



# THE IMPORTANCE OF SUSTAINABILITY IN BUSINESS DEVELOPMENT

REVIEW OF THE LEGAL FRAMEWORK AND CHALLENGES



BAHAS, GRAMATIDIS  
& PARTNERS<sup>LLP</sup>

**Dimitris Emvalomenos**, Lawyer, LL.M. (QMUL), Accredited Mediator of the Greek Ministry of Justice and of the Centre of Effective Dispute Resolution (CEDR), London, UK, Dep. Managing Partner at Bahas, Gramatidis and Partners LLP (**BGP**), Athens, Greece, Email: [d.emvalomenos@bahagram.com](mailto:d.emvalomenos@bahagram.com)

*Transcript with additions and updating of a presentation at the AHEPA (American Hellenic Educational and Progressive Association) Conference on "The Strategic Role of Greece: A Pillar of Stability, Security and Peace within and beyond Europe" on 20 February 2025 - Athens, Grande Bretagne Hotel*

### I. Key questions

Is there a legal framework for sustainability? What is its origin? What is its importance in shaping business practices? What are the key issues for businesses? What does sustainability mean in dispute resolution? What are the main business challenges? What developments are foreseen in the European Union (EU), hence in Greece?

### II. General - Terminology

1. We can define sustainability, in a simplified way, as the ability of a subject to continue its existence over time with a positive sign in terms of its quality as well as its impact outside itself. With regard to companies in particular, positive impact is examined in terms of the so-called stakeholders. Sustainability involves and refers to concepts such as Preservation, Adaptation, Change, Evolution, Selection, Creation.

2. The sustainability debate is encoded in the acronym ESG (Environmental, Social, Governance) which encompasses the three pillars of Environmental, Social (political) and Corporate (economic) application of the relevant regulations. ESG started as soft law, i.e. good practices and non-binding standards, but soon evolved into hard law, i.e. an extensive set of EU legal rules that remain highly relevant and keep changing as the overall circumstances evolve.

3. The acronym ESG is an evolution and quantification of CSR (Corporate Social Responsibility), and other such standards have been proposed, such as The Triple Bottom Line (TBL /3BL /3Ps): People, Planet and Profit.

### III. Overview of the ESG legal framework

1. The following can be pointed out as key EU ESG statutes in the extensive legislation (as well as European Commission's Guidance Communications), which has grown rapidly over the last 10 years or so:

a) Directives 2014/95/EU (NFRD) and (EU) 2022/2464 (CSRD) on the disclosure of non-financial information and corporate sustainability reporting.

b) Regulations (EU) 2019/2088 (SFDR) and 2019/2089 on sustainability indicators.

c) Regulation (EU) 2020/852 (Taxonomy Regulation) on classification.

d) Regulation (EU) 2023/2631 on European Green Bonds.

e) Regulation (EU) 2023/2772 on sustainability reporting standards (ESRS).

f) Directive (EU) 2024/1760 (CSDDD or CS3D) on corporate sustainability due diligence.

g) Regulation (EU) 2024/3005 on ESG rating activities.

h) The Greenwashing Directives, i.e. Directive (EU) 2024/825 (ECGT Directive) empowering consumers for the green transition and the March 2023 proposal for a Directive on Green Claims

2. The legal framework and its application **varies** quantitatively and over time due to the compliance costs of the undertakings that are subject to it, with their categorisation into "large" (entities of public and non-public interest), "medium-sized", "small" and "micro" undertakings on the basis of three criteria: total assets, net turnover and average number of employees per financial year (Directive 2013/34/EU and Law 4308/2014).

3. **Greece** consistently incorporates Community legislation, as required, with important relevant legislation (indicatively) Law 4548/2018 (public limited companies /sociétés anonymes) and Law 4706/2020 (corporate governance of listed companies), as in force.



### IV. Key ESG issues for business

The key issues for undertakings related to the ESG rules are the following:

**1. Their compulsory nature:** The legal framework is mandatory for those undertakings that come within its scope and compliance with it is a one-way street.

**2. Compliance:** Depending on the size of the undertaking, compulsory compliance with the ESG rules requires the establishment and maintenance of an appropriate internal framework and procedures to be followed as well as monitoring by qualified human resources (ESG Officers).

**3. Cost:** Compliance involves very significant costs, which is the main reason for the recent EU debate on relaxing the legal framework.

**4. Competitiveness:** Compliance costs imply an obvious increase of the costs of products and services for the Community undertakings subject to compliance requirements compared to those of third countries (in particular of China and the US).

**5. Competition law:** Conflicts arise between the strict application of EU competition rules and ESG rules so that a specific framework for reconciling the contradictions in the light of the balancing of the two Community policies emerges.

