

# LAW AND ECONOMICS YEARLY REVIEW

ISSUES ON FINANCIAL  
MARKET  
REGULATION,  
BUSINESS  
DEVELOPMENT AND  
GOVERNMENT'S  
POLICIES ON  
GLOBALIZATION

*Editors*

F. CAPRIGLIONE – R. M. LASTRA – R. MCCORMICK  
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*in association with*



# LAW AND ECONOMICS YEARLY REVIEW

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## *Mission*

The “Law and Economics Yearly Review” is an academic journal to promote a legal and economic debate. It is published twice annually (Part I and Part II), by the Fondazione Gerardo Capriglione Onlus (an organization aimed to promote and develop the research activity on financial regulation) in association with Queen Mary University of London. The journal faces questions about development issues and other several matters related to the international context, originated by globalization. Delays in political actions, limits of certain Government’s policies, business development constraints and the “sovereign debt crisis” are some aims of our studies. The global financial and economic crisis is analysed in its controversial perspectives; the same approach qualifies the research of possible remedies to override this period of progressive capitalism’s turbulences and to promote a sustainable retrieval.

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## EU REGULATION AND THE RULE OF LAW IN THE FACE OF GEOPOLITICAL CHANGES

Francesco Capriglione\*

**ABSTRACT:** *This text analyzes the role of the financial sector in economic development, examining the interactions between economics, law, and politics, with particular attention to European regulation. It highlights how financial legislation must respond to historical and institutional needs, aiming to strike a balance between fairness and economic efficiency. Specifically, the analysis focuses on current challenges, such as the difficulties of cohesion within the European Union, exacerbated by recent geopolitical changes and the aggressive stance of the Trump presidency, from which the “U.S. expansionist vocation” emerges—traceable to a universalistic formula based on a constructive hypothesis revolving around three pillars: “empire, market, America”. This leads to the overcoming of the principle of separation between politics and economics, which must be considered essential in order to avoid irreconcilable conflicts of interest and the emergence of harmful entanglements between the public and private sectors. The need for a revision of European policies is emphasized in order to address new global dynamics and ensure democratic stability, pointing out the risk of an erosion of democratic principles and an increasing dependence on economic interests. Finally, the text calls for unified and cohesive political action to face future challenges and to foster stronger European integration.*

**SUMMARY:** 1. Regulation and the economic process. - 2. Characteristics of European financial regulation. - 3. Links with democratic logic and the ‘Rule of Law’. - 4. Recent geopolitical changes. - 5. Towards a techno-plutocratic system. - 6. The disappointing prospect of a ‘return’ to the past.

1. From ancient times, studies in Law and Economics have paid particular

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\* Editor in Chief

attention to examining the role played by the financial sector in economic development. This has led to research that has moved along two parallel lines: the analysis of the phenomena that constitute this process and their impact on socio-political reality<sup>1</sup>.

From the first perspective, the link between financial activities and the functions they are called upon to perform over time has been highlighted, leading to the need to interpret their constituent elements in relation to the historical and institutional context in which market participants operate. Theoretical analysis offers a large framework of functions, which can be traced back to: (a) intermediation between savings formation and resource allocation; (b) transformation and diversification of risks and maturity; (c) selection and monitoring of investment projects; and (d) payment services<sup>2</sup>.

From the second perspective, emphasis has been placed on the impact of public intervention in this field, on the evaluation of the foundational elements of a dualistic paradigm, and, more generally, on the objectives that drive governments in their system-wide choices. Consequently, it becomes possible to identify, from a forward-looking viewpoint, the critical issues to be addressed in defining an operational paradigm aimed at achieving a rational balance between equity and economic efficiency.

The overall rationale behind legislature's choices finds expression in this context, reflecting the assessment of the phenomenon to be regulated and the recognition of the underlying interests. With reference to it, one can understand the pursued objectives, as well as the relative scope and the technical forms envisaged to achieve them.

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<sup>1</sup> See, among the numerous works that have addressed such topics, AA.VV., *Sviluppo economico e strutture finanziarie in Italia*, edited by Carli, Bologna, 1977; AA.VV., *La crisi dell'impresa industriale*, edited by Minervini, Naples, 1980; AA.VV., *Sistema finanziario ed industria*, edited by Onado, Bologna, 1986; CARLI - MASERA, *Intermediari, mercati e finanza in Europa e della globalizzazione*, Bari, 1991.<sup>1</sup>

<sup>2</sup> See, ex multis, the classic works of KEYNES, *A Treatise on Money*, London, 1930; GURLEY – SHAW, *Money in Theory of Finance*, Washington, 1960; STIGLITZ, *Credit Markets and the Control of Capital*, *Journal of Money, Credit and Banking*, vol. 17, 1983

This being said, it becomes possible to identify the function assigned to regulation, which, according to a common understanding, is meant to give voice to law, understood as the ordering criterion of relations between actors who find in the legal organisation the set of rules that are distinguished for being an expression of social cohesion and, therefore, for being the foundation of the relationality that characterises civil populations<sup>3</sup>.

Consequently, it can be said that, beyond the possible formalisms present in the legal domain, the rule is linked to the fact - or, more precisely, to the events that characterise the factual reality taken into consideration by the legislator - just as the plurality of events (which form the background) is summarised in the link that connects history to law.

Hence the norm's openness to external circumstances that give it a particular directionality, oriented prevalently to the protection of the subjects to whom it is addressed. This leads to a necessary objectivity of the legal norm: it fits into the legal system of which it is a constituent element, becoming a criterion to assess the legality of the activity carried out<sup>4</sup>. Therefore, the rule performs the essential task of establishing the guiding criteria for human action in their relationships with others, in order to enable them to coexist in the social context.

These considerations take on specific significance in the financial system, given that in the latter, regulation certainly performs a decisive function in favour of economic development; in this sense, the ability of the legal system to attract investments in the presence of a well-regulated market is oriented both in terms of the evaluation of the significant criteria that facilitate the growth of the sector in question (i.e. progressive privatisation of ownership, increasing level of competition, increase in size of the activity, product innovation, etc.), and in terms of the operating models of the system.

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<sup>3</sup> See Kelsen, *La dottrina pura del diritto*, edited by Losano, Turin, 2021.

<sup>4</sup> Reference is made to the considerations set out in the well-known study by Cammarata, *Formalismo e sapere giuridico*, Milan, 1963, p. 301 et seq

Hence the need exists to verify the effects of special regulation on the efficiency of the financial industry on a regular basis. In this way, it becomes possible to highlight the positive results of the regulatory evolution and, at the same time, the shortcomings that still persist, allowing an action that, at times, does not conform to behavioural lines marked by the 'must be'.

Changes in market realities since the last decades of the last century have modified the trends and content of banking regulation. Indeed, after an initial, progressive development, the process of globalisation has, over the last few decades, undergone a gradual reduction that is reflected in the characteristics of what in scholarship has been defined as a new *ius publicum*, 'of the modern maritime imperium investigated by Schmitt, without limes, without certain boundaries, but based on the hegemony of a mode of production, centred on exchanges, on the progress of the *lex mercatoria*'<sup>5</sup>.

Recently, as a result of the geopolitical changes following Donald Trump's assumption of the office of US President, there is a climate of uncertainty that negatively affects the democratic conformation of the countries of the western world. Hence the need exists to ascertain what the implications of this situation are on the complex arrangements put in place by the European regulator to guard the financial balances in the EU.

2. European financial regulation has the same limitations that characterise the Union's entire regulatory complex, which - as is well known - since the origins of the Economic Community has been oriented towards the objective of harmonising the legal frameworks existing in the Member States. In this way, a process of rapprochement between the different legislations of the EU countries has been set in motion; while such an event certainly constitutes a valid prerequisite for the realisation of advanced forms of socio-economic development, it cannot be

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<sup>5</sup> See MONTEDORO, *Attualità di Carl Schmitt nella lettura di Giannini e Nigro*, available at [www.giustizia-amministrativa.it](http://www.giustizia-amministrativa.it), with citations therein.



considered in itself suitable for the achievement of the more significant goal of a 'political union' between the aforementioned countries.

Conversely, as can be seen from the events that took place in the years following the signing of the Treaty of Rome (1957), regulatory harmonisation proved insufficient to support a 'convergence' that goes beyond the economic realm; indeed, it failed to create the connective tissue indispensable for overcoming national individualisms.

In the past, I sought, on multiple occasions, to identify the reasons for such a state of affairs<sup>6</sup>. I seemed to discern them in the difficulties of pooling national policies according to the federalist-constituent vision outlined by Ernesto Rossi and Altiero Spinelli<sup>7</sup>, as well as in the method followed by Jean Monnet for the establishment of the European Community, inspired by Mitrany's functionalism<sup>8</sup> and the neo-functionalism of Haas and Lindberg<sup>9</sup>. However, I was ultimately convinced that, in concrete terms, the political will to implement this theoretical approach was lacking.

In addition to this, the impulses necessary for the development of the EU and the definition of general political priorities (Article 15 of the TEU) are entrusted to a comitology mechanism, which has been defined as "a legacy of an anachronistically unbalanced intergovernmental equilibrium."<sup>10</sup> The limitations of the European institutional framework—and, with it, the regulation pursued in the financial sector—thus become evident. This regulation has pursued objectives which, as I will explain

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<sup>6</sup> See, ex multis, CAPRIGLIONE – SACCO GINEVRI, *Politica e finanza nell'Unione europea. Le ragioni di un difficile incontro*, Padua, 2015, passim and in particular Chapter II.

<sup>7</sup> Apart from some isolated critical voices on the federalist thought expressed in the *Manifesto di Ventotene*, the prevailing view agrees in considering reference to it as essential for the interpretation of this political proposal; see, among others, Voigt, *Ideas of the Italian Resistance on the Postwar Order in Europe*, in Lipgens and Loth, *Documents on the History of European Integration*, Berlin-New York, 1985, vol. I, p. 456 et seq.; Paolini, *Altiero Spinelli, Appunti per una biografia*, Bologna, 1988.

<sup>8</sup> See Mitrany D., *A Working Peace System*, London, 1943.

<sup>9</sup> See HAAS E.B., *The Uniting of Europe – Political, Social and Economic Forces, 1950-1957*, London, 1958; ID. *Beyond the Nation State*, London, 1964; LINDBERG, *The Political Dynamics of European Economic Integration*, London, 1963.

<sup>10</sup> See SAVINO, *La comitologia dopo Lisbona: alla ricerca dell'equilibrio perduto*, in *Giornale di diritto amministrativo*, 2011, p. 1041

further below, will in all likelihood be disregarded following the recent changes in the international geopolitical context.

That being said, regulation is not designed in accordance with a unified political plan; rather, it reflects operational choices dictated by contingent needs or the requests of individual EU Member States. Consequently, some legislative choices, after a short period of time, prove to be inadequate or, at the very least, premature in relation to the socio-political context characterising Europe.

I refer, first and foremost, to the regulatory measures adopted over the past five years in addressing climate-related issues, with the aim of eliminating (or at least mitigating) their harmful effects. It is well known that, with this objective in mind, the Union has initiated the creation of a regulatory framework aimed at defining the taxonomy of economic activities in order to provide a common notion of environmental sustainability. The regulation adopted at the European level has sought to implement the commitments undertaken with the Paris Agreement and the United Nations' 2030 Agenda. The 'action plan' to support the growth of EU countries and the adoption of the Green Deal, as established by the European Commission, have given substance to multiple regulatory interventions, outlining a legal framework for 'sustainable finance.'<sup>11</sup>

In this regard Regulation (EU) No. 852 of 2020 provides a comprehensive classification of environmentally sustainable activities based on precise scientific criteria, marking a decisive milestone in the EU's environmental challenge. It systematically addresses the threats posed by climate change (loss of biodiversity, excessive resource consumption, depletion of the ozone layer, etc.), identifying eco-sustainable investments that should have enabled the EU to achieve carbon neutrality by 2050. This regulatory framework is complemented by Regulation (EU) No. 631 of

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<sup>11</sup> See EUROPEAN COMMISSION, COM(2018)97, of 8 March 2018.; in literature, see SIANI, *L'impatto del processo di attuazione dell'Action Plan sulla Finanza sostenibile, Festival dello Sviluppo Sostenibile (ASVIS)*, Rome, 6 October 2021, highlighting the link between the Action Plan launched in 2018 and the EU Green Deal launched in 2019 and subsequently "reinforced in 2021 with the 'Fit for 55' plan, outlining a series of policies to achieve ambitious decarbonisation goals by 2050."

2019, which defines performance standards for CO<sub>2</sub> emissions from new passenger cars and light commercial vehicles, aiming to decarbonise road transport in order to meet the Union's stated objectives.

Upon closer examination, however, the goal set is obstructed by the current economic and financial situation of the EU, which is now affected by the automotive crisis and, consequently, its supply chain, with negative repercussions on development prospects in the coming years. There are grounds for the adoption of regulatory measures aimed at scaling down (or at least postponing) the implementation of the reform program designed to counter the adverse effects of climate change. This is confirmed by the economic policy directions outlined by President Donald Trump, who—despite the increasing frequency of extreme climate events—is determined to mark a sharp turn in the United States' energy and climate policies compared to the Biden administration<sup>12</sup>.

With regard to financial regulation, it is also necessary to highlight the consequences of the verticalisation of supervisory power under the ECB, implemented through the European Banking Union (EBU). This represents an explicit acknowledgment of the centrality of technical expertise in governing financial stability, in contrast to the absence of political leadership, which has become increasingly elusive. Hence, the need exists for a “return” of politics in the role of guiding financial activities, a function that, in some countries—such as Italy—also holds constitutional significance. This would involve fostering relationships based on an approach in which ideals of commonality and solidarity find adequate space.

Indeed, it cannot be overlooked that—despite the Union's efforts to adapt its financial structure to the changes necessitated by recent crises—there has been no real communion of intent (*rectius*: *idem sentire*) that should characterise the unity of a people. It is no coincidence that a senior member of the European Commission,

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<sup>12</sup> See QUARANTA, *Donald Trump e la nuova politica energetica degli Stati Uniti: cosa sta accadendo?*, available at <https://www.teknoring.com/news/modelli-e-strategie/politiche-energetiche-donald-trump-stati-uniti-aspettative-conseguenze>

already in the past, in light of the scenario anticipated by the establishment of the EBU, observed that very little had been done towards the creation of the United States of Europe<sup>13</sup>.

3. Unfortunately, Europe today remains a group of nations, no longer at war with one another but still lacking the binding force of cohesion and the will to establish a "common home." It is evident that, in the face of potential causes for fragmentation, it is necessary to dismantle the ambiguous strongholds of vested interests and/or hegemony that hinder the "determination of common purposes" aimed at achieving objectives that many countries accept only formally. In particular, it is essential to tackle shortcomings in defining a unified government for the Union—one that embodies reciprocity — while ensuring that no Member State violates the EU's fundamental principles.

The Eurozone is in a condition of imbalance, partly due to the persistent operational constraints imposed by the rigid regulatory prescriptions adopted following the Maastricht Treaty. The requirement for budgetary balance and, more generally, the fiscal rules contained in the "Stability Pact" expose Member States to infringement procedures that undermine their credibility.

Furthermore, there have been breaches in upholding the "universal values of the inalienable and inviolable rights of the person, liberty, democracy, equality, and the rule of law," expressly cited in the preamble of the TEU. Notable in this regard are the events surrounding the bailout programme for Greece, in which the intervention of the 'bailout fund' and the so-called "troika"— composed of the IMF, the ECB, and the EU— imposed a regime of austerity that had severe consequences in terms of employment and social protection, leading to a sharp rise in poverty.

This fundamental disregard for the Union's founding principles unfortunately persists today, with certain states exploiting contingent situations (such as the Russia-

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<sup>13</sup> See REDING, *Perché abbiamo bisogno adesso degli Stati Uniti d'Europa*, speech delivered at the European Law Centre of the University of Passau (8 November 2012).

Ukraine war) or established ties with some EU countries to engage in conduct that violates the 'rule of law'. This is confirmed by the European Commission's reports<sup>14</sup>, which, in relation to Poland, highlight the need to strengthen judicial independence and enforce European Court of Justice rulings on the rule of law, while in relation to Hungary, they lament the failure to honour past commitments, leading to the continued validity of the Article 7(1) TEU procedure initiated by the European Parliament against that country.

In light of the foregoing, there remain significant challenges for European leaders in achieving financial stability and overcoming the asymmetries within the European legal order. It is evident that the interaction between law, economics, and politics must be reconsidered, paying particular attention to the effects of modern technologies. While they support development, they also pose issues regarding the responsible use of vast amounts of stored information for algorithmic processing.

The most significant cause of this situation is the progressive withdrawal of politics from its 'leading role' in key decision-making. This retreat is unjustified and instead reveals a reluctance to confront the inherent difficulties of governance, which has, in essence, been delegated to technical expertise.

Some proposals recently put forward by Mario Draghi for reforming the Union prompt reflection on the crisis in which the Union currently finds itself. They compel us to reconsider its structural characteristics and to envisage the possibility of a "refoundation" that introduces the necessary changes to enable, among other things, the financial and economic system to fulfil its function of promoting development<sup>15</sup>.

Indeed, these proposals highlight the urgency of implementing significant structural, economic, and political changes, deemed essential to restoring the Union's competitiveness and, consequently, to enabling it to reclaim the founding values of democracy, freedom, and social cohesion that, according to the intentions of its

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<sup>14</sup> See the *Rule of Law Report 2024* to the European Parliament, the Council, the European Economic and Social Committee.

<sup>15</sup> See DRAGHI, *The Future of European Competitiveness – A Competitiveness Strategy for Europe* (September 2024).

founding fathers, define its very essence. Hence, there is a need for an appropriate shift in the interventionist approach that European policy has followed for years.

It goes without saying that, to this end, the optimal "form of government" is certainly one that is democratic, as it is directly linked to the decision-making power of the sovereign people. At the same time, any logic that interprets the concept of 'the people' in an extreme manner, in order to justify an extension of executive powers that would exceed the fundamental principles of democratic regimes, must be ruled out. This is in line with recent remarks by the President of the Italian Republic, who, in recalling the founding principles of liberal democracies, has stressed the need to ensure that "the will of a majority does not become a form of absolutism."<sup>16</sup>

Therefore, it is necessary to innovate the way political will is exercised within Europe and to promote compliance with the "rule of law" within the EU, as this represents the essence of democratic logic. On this point, as already mentioned, the Union has been lacking, given the repeated violations of this principle (perpetrated by some countries of the Visegrad group, particularly Hungary), which have led to the activation of EU sanctioning procedures that have so far yielded no tangible results<sup>17</sup>.

Recent geopolitical events prompt us to consider how, at present, the form of democratic government has evolved significantly from what we have known until now, following the rise of the so-called *representative democracies*<sup>18</sup>. As is well known, this political model is characterised by the fact that citizens elect representatives who are entrusted with the power to make decisions on their behalf. It is based on principles that ensure governance is tied to a system of political pluralism, guaranteeing free and regular elections, the protection of fundamental rights, the separation of powers, and the subjection of every individual—including

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<sup>16</sup> See the speech by President Mattarella on the political significance of "democracy", delivered at the opening of the *Settimana Sociale dei Cattolici* in Italy in Trieste, in *Il Foglio*, 4 July 2024.

<sup>17</sup> See CAPRIGLIONE, *Efficientamento dell'UBE e "stato di diritto". Per un'Europa diversa*, in *Nuova giuris. civ. commen.*, 2024, p. 693 et seq.

<sup>18</sup> See, for all, MORTATI, *Le forme di governo*, Padua, 1973, where the close connection between the democratic form of the State and the republican form is highlighted, a thesis later embraced by prevailing doctrine and constitutional jurisprudence itself.

those in power—to the law and constitutional principles<sup>19</sup>.

Representative democracies, to prevent the abuse of rights, adopt systems of checks and balances—that is, institutional counterweights between the various branches of the state. These include the role of the Head of State and Parliament, the independence of the judiciary, and freedom of the press. Thus, the foundations are laid for a system that seeks to prevent any state body from acquiring excessive power and acting arbitrarily. This leads to another defining characteristic of liberal democracies: the activation of a deliberative process which—through dialectical debate between different political forces in parliament—makes shared decisions that are synthesised by the government.

