to 'communities of users' the provision of essential public services, energy sources or monopoly situations for purposes of general utility.

²² S. Landini, 'ESG, Green Finance, assicurazioni e previdenza complementare' *Corporate Governance*, 221 (2022); F. Bertelli, 'Fattori di rischio climatico-ambientale e prodotti finanziari

The EU's legislative framework illustrates the importance of facilitating greater access for households and SMEs to sustainable finance, including green lending options to achieve the transition to a low-carbon, resource-efficient, and sustainable economy. Households and SMEs are significant contributors to energy consumption and greenhouse gas emissions. Bank lending continues to be the primary source of external finance for households and SMEs. However, the availability of instruments designed to enhance access to green loans remains limited.

A study by the European Commission²³ has identified several barriers hindering the growth of the green finance market. Some of these barriers include: (i) a lack of standardized financial products tailored to sustainability; (ii) insufficient regulatory guidance to drive the development of green financial services; (iii) high upfront costs associated with green investments; and (iv) limited awareness of green finance among both financial institutions and potential borrowers. Furthermore, low-income households and SMEs appear to be particularly marginalized in the markets that finance energy-efficient buildings and production processes. This marginalization can be attributed to two primary factors: firstly, the perceived high risk associated with their investment projects, and secondly, their limited expertise in evaluating energy efficiency projects and producing the due technical documentation.

In summary, improving access to green finance for households and SMEs is essential for enabling a widespread adoption of green practices and achieving the EU's ambitious climate-related goals. By addressing the identified barriers and supporting inclusive green loan markets, all sectors of society can contribute to and benefit from the transition to a sustainable economy.

To advance the sustainability strategy, the European Commission has sought advice from the EBA on green retail lending. The EBA's²⁴ advice provides an overview of current market practices and the prevalence of green loans in the banking market. Furthermore, it proposes and considers the merits of an EU definition of green loans and mortgages. Finally, it considers measures to encourage the uptake of or access to green finance by retail and SME borrowers. In general, the EU's objective is for Member States to establish the best conditions for the widespread and non-discriminatory provision of energy efficiency lending products to be offered by financial institutions. In this regard, the EU Green Deal, which has been widely recognized for its ambitious climate-related goals, acknowledges that its targets cannot be achieved without facilitating the green transition of buildings and providing comprehensive support to households and SMEs.²⁵

ESG-linked' *Diritto del mercato assicurativo e finanziario*, 55 (2023).

²³ The Energy Efficiency Financial Institutions Group (EEFIG), *The Evaluation of Financing Practices for Energy Efficiency in Buildings, SMEs and in Industry* (October 2021).

²⁴ European Commission Call for Advice to the European Banking Authority of 22 November 2022 regarding green loans and mortgages (2022).

²⁵ According to a paper cited in the report, a significant portion of total greenhouse gas (GHG) emissions in the EU originates from household consumption. Additionally, household and SME buildings account for approximately 40% of the EU's total energy consumption.

Several economic and environmental factors highlight the critical role played by households and SMEs in the EU's efforts to transition to a sustainable economy. This may be achieved by: (i) implementing technological changes; and (ii) reducing their GHG emissions through the adoption of new sustainable models and practices. To address these challenges, it is crucial to develop and support markets for green loans that are inclusive of households and SMEs. This support, as the EBA Report describes, should be provided in a way that does not place undue financial burden on these groups during the transition period. It involves the creation of standardized green financial products, transparent regulatory guidance, incentives to reduce the upfront costs of green investments, and the enhancement of awareness and understanding of green finance.

The EBA Report, in response to the call for advice from the European Commission on Green Loans and Mortgages, was finally released in December 2023. The Executive Summary of the report indicates that the current volume of green loans represents a limited share of credit institutions' overall balance sheets and that practices to identify green loans vary. Based on the analysis presented in the report, the EBA puts forward several recommendations for the European Commission to consider in the development of future policy initiatives aimed at fostering the growth of green loan markets. The EBA Report aims at: (i) introducing a common definition of green loans and a green loan label; (ii) ensuring that a green loan label can reflect not only loans aligned with the EU taxonomy and its technical screening criteria but also different loans with a dedicated environmental objective;²⁶ and (iii) analysing other types of sustainable financing and related potential policy initiatives.