**6. Funding:** ESG compliance as a key determinant of financeability makes it necessary for undertakings subject to compliance requirements to demonstrate implementation of sustainability criteria. The Greek interbank platform ESGr/ESG Questionnaire and the Athens Stock Exchange ATHEX ESG index are indicative examples.

**7. Liability:** The violation of the legal framework by the undertaking entails significant liability of various types, namely a) civil, against third parties (ESG /climate change litigation), which is increasing due to collective redress and third party litigation funding (TPLF), b) administrative, against the supervisor of the regulatory framework and c) criminal, under more specific conditions.

### V. ESG Dispute Resolution - Mediation

ESG disputes require "**ESG resolution**" and this can only mean out-of-court resolution, preferably by mediation, because:

**(a)** mediation allows for the possibility of quick and sustainable solutions that are crucial especially in long-term contractual relationships (e.g. supply of products, network contracts, labour and customer relations),

**(b)** litigation is long-standing in Greece (to name just one among a number of countries) and, realistically, very often does not resolve disputes,

**(c)** arbitration can, under certain conditions, provide solutions, which however are binding, inflexible and not relatively quick.

It is no coincidence that international organisations have established specific mechanisms for resolving ESG disputes through mediation, such as **CEDR** (Centre for Effective Dispute Resolution) with the ESG Resolve platform.

### VI. ESG legislative developments and challenges

**1.** The inclusion of all key issues related to the ESG regulatory framework under IV above in a legal and sustainable business practice is an increasing challenge as the EU ESG legislation is becoming more and more demanding and gradually expanding to include:

**(a)** more undertakings on the basis of their size, and

**(b)** increased reporting requirements.

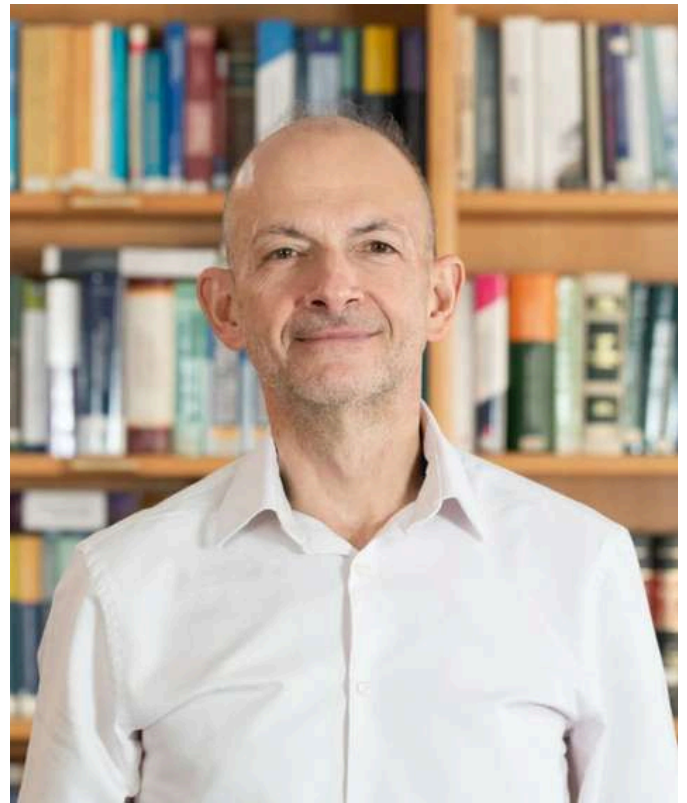
**2.** In view of the serious challenges and growing compliance issues that undertakings are facing, in the context of simplifying and streamlining the EU ESG rules towards a more favourable and competitive business environment, the European Commission presented on **26 February 2025** a package of proposals for the **Omnibus ESG Regulation**.

These proposals, strongly supported by France and Germany, have taken into account the 2024 "Draghi Report" on EU competitiveness boosting and inevitably the new political environment that has emerged with Donald Trump's presidency in the US. The completion of this legislative process is expected in about six months.



### VII. Conclusion

The sustainability/ESG legal framework of EU origin, which is mandatory law, remains very costly and complex for businesses, but it is expected to be soon simplified and eased in terms of its cost and compliance management. In any case, however, the ESG compliance requirements for businesses will remain significant (depending on their size), as will the corresponding challenges of addressing potential business **liability**. For the latter, the timely establishment and operation by businesses of appropriate **mechanisms for** both compliance and out-of-court dispute resolution, **in particular through mediation** (where possible), is a one-way street to limit the negative consequences in terms of money and reputation.



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Email: [d.emvalomenos@bahagram.com](mailto:d.emvalomenos@bahagram.com)



BAHAS, GRAMATIDIS  
& PARTNERS LLP

Contact us:

Email: [law-firm@bahagram.com](mailto:law-firm@bahagram.com)

Tel.: 210 33 18 170

Website: [www.bahagram.com](http://www.bahagram.com)