4. As is well known, the last years have witnessed a progressive decline of liberal democracies due to the assertion of populist logics that seek to erode their basic principles and undermine the strategies put in place to defend them. This is essentially due to the emergence of a tendency to transform democracies into systems dominated by economic and technocratic elites.<sup>20</sup>

A glance at the socio-economic reality brought about by recent geopolitical changes confirms the assumption made earlier and generates in us the fear that an irreversible process has been triggered that threatens to extinguish democracy. To understand the events that since the beginning of 2025 are subverting the democratic logic (known to us until recently) it is necessary to refer as a priority to the change in the market, which has occurred as a result of the globalisation process since the last decades of the previous century. The latter is linked to the market and, to some extent, identifies with it; it accentuates the comparison between different countries, facilitating the access of many populations to goods and services, enabling many people to benefit financially from opportunities that would otherwise have been

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<sup>19</sup> See, ex multis, the classic works of SCHUMPETER, *Capitalism, Socialism, and Democracy*, 1942; DAHL, *Polyarchy: Participation and Opposition*, 1971; SARTORI, *Teoria della democrazia*, 1987.

<sup>20</sup> See CROUCH, *Post-Democracy*, Polity Press, Cambridge, 2004; MOUNK, *The People vs. Democracy* (2018); LEVITSKY and ZIBLATT, *How Democracies Die*, 2018

unavailable to them.

A generalised belief in the positivity of the phenomenon in question takes hold, neglecting to consider that it may be underpinned by an intention of 'imperium'. Hence, it is linked to the diverse range of disadvantages associated with economic globalisation, among which the insufficient protection of the environment, human rights, and labour assume particular significance. Following the latest US political elections, held in 2024, certain doubts have been clarified regarding the actual intent of dominance pursued by that country through the expansion of trade and the provision of financial aid, which is subsequently expected to be disavowed.

Twenty years ago, when analysing the effects on market efficiency caused by the absence of conduct aligned with behaviour guided by the 'ought to be' principle, I was greatly surprised by the fact that globalisation certainly facilitated the US's intent to 'export democracy through war', as I had the opportunity to highlight in my work at that time!<sup>21</sup> Back then, I became convinced that the reality under observation necessitated the identification of a conceptual paradigm useful for a comprehensive framing of the phenomenon under examination, which undeniably appeared to serve solely the economic interests of the States that exploited it for purposes of 'imperium'.

At present, the events that have unfolded following the election of President Donald Trump allow for an answer to be given to the numerous antinomies that, in recent times, have emerged on a general level concerning the issue in question. A socio-political reality is revealed, one that leads us to look favourably upon the thesis that 'globalisation is a grand utopia that allows the world to be integrated into the market and both into America'<sup>22</sup>; an expression alluding to a reality which, in reference to the 'US expansionist vocation', can be traced back to a universalistic formula centred on a constructive hypothesis revolving around three pillars: 'empire, market, America'.

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<sup>21</sup> See CAPRIGLIONE, *Etica della finanza mercato globalizzazione*, Bari, 2004, p. 17.

<sup>22</sup> See the editorial titled *L'importanza di non essere globali*, in *Limes*, no. 4, 2023, p. 7.



Disregarding conceptual exaggerations that see in this formula the premise for the American people's claim to represent humanity, it seems to me that it cannot—and should not—be excluded that for a long time the planet has lived in a precarious balance (consider the years of the 'Cold War') precisely due to a logic aimed at an ephemeral globalisation<sup>23</sup>. It thus becomes clear how the market has played a role of 'cover', together with 'democratic expansion', in the pursuit of other interests.

In light of the above, it is evident that the stance taken by the US leadership disavows any previous hypothesis of an America as a bearer of peace and prosperity; instead, the hegemonic dream of a nation that now appears intentioned to replacing the 'democratic regime' with the onset of a 'hegemonic transition' fully emerges. Indeed, Trump's victory has accentuated the logic of 'domination', which in previous years had been masked by a benevolent attitude that now, instead, reveals its true essence.

We see the prospect of America moving towards economic isolationism, due—among other things—to the imposition of high tariffs, the refusal to participate in the fight against climate change, and its withdrawal from the World Health Organization, which, as is well known, plays a crucial role in protecting the health and security of people worldwide, including Americans. Furthermore, one can discern the foreseeable intention to compensate on other fronts with a policy aimed at asserting a logic of dominance.

This marks the end of a political era and, with it, the end of a privileged relationship between the US and Europe, in which many had believed, attributing to it a positive relational value—unfortunately contradicted by recent events which, as I have previously emphasised, unsettle the planet.

In an essay I wrote just a few months ago, without foreseeing what the political course of the new American President would be, I stated—after assessing the events

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<sup>23</sup> For an examination of the significant components of the relationship between the United States of America and the Soviet Union, see SALMONI, *Guerra o pace. Stati Uniti, Cina e l'Europa che non c'è*, Naples, 2022, passim, in particular Chapter II.

of recent years—that “history will judge the consequences of an anachronistic vision of triumphant imperialism.”<sup>24</sup> Today, there are solid grounds to believe that a socio-political shift at the global level is now underway, one that prevents the continuation, in economic terms, of a planetary development model based on forms of collaboration founded on a reciprocal trust relationship between the US and the European Union.

It is also evident that the changes induced in global reality by the aforementioned events rule out the possibility that the relationship between ‘development, economy, and finance’ can find an adequate synthesis within the relations maintained between Western countries. Indeed, America appears committed to assuming a role different from the one it played in the past; as an astute observer has pointed out, it relies on a consensus that will allow it to pursue “revolutionary objectives,” radically altering “the structure of the country and the international system.”<sup>25</sup>

5. In the preceding considerations, I have sought to highlight the sense of disorientation experienced by all those who, after the early days of the Trump presidency, have a clear understanding of the imperialistic logic that currently drives the US, which finds its synthesis in the well-known statement “America First.” Starting from the threat of tariff increases and the demand for NATO countries to significantly expand their military spending, significant difficulties for EU member states can be foreseen. Added to this are the fears triggered by some statements made by Trump in a recent interview, in which he declared his intention to implement a policy of territorial expansion for the US, if necessary, even though military force<sup>26</sup>.

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<sup>24</sup> See CAPRIGLIONE, *L’ordinamento finanziario tra operatività alternativa e cambiamenti geopolitici. Riflessioni introduttive*, presentation given at a conference of the same name on 25 October 2024 (Università Parthenope di Napoli, Santa Chiara).

<sup>25</sup> See FABBRINI, *Rivoluzione trumpiana, i due scenari possibili*, in *Il Sole 24 Ore*, January 2025

<sup>26</sup> See the editorial titled *Trump non esclude uso della forza con Panama e Groenlandia*, available at <https://www.thewatcherpost.it/walking-in-the-bubble/usa-2024-63-trump-non-esclude-uso-della-forza-con-panama-e-groenlandia>.

Additionally, there are the statements by the American President regarding the methods by which he intends to end the war that has afflicted Ukraine for three years and the position he has taken, on that occasion, towards the President of the latter. These statements reveal Trump's real motivations, which can be traced back to his business-driven approach. He prioritises his business spirit above everything else and intends to enrich America, regardless of the fact that his actions contradict the founding principles of liberal democracies. This perspective leads to the progressive weakening of the system of checks and balances, which until now has been responsible for maintaining the country's socio-political balance, ensuring respect for constitutional safeguards that protect the democratic system. The illusions of those who, until recently, believed in the possibility of continuing to enjoy the protective umbrella that America has offered for decades are now collapsing.

In this regard, it is worth recalling the rash and surprising attack on President Volodymyr Zelensky, whom Trump severely criticised, calling him a "dictator without elections" and accusing him of having started the conflict with Russia and of manipulating US aid for personal gain—claims that have sparked international outrage<sup>27</sup>. Furthermore, Trump demanded that Ukraine provides the United States with rare earth materials worth 500 billion dollars (later reduced) as compensation for the financial and military support offered during the conflict with Russia<sup>28</sup>. This proposal caused significant tensions in Ukraine due to the pressure exerted by Trump to force Ukraine into accepting the agreement, suggesting that failure to comply could negatively impact the continuity of US support<sup>29</sup>. Military aid was subsequently

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<sup>27</sup> See the editorial titled *Verità alternative. Trump ha accusato l'Ucraina di aver iniziato la guerra*, available at <https://www.linkiesta.it/2025/02/trump-ucraina-accusa-guerra-conferenza-stampa-zelensky>

<sup>28</sup> See the editorial titled *Terre rare in Ucraina, cosa sappiamo finora sull'accordo con gli Stati Uniti*, available at <https://www.wired.it/article/terre-rare-ucraina-usa-accordo>, where it reads: "In the first draft presented by the Trump administration, Kiev was asked to contribute up to 500 billion dollars in mineral resources, a figure that President Zelensky deemed excessive, emphasising that the total American aid received so far had been around 100 billion dollars."

<sup>29</sup> See the editorial titled *Terre rare in cambio di aiuti militari: il piano di Trump per risolvere la guerra in Ucraina*, available at <https://www.today.it/mondo/terre-rare-aiuti-militari-trump-guerra-ucraina.html>, where it reads: "Donald Trump has pulled a rabbit out of the hat to secure a role - as a winner - in the negotiations for the end of the war in Ukraine or a ceasefire with Russia. The US president wants

suspended (pending the signing of the agreement in question), along with intelligence services, which obviously worsened Ukraine's position, leaving it unable to defend itself and, in practical terms, forcing it into a precipitous collapse<sup>30</sup>.

We are witnessing a new form of expression of the US imperialistic logic, manifesting itself through a predatory policy which, on the one hand, appears to constitute an atypical form of colonial-style expansion, while, on the other, allows for a way of relating to others that is designed to achieve commercial objectives, as evidenced by the negotiations that followed the aforementioned requests. In other words, there is an openness to compromise and transactions, underpinned by the intent to engage only in relationships that are economically advantageous to the US.

This reality confirms the dark page in American history marked by the conclusion of Trump's previous presidential term, when, with an ambiguous attitude, he encouraged his supporters (whom he called "true patriots") to march towards the Capitol, triggering a veritable assault on what was commonly considered the "temple of democracy."<sup>31</sup>

On closer examination, Donald Trump's stance can be attributed to sovereignist populism, which sees the electoral victory as a legitimisation for the exercise of absolute power. Within this framework, the actions characterising the start of the new US presidency can be explained; according to Trump, the constant reference to traditional American values justifies his choice to staunchly defend national interests in the name of the free market and individual liberties. Policies have been enacted which, on the one hand, seem to take the form of outright xenophobia<sup>32</sup>

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to reach an agreement with Ukraine to gain access to the country's rare earths as a condition for continuing to support Kiev in the war against Russia".

<sup>30</sup> See the editorial titled *Ucraina, Usa: stop condivisione intelligence e dati usati da Kiev per colpire in Russia*, available at [www.adnkronos.com/internazionale/esteri/ucraina-usa-sospendono-condivisione-intelligence-e-dati-ultime-news](http://www.adnkronos.com/internazionale/esteri/ucraina-usa-sospendono-condivisione-intelligence-e-dati-ultime-news).

<sup>31</sup> This behaviour was harshly condemned by members of both American political parties and numerous world political leaders; see *World leaders react with shock to Trump mob storming US Capitol*, in France 24, 7 January 2021.

<sup>32</sup> See for all MOLINARI, *Usa. Le deportazioni e la Marcia per la vita: ma dove vuole andare l'America di Trump?*, editorial available at <https://www.avvenire.it/mondo/pagine/deportati-e-marcia-per-la-vita>

and, on the other, appear intended to subordinate the principles of liberal democracy and international law to the goal of securing new profits for the United States, as I have previously pointed out.

This is an unprecedented application of the "law of the strongest" which—evoking the well-known Hobbesian principle of *homo homini lupus*—blatantly expresses hostility towards other countries, even towards the EU. This was evident during the first meeting of his cabinet, when he stated: "The EU was formed 'to screw the United States,'"<sup>33</sup> disregarding the fact that, as the spokesperson for the European Commission responded, "US investments in Europe are highly profitable...(therefore)... American companies have been able to invest and generate substantial revenues precisely because the EU is a large unified market that benefits business."<sup>34</sup>

The conditions are in place to foresee a serious risk of democratic decline, which has already become devastatingly apparent in several instances, including the extreme application of the spoils system<sup>35</sup>, the adoption of a denialist position regarding the Russian aggression against Ukraine<sup>36</sup>, the overt territorial expansion programme targeting Canada, Greenland, and Panama<sup>37</sup>, and, finally, the imaginative proposal for the reconstruction of Gaza, which envisions transforming it into a "riviera

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<sup>33</sup> See the editorial titled *Musk apre la prima riunione del governo Trump: "Tagliare subito il debito altrimenti il paese va in bancarotta"*, available at [https://tg.la7.it/esteri/musk-parla-prima-riunione-gabinetto-tagliare-debito-paese-bancarotta-26-02-2025-232809?refresh\\_ce..](https://tg.la7.it/esteri/musk-parla-prima-riunione-gabinetto-tagliare-debito-paese-bancarotta-26-02-2025-232809?refresh_ce..)

<sup>34</sup> See the editorial titled *L'Ue replica a Trump, 'siamo stati una manna per gli Usa'*, available at [www.ansa.it/europa/notizie/rubriche/altrenews/2025/02/26/lue-replica-a-trump-siamo-stati-una-manna-per-gli-usa\\_e4f8817](http://www.ansa.it/europa/notizie/rubriche/altrenews/2025/02/26/lue-replica-a-trump-siamo-stati-una-manna-per-gli-usa_e4f8817)

<sup>35</sup> See the editorial titled *Trump contro il deep state: una finestra sullo spoils system di massa*, available at <https://www.ilfoglio.it/esteri/2025/02/04/news/trump-contro-il-deep-state-una-finestra-sullo-spoils-system-di-massa-7389399>, where it reads: "Subito dopo il suo insediamento Trump ha ripreso lo *spoils system* nella sua versione più perniciosa per l'amministrazione...".

<sup>36</sup> See the editorial titled *Gli Stati Uniti rifiutano di appoggiare una risoluzione Onu contro l'aggressione russa*, available at <https://www.rainews.it/maratona/2025/02/trump-contro-zelensky-comico-mediocre-e-dittatore-mai-eletto-soldi-usa-scomparsi>.

<sup>37</sup> See the editorial titled *Trump: "Groenlandia e Panama, pronti a usare la forza"* and showing the map with the USA and Canada united, available at <https://www.rainews.it/articoli/2025/01/trump-primo-discorso-da-presidente-e-pubblica-mappa-con-stati-uniti-e-canada-insieme-bf17d9cd-42ae-4570-80>, where it states: "The tycoon, after his first speech as officially elected president, posts on his Truth social media platform a map placing the Stars and Stripes flag also on the neighbouring country and writes: Oh Canada."

with resorts and beaches for affluent tourists."<sup>38</sup>

Another relevant aspect is the appointment of Elon Musk as an advisor to President and head of the Department of Government Efficiency (DOGE). Musk, described by the media as "the richest man in the world," holds a leading position in the economic and financial sectors. He was, in fact, the co-founder of PayPal, the world's largest online payment system, as well as the founder of the US automotive company Tesla Motors, which produces innovative electric vehicles and propulsion systems. He also founded the Space Exploration Technologies Corporation (SpaceX), a well-known private space company. Elon Musk participates in Trump administration cabinet meetings despite not being an official member or an elected representative. His role appears set to have a significant impact on the management of US economic policies. Hence the justified concern that sees in him a "mix of consumerism, hypercapitalism, transhumanism, and techno-anarchism," which defines the new socio-economic "frontier" supported by Trump, fulfilling Americans' need to "dream again."<sup>39</sup>

6. We are witnessing a significant innovation in the governmental system that surpasses the principle of separation between politics and economics, which, conversely, must be considered indispensable in order to prevent irreparable conflicts of interest and unhealthy entanglements between the public and private sectors. Upon closer examination, violating this principle would ultimately hinder the proper functioning of the government, rendering antitrust measures ineffective, which typically succeed in counteracting competitive imbalances.

In other words, it determines the conditions that undermine free competition,

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<sup>38</sup> See the editorial titled «Benvenuti a Trump Gaza»: le follie del video pubblicato dal presidente dagli Stati Uniti sulla «Riviera del Medio Oriente», available at <https://www.vanityfair.it/article/trump-gaza-video-pubblicato-donald-trump-riviera-medio-orient>, where it reads: "Donald Trump has published on his official channels a video created using artificial intelligence in which Gaza appears as a future Dubai, with children playing with dollars falling from the sky while he sunbathes on the beach alongside Netanyahu."

<sup>39</sup> See the editorial titled *Ci incontreremo ancora*, in *Limes*, no. 12, 2024, p. 33.

which is regulated by impartial laws that promote innovation and economic growth.<sup>40</sup> This reality fully demonstrates its distortive capacity in cases where the observance of separation is merely apparent, as can be observed in the position of Elon Musk, who does not hold specific ministerial roles but is nonetheless empowered by Trump to participate in meetings of the US executive. This, in turn, creates the possibility of significantly influencing the political decisions of the US president, presumably steering them to his own advantage rather than for the public good.<sup>41</sup>

In such a context, openings may arise for situations of instability and arbitrariness, which, if prolonged over time, would inevitably undermine confidence in investments. As is well known, the economy requires predictable rules that do not change based on short-term political convenience or to accommodate particular interests.

It follows that such separation in democratic regimes is a fundamental principle to ensure the proper functioning of institutions and the protection of the public interest. Indeed, it is intuitively clear that if economic power were able to interact with politics, it could direct the latter towards consolidating positions of personal interest rather than pursuing the common good. Additionally, there is the possibility of excessive political influence over the market, aimed at favouring certain enterprises at the expense of others, leading to obvious situations of abuse and distortion—issues

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<sup>40</sup> It is worth noting that the USA has a complex legislative framework aimed at promoting competition and preventing monopolistic practices that could harm consumers and the market. The laws currently in force, applied and reinterpreted by federal courts, the Federal Trade Commission (FTC), and the Department of Justice (DOJ), are: the Sherman Antitrust Act of 1890, which prohibits monopolies and anti-competitive practices; the Clayton Antitrust Act of 1914, concerning mergers and unfair practices; the Federal Trade Commission Act of 1914, which empowers the FTC to pursue anti-competitive practices; the Robinson-Patman Act of 1936, which is rarely enforced; and the Hart-Scott-Rodino Act of 1976, which mandates prior notification for large mergers

<sup>41</sup> See, among others, the classic works of FRIEDMAN, *Capitalism and Freedom*, 1962, in which he argues for clear economic rules that are not subject to manipulation to ensure stability and growth, and of RAJAN, *The Third Pillar: How Markets and the State Leave the Community Behind*, Penguin Press, 2019, in which he highlights how economic policies subject to external pressures can damage growth and social cohesion.



that financial regulation has always opposed.<sup>42</sup> Not to mention the substantial reduction of powers of certain independent authorities, whose function, as is well known, responds to the need to prevent dangerous forms of overlap or identification between politics and the economy.

From the above, it is evident that in cases where politics and economics become intertwined, the former—by being able to directly control the latter—can also use it to suppress opponents and consolidate its own power. This paves the way for social control and the establishment of totalitarian regimes. In such cases, we are witnessing a distorted interpretation of political action, as is clearly demonstrated by Trump's approach, which aligns with his personal vision of 'power'—one that rejects any constraints, whether internal (such as the will of Congress and/or the Supreme Court) or external (represented by the rules of international treaties, the needs of allies, etc.).

The legal and economic categories that politics has so far taken into account in shaping the order that defines institutional democracies are being dismantled. In these democracies, public authorities establish market rules, preventing the formation of monopolies and economic power abuses, and, where necessary, regulating market failures. Indeed, by upholding the principle of separation between politics and the economy, it becomes possible to ensure freedom, fairness, and democratic stability while maintaining a necessary balance between public regulation and market autonomy.