The EBA Report suggests a need to consider the full spectrum of green finance options beyond green loans. Furthermore, it addresses the issue of defining what is considered 'green'. Similarly, the Taxonomy Regulation, which entered into force in July 2020, also addresses this specific problem and establishes several rules that define which economic activities should be considered 'green' and 'environmentally sustainable'. However, the implementation of the Taxonomy Regulation depends heavily on delegated acts, those of which have still not been adopted.

In conclusion, the EBA has conducted an in-depth analysis of green loans across the EU, thereby revealing several critical insights into the current state and challenges of sustainable finance. Despite the growing emphasis on environmental sustainability, green loans continue to represent a relatively minor share of the total lending portfolios of credit institutions.

Regarding households, the report provides that green loans for households are primarily used for the financing of the acquisition and construction of new residential properties. Hence, the availability of green loans for the renovation of

²⁶ Voluntary green loan labels are aimed to facilitate transition to a more sustainable economy. The report further advises the European Commission to support credit institutions in granting green loans. It recommends including the sustainability features of residential immovable property securing the loan in the Mortgage Credit Directive (MCD) as these features are becoming an important element in mortgage lending.

existing buildings with low energy efficiency is limited. Consequently, certain categories of green loans for households, including those for the purchase of energy-efficient appliances and the installation of renewable energy equipment, remain inaccessible for a proportion of the population. In this sense, the report suggests that while there has been progress in certain areas, comprehensive support for household sustainability initiatives remains inadequate.

The situation for SMEs is even more challenging. The EBA's analysis indicates that the number of green loans extended to SMEs is significantly lower compared to those extended to household and non-financial corporations. Despite their reliance on bank lending, SMEs do not benefit sufficiently from green loan markets. This may be attributed to several factors, including their reliance on alternative sources of finance and difficulties faced in meeting the stringent data and documentation requirements associated with green loans. Given the crucial role that SMEs play in the EU economy, it is necessary to develop mechanisms and incentives to facilitate their transition to sustainable practices.²⁷

Finally, there exists the aforementioned problem of information asymmetry. The green loan market is more developed in economic sectors where data and documentation are readily available and where there is effective information exchange between credit institutions and borrowers.

Thus, while there has been notable progress in the development of green loans within the EU, significant gaps remain. The main findings can be summarized as follows: firstly, there is focus on new residential properties; secondly, there is limited support for household sustainability initiatives; and thirdly, SMEs are marginalized. These issues highlight the need for a more comprehensive approach. By addressing these challenges, the EU can better align its financial

²⁷ Credit institutions often use their internal criteria to define green loans, often referring to EU taxonomy and the United Nations Sustainable Development Goals (SDGs). The EU taxonomy, as previously described, provides a classification system that helps identify which economic activities can be considered environmentally sustainable. However, recent implementation of this framework demonstrates its current challenges and limitations in use by operators. An excellent example of a private green loans classification initiative has been made by the International Capital Market Association (ICMA). Several intermediaries use this scheme as a reference model in practice, available at <https://tinyurl.com/yrjh8jhn> (last visited 31 January 2026). For instance, the Green Bond Principles (GBP) seek to support issuers in financing environmentally sound and sustainable projects that foster a net-zero emissions economy and protect the environment. GBP-aligned issuance should provide transparent green credentials alongside an investment opportunity. By recommending that issuers report on the use of Green Bond proceeds, the GBP promote a step change in transparency that facilitates the tracking of funds to environmental projects while simultaneously aiming to improve insight into their estimated impact. The GBP, updated as of June 2021, are voluntary process guidelines that recommend transparency and disclosure as well as promote integrity in the development of the Green Bond market by clarifying the approach for issuance of a Green Bond. The GBP recommend a clear process and disclosure for issuers which investors, banks, underwriters, arrangers, placement agents and others may use to understand the characteristics of any given Green Bond. The GBP emphasize the required transparency, accuracy and integrity of the information that will be disclosed and reported by issuers to stakeholders through core components and key recommendations.

sector with its ambitious sustainability goals, thereby facilitating a more inclusive and effective transition to a low-carbon, resource-efficient economy.