Conversely, disregarding this principle lays the groundwork for potential systemic failures—an occurrence that becomes likely when those with excessive financial power are not curbed (or rather, contained) in their capacity for continuous expansion. In such cases, the endemic flaws of capitalism risk being exacerbated.<sup>43</sup> Capitalism itself seems destined to become increasingly unjust due to growing

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<sup>42</sup> Regarding Italian regulation, see SEPE, *Abusi di mercato*, in AA.VV., *Manuale di diritto bancario e finanziario*, Milano, 2024, p. 885, where the underlying reasons for market abuse regulations are specified.

<sup>43</sup> See CIOCCA, *Del capitalismo*, Roma, 2023, *passim*, but particularly Chapter I.



economic inequality arising from the concentration of wealth in the hands of a few, thereby widening the gap between social classes. In this context, the prospect of disproportionate economic influence over politics also emerges, as financial power can fund electoral campaigns—an obvious means of influencing the passage of laws and fiscal measures that favour the elites supporting the government.

Moreover, when economic power is concentrated in the hands of certain individuals—such as Tesla and SpaceX owner Elon Musk, Facebook CEO Mark Zuckerberg, and Amazon founder Jeff Bezos—who, through their business activities, rely on advanced digital tools, there is the risk of witnessing substantial manipulation of information to steer public opinion in favour of political movements deemed advantageous to them. It goes without saying that these oligarchs have a vested interest in promoting the process of deregulation underlying the libertarian logic that defines Trump's revolution, which aims to replace the liberal regime "inaugurated by the Democratic administrations of F.D. Roosevelt ... and consolidated by those of J.F. Kennedy and L.B. Johnson ... (pursuing the objective of) ... creating a new political regime based on the fusion of traditional conservatism and post-technological conservatism."<sup>44</sup>

In such a scenario, democracy inevitably gives way to autocracy—a reality that is now manifest with the advent of the new Trump administration, leading to the erosion of fundamental freedoms (moral, legal, economic, intellectual, and religious) that are inherent to human existence. Specifically, it can be said that we are witnessing the coming into power of a techno-plutocratic oligarchy, which — also considering its behavioural approach towards certain European countries, characterised by unacceptable interference and criticism<sup>45</sup> — will produce inevitable

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<sup>44</sup> See FABBRINI, *Rivoluzione Trumpiana, i due scenari possibili*, in *Il Sole24Ore*, cit.

<sup>45</sup> Relevant in this context are the negative assessments regarding Keir Starmer, presenting the possibility of his removal from the role of British Prime Minister before the next general elections, as reported by the Financial Times on 9 January 2025, citing sources familiar with the matter. This has led to the conviction that such an oligarchy "represents a threat to European democracy."

negative consequences, as highlighted by the specialised press.<sup>46</sup> Indeed, the state of vassalage in which Europe seems to have been thrust ultimately results in the surrender of its political and economic freedoms, which have characterised it until now, into the hands of the financial and technological corporations that currently wield power in the United States.

7. The profound changes characterising the US governmental regime following the rise of Trumpism are destined to have a significant impact on the country's international relations, particularly with the nations of the European Union, which, as is well known, is distinguished by the presence of democratic systems.

As highlighted in the preceding pages, the advent of Donald Trump has led to the subversion of the founding principles of the 'rule of law.' We have witnessed the overturning of the traditional separation of powers, a situation further exacerbated by the President's behaviour, which on multiple occasions has adopted a denialist stance, reversing indisputable truths and disregarding respect for human rights, particularly concerning immigrants. This is a reality that, in some respects, is disconcerting, especially given the undue interference of Elon Musk in the politics of certain EU member states,<sup>47</sup> as well as his disrespectful remarks directed at the judiciary of other European countries—clearly aimed at undermining their independence.<sup>48</sup>

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<sup>46</sup> See the editorial titled *Con i primi decreti Trump sta ringraziando le oligarchie Tech per l'appoggio elettorale*, in *L'Indipendente* of 27 February 2025, where it states: "The newly inaugurated administration of Donald Trump immediately grants a significant favour to the oligarchs who supported his candidacy. Indeed, with a memorandum addressed to the new Secretary of the Treasury, Trump withdraws the United States from the Global Tax Deal. The agreement, negotiated in 2021 by the Biden administration and signed by nearly 140 countries, establishes the Global Minimum Tax, a global tax regime with a minimum effective tax rate of 15% applied to multinational corporations with revenues exceeding 750 million dollars."

<sup>47</sup> See the editorial titled *Le interferenze di Elon Musk nella politica europea e internazionale*, available at <https://it.euronews.com/next/2025/01/04/le-interferenze-di-elon-musk-nella-politica-europea-e-internazionale>.

<sup>48</sup> See the editorial titled *Musk irrompe sul caso migranti: 'Via quei giudici'*, available at [https://www.ansa.it/sito/notizie/politica/2024/11/12/caso-migranti-musk-attacca-i-giudici-italiani-devono-andarsene\\_3e3bab59-042b](https://www.ansa.it/sito/notizie/politica/2024/11/12/caso-migranti-musk-attacca-i-giudici-italiani-devono-andarsene_3e3bab59-042b).

Indeed, the absolutism that defines this exercise of power is reinforced by a frequently deceptive narrative (such as the denial of the Russian invasion), designed to promote convenient ‘alternative truths,’ which can, however, be abandoned should they no longer serve the interests pursued. We are witnessing a political climate marked by a fundamental ambiguity that is surprising, as it contrasts with the certainty of action that is found when leadership is exercised in accordance with established rules. This approach perhaps reflects an exaggerated emphasis on sovereignist ideology, which often spills over into an attitude of arrogance, preventing open debate and inflicting severe humiliations on opponents (as was evident in the widely broadcast meeting between Trump, Vance, and Zelensky in the Oval Office of the White House, in the presence of a large number of journalists).

We are thus witnessing the subversion of rules that could be described as fundamental to civilisation—rules long upheld by ‘good politics,’ which is rooted in culture and opposes those who deviate from the core values upon which democracies have always relied. Conversely, we are seeing the emergence of elements characteristic of any conceivable form of autocracy—an autocracy which, as history has shown, inevitably leads to the assertion of a position of absolute power, incompatible with expectations of assistance, security, prosperity, equality, and respect for the interests of others. These expectations, on the other hand, define legal systems in which the ‘sovereign people’ are recognised as having the right to self-governance.

Adding to this scenario is the US withdrawal from major international organisations, such as the World Health Organization, which suggests an American desire to disengage—one that could extend even to reconsidering its membership in NATO and other strategic alliances (as indicated by the threat to scale back US commitments and the demand for European allies to increase their military spending). Certainly, the future of the EU’s strategic equilibrium depends on maintaining an approach to relations with the US that differs from the one currently taking shape—namely, on the possibility of America returning to managing international affairs in a

manner consistent with the behaviour of its previous administrations.

It follows that, in this context, having lost its 'American umbrella,' the European Union is compelled to adopt the necessary measures to ensure the security of its citizens against potential aggressions targeting one of its member states—measures aimed, therefore, at countering any expansionist ambitions Russia may entertain, particularly given Trump's evident interest in fostering relations with it.<sup>49</sup>

In my view, the complexity of this situation requires behaviour inspired by the utmost caution—namely, proceeding with appropriate amendments to EU treaties to establish a 'common defence' and a 'common foreign policy.' This must be done while avoiding, in the construction of such a project (the implementation of which is likely to require a long time frame), the use of overly emphatic rhetoric, which could provoke reactions from a state like Russia—always in search of pretexts to justify interventions that might escalate into full-scale conflict, possibly even a world war.<sup>50</sup>

What emerges is a scenario in which multilateralism is being called into question, and serious doubts arise regarding Trump's presumed objective of weakening Europe in order to render it entirely subservient to the desires of the US presidency, thereby reducing it to a position of 'vassalage.' Indications of this can be found both in the threat to raise tariffs, as previously mentioned, and in the criticisms directed by the American president at the European Union during his first Cabinet meeting at the White House. On that occasion, he began by stating: "Listen, let's be honest, the European Union was conceived to rip off the United States," later clarifying that it is an organisation designed to "take advantage" of the US, particularly in trade matters.<sup>51</sup>

That being said, the negative implications arising from Trumpism are evident.

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<sup>49</sup> See the editorial titled *Ucraina, Trump mette in crisi l'unità transatlantica*, available at [www.balciani-caucaso.org/aree/Ucraina/Ucraina-Trump-mette-in-crisi-l-unita-transatlantica-23637](http://www.balciani-caucaso.org/aree/Ucraina/Ucraina-Trump-mette-in-crisi-l-unita-transatlantica-23637).

<sup>50</sup> See the editorial titled *Mosca: il riarmo europeo è una minaccia, prenderemo contromisure*, available at <https://www.antimafiaduemila.com/home/terzo-millennio/231-guerre/104193-mosca-il-riarmo-europeo-e-una-minaccia-prenderemo-contromisure.html>.

<sup>51</sup> See the editorial titled *L'attacco di Trump all'UE*, in *Il punto del Corriere della Sera*, available at [www.corriere.it/il-punto/prima-ora/25\\_febbraio\\_27/l-attacco-di-trump-alla-ue.shtml?refresh\\_ce](http://www.corriere.it/il-punto/prima-ora/25_febbraio_27/l-attacco-di-trump-alla-ue.shtml?refresh_ce)

These can be seen, among other things, in the impetus that the US executive gives to the rise of populism and Euroscepticism, especially in certain countries such as Hungary, which are traditionally nationalist and critical of any EU proposal aimed at fostering deeper integration within the Union. Furthermore, significant concerns arise from the widespread habit of disseminating fake news and proclaiming false conspiracies, which erode trust in information. This, in turn, makes democratic dialogue particularly difficult, ultimately giving increasing space to possible forms of political dissent and fragmentation.

Trump's policies mark a turning point in the legal and economic history of the planet; the paradigms that, up to now, have—albeit with alternating fortunes—allowed people to believe in the certainties guaranteed by democracy, which is based on the ‘rule of law,’<sup>52</sup> are collapsing. Europe is now compelled to reflect on the relationship it has maintained with the United States for decades. The governments of EU countries today must reconsider the nature of this relationship, which, on the one hand, seems destined to lose its original protective function (ensuring military defence), while on the other, appears to be pushing them towards complete dependence on the US administration. The EU's reaction to the harsh, imperious stance adopted by the latter struggles to unify, whereas only through strengthening internal cohesion and resolutely defending democratic principles (which are currently being disregarded by the US government, where Musk's role is becoming increasingly invasive) can a viable antidote be found against the turmoil caused by an unpredictable Trump.

Some positive signals emerged from the meeting of the 27 EU countries on 6 March 2025, convened by the President of the European Commission, where an agreement was reached on the need to proceed swiftly with “rearmament” by approving an €800 billion plan.<sup>53</sup> This marked an important step towards European

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<sup>52</sup> See *supra* para. no. 3.

<sup>53</sup> See the editorial titled *L'Europa si riarma, approvati 800 miliardi per la difesa comune*, available at [www.vaticannews.va/it/mondo/news/2025-03/europa-riarmo-rearm-europe-leyen-macron-nuclear-e-santegidio-giro.html](http://www.vaticannews.va/it/mondo/news/2025-03/europa-riarmo-rearm-europe-leyen-macron-nuclear-e-santegidio-giro.html)

integration, but I do not believe that this agreement can be considered the formal beginning of a path towards political union. This is confirmed by the divergent positions taken by the participants on that occasion.<sup>54</sup> Consequently, while it must be acknowledged that the groundwork has been laid for greater political and institutional cooperation, it is difficult to reach a different conclusion from the one outlined above.

In light of the foregoing, as I have sought to highlight in this essay, one might hope that the danger of overturning the reality that has ensured peace and economic growth in Europe for 70 years could act as a catalyst in realising the project formulated in the 1940s by Gualtiero Spinelli and Ernesto Rossi.<sup>55</sup>

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<sup>54</sup> See the editorial titled *Return of the two Europes*, published by the *Financial Times* on 6 March 2025.

<sup>55</sup> See *supra* para no 7.

# THE MAIN CHALLENGES ON THE PATH TO THE CAPITAL MARKETS UNION: CODIFICATION OF EUROPEAN FINANCIAL MARKETS LAW AND CENTRALISATION OF SUPERVISORY POWERS

Mirella Pellegrini\*

**ABSTRACT:** *The paper examines the pivotal challenges confronting the Capital Markets Union, with particular emphasis on the codification of European financial markets law and the centralisation of supervisory powers. The analysis contends that establishing a European Capital Markets Code and restructuring the current allocation of supervisory powers constitute synergetic objectives, essential for achieving true market integration. The current geopolitical context may provide the necessary momentum for realizing these long-sought reforms, ultimately fostering a more cohesive and efficient European financial system.*

**SUMMARY:** 1. The Capital markets Union in context. – 2. A primer on rulemaking and regulatory techniques for harmonization. – 3. The role of supervisory powers. – 4. CMU as a topical moment for the future development of the financial market.

1. The European Union's financial landscape stands at a crucial crossroads, with the Capital Markets Union (CMU) representing one of the most ambitious initiatives in recent decades to reshape and integrate financial markets across Member States<sup>1</sup>. This transformative project seeks to create a unified capital market that transcends national boundaries and enables the free flow of investments and savings throughout the Union.

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<sup>1</sup> As pointed out, almost a decade ago, by D. Busch, *A Capital Markets Union for a Divided Europe*, in *Journal of Financial Regulation*, Volume 3, Issue 2, September 2017, p. 262 and ff. the CMU project is geared towards the creation of a fully integrated European capital market, remediating the existing fragmentation and ensuing inefficiencies.

The evolution of financial market integration in Europe has been marked by a series of incremental steps, from the early days of the European Monetary System to the creation of the euro<sup>2</sup>. Each phase has brought its own challenges and lessons, shaping our understanding of what true market integration requires in the contemporary financial landscape.

In this regard, a gradual harmonisation has been accomplished in various areas of financial law (e.g., as a result of the entry into force of MIFID and MIFIR, PRIIPs Regulation, UCITS Directive, etc.), targeting specific product categories. Yet it has not achieved a comprehensive and coherent architecture, that also adequately covers enforcement aspects.

This approach could be framed within the framework of a ‘*small steps*’ perspective<sup>3</sup>, that should hopefully lead to full integration; however, it has often merely constituted an island of integration, incapable of generating further ‘political’ consequences.

The emergence of new financial technologies, changing investor behaviors, and the growing importance of retail participation in capital markets have created both opportunities and challenges for European integration efforts<sup>4</sup>.

Moreover, the constantly changing environment dictates that reform proposals must be adjusted, considering market developments and the international scenario.

These developments form the backdrop against which the next steps of the CMU must operate.

Indeed, the CMU's scope extends far beyond mere market integration,

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<sup>2</sup> A. Delivorias, *A history of European monetary integration*, EPRS - European Parliamentary Research Service, PE 551.325, March 2015, available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551325/EPRS\\_BRI%282015%29551325\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/551325/EPRS_BRI%282015%29551325_EN.pdf).

<sup>3</sup> This is an approach that has characterised European integration since its origins. Reference can be made to the European Commission: Directorate-General for Communication, *The Schuman Declaration of 9 May 1950*, Publications Office, 2015, <https://data.europa.eu/doi/10.2775/065>

<sup>4</sup> On the topic, C. Baba et al., *Fintech in Europe: Promises and Threats*, IMF Working Paper, WP/20/241.



encompassing a comprehensive framework of sixteen key actions designed to address critical challenges in the post-COVID economy.

These actions aim to democratize access to capital, enhance market efficiency, and foster a more resilient and sustainable financial ecosystem that aligns with Europe's broader economic and social objectives.

In the following sections, I will examine some aspects that are instrumental in understanding the broader context of the Capital Markets Union (CMU) and what it entails.

As widely recognized, the CMU is a major EU initiative aimed at creating a single market for capital across all Member States.

It will allow investments and savings to move more freely and efficiently to the benefit of citizens, investors, and businesses. It is a proposal the realization of which has been ongoing for several years now as it was first formulated by the EU Commission in 2015<sup>5</sup>; followed, in 2020, by the publication of a dedicated Action Plan<sup>6</sup>.

The 2020 Action Plan outlines key measures (16 actions) to be adopted for achieving the Capital Markets Union goals. Among those, it aims to:

- 1) provide businesses with a greater choice of funding at lower costs,
- 2) support the economic recovery post-Covid-19,
- 3) offering new opportunities for savers and investors,
- 4) creating a more inclusive and resilient economy.

At the same time, the CMU aims at helping Europe to

- 5) deliver its new green deal and digital agenda,
- 6) reinforcing the EU's global competitiveness and autonomy and
- 7) making the financial system more resilient.

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<sup>5</sup> European Commission, *Action plan on building a capital markets union*, Communication, COM/2015/0468 final, 30 September 2015 which followed the adoption of the Green Paper on Building a Capital Markets Union [COM(2015) 63 final] and the subsequent public consultation.

<sup>6</sup> European Commission, *A Capital Markets Union for Persons and Businesses-A New Action Plan*, Communication, COM/2020/590 final, 24 September 2020.

All these goals are, indeed, very meaningful and promising objectives that would be key for strengthening the EU financial markets and their functioning. At the present time, the CMU project seems to have reached a turning point and it is thus worth dwelling on its criticalities<sup>7</sup>. In fact, in addition to the challenges that have delayed the realization of the project over the past ten years, the CMU is now also facing difficulties arising from the shifting strategic priorities of the EU Commission in the light of the recent geopolitical changes (that have a clear impact e.g. on sustainability regulations)<sup>8</sup>.

This demanding context poses a number of significant challenges - some political, other having a purely legal nature – that deserve in-depth studies.

In this respect, I would like to briefly address two issues that I consider very relevant: the first one concerning the rulemaking and regulatory techniques to be adopted, whereas the second relates to the enforcement of rules and the (optimal) allocation of the relevant supervisory powers.

2. The history of financial regulation in Europe reveals a pattern of reactive rulemaking, often triggered by crises or market failures<sup>9</sup>. This approach has resulted in layers of regulations that, while addressing specific issues, sometimes lack

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<sup>7</sup> C. Lagarde, *A Kantian Turn for the Capital Markets Union*, Speech at the European Banking Congress, Frankfurt am Main, 17 November 2023.

<sup>8</sup> Consider in this regard the recent European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, {SWD(2025) 80}, Brussels, 26.2.2025 COM(2025) 81 final 2025/0045 (COD).

<sup>9</sup> N. Moloney *EU financial market regulation a decade from the financial-crisis-era reforms: crisis, uncertainty, and capacity*, in Yearbook of European Law, Volume 42, 2023, p. 169 and ff. in which the Author highlights how financial regulation has traditionally been subject to major reforms in the wake of crisis events ( this was clearly what happened in response to the 2007/2008 crisis, but also in other situations in the past).

coherence and create unintended consequences for market participants and supervisors alike.<sup>10</sup>

Therefore, the establishment of a uniform regulatory framework for European financial markets represents one of the most pressing challenges in realizing the CMU's objectives.

The lack of homogeneity between national legal systems proves to be harmful for financial market participants as divergences come at a cost. For example, these entail incurring costs for dedicated compliance procedures in each country, discouraging companies (especially smaller ones) from operating in all the countries of the European market. In addition, this leads to low predictability of the outcomes of disputes concerning infringement of securities regulation (including the national transposition rules): in this respect, not only the range of public and private enforcement remedies that can be activated in each national legal system is very fragmented, but the case law - also by the European courts - has only rarely gone so far as to impose specific type of remedies under civil law for particular violations<sup>11</sup>.

Conversely, financial service providers acting on a cross-border basis can significantly benefit from cost savings when the rules to which they are subject – and their interpretations in the relevant case law – are uniform. A notable example is the possibility of adopting a single procedure for each service provided.

At the same time, the existence of uniform provisions throughout the European single market ensures better consumer protection, as users can rely on homogeneous rules, with no need to worry about the level of protection offered by individual national laws.

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<sup>10</sup> For example, in the Italian context, in the Combined Act on Finance there are several similar (but not fully overlapping) definitions which refer to similar phenomena that have been regulated in different moments, as each definition derives from the transposition of EU directives

<sup>11</sup> F. Della Negra, *Financial Services Contracts in EU Law*, Oxford University Press, 2023, p. 271 and ff.

The achievement of harmonization of the applicable rules (and their interpretation by supervisory authorities and courts) is therefore a priority objective, but still a long way off<sup>12</sup>.

As it has been noted, in the absence of perfect alignment by means of regulatory harmonization, the existence of conflict-of-law rules that identify the applicable law and assign supervisory powers to the home country authorities can try to level the playing field by relying (only) on negative integration<sup>13</sup>, thus limiting the possible divergencies. However, this integration policy does not seem to be sufficient. In fact, as is currently the case, this approach may result in different levels of protection based on the provider's country of origin: as hinted, for retail investors, it would make it very difficult to ascertain the level of protection applicable in different countries.

The implementation of the CMU objectives is the very opportunity to remedy this situation and to provide a unified and comprehensive reaction to the challenges that have emerged in recent years.

After the 2008 financial crisis, European securities regulation has experienced a “dynamic overhaul”<sup>14</sup>: there has been a mix of different elements consisting in the surfacing of new financial products, the unveiling of market interdependencies that for long time were not detected and caused new risks, as well as fast paced legislative activity seeking to counter such emerging risks. The ensuing legislative activity, that led to the creation to single rulebooks in the field of the European securities regulation

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<sup>12</sup> N. Moloney, *EU Securities and Financial Markets Regulation*, Oxford EU Law Library, 2023, p. 56 and ff.

<sup>13</sup> M. Gargantini, *Diritto europeo e discipline nazionali dei mercati finanziari: l'armonizzazione normativa dopo la capital markets union*, in Banca Borsa Titoli di Credito, fasc.1, 1 February 2024, p. 25.

<sup>14</sup> Armour et al., *Principles of Financial Regulation*, Oxford University Press, 2016, specifically Introduction (p. 3 and ff.) and Conclusion – Designing Tomorrow's Financial System Today (p. 643 and ff.)

resulted in the mere aggregation of individual rules, lacking a systematic order. At the same time, the rules became highly complex and sometimes inconsistent.

Against this background, the idea of codification, to create a European Capital Markets Code as the recent book edited by Rudiger Veil<sup>15</sup> advocated for, has resurged among European legal scholars and policymakers.

Creating a European Capital Markets Code<sup>16</sup> – thus bringing the single rulebooks under a common frame - would allow to better develop the systematic order of rules, specifying their regulatory objectives (i.e., the smooth functioning of securities markets and public confidence in markets, that are prerequisites for economic growth and wealth and contributes to the internal market) and ensuring coherence of the entire system, thus remedying both the discrepancies caused by national transposition law, and by the narrowly segment-specific nature of the regulatory interventions of European law to date. Moreover, in this context, some concepts, like e.g. the one of investor confidence, could be (and will need to be) better defined and translated into more concrete terms. In the context of a single European code - which would be the CMU's main regulatory product - an effort should also be made to bridge the discrepancies in national caselaw with regard to the interpretation of general clauses and principles stemming from European law (which were variably implemented in each Member State).

Furthermore, the Code should not be merely recognitive of already existing principles and rules. It should serve as an opportunity to introduce innovations, also in relation to ESG issues<sup>17</sup>. The entire rulebook should integrate sustainability and

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<sup>15</sup> R. Veil (edited by), *Regulating EU Capital Markets Union. Volume I: Fundamentals of a European Code*, Oxford University Press, 2024

<sup>16</sup> This project reminds the proposal - which has been proposed a long time ago and it is still in an infant phase, not having borne concrete fruit - for the elaboration of a European civil code, covering in particular contract law. For an overview of the historical reasons underpinning the project for the establishment of common rules on contract law applicable throughout Europe see G. Alpa, *Harmonisation of Contract Law and the Plan for a European Civil Code*, *European Business Law Review*, Vol. 15, Issue 1, 2004, p. 33 and ff.

<sup>17</sup> M. Driessen, *Sustainable Finance: An Overview of ESG in the Financial Markets*, in D. Busch-G. Ferrarini-S. Grünwald (edited by), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets*, EBI Studies in Banking and Capital Markets Law, Palgrave

social integrity as embedded principles. It may represent the opportunity of integrating those values and priorities in the financial regulation rules – solving the current intricacies<sup>18</sup> – creating a truly European platform.<sup>19</sup> It is therefore crucial that European values are at the heart of the initiative and are not sacrificed lightly for the sake of the competitiveness of the European market (in relation to other non-EU financial markets).

The codification process will also be the opportunity to clarify the relationship between the regulatory objectives, providing an answer to the question whether a hierarchy exists between the objectives of financial stability and market functioning<sup>20</sup>.

At the same time, the question arises as to whether the Code should state clearly how to frame sustainability as a goal of securities regulation<sup>21</sup>. Although sustainability (so far) has undoubtedly gained a central place on the legislator's agenda and among the priorities of the supervisory authorities, there is a lack of any precise provision specifying its positioning among the goals of financial regulation. The creation of a European Capital Markets Code would allow to make it clear whether sustainability can now be considered as an independent regulatory objective of financial regulation and how that can be reconciled with the traditional regulatory objectives of EU capital markets law (e.g., with respect to financial stability).

3. The evolution of financial supervision in Europe also reflects a delicate balance between national sovereignty and the need for coordinated oversight.

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Macmillan, 2024, p. 465 and ff. Specifically on the interactions between the CMU project and the pursuit of ESG objectives see B. Spießhofer, *Sustainability and ESG Aspects*, in R. Veil (edited by), *Regulating EU Capital Markets Union. Volume I: Fundamentals of a European Code*, Oxford University Press, 2024, p. 182 and ff.

<sup>18</sup> For example, V. Colaert, *The Changing Nature of Financial Regulation: Sustainable Finance As A New EU Policy Objective*, *Common Market Law Review*, 2022, 59, p. 1705 highlights the current difficulties in identifying a clear hierarchy in the relationship between sustainable finance and the other objectives of financial regulation.

<sup>19</sup> It would reduce the current criticalities stemming from gold-plating phenomena (when member states introduce stricter rules than the ones provided for in the EU directives).

<sup>20</sup> R. Veil, *The Idea of Codification of European Capital Markets Law*, in R. Veil (edited by), *Regulating EU Capital Markets Union*, cited, p. 3 and ff.

<sup>21</sup> V. Colaert, *The Changing Nature of Financial Regulation*, cited, pp. 1669–1710.

Historical attempts at creating unified supervisory mechanisms have often faced political resistance, technical challenges, and questions about democratic accountability. The increasing complexity of financial products and services, combined with the cross-border nature of modern financial markets, has exposed limitations in traditional supervisory approaches.

Such (fragmented) allocation of supervisory powers has major impact on the harmonization process<sup>22</sup>. In fact, despite a steady strengthening of powers granted to ESMA<sup>23</sup>, supervisory powers are still mostly vested in national authorities.

This structure poses glaring drawbacks and in order to fully achieve the CMU's objectives, a thorough review of the current set-up of supervisory powers will be necessary.

As of now, the insufficient harmonization levels in the European capital markets are attributable – together with other reasons<sup>24</sup> – to the different levels of enforcement of rules by the “multitude” of competent national authorities. The lack of a single supervisory authority for the CMU (unlike the ECB in the Banking Union<sup>25</sup>) prevents uniformity of safeguards and supervisory practices. Under the current institutional setting, the actual application of the rules that would compose the CMU code inevitably will depend on local interpretations as well as, ultimately, on the supervisory style of the NCAs involved.

Since divergences in supervisory guidelines result from the co-existence of several NCAs, a natural solution might be to concentrate supervisory powers in a

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<sup>22</sup> N. Moloney, *EU Securities and Financial Markets Regulation*, Oxford EU Law Library, 2016, p. 36 and ff, p. 951 and ff.

<sup>23</sup> N. Moloney, *The age of ESMA. Governing EU Financial Markets*, Bloomsbury, 2018, passim. The Author points out all the cases in which ESMA is granted direct supervisory powers on supervised entities. Also based on this, she highlights how ESMA is gradually assuming a key role in the financial markets, to the extent that it is positioned preferentially to become the European supervisor over the financial sector within the CMU.

<sup>24</sup> E.g. the different level of development of financial markets in each Member state, deriving from the population financial education, availability of resources, etc.

<sup>25</sup> For some interesting insights F. Annunziata, *European Banking Supervision in the Age of the ECB: Landeskreditbank Baden-Württemberg—Förderbank v. ECB*, in *European Business Organisation Law Review*, Volume 21, 2020, p. 545-570.

single authority under European law: the most expedient approach in this direction would, of course, be to expand ESMA's direct supervisory powers<sup>26</sup>. For feasibility reasons, the centralization process could initially involve only certain areas, as envisaged in Action 16 of the new CMU Action Plan. For example, in the area of prospectus approval, there are those who believe<sup>27</sup> that the completion of a true CMU would require the creation of a single authority.

Even if the specificities of national markets - and the reluctance of national authorities – would not allow for a prompt full centralization of powers in the hands of ESMA, half-way solutions could be explored: progressively strengthening ESMA's coordination powers, in the perspective of a gradual centralization of power, while pursuing the goal of full harmonization, protecting investors and market competitiveness.

Drawing a conclusion from what has been said so far, the creation of a single capital markets code and the amendment of supervisory set-ups are synergetic objectives - likely to be realized in different timelines, both being highly ambitious - on which the concrete success of the CMU will depend.

4. For the examined reasons, and for many others, the Capital Markets Union has become pivotal for the future development of financial markets.

The transformation of global financial markets through technological innovation, changing demographic patterns, and evolving investor preferences creates both opportunities and imperatives for European capital markets. Yet, the ability to harness these changes while maintaining market stability and investor protection will be crucial for Europe's economic competitiveness.

The intersection of capital markets development with broader societal

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<sup>26</sup> C. Gortsos-K. Lagaria, *The European Supervisory Authorities (ESAs) as “direct” supervisors in the EU financial system*, EBI Working Paper Series, n. 57/2020, p. 4 and ff.

<sup>27</sup> E. Avgouleas-G. Ferrarini, *The Future of ESMA and a Single Listing Authority and Securities Regulator for the CMU: Costs, Benefits and Legal Impediments*, in D. Busch-E. Avgouleas-G. Ferrarini (edited by), *Capital Markets Union in Europe*, Oxford University Press, 2018, p. 55 and ff.



challenges, including climate change, aging populations, and technological disruption, requires a comprehensive approach to market integration. These challenges demand solutions that go beyond traditional financial market considerations to encompass broader economic and social objectives.

In such sense, the CMU represents a groundbreaking, comprehensive and sustained effort to build a robust financial system that supports economic growth, innovation, and sustainability. Realizing its full potential requires the collective commitment of EU institutions, Member States, market participants, and all Europeans.

The recent proposal of the EU Commission on the Savings and Investments Union<sup>28</sup> marks the last development in this area: it combines the Capital Markets Union and the Banking Union and builds on their past achievements in order to advance further reforms. In particular, the proposal aims to leverage the (enormous) wealth of private savings in support of the wider objectives of the EU, focusing its *“action on supporting people to save better, fostering capital for innovation, unlocking digital finance, ensuring the competitiveness of the financial sector and harnessing sustainable finance”*<sup>29</sup>.

Incidentally, the most recent version of the initiative presented by the European Commission appears to be perfectly consistent with the Draghi Report<sup>30</sup>, that highlighted the existing inefficiencies in EU’s capital markets (in particular a significant savings and investment mismatch in the EU, where citizens’ wealth is being underserved by low-yielding deposits, and companies, particularly young and innovative ones, are struggling to meet their) calling for swift and decisive action.

In conclusion, the current situation of geopolitical transformation, and the

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<sup>28</sup> European Commission, *Communication on European Savings and Investments Union. Call for evidence*, Ref. Ares(2025)807910, 03 February 2025, available at [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14488-Savings-and-Investments-Union\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14488-Savings-and-Investments-Union_en)

<sup>29</sup> Idem, p.1.

<sup>30</sup> M. Draghi, *The future of European competitiveness*, Part A | A competitiveness strategy for Europe, September 2024, passim and spec. p. 59 and ff., available at [https://commission.europa.eu/topics/eu-competitiveness/draghi-report\\_en#paragraph\\_47059](https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en#paragraph_47059).

consequent stimulus towards greater integration as a response to external dangers, could therefore be a propitious moment to realise the much sought-after Capital Markets Union, drawing on the scholarly debate that have matured in the ten years since the first proposal. It is precisely in this context that may finally be found the impulse needed to realize a European Code of Financial Markets Law as well as to define a supervisory set-up that best balances instances of centralisation and 'local' specificities.

# ACTIVE LEGAL STANDING AND LEGAL AID FOR CONSUMER ORGANIZATIONS IN THE FINANCIAL MARKET. JUDGMENT OF THE CJEU OF 16 JANUARY 2025 (CASE C-346/23, BANCO SANTANDER VS. AUGE).

Alberto J. Tapia Hermida\*

**ABSTRACT:** *This essay analyzes the Judgment of the Fourth Chamber of the Court of Justice of the European Union dated 16 January 2025, which interprets Article 52(2) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, applying it to the dispute arising from a lawsuit submitted by a consumer organization in defense of the individual interests of two of its members who had made investments in high-value financial products.*

**SUMMARY:** 1. – Introduction: the notions of investor, client and consumer in financial markets. – 2. Scope of the Judgment of the Fourth Chamber of the CJEU of 16 January 2025. – 3. Legal conflict underlying the dispute. – 4. The two statements of the Judgment of the Fourth Chamber of the CJEU of 16 January 2025. – 5. Conclusions.

1. We must begin this essay by a fundamental clarification about the key players in this “theatrical play” since the Judgment of the Fourth Chamber of the Court of Justice of the European Union dated 16 January 2025, which is the subject of this commentary, concerns a request for a preliminary ruling made in the context of a dispute regarding the validity of contracts for the acquisition of financial instruments concluded by retail clients.

As we shall see, this gives rise to the complex nature of the case, in which the regulation of investor protection in financial markets intersects with general consumer protection law. Consequently, the CJEU Chamber is compelled to consider

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a “dual-entry” legal framework, where the paths of financial market investor and protection rules converge.

In light of the above, it seems appropriate to begin by clarifying the notions of three key roles or “characters” that coexist in financial markets: the investor, the client and the consumer.

In this regard, a natural or legal person who acquires - and potentially disposes of - securities can be characterized in various ways<sup>1</sup>: as an “investor”, focusing on what is being acquired, namely transferable securities or financial instruments; as a “client” of market intermediaries, if we consider how these instruments are acquired; and as a “consumer or user”, with the corresponding protective implications. We should note in advance that these classifications are grounded in EU law.

Firstly, a natural or legal person who acquires - and potentially disposes of - transferable securities or financial instruments can be characterized as an “investor” focusing on what is being acquired, namely the transferable securities or financial instruments<sup>2</sup>.

The essential characteristics of the objects being acquired - their intangible nature and their existence as second-order goods whose economic value can only be determined through a process of gathering and assessing information - define the nature of the protective mechanisms, which are, fundamentally, mechanisms of informational protection.

We can identify the individual, private or retail investor as the natural or legal person who acquires securities in a limited amount and outside the scope of their business or professional activity.

An institutional investor is a legal entity (such as an investment company) or a fund without legal personality (such as an investment fund) that acquires negotiable securities or financial instruments on a large scale and as part of its specific business

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<sup>1</sup> TAPIA HERMIDA, Manual de Derecho del Mercado Financiero, Colección Manuales, Ed. Iustel, 1ª Edition, Madrid, (2015), pp.337 ff.

<sup>2</sup> TAPIA HERMIDA, Manual de Derecho del Mercado Financiero, cit., pp. 338 ff.

or professional activity.

According on this second defining characteristic, institutional investors can be classified into two categories: first-degree institutional investors, whose main purpose is investment in securities (e.g., collective investment undertakings); and second-degree institutional investors, whose main purposes are not the investment in securities, but who, in order to fulfill their objectives, need to invest extensively and continuously in securities and financial instruments.

For example, pension funds, whose primary aim is to serve as instruments for implementing pension plans and, for that purpose, must invest in financial instruments; or insurance companies, whose activity is to carry out insurance and reinsurance operations and, consequently, must invest their technical provisions related to those insurance contracts<sup>3</sup>.

Secondly, a natural or legal person who acquires - and potentially disposes of - transferable securities or financial instruments can be characterized as a “client” of market intermediaries, if we focus on how these instruments are acquired. Indeed, in virtually all cases, whether the acquisition is original or derivative, the investor acquires the transferable securities through the involvement of an intermediary (such as a bank or an investment firm), thereby assuming the role of the intermediary’s client<sup>4</sup>.

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<sup>3</sup> TAPIA HERMIDA, Institutional Investors and Corporate Control in Spanish Perspective, in Institutional Investors and Corporate Governance, Baums, Busbaum, Hopt (Dirs.) (Ed. de Gruyter), Berlín (1993), pp. 399-463; Id., La igualdad informativa: inversores institucionales y accionistas minoritarios, in El accionista minoritario en la sociedad cotizada (Libro Blanco del Accionista Minoritario) (dirs. Peinado Gracia, J. I. / Cremades García, J.), Ed. La Ley, Las Rozas (Madrid), October (2012), pp. 423-439; Id., (Chapt. III) Concepto y tipología de inversores institucionales. Accionistas institucionales, inversores y agencias externas (coords. Agúndez, M. A. / Martínez Simancas, J.), Colección Cuadernos de Derecho para Ingenieros, n.º 9, Iberdrola / La Ley, Madrid (2011), pp. 47-66; Id., El activismo societario de los principales inversores institucionales: fondos de inversión y fondos de pensiones, in Gobierno corporativo y crisis empresariales. II Seminario Harvard-Complutense de Derecho Mercantil, Ed. Marcial Pons, Madrid (2006), pp. 523-548. Additionally, about latest regulations, can also consult the entries on our financial blog ([ajtapia.com](http://ajtapia.com)), 14 March 2023 on Código de la CNMV de buenas prácticas para inversores institucionales, gestores de activos y asesores de voto; and 13 May 2021, about Implicación a largo plazo de los inversores institucionales en las sociedades anónimas cotizadas: reformas de la Ley 5/2021 de 12 de abril.

<sup>4</sup> TAPIA HERMIDA, Manual de Derecho del Mercado Financiero, cit., pp. 339 ff.

This classification is relevant for determining the level of protection that should be afforded to clients in relation to the application of conduct rules by intermediaries when providing investment services.

To this end, Article 192 of the LMVSI<sup>5</sup> (Law on the Securities Market and Investment Services) establishes that entities providing or offering investment services must tailor their treatment of each client according to the type of client involved. For this purpose, they are required to classify their clients as either professional clients or retail clients, and, in certain cases, may also categorize them as eligible counterparties.

For the purposes mentioned above, retail clients are all those who are not classified as professional clients (Article 193 of the LMVSI). Retail clients are afforded the highest level of protection, which includes full compliance with information obligations.

On the other hand, professional clients are generally those who are presumed to have the experience, knowledge, and expertise necessary to make their own investment decisions and to properly assess the associated risks (Article 194.1 of the LMVSI). They are granted a medium level of protection, which allows for the exemption from certain information duties. Eligible counterparties are those entities listed in Article 196 of the LMVSI.

Thirdly, in order to consider an investor or client as a “consumer or user” with the corresponding protective consequences under both EU law and our national legal framework, one must go a step further and verify that the individual is a natural person who - when acquiring or disposing of securities or financial instruments - “acts for purposes outside their trade, business, craft, or profession”; or a legal person or entity without legal personality that “acts without a profit motive in a context unrelated to a commercial or business activity”<sup>6</sup>.

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<sup>5</sup> Spanish L. 6/2023, 17 march, of the Securities Markets and Investment Services.

<sup>6</sup> This follows from the application of the concept of consumer and user as defined in Article 3 of the General Law for the Defense of Consumers and Users (Consolidated Text of the General Law for the

In this regard, it is important to acknowledge that financial markets are economic spaces in which consumers are particularly likely to find themselves in a position of vulnerability<sup>7</sup>.