VI. The Key Role of Households and SMEs and the Problem of Purpose

The market for green retail loans and mortgages is developing based on a variety of market practices. Financial institutions are beginning to apply and evaluate the EU taxonomy as a basis for the issuance of retail green loans, including mortgages.²⁸

From a legal perspective, the fundamental question of whether these types of green financial products require different rules compared to their conventional counterparts, ie brown products, arises. To answer this question, it is necessary to investigate the meaning of 'green' and develop an appropriate understanding of such. Does the question thus pertain solely to defining 'green' and sustainability in the context of business activities? The Taxonomy Regulation 852/2020/EU²⁹ (Taxonomy Regulation) already delineates sustainable activities to which the ECJ subsequently also tried to do.³⁰ An alternative approach is thus to consider whether the requirement for different rules can be tied to the purpose or function of the loan. If this is the case, various scenarios can be envisaged. For instance, divergence from the initially agreed purpose between the parties of contract can have significant legal and financial consequences. Such consequences would be critical for various economic sectors, particularly in business and retail contexts where greenwashing is of major concern.³¹

This brings us back to the capacity of the private sector and private law instruments in conveying and 'internalizing' socially positive outcomes from an environmental perspective. As previously stated, the private sector possesses the flexibility and innovation to develop and implement solutions to address environmental challenges in a more effective and continuous way. Through a sort of market-based approach, private entities can facilitate the implementation of sustainable financial practices, thereby enabling the realization of the objective of 'building sustainability' together with the public sector.

This raises the question of the role of private law, particularly the role of soft law (ie, UNIDROIT principles,³² UNCITRAL projects)³³ and private sector guidelines (ie, International Capital Market Association (ICMA) Green Bond Principles). Private sector guidelines are not legally binding in nature, including for ICMA members. However, as they are issued by recognized private sector authorities

²⁸ See n 26 above.

²⁹ European Parliament and Council Regulation 2020/852/EU of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088 [2020] OJ L198/2020.

³⁰ See Case T-628/22 *René Repasi v Commission* [2022] OJ C24.

³¹ Taking into consideration the new Directive 2024/825/EU (see the following n 35).

³² The latest version is available at <https://tinyurl.com/37ecpsx6> (last visited 31 January 2026).

³³ A general overview is available at www.uncitral.un.org/en/content/homepage.

and associations, they play an important role in private sector regulation.³⁴ Can private legal instruments thus ensure the sustainability required to pursue not only the primary economic objectives of private law, but also broader social and environmental objectives? If this is the case, how can it be achieved? These questions are necessary for discerning the purpose of loans in green finance.

As previously alluded, EU law provides technical criteria for defining the sustainability of business activities. In the context of green finance, the creation of distinct rules for green and brown financial products may not be optimal for advancing accessibility. The following arguments can be suggested:

(i) The first consideration pertains to the need for consistency within the regulatory framework. Consistency is fundamental for effective regulations. Thus, the establishment of disparate rules for green and brown financial products can result in a fragmented regulatory environment, which may lead to operational confusion and inefficiency. Currently, financial institutions favour regulatory frameworks that are transparent, consistent, and predictable.

(ii) The introduction of disparate rules can result in increased complexity in compliance processes. Similar to the risks posed by greenwashing, differentiated rules can also result in this issue, which is a significant concern at the European level.³⁵

(iii) From an economic standpoint, the competitiveness and efficiency of the markets can be adversely affected by the introduction of disparate rules for green and brown products, potentially leading to inefficiencies. The implementation of disparate regulations may result in the preferential treatment of certain products over others based on mere regulatory distinctions, which are to debate. As a result, competition can be impeded, which can in turn hinder the development of both green and traditional financial markets.

(iv) Finally, the pursuit of sustainability goals should be a collaborative effort that incorporates environmental concerns into the entirety of financial activities, extending beyond those explicitly labelled as green. The application of consistent regulatory standards to all financial products can facilitate the integration of sustainability as a fundamental aspect of the financial system as a whole. This approach can therefore facilitate a more comprehensive and environmentally conscious decision-making process among economic operators, thereby fostering a more sustainable approach to business.

³⁴ See n 26 above; F. Cafaggi, 'The Regulatory Functions of Transnational Commercial Contracts: New Architectures' *Fordham International Law Journal*, 1618 (2013).