From the intersection of the three definitions we have outlined, we can deduce that retail investors or clients can be considered consumers or users; however, institutional investors, professional clients, and eligible counterparties are not included in this category.

It is important to clarify that the decisive criterion - from a legal perspective - is not the volume or complexity of the financial instruments acquired as part of their investment, but rather their role or status - whether personal or professional - in the financial market.

In this regard, we must reiterate that, although it cannot be ignored that statistical economic norms tell us that retail investors or clients, who may be classified as consumers or users, typically make investments of much lower value and complexity compared to institutional investors, professional clients, or eligible counterparties, it is not necessary to require a “vote of poverty” from the retail investor in order for them to be granted the status and protection of a consumer. In other words, the amount and complexity of their investments do not alter their nature as an investor/consumer.

We anticipate that, for example, in the case resolved by the CJEU ruling we are commenting on, the two investors represented by AUGÉ invested a substantial amount of € 900.000 in complex financial products.

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Defense of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007).

<sup>7</sup> To this end, let us recall that paragraph 2 of Article 3 of the General Law for the Defense of Consumers and Users states: *“Likewise, for the purposes of this law and without prejudice to the sector-specific regulations that may apply in each case, individuals are considered vulnerable consumers in relation to specific consumer relationships, those natural persons who, individually or collectively, due to their characteristics, needs, or personal, economic, educational, or social circumstances, find themselves, whether territorially, sectorally, or temporarily, in a special situation of subordination, defenselessness, or lack of protection, which prevents them from exercising their rights as consumers on equal terms”*.

From the above, it can also be inferred that institutional investors, professional clients, or eligible counterparties should not be classified as consumers or users and, consequently, should not receive protection that is generally unjustified and inefficient in terms of the functioning of financial markets.

This does not mean that issuers of securities should not provide this type of investor with the information required by securities market regulations to mitigate the information asymmetry that exists not only between issuers and retail investors but also between the former and institutional investors. Rather, it refers to not providing them with excessive, unjustified, and inefficient protection by treating them as “financial minors”.

Additionally, we will see how the case law of the CJEU and the Spanish Supreme Court differentiates between the level of informational protection that a retail investor deserves and that which should be afforded to an institutional investor, who has more opportunities to access information and greater duties of diligence in processing the available information to avoid making errors that could taint their consent when deciding to invest or divest in transferable securities or financial instruments.

2. The Judgment of the Fourth Chamber of the Court of Justice of the EU of January 16, 2025, operates within a “dual-entry” legal framework.

On one hand, the regulation of investor protection in financial markets, referencing Directive 2004/39/EC<sup>8</sup> and Directive 2014/65/EU. On the other hand, the regulation of general consumer protection, referencing Directive (EU) 2020/1828 of November 25, 2020, on representative actions for the protection of the collective interests of consumers.

In the case at hand, a lawsuit filed by a consumer organization defending the

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<sup>8</sup> Directive 2004/39/EC of the European Parliament and of the Council of April 21, 2004, on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and European Parliament and Council Directive 2000/12/EC, and repealing Council Directive 93/22/EEC.



individual interests of two of its members who had made investments in high-value financial products<sup>9</sup>.

Specifically, this judgment concerns a request for a preliminary ruling made by the Supreme Court of Spain, through an order of May 17, 2023, in the procedure between Banco Santander, S.A., as successor to Banco Banif, S.A., and the General Consumers and Users Association (AUGE)<sup>10</sup>, representing two of its members, regarding the validity of contracts for the acquisition of financial instruments entered into by retail clients.

3. The legal dispute at the heart of the case can be summarized as follows<sup>11</sup>:

a) Between May 4, 2007, and January 7, 2010, Ms. Andrea and Mr. Alberto subscribed to several purchase orders for financial products with Banco Banif, totaling € 900.000.

b) The AUGE association, acting on behalf of the two members, initiated legal proceedings against the bank, requesting that the contracts for the acquisition of said financial products be declared null and void due to a defect in consent, and sought the return of part of the amounts paid under those contracts, along with fees, costs, and interest.

c) The Court of First Instance partially upheld this claim.

d) The Provincial Court of Granada issued a judgment dismissing the appeal filed against that ruling, considering that the bank did not take into account the client' investor profile nor provided them with clear and complete pre-contractual information about the risks of the products they were contracting.

e) Banco Santander, as successor to Banco Banif, filed an extraordinary appeal

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<sup>9</sup> See our financial blog ([ajtapia.com](https://ajtapia.com)) on the application of the principle of effectiveness in the consumer field. Entry of November 21, 2024, on “Cross-selling of a personal loan and an unrelated insurance product: Concept of 'average consumer' and the framing of information as an unfair commercial practice by businesses in their relations with consumers: Judgment of the CJEU of November 14, 2024 (Case C-646/22)”.

<sup>10</sup> Asociación de Consumidores y Usuarios de Servicios Generales (AUGE).

<sup>11</sup> V. Sections 14 to 27 on the “Main Case and Preliminary Questions”.

for procedural infringement and a cassation appeal against this decision before the Spanish Supreme Court.

f) In this context, the First Civil Chamber of the Spanish Supreme Court expressed its doubts before the CJEU regarding the interpretation of Article 52.2 of Directive 2004/39, particularly concerning the legal standing of consumer organizations to bring legal actions aimed at protecting the individual interests of their members.

4. The two statements in the Judgment of the Fourth Chamber of the CJEU of January 16, 2025, share two common denominators.

First, the interpretation of the same provision, Article 52.2 of Directive 2004/39/EC of the European Parliament and the Council of April 21, 2004, concerning markets in financial instruments; second, the same factual context, which is a lawsuit filed by a consumer organization defending the individual interests of two of its members who had made investments in high-value financial products<sup>12</sup>.

The CJEU states that when the legislation of a Member State of the EU grants consumer organizations active standing to bring legal actions in order to defend the individual interests of a plurality of their members, the national courts of that State cannot impose restrictions on such standing for subjective reasons, such as the economic capacity of those members, or for objective reasons, such as the economic value, type, or complexity of the financial products in which those members have invested.

This first statement is based on a materially expansive interpretation in favor of the consumer and their advocacy organizations, which we can express in the following syllogism:

a) If Directive 2004/39 aims to protect “investors” a category that includes

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<sup>12</sup> In this regard, it is important to recall that the lawsuit filed by AUGÉ, on behalf of its two members, requested the annulment of the contracts for the acquisition of several financial products totaling € 900.000 due to a defect in consent and sought the reimbursement of part of the amounts paid under these contracts, along with commissions, expenses, and interest.

retail clients, professionals, and businesses<sup>13</sup>;

b) If the dual condition of investor/consumer encompasses, in addition to the general consumer protection legislation, areas such as financial services<sup>14</sup>;

c) Thus, Member States have the freedom to determine the organizations that have active standing in the interest of consumers, the individual or collective nature of the interests that these organizations can defend, as well as the procedural regime under which the aforementioned organizations must act in defense of those interests<sup>15</sup>.

Then, the CJEU declares that when the legislation of a Member State of the EU grants consumer organizations active standing to bring legal actions in order to defend the individual interests of a plurality of their members, their national courts may take into account, in deciding whether these organizations are entitled to free legal assistance, subjective reasons, such as the economic capacity of those members, or objective reasons, such as the economic value, type, or complexity of the financial products in which those members have invested.

This second statement is based on a procedurally strict interpretation, which we can express in the following syllogism:

a) If Article 52.2 of Directive 2004/39 merely establishes a right of action in favor of consumer organizations that have a legitimate interest in consumer

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<sup>13</sup> In this regard, paragraph 37 of the Judgment states that Preliminarily, it should be noted that, as is clear from its recitals 31, Directive 2004/39 - which, as the Advocate General stated in paragraph 32 of her Opinion, is applicable *ratione temporis* to the main proceedings - aims, in particular, to protect 'investors,' that is, retail clients, professionals, and businesses.

<sup>14</sup> In this regard, paragraph 39 of the Judgment states that furthermore, as the Advocate General has indicated in paragraph 67 of her Opinion, the dual status of the investor/consumer is corroborated by Directive 2020/1828, whose recital 14 states that its provisions protect the interests of consumers regardless of whether they are referred to 'as travelers, users, clients, retail investors, retail clients, data subjects, or otherwise'. In particular, recital 13 of this Directive makes clear that it covers, in addition to the general consumer protection legislation, areas such as financial services.

<sup>15</sup> In this regard, paragraph 46 of the Judgment states that therefore, the broad formulation of this provision allows us to deduce that Member States have the freedom to determine the organizations that have active standing in the interest of consumers, the individual or collective nature of the interests that these organizations can defend, as well as the procedural regime under which the aforementioned organizations must act in defense of those interests.

protection, without imposing the provision of free legal assistance<sup>16</sup>;

b) If there is no EU legislation regarding the granting of free legal assistance to consumer associations when litigating in the interest of consumers in the context of Article 52(2) of Directive 2004/39, it is for the national legal system of each Member State to establish such rules, in accordance with the principle of procedural autonomy, provided that they respect the principles of equivalence and effectiveness<sup>17</sup>;

c) It is then up to the national judicial authority to assess whether the financial instruments involved in each case constitute “products or services of common, ordinary, and widespread use or consumption” that grant consumer associations the right to legal aid; so that, in a litigation arising from a lawsuit filed by a consumer association defending the individual interests of high-net-worth consumers who invest in speculative financial products of high economic value, which cannot be considered of common, ordinary, and widespread use, the right to legal aid should not be granted<sup>18</sup>.

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<sup>16</sup> In this regard, paragraph 56 of the Judgment states that on the other hand, with regard to the regime of free legal assistance, it should be noted that Article 52(2) of Directive 2004/39 merely establishes a right of action in favor of consumer organizations that have a legitimate interest in protecting consumers, without imposing the granting of such assistance to facilitate the exercise of that right.

<sup>17</sup> In this regard, paragraph 57 of the Judgment states that since there is no Union legislation on the granting of free legal assistance to consumer associations when they litigate in the interest of consumers in the context of Article 52(2) of Directive 2004/39, it is for the national legal system of each Member State to establish such rules, under the principle of procedural autonomy, provided that these rules are not less favorable than those governing similar situations under domestic law (principle of equivalence) and do not make the exercise of the rights conferred by Union law impossible or excessively difficult in practice (principle of effectiveness) (see, in this regard, the judgment of 20 September 2018, EOS KSI Slovensko, C 448/17, EU:C:2018:745, paragraph 36 and the case-law cited).

<sup>18</sup> In this regard, paragraphs 58, 59, and 60 of the judgment state: (58) in the present case, the referring court indicates that, when the actions taken by those associations are directly related to products or services of common, ordinary, and widespread use or consumption, including banking and financial services in general, those associations are entitled to legal aid. Therefore, they are not required to pay the judicial deposits necessary to file appeals, nor are they required to bear the costs incurred by the opposing party if they lose the case. The individual members whom these associations represent are also not obliged to bear these costs; (59) in this regard, it is for the referring court to assess whether financial instruments such as those in the main dispute constitute 'products or services of common, ordinary, and widespread use or consumption' which would grant these associations the right to legal aid; (60) however, according to the referring court, in disputes where 'the consumer status is diluted, considering the characteristics of the dispute and the amount in dispute,' a procedural fraud or abuse of process might arise from the defense by a consumer association of the individual interests of high-net-

5. In Conclusion, we can state the following:

1º. The complex nature of the underlying case in the Judgment of the Court of Justice of the European Union (CJEU) of January 16, 2025 (Case C-346/23, Banco Santander vs. AUGÉ) requires the Fourth Chamber of the CJEU to take into account a “dual-entry” legal framework, where the regulation of investor protection in financial markets intersects with the general consumer protection regulations.

2º. Therefore, it is necessary to begin by clarifying the concepts of three entities that operate in financial markets: the investor, the client, and the consumer.

The individual or legal entity that acquires securities - and, potentially, sells them- can be characterized in various ways: as an “investor” focusing on “what” they acquire, that is, negotiable securities or financial instruments; as a “client” of intermediaries in the securities market, based on “how” they acquire these objects; and as a “consumer or user” with the corresponding protective implications.

3º. To consider an investor or client as a “consumer or user” with the protective consequences that arise under both EU law and our own legal system, it is necessary to verify that they are a natural person who, when acquiring or disposing of securities or financial instruments, “acts for a purpose unrelated to their commercial, business, trade, or profession”; or a legal person or entity without legal personality that “acts without a profit motive in an area unrelated to a commercial or business activity”.

4º. From the intersection of the three definitions we have outlined, we can deduce that retail investors or clients can be considered as consumers or users; but not institutional investors, professional clients, or eligible counterparties.

5º. The exclusion of institutional investors, professional clients, or eligible counterparties from the concept of consumers or users leads to their deprivation of protection that is generally unjustified and inefficient in terms of the functioning of financial markets.

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worth consumers who make investments in speculative financial products of high economic value, which cannot be considered as products or services of common, ordinary, and widespread use.

6º. The above does not mean that issuers of securities should not provide this type of institutional investors with the information required by securities market regulations to address the information asymmetry that exists not only between issuers and retail investors, but also between issuers and institutional investors; rather, it means not providing them with excessive, unjustified, and inefficient protection by treating them as “financial minors”.

7º. In addition to the above, the jurisprudence of the CJEU and the Spanish Supreme Court distinguish between the level of informational protection that a retail investor deserves and that which should be afforded to an institutional investor, who has more opportunities to access information and greater duties of diligence in processing the available information to avoid making errors that could vitiate their consent when deciding to invest or disinvest in negotiable securities or financial instruments.

8º. The two declarations in the judgment of the CJEU's Fourth Chamber of January 16, 2025, share two common denominators: first, the interpretation of the same provision, namely Article 52(2) of Directive 2004/39/EC of the European Parliament and Council of April 21, 2004, on markets in financial instruments; and second, the same factual scenario, which is the claim by a consumer organization defending the individual interests of two of its members who had made investments in high-value financial products.

9º. In its first declaration, the Fourth Chamber of the CJEU, in its judgment of January 16, 2025, declares that when the legislation of a Member State of the EU grants consumer organizations active standing to bring legal actions in order to defend the individual interests of a plurality of their members, national courts cannot impose restrictions on such standing based on subjective reasons, such as the economic capacity of those members; or on objective reasons, such as the economic value, type, or complexity of the financial products in which those members have invested.

10º. In its second declaration, the Fourth Chamber of the CJEU, in its judgment

of January 16, 2025, declares that, in the previous hypothesis, the judges or courts of a Member State of the EU may take into account, when deciding whether these organizations are entitled to legal aid, subjective reasons, such as the economic capacity of those members; or objective reasons, such as the economic value, type, or complexity of the financial products in which those members have invested.

## REGULATORY SANDBOXES FOR SUSTAINABLE FINANCE\*

Sofia Ranchordás\*\* - Roberta Meoli\*\*\*

**ABSTRACT:** *The article delves into the potential of regulatory sandboxes to enhance the effectiveness of sustainable finance policies, that is, financial policies designed to fund sustainable projects and activities including the green transition. While acknowledging the significant regulatory advancements made by the EU, this analysis highlights persistent gaps—such as greenwashing, informational asymmetries and regulatory compliance burdens—that hinder the operationalization of sustainability goals. Drawing on a selected number of examples, we explain how regulatory sandboxes, through supervised experimentation, compliance guidance and close collaboration between regulators and market participants, can support the development of sustainable finance. This article contributes both to legal scholarship and policy literature on the regulation of sustainable finance and on regulatory experimentation. This article argues that regulatory sandboxes have the potential to reconcile the need to promote economic innovation with the promotion of specific public values (including sustainability), facilitate stakeholder dialogue, and generate operational solutions, particularly within the rapidly evolving domain of green fintech.*

**SUMMARY:** 1. Introduction – 2. Regulating Sustainable Finance – 3. Regulatory Sandboxes – 4. Regulatory Sandboxes for Sustainable Finance – 5. Conclusion.

1. The pursuit of sustainable development in regulated sectors has become a growing priority for regulators and policymakers.<sup>1</sup> While finance itself cannot mitigate

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<sup>1</sup>The OCED highlighted that this shift reflects a broader institutional commitment to aligning financial systems with long-term environmental and social objectives. See: [https://www.oecd.org/en/publications/global-outlook-on-financing-for-sustainable-development-2025\\_753d5368-en.html?wcmode=di](https://www.oecd.org/en/publications/global-outlook-on-financing-for-sustainable-development-2025_753d5368-en.html?wcmode=di)



directly to climate change, it is instrumental to support and advance broader sustainability policies, including the financing of climate change mitigation actions, biodiversity protection, and social inclusion.<sup>2</sup> However, the transition to a greener economy and society comes with a hefty price tag—one that public finance alone is not able to cover.<sup>3</sup> Combating climate change requires a large mobilization of capital markets at a global level, at a time when many European governments are already struggling to balance several other priorities. Despite the growing number of sustainable policies and adopted climate change policies, it soon became clear that more capital was needed than what public finance could ever offer.<sup>4</sup> Consequently, there has been a turn to private finance to support the green transition and sustainable development.<sup>5</sup> A variety of financial strategies, ranging from debt instruments and risk mitigation derivatives to asset securitization, have been considered, for example, to finance the transition to clean energy infrastructure.<sup>6</sup> Before exploring these mechanisms in detail, it is worth clarifying some key definitions

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sabled.html; For a more in-depth analysis, see also: S. LA MONACA – K. SPECTOR – J. KOBUS, *Financing the green transition* in *Journal of International Affairs*, V. 73 n. 1, 2019, pp. 17-32; M. BABIC, *Green finance in the global energy transition: Actors, instruments, and politics*, in *Energy Research & Social Science*, v. 111, n. 103482, 2024; A. MAINO, *Financing the energy transition: The role, opportunities and challenges of green bonds*, in *Oxford Institute for Energy Studies*, 2022.

<sup>2</sup>A. J. VAN NIEKERK, *Economic inclusion: green finance and the SDGs in Sustainability*, v. 16, n.3, p. 1128, 2024, p. 2.

<sup>3</sup>See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A sustainable finance framework that works on the ground, COM(2023) 317 final, p. 1. The document highlights that, in order to meet the objectives, set by the various EU sustainable finance initiatives, approximately EUR 700 billion in additional investments will be needed each year—most of which is expected to come from private sources. These ambitious targets underscore the need for regulation to play an active role in mobilizing and guiding financial flows towards sustainable goals.

<sup>4</sup>L. AMMANNATI – A. CANEPA, *Intervento pubblico e finanza sostenibile*, in *Rivista trimestrale di diritto dell'economia*, supp. 4, 2022, p. 163.

<sup>5</sup>The European Commission confirmed this in its sustainable finance strategy: “As the scale of investment required is well beyond the capacity of the public sector, the main objective of the sustainable finance framework is to channel private financial flows into relevant economic activities”. COM(2021)390 final (n 48) 2, See also: V. COLAERT, *The changing nature of financial regulation: sustainable finance as a new EU policy objective*, in *Common Market Law Review*, n. 02, 2022, pp. 22 ff.

<sup>6</sup>S. LA MONACA, *Financing the green transition; addressing barriers to capital deployment*, in *Journal of International Affairs*, vol. 73, no. 1, 2019, pp. 17–32; Cf. F. MOLITERNI – S. PAREGLIO (Eds.), *Sustainable Investing and Green Finance: Boosting Markets by Solving Ambiguities*, in *Fondazione Eni Enrico Mattei (FEEM)*, 2018.

that underpin the overall framework.

The notion of sustainable finance, in particular, is elusive, with multiple definitions emerging across academic and policy literature.<sup>7</sup> The European Commission defines it as “the process of taking environmental, social, and governance (ESG) considerations into account when making investment decisions in the financial sector, leading to more long-term investments in sustainable economic activities and projects.”<sup>8</sup> That is, sustainable finance refers to the allocation of capital towards activities that generate long-term economic value while also delivering positive social impact, promoting sound governance, and avoiding harm to the environmental system.<sup>9</sup> Sustainable finance aims thus to redefine the world of finance through ESG’s, ensuring that investments are not only guided by profit but also by sustainability.

Specific examples of financial instruments are green bonds, that is, any type of bonds committed to financing climate projects, for example, in renewable energy, pollution prevention or clean transportation; blue bonds, that is, bonds issued by governments or development banks destined to finance marine and ocean-based projects; and social bonds which are bonds committed to financing social projects.<sup>10</sup>

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<sup>7</sup>Cf. F. CAPRIGLIONE, *Clima, energia, finanza: una difficile convergenza*, Utet giuridica, 2023, p. 14; F. CAPRIGLIONE, *Il sistema finanziario verso una transizione sostenibile*, in *Rivista trimestrale di diritto dell’Economia*, n.2, 2021, p. 243; H. AHLSTRÖM, D. MONCIARDINI, *The Regulatory Dynamics of Sustainable Finance: Paradoxical Success and Limitations of EU Reforms*, in *J Bus Ethics*, n. 177, 2022; L. AMMANNATI, *Transizione energetica, “just transition” e finanza*, in *Rivista trimestrale di diritto dell’economia*, suppl. 1, 2022; V. COLAERT, *The Changing Nature of Financial Regulation: Sustainable Finance as a New EU Policy Objective*, in *Common Market Law Review*, v.6, n. 59, 2022; M. GARGANTINI, M. SIRI (Eds.), *The Cambridge Handbook of EU Sustainable Finance: Regulation, Supervision and Governance*, Cambridge, 2024; M. PELLEGRINI, *Il ruolo dello stato nella transizione della finanza verso la sostenibilità*, in M. PASSALACQUA (Ed.), *Diritti e mercati nella transizione ecologica e digitale*, Cedam, 2022; M. SEPE, *Sviluppo, sostenibilità e sana e prudente gestione in ambito finanziario*, in M. PASSALACQUA (Ed.) *Diritti e mercati nella transizione ecologica e digitale*, Cedam, 2022; Quaderno Consob, *La finanza per lo sviluppo sostenibile*, n. 1, giugno 2022.

<sup>8</sup>European Commission, *Overview of Sustainable Finance*, available at: [https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en). See also S. PELLERITI, *Il ruolo del FinTech nella transizione ecologica*, in L. AMMANNATI – A. CANEPA (Eds.), *La finanza nell’età degli algoritmi*, Giappichelli, Torino, 2023, pp. 146–148.

<sup>9</sup>Consob, *Sustainable Finance description* available at: <https://www.consob.it/web/area-pubblica/finanza-sostenibile>

<sup>10</sup>European Parliamentary Research Service, *Green and Sustainable Finance*, PE 679.081, 2021.

However, sustainable finance nowadays extends well beyond these traditional instruments, including also Green Fintech which harnesses digital technology to promote environmental sustainability.<sup>11</sup>

A related but narrower term is “green finance”, which refers specifically to “financial investments flowing into sustainable development projects and initiatives, environmental products, and policies that encourage the development of a more sustainable economy. It includes climate finance but it is not limited to it.”<sup>12</sup> Accordingly, while green finance is a way to mobilize private capital flows to promote environmental goals, the term sustainable finance is broader encompassing the mobilization of funds for other ESGs. Complementing this, “Greening finance” corresponds to the diffusion of new tools, procedures, and regulations that aim to encourage the financial system to consider climate and environmental goals in financial risk management and investment decision-making.<sup>13</sup>

Turning to the facts, in 2025, Moody’s estimated the global sustainable bond issuance to total \$1 trillion, in line with 2024.<sup>14</sup> However, this number is far below what would be needed to adequately address climate change challenges.<sup>15</sup> This discrepancy is partly explained by a combination of policy and regulatory factors. To stimulate private investment in sustainable finance, the European Union has developed several regulatory frameworks, marking a shift from broad political

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<sup>11</sup>This is the case of Green FinTech which is also discussed in this article. T PUSCHMANN – V. KHMARSKYI, *Green fintech: Developing a Research Agenda*, in *Corporate Social Responsibility and Environmental Management*, 31 (4), 2024, p. 2823-2837.

<sup>12</sup>H. WRIGHT, et al., *Banking on reform: aligning development banks with the paris climate agreement*, E3G, 2018, pp. 109–17.

<sup>13</sup>European Parliamentary Research Service, *Green and Sustainable Finance*, PE 679.081, 2021, p. 3.

<sup>14</sup>Moody’s, *What’s in store for sustainable finance and ESG in 2025*, available at: <https://www.moody.com/web/en/us/insights/credit-risk/outlooks/esg-sustainable-finance-2025.html>

<sup>15</sup>As already recognized by the 2018 Sustainable Finance Action Plan, ensuring transparency and legal certainty for investors willing to support the ecological transition proves far more complex than it may appear at first glance. For this reason, the Action Plan laid the foundations for a set of targeted regulatory initiatives aimed at reorienting capital flows and overcoming these investment gaps. See: D. BUSCH - G. FERRARINI - A. VAN DE HURK, *The European Commission’s Sustainable Finance Action Plan*, 2018; A. BROZZETTI, *Profili evolutivi della finanza sostenibile: la sfida europea dell’emergenza climatica e ambientale*, in PASSALACQUA (Ed.), *Diritti e mercati nella transizione ecologica e digitale*, Cedam, 2022, p. 197. And for an insight about the required numbers see: <https://www.climatepolicyinitiative.org/publication/top-down-climate-finance-needs/>

commitments to a more structured and binding approach. This combines protective measures, which aim to improve transparency and investor awareness, with promotional ones, which actively encourage the reallocation of capital towards ESG-aligned activities.<sup>16</sup> An important milestone in this transition was the 2015 Paris Agreement, which provided a global framework for climate action and committed Member States to limiting global warming and enhancing climate resilience through coordinated public and private efforts.<sup>17</sup> This was reinforced by the adoption of the United Nations 2030 Agenda for Sustainable Development, which outlined a comprehensive set of goals for inclusive and sustainable growth, establishing a global benchmark for policy alignment.<sup>18</sup> In 2018, the European Commission launched the Sustainable Finance Action Plan (SFAP), a foundational document aimed at reorienting capital flows towards sustainable investments. This policy document aimed at integrating sustainability into risk management, and foster transparency and long-termism in economic decision-making.<sup>19</sup> The Action Plan was key in the integration of ESG considerations in the regulatory framework of European financial markets. This strategic vision was subsequently embedded within the broader policy context of the European Green Deal, unveiled in December 2019, which set the EU's overarching objective of achieving climate neutrality by 2050.<sup>20</sup> The Green Deal not

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<sup>16</sup> V. TROIANO, *Regolamentazione finanziaria, finanza sostenibile e obiettivi ESG*, in *Rivista trimestrale di diritto dell'economia*, n. 4, 2023, p. 592.

<sup>17</sup> The Paris Agreement, aimed at countering climate change by acknowledging its link to human activity. Article 2 frames the global response within sustainable development and poverty eradication. See IPCC, Fifth Assessment Report – Summary for Policymakers (2013).

<sup>18</sup> The 2030 Agenda for Sustainable Development, adopted by the UN General Assembly on 25 September 2015, is a global action plan structured around 17 Sustainable Development Goals (SDGs) and 169 specific targets. It promotes an integrated model of economic, social, and environmental sustainability, emphasizing a holistic and cross-sectoral approach involving governments, the private sector, and civil society. Unlike the Millennium Development Goals, it applies universally to all countries and introduces monitoring indicators and reporting mechanisms to track progress.

<sup>19</sup> European Commission, COM(2018)97, of the 8 march 2018; See also: M. COSSU, *Delle scelte di investimento dei Post-Millennials, e del difficile rapporto tra analfabetismo finanziario e finanza sostenibile*, in *Rivista delle Società*, 2021, pp. 1270–1271; and, previously, for an in-depth analysis of the same Plan, see also: M. SIRI – S. ZHU, *L'integrazione della sostenibilità nel Sistema europeo di protezione degli investitori*, in *Banca, Impresa, Società*, 2020, pp. 6 ff.; On long termism policy see M.S. RICHTER, *Long-termism*, in *Rivista della Società*, vol.1, no.1, 2021, pp. 16 ff.

<sup>20</sup> M. PASSALACQUA, *Green deal e transizione digitale. Regolazione di adattamento a un'economia sostenibile*, in *Analisi Giuridica dell'Economia*, n.1, 2022; A. SIKORA, *European Green Deal: legal*

only provided a normative and political framework for the ecological transition, but also mobilized substantial financial resources, over €1 trillion for the 2020–2030 period.<sup>21</sup>

Building on these foundations, the EU introduced a series of legislative initiatives to implement its objectives. The most important one was the Taxonomy Regulation (Regulation EU 2020/852), which establishes a unified classification system for environmentally sustainable economic activities—offering a common language for investors, issuers, and regulators alike.<sup>22</sup> Closely linked is the Sustainable Finance Disclosure Regulation (SFDR) (Regulation EU 2019/2088) which imposes mandatory disclosure requirements on financial market participants regarding the integration of sustainability risks and the adverse impacts of their investment decisions.<sup>23</sup> To support this regulatory framework, existing regulations were amended (e.g., MiFID II and the Insurance Distribution Directive (IDD)<sup>24</sup> and new directives were adopted regarding corporate reporting (e.g., Corporate Sustainability Reporting Directive (CSRD)<sup>25</sup>. These developments in the regulation of sustainable finance were accompanied by other financial policies, namely the COVID-19 recovery packages (for example, the NextGenerationEU recovery package)<sup>26</sup> and in July 2021, this evolving

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*and financial challenges of the climate change*, in *Era forum*, v. 21., n. 4, Springer Berlin Heidelberg, 2021.

<sup>21</sup>A. BROZZETTI, *Il Green deal europeo: rinnovate prospettive per intermediari finanziari ed imprese*, in *Studi in onore di Sabino Fortunato*, vol. IV, Bari, 2023, pp. 2957 ff.

<sup>22</sup>Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088. On the Taxonomy Regulation see C. GORTSOS, *The Taxonomy Regulation: More Important Than Just as an Element of the Capital Markets Union*, in *European Banking Institute, Working Paper Series*, No. 80, 2020.

<sup>23</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.

<sup>24</sup> In parallel, sustainability preferences have been formally incorporated into investment and insurance advice through amendments to sectoral legislation. Specifically, changes to the Markets in Financial Instruments Directive II (MiFID II) and to the Insurance Distribution Directive (IDD), implemented in 2021 and 2022 respectively, require financial advisers and product manufacturers to take into account clients' sustainability preferences in the provision of services and product governance.

<sup>25</sup> Directive EU 2022/2464: which extends the scope and depth of sustainability disclosure obligations, introducing harmonized European Sustainability Reporting Standards (ESRS) applicable to a broad range of entities, including listed companies and large undertakings.

<sup>26</sup> This unprecedented financial instrument allocates over €700 billion in grants and loans to Member States, conditional on the adoption of National Recovery and Resilience Plans (NRRPs) that dedicate



regulatory architecture was further consolidated with the adoption of the Sustainable Finance Strategy, which expanded the EU's approach to four key areas: transition finance, inclusiveness, resilience, and the global alignment of financial flows with sustainability goals.

This evolving framework reflects an ambitious and far-reaching attempt to redefine the role of finance in sustainability. Nevertheless, its operationalization continues to encounter a number of unresolved challenges. First, the rising popularity of sustainable financial products has been accompanied by an increased risk of 'greenwashing', that is, exaggerated, partly unsupported or false claims on the integration of environmentally responsible practices into investment strategies.<sup>27</sup> Greenwashing is often explained by a second shortcoming of the regulation of sustainable finance: the existence of significant information asymmetries between financial intermediaries and investors, particularly regarding the true environmental and social value of sustainable-labelled products.<sup>28</sup> These asymmetries are further exacerbated by the lack of shared and reliable data, the divergent interpretations of

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at least 37% of total expenditure to climate-related objectives. The RRF has effectively elevated sustainability to a criterion for accessing EU funding, further reinforcing the alignment between financial support and environmental goals.

<sup>27</sup>Recital 11 of the Taxonomy Regulation describes greenwashing as the practice of “gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards are not met.” Similarly, Recital 16 of Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 defines greenwashing as “the practice of gaining an unfair competitive advantage by recommending a financial product as environmentally friendly or sustainable, while in fact it does not meet basic environmental or other sustainability standards.” On the impact of the Sustainable Finance Disclosure Regulation on greenwashing, see R. ABOUARAB – T. MISHA – S. WOLFE, *Does the EU sustainable finance disclosure regulation mitigate greenwashing?* In *The European Journal of Finance*, 2025, p. 1–33.

<sup>28</sup>In its recent Final Report on greenwashing, ESMA underscored the close link between this phenomenon and the communication of inaccurate or misleading information to investors. The report suggests that combating greenwashing requires not only the enforcement of sustainability-specific obligations, but also the broader application of rules aimed at preventing the spread of deceptive or unclear disclosures. See EUROPEAN SECURITIES AND MARKETS AUTHORITY, *Final Report on Greenwashing. Response to the European Commission's request for input on “greenwashing risks and the supervision of sustainable finance policies”*, ESMA 36-287652198-2699, 2024, pp. 2–3; The issue has been expressly identified as a priority within the scope of supervisory and oversight action. See EIOPA, *Final Report on Greenwashing. Response to the European Commission's request for input on “greenwashing risks and the supervision of sustainable finance policies”*, EIOPA-BoS-24-159, 2024; A. DAVOLA, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio*, in *Riv. dir. banc.*, III, 1, 2022.

what constitutes a genuinely sustainable activity, and the widespread marketing of financial products as “sustainable” in the absence of robust and verifiable evidence. Greenwashing in sustainable finance is further intensified by fragmented and inconsistent ESG metrics and the absence of harmonized and universally accepted methodologies.<sup>29</sup> Eco-washing, as it is also known, is not merely a reputational issue for individual actors; it constitutes a structural challenge, undermining the credibility of the entire regulatory framework and obstructing the alignment of financial markets with the transition imperatives of the real economy.<sup>30</sup> Second, the implementation of the EU Taxonomy has proven to be problematic because it fails to capture the diversity and complexity of economic realities and provide clear guidance to financial actors.<sup>31</sup> Its rigid, binary classification fails to account for transitional activities or sector-specific challenges, resulting in distortions and uncertainty for financial actors. Third, although sustainable finance regulation has evolved from initial “nudging” strategies to more mandatory obligations, including extended disclosure and reporting duties, existing rules remain weak in terms of regulatory enforcement.<sup>32</sup> For example, in many cases, there are no tangible consequences for failing to invest in ESG goals. Additionally, the transition is still too often conceptualized through an individual or firm-level lens, which overlooks the need for a broader and collaborative perspective in which sustainability is recognized as a collective responsibility shared across public and private actors.<sup>33</sup>

These challenges highlight the need for a normative shift that goes beyond

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<sup>29</sup>M. BODELLINI, *Greenwashing and the misapplication of Article 8 and 9 of the Sustainable Finance Disclosure Regulation*, available at <https://ssrn.com/abstract=4499639>.

<sup>30</sup>M. BODELLINI, *Servizi di investimento, prodotti finanziari e rischio di greenwashing*, in F. RIGANTI (Ed.), *Sostenibilità e mercati vigilati: regolatori e operatori nella “galassia” ESG*, Giappichelli, Torino, 2024, pp. 407 ff.

<sup>31</sup>F. CAPRIGLIONE, *Clima, energia, finanza: una difficile convergenza*, Utet, 2023, p. 76; D. ZETSCHÉ – M. BODELLINI – R. CONSIGLIO, *The EU Sustainable Finance Framework in Light of International Standards*, in *Journal of International Economic Law*, 2022, p. 11.

<sup>32</sup>D. A. ZETSCHÉ – M. BODELLINI, *Sustainability Sandbox: Designing a Safe Regulatory Environment for ESG Innovation*, in *European Banking Institute Working Paper Series*, n. 124, 2023, pp. 109 ff.

<sup>33</sup>R. MEOLI, *Finanziamenti pubblico-privati: una leva per lo sviluppo sostenibile*, in *Luiss Law Review*, n. 1, 2024, pp. 123 ff.

technical or financial considerations, embracing ethical and methodological dimensions rooted in principles of responsibility, accountability, and intergenerational solidarity.<sup>34</sup> This shift should also promote more transparency, evidence-based policymaking and foster stronger collaboration among regulators, financial intermediaries, investors, and sustainability stakeholders. It also suggests the need for non-traditional, adaptive, collaborative, and experimental regulatory instruments that are well suited for a field characterized by innovation, uncertainty, and rapid transformation. It is in this context that regulatory sandboxes emerge as a promising institutional response in the field of sustainable finance.<sup>35</sup>

Recently, there has been a growing interest in novel regulatory instruments that are adaptable, innovation-friendly, and collaborative.<sup>36</sup> Regulatory sandboxes are a key example of this.<sup>37</sup> They have been used for different purposes over the last

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<sup>34</sup>An ethical rethinking of finance has been proposed, calling for a shift from a self-referential and profit-centric model to one grounded in solidarity and sustainability. In this view, the governance of financial markets should be reframed through ESG principles to foster a more responsible allocation of resources, aligned with the overarching equilibrium of the economic system and the legitimacy of pursued goals. See F. CAPRIGLIONE, *Concorrenza e stabilità nel paradigma digitale*, in *Rivista Trimestrale di Diritto dell'Economia*, n.3, 2023, pp. 13 ff. This line of reasoning, grounded in the moral dimension of financial activity has long been central to the work of F. CAPRIGLIONE, who already in the late 1990s stressed the need for a finance rooted in ethical principles and responsive to the challenges of globalization and systemic transformation. The author has further developed these considerations in recent years, particularly in light of the sustainability agenda and post-pandemic recovery. See F. CAPRIGLIONE, *Etica della finanza e finanza etica*, Bari, 1997; ID., *Etica della finanza mercato globalizzazione*, Bari, 2004; ID., *Il dopo CoViD-19: esigenza di uno sviluppo sostenibile*, in *Nuova giur. civ. commentata*, n. 5/2020, Speciale; ID., *Clima Energia Finanza. Una difficile convergenza*, UTET Giuridica, 2023; Recently, the author has defined sustainability as an essential good, marked by a strong ethical dimension and increasingly recognized as such by society. This perspective highlights its enduring value as a normative reference capable of reconciling profit maximization with the collective social interest, within a long-term vision in F. CAPRIGLIONE, *Sostenibilità mercato ambiente. Una riflessione introduttiva*, in A. ANTONUCCI – S. CAVALIERE – A. DAVOLA – G. LUCHENA, *Sostenibilità, finanza, mercati, ambiente. Spunti di riflessione*, Cacucci Editore, 2025, p. 27.

<sup>35</sup>L. BROMBERG – A. GODWIN – I. RAMSAY, *Fintech sandboxes: Achieving a balance between regulation and innovation*, in *Journal of Banking and Finance Law and Practice*, vol. 28, n.4, 2017, pp. 314-336.

<sup>36</sup>S. MONDONÇA *Creative Regulatory Environments: Sandboxes at the Intersection of Regulation and Innovation in an Era of Transition*, in T. DEVEZAS – J. LEITÃO – A. SARYGULOV – D. J. LEPOIRE – B. KHUSAINOV, *Global Energy Transition and Sustainable Development Challenges*, v. 1., World-Systems Evolution and Global Futures. Springer, Cham, 2024.