³⁵ The recently adopted Greenwashing Directive 2024/825/EU addresses greenwashing by banning misleading communications and promoting environmental information and responsibility in business contexts. For green finance, it aims to prevent companies from profiting on the perceived favorable regulatory conditions for green financial products. Otherwise, companies can misrepresent their activities to fall under the 'green' category, ultimately misleading investors and affecting the overall credibility of genuine green initiatives. A unified regulatory framework can mitigate this risk by maintaining stringent standards across the board, ensuring a proper evaluation of all financial products.

From this perspective, it is useful to consider the insights provided the ECJ's judgement in Joined Cases C-212/21 P and C-223/21 P of July 2023.³⁶ Here, the ECJ rejected two actions initiated by the European Commission and the European Investment Bank (EIB) and focused the argues on the importance of green objectives as fundamental requirement.

On 28 June 2018, the EIB's Board of Directors published a resolution (EIB resolution) on the EIB's website. This resolution proposed financing the construction of a biomass power generation plant in the municipality of Curtis in Galicia, Spain. The plant would have a capacity of approximately 50 megawatts of electricity and would be fuelled by forest waste collected within a radius of 100 km (the Curtis project). The EIB resolution proposed granting a EUR 60 million loan to an *ad hoc* body for this project. On 9 August 2018, ClientEarth, a non-governmental organization dedicated to environmental protection, submitted a request for an internal review of the loan to the EIB. This request, based on Art 10, paragraph 1 of Regulation 1367/2006/EU (the Aarhus Convention Regulation), sought to challenge the EIB resolution. This Article of the Aarhus Convention Regulation implements the Aarhus Convention within EU institutions. It provides that

'(any) non-governmental organization meeting the criteria set out in Art 11 shall be entitled to make a request for internal review to the (EU) institution or body that has adopted an administrative act under environmental law'.

The request was however dismissed by the EIB on admissibility grounds based on the assertion that the EIB resolution was 'administrative act' and therefore not subject to the provisions of the EIB resolution. The General Court thus annulled the decision of the EIB on that issue. In this case, the ECJ ruled that 'Union legislation must, as far as possible, be interpreted in a manner consistent with international law'.³⁷

A related element of this discussion is the EIB's dual role in its financing activities, particularly in contractually agreed financing. In its capacity as a private partner of a beneficiary, the EIB simultaneously performs *functions of general interest*. Consequently, when the EIB is engaged in financing activities, it should be considered an 'EU body' under the Aarhus Convention Regulation, and thus tasked with ensuring compliance with Art 2, para 2, letter d of the Aarhus Convention. This perspective effectively expands the dual role of the EIB. On the one hand, it means the EIB remains a traditional borrower and is thus required to verify, when approving projects, their economic feasibility. On the other hand, by channelling public resources, it must guarantee the market the appropriate and effective pursuit

³⁶ Joined Cases C-212/21 P and C-223/21 P *European Investment Bank (EIB) v ClientEarth, European Commission* (C-212/21 P), *European Commission v Client Earth, European Investment Bank (EIB)* (C-223/21 P) [1995].

³⁷ The summary of the matter is available at <https://tinyurl.com/2z4snbzz> (last visited 31 January 2026).

of this function. Hence, the admissibility of the administrative control permitted by the ECJ.

Although this decision does not concern a contract between private parties, a loan granted by the EIB, it is very interesting because it outlines some principles that can also be applied to loans between private parties, such as the issue of the (green) objectives constraint. From this perspective, the ECJ's judgement confirms that green objectives are an essential requirement to be considered, also in green loan contracts. Inherently, green objectives significantly impact the contractual framework of green loans. For instance, they define the terms for the use of the loan proceeds and the sustainability criteria that the company must meet. Furthermore, the ECJ established that the green objectives of a green loan can oblige individuals or companies to comply with them.³⁸ In this sense, green objectives appear to be integrated into the contractual logic and associated obligations of green loans. Thus, it can be reasonably concluded that the establishment of separate regulatory frameworks for green and brown products is unnecessary.