<sup>37</sup> See, for example, R. N. MARKELLOS, et al., *Worldwide Adoption of Regulatory Sandboxes: Drivers, Constraints and Policies: Drivers, Constraints and Policies*, 2024; A. MIGLIONICO, *Regulating Innovation through Digital Platforms: The Sandbox Tool*, in *European Company and*



decade. While there is no agreed definition, regulatory sandboxes generally refer to “regulatory tools allowing businesses to test and experiment with new and innovative products, services or businesses under supervision of a regulator for a limited period of time.”<sup>38</sup> Indeed, regulatory sandboxes may serve different roles: first, they can be employed to foster business learning, that is, the development and testing of innovations in a real-world environment; second, they can be deployed to support regulatory learning, i.e. experimental regulation and policy can be used to guide and support businesses in their innovation activities under the supervision of a regulatory authority; third, they can enable closer cooperation between different stakeholders and regulators, allowing them to address regulatory challenges such as information asymmetries.<sup>39</sup> Regulatory sandboxes first emerged in 2015 in the financial sector, where they quickly gained traction as controlled environments for safe testing in Fintech innovations in a safe and supervised way.<sup>40</sup> Nowadays, more than 60 jurisdictions have used this instrument to promote innovation in the financial sector (among others), often alongside innovation hubs and accelerator programs.<sup>41</sup>

Thus far, regulatory sandboxes do not seem to have been employed widely in sustainable finance. This is, nonetheless, puzzling as regulatory sandboxes have

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*Financial Law Review*, v. 19, n. 5, 2023, p. 828-853; T. MORAES, *Regulatory Sandboxes as Tools for Ethical and Responsible Innovation of Artificial Intelligence and their Synergies with Responsive Regulation*, in *The Quest for AI Sovereignty, Transparency and Accountability-Official Outcome of the UN IGF Data and Artificial Intelligence Governance Coalition*, 2023; H. J. ALLEN, *Sandbox boundaries*, in *Vand. J. Ent. & Tech. L.* 22, 2019, p. 299.

<sup>38</sup>S. RANCHORDÁS, *Experimental lawmaking in the EU: Regulatory sandboxes*, in *EU Law Live*, n. 12, 2021.

<sup>39</sup>T. MADIEGA – A. L. VAN DE POL - *Artificial intelligence act and regulatory sandboxes*, in *European Parliamentary Research Service*, PE 733.544, 2022, see: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733544/EPRS\\_BRI\(2022\)733544\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733544/EPRS_BRI(2022)733544_EN.pdf)

<sup>40</sup>B. LIM - C. LOW, *Regulatory Sandboxes in Fintech*, in J. MADIR (Ed.) *FinTech. Law and Regulation*, Cheltenham, UK: Edward, 2019; A. ALAASSAR - A.L. MENTION, T. HELGE AAS, *Exploring a new incubation model for FinTechs: Regulatory sandboxes*, *Technovation*, 103, 2021; D. AHERN, *Regulators Nurturing Fintech Innovation: Global Evolution of the Regulatory Sandbox as Opportunity-Based Regulation*, *Indian Journal of Law and Technology*, v. 15, Iss. 2, Article 4, 2019; D. A. ZETZSCHE, et al., *Regulating a Revolution: From Regulatory Sandboxes to Smart Regulation*, in *FORDHAM J. CORP. & FIN. L.* 31, 2017.

<sup>41</sup>J. IVO – S. DUFF, *How to Build a Regulatory Sandbox: A Practical Guide for Policy Makers, Technical Guide*. Washington, D.C.: CGAP, 2020. See also G. CORNELLI – S. DOERR – L. GAMBACORTA – O. MERROUCHE, *Regulatory Sandboxes and Fintech Funding: Evidence from the UK*, in *Review of Finance*, v. 28, Issue 1, 2024, pp. 203–233.

become widely disseminated, for example, in the context of the energy transition.<sup>42</sup> Drawing on literature, policy reports, and best practices from various sustainability-related domains—as well as a limited number of identified examples in the sector of sustainable finance, this article posits that regulatory sandboxes offer significant strategic value to both regulators and other stakeholders in the field of sustainable finance. Regulatory sandboxes — when properly designed and effectively implemented — may be particularly well-suited to support the governance of sustainable finance. Furthermore, by fostering structured experimentation within a supervised environment, regulatory sandboxes hold the potential to support initiatives that embed sustainability objectives at the core of financial practices, contribute to the consolidation of long-term approaches in sustainable finance, and help combat greenwashing through closer cooperation between different stakeholders.<sup>43</sup> Given the experimental nature of many ESG-driven financial practices, and the urgency of aligning private investment with sustainability goals, sandboxes can also play a strategic role in enabling regulators to respond more flexibly to emerging risks, identify gaps in the current framework, and test new approaches in a context of controlled exposure. Indeed, they can serve as effective instruments to direct private capital flows towards sustainable goal, by creating a safe regulatory space where innovative solutions can be tested and refined before reaching full market deployment. This is particularly important in a field where finance is increasingly viewed as a tool to advance collective goals such as climate action, ecological resilience, and social equity.

In this article, regulatory sandboxes are presented as regulatory structured environments in which new financial products, services, or business models can be

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<sup>42</sup>F. GANGALE – A. MENGOLINI – L. COVRIG – S. CHONDROGIANNIS – R. SHORTALL, *Making energy regulation fit for purpose. State of play of regulatory experimentation in the EU*, in *Publications Office of the European Union*, Luxembourg, 2023.

<sup>43</sup>J. TRUBY. et. al., *A sandbox approach to regulating high-risk artificial intelligence applications*, in *European Journal of Risk Regulation*, Vol. 13(2), 2021; On the contrast between short-term and long-term value creation, see: M.E. PORTER – M.R. KRAMER, *Creating Shared Value*, in *Harvard Business Review*, 2011, pp. 62 ff.

tested under close supervisory oversight, prior to their full-scale authorization.<sup>44</sup> Yet, their significance in the sustainable finance context extends beyond technical experimentation. Their aim in this field should not only be to enable experimentation but also to generate feedback for regulators, improve compliance tools, and foster mutual learning between public institutions and market participants.<sup>45</sup> Sandboxes offer a collaborative platform through which regulators and market actors can co-develop and calibrate regulatory instruments, enabling a preventive and anticipatory governance capable of identifying risks, closing normative gaps, and improving rule design.<sup>46</sup> Crucially, the sandbox model allows regulators to reconcile the need for innovation with other public values such as sustainability, consumer protection, and legal values including legal certainty. This contribution is particularly relevant at a time when the Italian Ministry of Economy and Finance, through the proposed reform of the 2025 regulatory sandbox, aims to simplify the experimental framework and remove procedural burdens, particularly to better integrate FinTech innovations — including those aligned with sustainability goals — into the national and European regulatory architecture.<sup>47</sup> This article contributes to the growing body of literature on regulatory sandboxes, FinTech regulation, and sustainable finance by proposing a novel experimental approach to regulating sustainable financial instruments.<sup>48</sup>

The article is structured as follows: Section II outlines the conceptual foundations and regulatory developments of sustainable finance within the European

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<sup>44</sup>S. RANCHORDÁS, *Experimental regulations and regulatory sandboxes: Law without order?*, in *Law and method*, Faculty of Law University of Groningen Faculty of Law Research Paper Series, n. 10, 2021.

<sup>45</sup>L. A. FAHY, *Fostering regulator–innovator collaboration at the frontline: A case study of the UK's regulatory sandbox for fintech*, in *Law & Policy*, v. 44, n. 2, 2022, p. 162-184.

<sup>46</sup>L. AMMANNATI, *Regolatori e supervisori nell'era digitale: ripensare la regolazione*, in *Giurisprudenza Costituzionale*, fasc. 3, 2023, p.5.

<sup>47</sup>See the public consultation launched by the Italian Ministry of Economy and Finance on the reform of the regulatory sandbox regime: *Consultation on the FinTech regulatory sandbox reform*, available at: [https://www.dt.mef.gov.it/it/dipartimento/consultazioni\\_pubbliche/consultazioni\\_in\\_corso/consultazione\\_fintech/index.html](https://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazioni_in_corso/consultazione_fintech/index.html) We thank Paolo Longo for further information on this.

<sup>48</sup>On regulatory sandboxes, see, for example, F. BAGNI, *The Regulatory Sandbox and the Cybersecurity Challenge: from the Artificial Intelligence Act to the Cyber Resilience Act*, in *Rivista Italiana di Informatica e Diritto*, n. 2, 2023.

Union. Section III explores the evolution of regulatory sandboxes in financial regulation, illustrating their main features and objectives. Section IV focuses on the intersection of sandbox regimes and sustainable finance, discussing examples from various jurisdictions and assessing critically their potential. The final concludes with policy recommendations for the integration of regulatory sandboxes to support the sustainable transformation of financial systems.

2. The gradual integration of sustainability into financial regulation has profoundly influenced the evolution of the European legal and economic landscape.<sup>49</sup> In the case of sustainable finance, regulatory frameworks aim to encourage investments that promote sustainability. By shaping incentives and defining clear standards, the regulatory framework of sustainable finance seeks to reorient capital flows towards activities aligned with long-term sustainability objectives. However, even if these efforts mark an important shift towards a greener and more socially responsible financial architecture, the practical implementation of this ambition remains fraught with significant complexity, regulatory fragmentation, and persistent uncertainty. In this section, we discussed the main pillars of this framework in order to understand why some regulatory shifts may be required to further promote sustainable finance. As the European Commission has explained: “Major private and public investments are needed to transform the EU economy to deliver on climate, environmental and social sustainability goals, including the Paris Agreement and the UN Sustainable Development Goals (SDGs). Sustainable Finance is an important

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<sup>49</sup>H. AHLSTRÖM, D. MONCIARDINI, *The Regulatory Dynamics of Sustainable Finance: Paradoxical Success and Limitations of EU Reforms*, in *J Bus Ethics*, n. 177, 2022; V. COLAERT, *The Changing Nature of Financial Regulation: Sustainable Finance as a New EU Policy Objective*, in *Common Market Law Review*, 6, 59, 2022; M. GARGANTINI, M. SIRI (Eds.), *The Cambridge Handbook of EU Sustainable Finance: Regulation, Supervision and Governance*, Cambridge, 2024; With particular reference to sustainability in the exercise of banking activities, see R. LENER – P. LUCANTONI, *Sostenibilità ESG e attività bancaria*, in *Banca, Borsa e Titoli di Credito*, n. 1, 2023; R. CALDERAZZI, *La sostenibilità nell'impresa bancaria*, in *Rivista Trimestrale di Diritto dell'Economia*, Supplement n. 4, 2022, pp. 168 ff.

component of the European Green Deal.”<sup>50</sup> Sustainable finance integrates ESG factors into financial decisions, driving investment towards climate-neutral, energy- and resource-efficient, and circular economy projects. The regulation of sustainable finance is composed by a set of EU regulations and directives.<sup>51</sup>

At the core of this framework lies the EU Taxonomy Regulation (Regulation (EU) 2020/852) and its package of delegated acts such as the Climate Delegated Act<sup>52</sup> and the Environmental Delegated Act<sup>53</sup>, which introduces a technical classification system for identifying which economic activities can be considered environmentally sustainable.<sup>54</sup> The Taxonomy sets out a common language for financial and non-financial market participants, enabling greater transparency and comparability in the sustainability disclosure. By setting out clear parameters for what qualifies as a "green" activity (e.g., afforestation), it seeks to guide investment decisions, foster credibility in sustainable financial products, and enhance investors' trust. Under the mentioned regulation, an activity can be deemed sustainable only if it contributes substantially to at least one of the six environmental objectives, complies with the "do no significant harm" principle, and with minimum safeguards related to social and governance standards. Indeed, it facilitates the development of coherent EU policies in the field of sustainability, and it acts as a catalyst for market transformation by

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<sup>50</sup>See: [https://finance.ec.europa.eu/document/download/385df525-a170-4275-bf07-515719385076\\_en?filename=200108-financing-sustainable-growth-factsheet\\_en.pdf](https://finance.ec.europa.eu/document/download/385df525-a170-4275-bf07-515719385076_en?filename=200108-financing-sustainable-growth-factsheet_en.pdf)

<sup>51</sup>C. BRESCIA MORRA, *Chi salverà il pianeta: Lo Stato o le grandi corporation? ESG: una formula ambigua e inutile*, in *Rivista Trimestrale di Diritto dell'Economia*, 2022, pp. 78 ff.;

<sup>52</sup>Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021, supplementing Regulation (EU) 2020/852 by establishing technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or adaptation. Available at: [https://eur-lex.europa.eu/eli/reg\\_del/2021/2139/oj/eng](https://eur-lex.europa.eu/eli/reg_del/2021/2139/oj/eng)

<sup>53</sup>Commission Delegated Regulation (EU) 2023/2486 of 27 June 2023, supplementing Regulation (EU) 2020/852 by establishing technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to the sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems.

<sup>54</sup> On the Taxonomy Regulation, see F. SCHUTZE – J. STEDE, *The EU sustainable finance taxonomy and its contribution to climate neutrality*, in *Journal of Sustainable Finance & Investment*, 2021; C. GORTSOS, *The Taxonomy Regulation: More Important Than Just as an Element of the Capital Markets Union*, European Banking Institute Working Paper Series, No. 80, 2020, D.A. ZETZSCHE – M. BODELLINI – R. CONSIGLIO, *Towards A New European Social Taxonomy: A Counterproposal Based On A Three-Step Approach*, University of Luxembourg, Working Paper, 2022.

promoting environmentally and socially responsible investment practices. It helps direct capital flows towards economic activities aligned with the Sustainable Development Goals (SDGs) and provides a foundation for building a financial system that supports the ecological transition. However, the practical implementation of the taxonomy has revealed several structural limitations and conceptual tensions.

Although the Taxonomy regulation aspires to objectivity through its reliance on science-based criteria, it has sparked controversy over its internal coherence and practical implementation. One point of criticism concerns the narrow scope of sustainability assessments, which often focus on the final output of an activity while neglecting its full life-cycle impact. For instance, an activity may be classified as sustainable based on the nature of its final product, despite using highly polluting or energy-inefficient production processes.<sup>55</sup> These inconsistencies highlight the need for a more holistic and integrated approach, one that captures both the environmental and social dimensions of sustainability with greater precision. Without such refinement, there is a risk that the taxonomy may inadvertently legitimize unsustainable practices, or fail to deliver the regulatory certainty needed to mobilize large-scale private investment in the green transition.

The Sustainable Financial Disclosure Regulation (SFDR) is the second pillar of EU sustainable finance regulation. It was conceived as a response to the growing demand for reliable and standardized information on the sustainability profile of financial products. Its objective is to improve market transparency, reduce the risk of greenwashing, and strengthen investor trust in sustainable investment offerings. It imposes a set of obligations on financial market participants and advisers concerning how they integrate sustainability risks and impacts into their investment processes. Additionally, it distinguishes between products that merely promote environmental, social and governance (ESG) characteristics (Article 8) and those that pursue a

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<sup>55</sup>For example, activities such as electric vehicle manufacturing may qualify as sustainable based on low-emission outputs, while the environmental impact of battery production, energy sources, and end-of-life disposal remains largely unaccounted for.



sustainable investment objective as their core purpose (Article 9).<sup>56</sup> In theory, this differentiation is intended to guide investor choice and reduce the risk of greenwashing. In practice, however, the distinction has proven ambiguous, leaving considerable interpretative discretion to financial actors.<sup>57</sup> Consequently, products labelled as “sustainable” may differ substantially in their actual environmental or social impact, and the lack of standardized reporting formats and data sources further undermines comparability. The SFDR’s effectiveness has thus been weakened not only by its technical shortcomings but also by the fragility of the broader ESG data infrastructure on which the entire sustainable finance framework relies.

A more robust response to the need for sustainability-related disclosure is found in the Corporate Sustainability Reporting Directive (CSRD), which replaces and strengthens the previous non-financial reporting framework.<sup>58</sup> The CSRD extends reporting obligations to a broader range of companies. It also introduces the use of common European Sustainability Reporting Standards (ESRS) and incorporates the principle of double materiality, requiring firms to disclose both the impact of environmental, social, and governance (ESG) factors on their financial performance and the effects of their own activities on society and the environment.<sup>59</sup> This directive

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<sup>56</sup>For an analysis of the SFDR, see D. BUSCH, *Sustainability Disclosure in the EU Financial Sector*, European Banking Institute Working Paper Series, No. 70, 2020; For an in-depth analysis of the greenwashing related risks and the SFDR see M. BODELLINI, *Greenwashing and the Misapplication of Article 8 and 9 of the Sustainable Finance Disclosure Regulation*, 2023, available at SSRN: <https://ssrn.com/abstract=4499639>

<sup>57</sup>M. BODELLINI, *Servizi di investimento, prodotti finanziari e rischio di greenwashing*, in F. RIGANTI (Ed.), *Sostenibilità e mercati vigilati: regolatori e operatori nella “galassia” ESG*, Giappichelli, Torino, 2024. pp. 408 ff.; A. DAVOLA, *The promise and perils of sustainable disclosure for retail investors. Does the SFDR framework tackle, or rather promote, product greenwashing?*, in *Eusfil Working Paper Series*, 3, 2022; T. ECKETT, *SFDR ‘opens door’ to greenwashing*, su [www.etfstream.com](http://www.etfstream.com), 2021.

<sup>58</sup>Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on corporate sustainability reporting. For an insight analysis see: M. RISPOLI FARINA, *La direttiva UE sulla rendicontazione di sostenibilità delle imprese. Un Quadro ricostruttivo*, in A. ANTONUCCI – S. CAVALIERE – A. DAVOLA – G. LUCHENA, *Sostenibilità, finanza, mercati, ambiente. Spunti di riflessione*, Cacucci Editore, 2025, p. R. ROLLI, *Dalla Corporate Social Responsibility alla Sustainability, alla Environmental, Social and Governance (ESG)*, in *Corporate Governance*, 1/2022, p. 179.

<sup>59</sup>C.A. ADAMS et al., *The Double Materiality Concept: Application and Issues*, in *Global Reporting Initiative*, 2021, pp. 6 ff.; H.B. CHRISTENSEN – L. HAIL – C. LEUZ, *Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review*, in *Rev. Acct. Stud.*, 2021, 26,

introduced considerable technical and organizational challenges, especially for firms not yet equipped to assess their broader sustainability footprint. The obligation to provide externally assured sustainability disclosures, while essential for enhancing data reliability and investor confidence, may also lead to new asymmetries between firms with access to sophisticated verification mechanisms and those that lack such resources, potentially exacerbating existing market inequalities.<sup>60</sup> The CSRD aims to elevate ESG information to the same level of importance, consistency, and verifiability as traditional financial data.<sup>61</sup> Additionally, there is a risk of over-reporting, where companies, in an attempt to ensure compliance or improve their ESG ratings, may inundate reports with excessive or non-material information, thereby undermining clarity and usability.

The Green Bond Regulation (Regulation (EU) 2023/2631) unifies the framework for the issuance of European green bonds (EuGBs), setting out clear criteria to ensure that proceeds are allocated exclusively to projects that align with the EU Taxonomy for environmentally sustainable activities.<sup>62</sup> The regulation aims to enhance investor confidence, increase market credibility, and foster the growth of a robust and transparent green bond market capable of supporting the financing needs of the ecological transition.<sup>63</sup> By standardizing the definition and use of green bonds,

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1176, 1178; M. BODELLINI, *Tra principi generali e standards internazionali di soft law: la disciplina europea sulla finanza sostenibile e l'inizio di una nuova stagione per il "Brussels effect"*, in *Rivista Trimestrale di Diritto dell'Economia*, n.3, 2023.

<sup>60</sup>M. RESCIGNO, *Note sulle regole dell'impresa sostenibile. Dall'informazione non finanziaria all'informazione sulla sostenibilità*, in *Analisi giur. Econ.*, 2022, pp. 180 ff.; M. COSSU, *Sostenibilità e mercati: la sostenibilità ambientale dell'impresa dai mercati reali ai mercati finanziari*, in *Banca Borsa, tit. cred.*, 2023, IV, pp. 558 ff..

<sup>61</sup>M. CAPELLI, *Il recepimento della Corporate Sustainability Reporting Directive nell'ordinamento interno*, in F. RIGANTI (Ed.), *Sostenibilità e mercati vigilati: regolatori e operatori nella "galassia" ESG*, Giappichelli, Torino, 2024, pp. 87 ff.

<sup>62</sup>*Green bonds* are fixed-income financial instruments whose proceeds are exclusively used to finance or refinance projects that have positive environmental and/or climate benefits. These typically include investments in renewable energy, energy efficiency, clean transportation, sustainable water management, and green buildings. See S. KIM PARK, *Investor as Regulators: green bonds and the governance challenges of the sustainable finance revolution*, in *Stanford Journal of International Law*, 2018; C. VALENTI, *The EU Green Bond Standard*, in E. MACCHIAVELLO, M. SIRI, *Sustainable finance and financial education: a snapshot*, Torino, 2024.