VII. Conclusion

At the European level, the question of whether to introduce an exclusive regulatory act for green loans remains under discussion. As previously indicated, the EU Directives and Regulations provide a substantive set of rules and principles sufficient to ensure proper systematic and axiological interpretations are present within the legal framework surrounding green loans, those of which simultaneously aim to achieve green purposes.³⁹

In addition, the EU has recently approved the Green Bond Regulation⁴⁰ which establishes a non-binding standard for bonds aimed at financing sustainable investment, ie the European Green Bond Standard. It also provides optional disclosures for bonds marketed as environmentally sustainable and promoting sustainability more generally. For instance, an alternative approach is to adapt the existing rules on mortgages within the EU legal framework applicable to the consumer credit market. This can be achieved by an analogical interpretation of the Directive on mortgages for consumers, in particular the information disclosure rules (see Arts 15 and 20).⁴¹

³⁸ P. Perlingieri, 'Nuovi profili del contratto' *Rassegna di diritto civile*, 545 (2000), now in Id ed, *Il diritto dei contratti fra persona e mercato. Problemi del diritto civile* (Napoli: Edizioni Scientifiche Italiane, 2003), 421.

³⁹ Relating to the need for a systematic and axiological interpretation, see P. Perlingieri, *Il diritto civile nella legalità costituzionale secondo il sistema italo-europeo delle fonti* (Napoli: Edizioni Scientifiche Italiane, 4th ed, 2020), II, 334-335.

⁴⁰ European Parliament and Council Regulation 2023/2631/EU of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds [2023] OJ L series.

⁴¹ European Parliament and Council Directive 2014/17/EU of 4 February 2014 on credit

Indeed, the rationale behind establishing separate rules for green financial products is to promote sustainability; however, the potential adverse consequences described in this article suggest that a unified regulatory structure is both more suitable and effective. The implementation of regulations which consistently with sustainable purposes are to ensure that the resulting contractual practices are also consistent. Such measures can assist in the prevention of greenwashing misinformation issues as previously described, the maintenance of market efficiency, and the integration of sustainability into the financial sector as a whole. Contracts established in the interests of sustainability are thus interpreted and enforced with this in mind. For instance, remedies for breach are identified by considering both the interests of the contractual creditor party as well as broader interests (like third parties and stakeholders ones, aforementioned financial stability and so on).⁴²

In conclusion, as argued before, the adoption of a uniform regulatory framework for green and brown financial products by the European regulator can facilitate the creation of a more stable, transparent, and comprehensive financial environment, which can in turn can support market efficiency and legal clarity as well as the EU's ambitious sustainable development goals.⁴³

agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 [2014] OJ L60/34.

⁴² V. Ulfbeck and O. Hansen, 'Sustainability clauses in an unsustainable contract law?' *CEPRI Studies on Private Governance*, 6, 1 (2022); V. Ulfbeck et al, 'Contractual enforcement of CSR clauses and the protection of weak parties in the chain', in Eid eds, *Law and Responsible Supply chain Management* (London and New York: Routledge, 2019), 46-52 with further references; K. Mitkidis, 'Enforcement of sustainability clauses in supply chains by third parties', *ibid* 65.

⁴³ The principle of constitutional legality implies compliance with individual precepts coordinated with a set of normative propositions and harmonized with the fundamental principles of primary importance. This is further achieved through the comparison and contextual knowledge of the problem to be regulated ie a fact historically determined, in order to identify the most appropriate legislation for the interests and values it bears, according to P. Perlingieri, *Il diritto dei contratti* n 38 above, 334-335. Moreover, the market is only an idea serving the primary objective of protecting the person and his rights, not the result to be achieved: Id, 'Relazione conclusiva', in Id and L. Ruggeri eds, *Diritto privato comunitario* (Napoli: Edizioni Scientifiche Italiane, 2009), II, 401, and P. Perlingieri, 'Persona, ambiente e sviluppo', in M. Pennasilico ed, *Contratto e ambiente. L'analisi 'ecologica' del diritto contrattuale* (Napoli: Edizioni Scientifiche Italiane, 2016), 322, who underline that development is sustainable when it guarantees the full and free development of the human person. See also D. Schoenmaker and W. Schramade, *Principles of Sustainable Finance* (New York: Oxford University Press, 2019). According to the authors, by using finance as a means to achieve social goals, we can divert the global economy to achieving more sustainable outcomes for all.