<sup>63</sup>D. DE FILIPPIS, *Transizione ecologica e mercati finanziari: i green bonds*, in *Nuovo dir. soc.*, 2023, p. 871.



the regulation seeks to address the risk of greenwashing and to differentiate genuinely sustainable financial instruments from those making unfounded or exaggerated claims.<sup>64</sup> However, there are several concerns regarding the voluntary nature of the regulation, which allows issuers to continue marketing green bonds outside the official EuGB label. Additionally, the use of external reviewers—introduced to ensure adherence to sustainability standards—raises issues of reliability and consistency, as their methodologies are not harmonized, and their governance is not subject to supervisory oversight. These weaknesses could be mitigated through the adoption of a unified regulatory framework at the European level.<sup>65</sup> In addition, the strict alignment requirement with the EU Taxonomy for the use of proceeds has raised concerns for being overly rigid, potentially discouraging the adoption of the EuGB label.<sup>66</sup>

Another relevant instrument gaining traction in sustainable finance is the Sustainability-Linked Bond (SLB), which, unlike green bonds, does not earmark proceeds for specific projects, but instead links the bond's financial characteristics—such as coupon rates—to the issuer's achievement of predefined ESG performance targets. This more flexible approach aims to incentivize sustainability across a company's operations rather than in isolated projects. Nevertheless, the SLB model also raises concerns about transparency and accountability, particularly regarding the credibility of the selected Key Performance Indicator and the lack of a binding framework for verifying performance.<sup>67</sup>

Beyond these instruments, the EU has developed a broader regulatory

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<sup>64</sup> M. MAUGERI, *Le obbligazioni “verdi”: problemi e prospettive*, in *Riv. dir. comm.*, n. 3/2024, p. 373 ; S. GILOTTA, *Green Bonds: a legal and economic analysis*, in T. KUNTZ, *Research handbook on Environmental, Social and Corporate Governance*, Elgar, 2024.

<sup>65</sup> D. DE FILIPPIS, *La revisione esterna nella disciplina delle obbligazioni verdi europee*, in F. RIGANTI (Ed.), *Sostenibilità e mercati vigilati: regolatori e operatori nella “galassia” ESG*, Giappichelli, Torino, 2024, pp. 366 ff.

<sup>66</sup> N. MARAGOPOULOS, *Toward a european green bond standard: a european initiative to promote sustainable finance*, in D. RAMOS MUÑOZ, A. SMOLENSKA, *Greening the Bond Market. A European Perspective*, Palgrave Macmillan, 2023.

<sup>67</sup> For an in-depth analysis on the sustainability-linked bonds see: D. FOA', *Sustainability-linked bonds: allineamento degli incentivi tra autonomia privata e vincoli normativi*, in *Rivista Trimestrale di Diritto dell'Economia*, supplement n.3, 2024, pp. 434 ff.

ecosystem that includes the Corporate Sustainability Due Diligence Directive (CS3D),<sup>68</sup> the Deforestation-Free Products Regulation, and a series of delegated acts amending core financial frameworks such as MiFID II, UCITS, AIFMD, IDD, and Solvency II. These measures reflect an increasingly systemic approach to embedding sustainability into the financial and corporate governance architecture.<sup>69</sup>

A cross-cutting concern of this entire framework is the persistence of information asymmetries between financial intermediaries and end investors.<sup>70</sup> These asymmetries manifest in several forms: through the opacity of ESG ratings and methodologies; through the lack of standardized benchmarks; and through the misalignment between the sustainability claims made by financial products and their underlying economic substance. Adding to this, the absence of harmonized criteria has made it difficult for investors to assess which products genuinely meet sustainability standards, further weakening their ability to make informed choices.<sup>71</sup> When sustainability-labelled products are used as marketing tools rather than instruments of transformation, financial actors may gain privileged access to capital without implementing real and meaningful changes in strategy, governance, or operations.<sup>72</sup> This dynamic distorts capital allocation, erodes investor trust in the system, and ultimately compromises the legitimacy of the sustainable finance agenda.

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<sup>68</sup>Regulation (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directive 2005/29/EC and Directive 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information; On the CSDDD See M.S. RICHTER Jr – M.L. PASSADOR, *Corporate Sustainability Due Diligence: Supernatural Superserious*, in *Osservatorio del diritto civile e commerciale*, 1/2024, pp. 235-256.

<sup>69</sup>V. COLAERT, *Integrating Sustainable Finance into the MiFID II and IDD Investor Protection Frameworks*, in D. BUSCH – G. FERRARINI – S. GRÜNEWALD, *Sustainable Finance in Europe Corporate Governance, Financial Stability and Financial Markets*, Palgrave Macmillan, p. 637 ff.

<sup>70</sup>Hence, it's important to enable investors to clearly identify the features that make an investment sustainable. See M. PELLEGRINI, *Mercati finanziari e sviluppo sostenibile*, in M. PELLEGRINI, *Diritto pubblico dell'economia*, Milano: Wolters Kluwer, 2023, p. 320. Cf. A. DAVOLA, *The promise and perils of sustainable disclosure for retail investors. Does the SFRD framework tackle, or rather promote, product greenwashing?*, in *Eusfil Working Paper Series*, 3, 2022.

<sup>71</sup>A. DAVOLA, *Informativa in materia di prodotti finanziari sostenibili, tutela dell'investitore e contrasto al greenwashing: le criticità dell'assetto europeo tra norme primarie e disciplina di dettaglio*, in *Riv. dir. banc.*, III, 1, 2022, p. 518.

<sup>72</sup>A. DAVOLA, *Ibid*, pp. 525 ff.; on the role and structure of prospectus disclosure, see P. LUCANTONI, *L'informazione da prospetto. Struttura e funzione nel mercato regolato*, Milano, 2020.

Despite the importance of the EU’s regulatory framework to reshape market incentives and promote responsible finance, it is fraught with methodological inconsistencies, fragmentation of data sources, uneven regulatory enforcement, insufficient supervisory resources, and a limited capacity for empirical validation of ESG claims. Without robust mechanisms to address these challenges—through better data governance, supervisory coordination, and capacity-building—the transformative potential of the EU’s sustainable finance agenda risks remaining largely aspirational. Nevertheless, addressing these limitations requires not only regulatory refinement, but also more agile, collaborative, and adaptive mechanisms capable of fostering innovation while reducing uncertainty. As the next section will explore, regulatory sandboxes may offer a promising institutional response to this need.

3. Cybersecurity professionals define sandboxes as isolated testing environments where code or applications can be safely analyzed to understand their behavior without impacting the operational network.<sup>73</sup> Similar to a physical sandbox for children, these digital spaces enable experimentation with potentially harmful software, such as suspicious attachments. If the code attempts to compromise the server, self-replicate, or exhibit other malicious activities, researchers can identify and address the threat. Developers also utilize sandboxes to test applications and updates before widespread release.

Two decades ago, regulatory sandboxes were an unknown reality. Their closest relative—experimental regulation, which allows for the temporary derogation from existing rules for a certain group or geographical region, had been employed throughout the world on several occasions and in different fields from education to road traffic regulation, but was viewed with skepticism and remained relatively

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<sup>73</sup>A. GUIO, *Regulatory sandboxes in developing economies An innovative governance approach*, Project Documents(LC/TS.2024/59), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2024. Available at:<https://repositorio.cepal.org/server/api/core/bitstreams/960a7e7d-ab60-4c3e-b4b2-c7a302e2ea16/content>

underused.<sup>74</sup> Part of the critique to experimental regulations was connected to their casuistic application, the absence of a clear methodology, and the deviation from the key goals of any experiment: to gather information on a novel solution, manage risks, and learn from trying through trial and error.<sup>75</sup> Fast-forward to 2015: regulatory sandboxes enter the regulatory toolbox of regulators to promote flexibility and innovation-friendly solutions in the context of Fintech regulation.

Some clarifications are required. First, contrary to experimental regulations, regulatory sandboxes do not always involve an experiment, they may or may not contain an experimental character. Also, each sandbox is unique as the regulatory framework, the regulatory requirements for participation, the participants, and the conditions of participation will vary from sandbox to sandbox. Second, besides the uniqueness of each sandbox, there are different types of sandboxes. Some regulatory sandboxes include only a temporary relaxing of existing regulatory frameworks, for example, through waivers of certain rules such as limiting accountability (for example, reduced liability, customized guidance regarding compliance, guarantee that the regulator will refrain from taking legal action for specific infringements that refer to the participation in a sandbox). Ultimately, each sandbox is different because the goal is to customize regulation to the needs of stakeholders and a specific sector. As such, regulatory sandboxes can be experimental in nature and act as platforms for experimentation that temporarily relax or wave regulatory requirements, while gathering evidence for potential regulatory changes.<sup>76</sup> Regulatory sandboxes can also have a more compliance emphasis and focus on providing compliance support to businesses that would have otherwise limited compliance capacity.

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<sup>74</sup>S. RANCHORDÁS, *Experimental regulations and regulatory sandboxes: Law without order?*, in *Law and method*, 2021.

See also S. RANCHORDÁS, *Sunset clauses and experimental legislation*. Edward Elgar, 2014.

<sup>75</sup>S. RANCHORDÁS, *Experimental regulations and regulatory sandboxes: Law without order?*, in *Law and method*, 2021.

<sup>76</sup>A. GUIO, *Regulatory sandboxes in developing economies An innovative governance approach*, Project Documents (LC/TS.2024/59), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2024, available at: <https://repositorio.cepal.org/server/api/core/bitstreams/960a7e7d-ab60-4c3e-b4b2-c7a302e2ea16/content>

Regulatory sandboxes are also regularly defined by reference to innovation as a “safe space” to test innovations without immediate regulatory consequences, focusing on minimizing risks while fostering innovation.<sup>77</sup> At the resemblance of experimental regulations, they seek to regulate under controlled conditions, limiting legal uncertainty and the potential negative and systemic risks.<sup>78</sup>

This legislative tendency towards experimental and adaptive governance has found increasing recognition at the EU level. A clear example is offered by the European Commission’s Digital Finance Package (adopted on 24 September 2020), which explicitly encourages Member States to establish and coordinate national regulatory sandboxes in order to support innovation while preserving financial stability and consumer protection.<sup>79</sup> Sandboxes are presented as a key mechanism for testing emerging digital financial services—such as blockchain-based products or AI-powered investment tools—under regulatory oversight, thus enabling a more agile and risk-sensitive approach to rulemaking in a rapidly evolving financial environment.<sup>80</sup> The European Union's Digital Finance Package introduces several initiatives aimed at promoting innovation in the financial sector, including the DLT Pilot Regime.<sup>81</sup> This regime represents a form of regulatory sandbox designed for market infrastructures that use distributed ledger technology (DLT) to trade and settle financial instruments issued, recorded, and transferred using DLT. The DLT Pilot

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<sup>77</sup>D. QUAN, *A Few Thoughts on Regulatory Sandboxes*, available at: <https://pacscenter.stanford.edu/a-few-thoughts-on-regulatory-sandboxes/>

<sup>78</sup>C. PONCIBO’ – L. ZOBOLI, *Il diritto della concorrenza nei mercati digitali fra eccessi di regolamentazione ed esperimenti normativi: il caso delle regulatory sandboxes*, in *Concorrenza e Mercato*, n. 1, 2022. p. 59. See also Council Conclusions on Regulatory Sandboxes and Experimentation Clauses as tools for an innovation-friendly, future-proof and resilient regulatory framework that masters disruptive challenges in the digital age 2020/C 447/01, p. 10.

<sup>79</sup>European Commission, *Digital Finance Package*, 24 September 2020, COM(2020) 591 final, available at: [https://finance.ec.europa.eu/publications/digital-finance-package\\_en](https://finance.ec.europa.eu/publications/digital-finance-package_en)

<sup>80</sup>Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU.

<sup>81</sup>The DLT Pilot Regime was implemented in Italy through Decree-Law No. 25 of 17 March 2023, which introduced national provisions to align with Regulation (EU) 2022/858. For a detailed commentary on the Italian transposition and its implications for digital financial markets, see V. LEMMA, *DLT Pilot: verso il mercato degli strumenti finanziari digitali* in *Diritto bancario*, 2023.

Regime allows such infrastructures to operate under temporary exemptions from existing regulations, thereby enabling testing and learning about the application of current rules within the DLT context.<sup>82</sup>

Their importance has also been underlined in the EU AI Act ('AIA'),<sup>83</sup> which enables Member States to establish general AI regulatory sandboxes.<sup>84</sup> The AI Act presents the regulatory sandboxes in Articles 57, 58, and 59 as an innovation-friendly instrument that seeks to promote regulatory learning, accelerate market access, improve legal certainty, and contribute to evidence-based regulatory learning.<sup>85</sup> Specifically, Article 57 defines a regulatory sandbox as “a controlled environment that fosters innovation and facilitates the development, training, testing and validation of innovative AI systems for a limited time before their being placed on the market or put into service pursuant to a specific sandbox plan agreed between the providers or prospective providers and the competent authority”.

While regulatory sandboxes were primarily developed in the financial sector, these instruments are flexible enough to be tailored to many other sectors, offering unique and holistic approaches to specific regulatory challenges and able to foster the advancement of new technologies and their legal frameworks.<sup>86</sup> Regulatory sandboxes have expanded to several sectors such as energy, healthcare, and

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<sup>82</sup>F. ANNUNZIATA – A. C. CHISARI – R. P. AMENDOLA, *DLT-Based Trading Venues and EU Capital Markets Legislation: State of the Art and Perspectives under the DLT Pilot Regime*, in *Bocconi Legal Studies Research Paper*, No. 4344803, 2023.

<sup>83</sup>The Artificial Intelligence Act was formally adopted by the European Parliament on 13 March 2024 and by the Council on 21 May 2024. The regulation entered into force on 1 August 2024 and will become fully applicable after a transitional period of 24 months. For further details, see Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 March 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts.

<sup>84</sup>European Parliament, P9\_TA(2023)0236, *Artificial Intelligence Act, Amendments adopted by the European Parliament on 14 June 2023 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts* (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)).

<sup>85</sup>For an in-depth analysis: <https://digi-con.org/regulatory-sandboxes-in-the-ai-act-between-innovation-and-safety/>

<sup>86</sup>G. CENTEMERO – O. LONGO, *Regulatory sandbox Analisi e prospettive parlamentari della sperimentazione normativa nel nuovo millennio*, Maggioli, p. 86-87.



telecommunications.<sup>87</sup> They have also been used to innovate the legal profession in the United States, Canada, and the United Kingdom.<sup>88</sup> While at first sight this last application may seem problematic, Christie Ford and Quinn Ashkenazy have recently argued and demonstrated based on comparative research that legal innovation sandboxes “may actually be possible to foster legal innovation, advance the public interest, and take meaningful steps to address the access to justice crisis.”<sup>89</sup> Regulatory sandboxes have also been considered for the promotion of sustainable development and responsible innovation in the last ‘Green Deal Industrial Plan for the Net-Zero Age.’<sup>90</sup>

Not all—if any—regulatory sandboxes are playgrounds for free experimentation, as the term may suggest. Indeed, each regulatory sandbox has its own specific design, which means that it may be difficult to compare between different sandboxes and transplant findings due to the existence of fragmentation.<sup>91</sup>

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<sup>87</sup> See, for example, [https://energy.ec.europa.eu/publications/regulatory-sandboxes-energy-sector\\_en..](https://energy.ec.europa.eu/publications/regulatory-sandboxes-energy-sector_en..) The U.K. Office of Gas and Electricity Markets launched a regulatory sandbox in 2017. Innovation Sandbox Service Overview, Off. Gas & Elec. Mkts. (Feb. 27, 2020), [www.ofgem.gov.uk/publications/innovation-sandbox-service-overview](http://www.ofgem.gov.uk/publications/innovation-sandbox-service-overview). For healthcare, see E. LECKENBY et al., *The Sandbox Approach and Its Potential for Use in Health Technology Assessment: A Literature Review*, in 19 Applied Health Econ. & Health Pol’y 857 (2021). Since it mobilizes real-world deployment as a means for information gathering, some have compared the U.S. Food and Drug Administration (FDA)’s Emergency Use Authorization (EUA) program for COVID-19 treatments and vaccines to a regulatory sandbox. See J. SHERKOW, , *Regulatory Sandboxes and the Public Health*, U. Ill. L. Rev. 357, 2022. In the Canadian context, see I. E. VURAL et al., *From Sandbox to Pandemic: Agile Reform of Canadian Drug Regulation*, 125 Health Pol’y 1115 (2021).

<sup>88</sup>In North America, legal sandboxes have launched in Utah, and the Canadian provinces of British Columbia, Ontario, and Alberta. The Office of Legal Servs. Innovation, [utahinnovationoffice.org](http://utahinnovationoffice.org) ; Innovation Sandbox, Law Soc’y of B.C., [www.lawsociety.bc.ca/our-initiatives/innovation-sandbox](http://www.lawsociety.bc.ca/our-initiatives/innovation-sandbox); Access to Innovation (A2I), Law Soc’y of Ont., <https://lso.ca/about-lso/access-toinnovation>; Law Society of Alberta Introduces Innovation Sandbox, Law Soc’y of Alta. (Oct. 1 2021), <https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/>. The United Kingdom also has a legal sandbox: Multi-Million Investment to Turbocharge Growth of Technology in Legal Services, U.K. Gov’t, [www.gov.uk/government/news/multi-million-investment-to-turbocharge-growth-of-technology-in-legalservices](http://www.gov.uk/government/news/multi-million-investment-to-turbocharge-growth-of-technology-in-legalservices).

<sup>89</sup>C.FORD – Q. ASHKENAZY, *The Legal Innovation Sandbox*, in *The American Journal of Comparative Law*, Vol. XX, 2025, p. 1.

<sup>90</sup>Brussels, 1.2.2023 COM(2023) 62 final, *Communication from the European Commission, A Green Deal Industrial Plan for the Net-Zero Age*, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023DC0062>

<sup>91</sup>A. ATTREY - M. LESHER - C. LOMAX , *The role of sandboxes in promoting flexibility and innovation in the digital age*, OECD Going Digital Toolkit Notes, No. 2, OECD Publishing, Paris,

Some sandboxes place greater emphasis on experimentation, thus entailing temporary derogations from specific rules. Others, by contrast, are primarily designed to assist small and medium enterprises (SMEs) in navigating and complying with complex regulatory frameworks. Although there are some differences across jurisdictions and sectors, regulators generally follow a common set of steps when establishing them.

The process typically begins with a call for applications, in which regulators define a timeline and specify the terms of participation, including the entry and exit requirements. At the time of writing, a regulation on Fintech is under consultation in Italy, which proposes allowing admission requests to be submitted on a rolling basis rather than during specific windows.<sup>92</sup> This would serve as a non-compulsory alternative to the traditional fixed application windows. Another general key starting point of regulatory sandboxes is the articulation of the eligibility criteria—specifying who can apply (e.g., only startups or SMEs), the expected benefits and objectives (e.g., enhancing the safety of a product), and the innovative features of the proposed project. At this stage, regulators may also request a feasibility assessment and a detailed testing plan, which should outline key performance indicators (KPIs), testing objectives (particularly if the sandbox is testing-focused), and a risk mitigation strategy.

The next step is the selection of participants. Regulators evaluate the submitted applications and identify a cohort of eligible participants. Once the sandbox begins, regulators may support participants in various ways, depending on the sandbox's goals and thematic focus. Support could include temporary waivers from

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2020. Available at: [https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/06/the-role-of-sandboxes-in-promoting-flexibility-and-innovation-in-the-digital-age\\_ddcd3d40/cdf5ed45-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/06/the-role-of-sandboxes-in-promoting-flexibility-and-innovation-in-the-digital-age_ddcd3d40/cdf5ed45-en.pdf), p. 7

<sup>92</sup>See the public consultation launched by the Italian Ministry of Economy and Finance on the reform of the regulatory sandbox regime: *Consultation on the FinTech regulatory sandbox reform*, available at: [https://www.dt.mef.gov.it/it/dipartimento/consultazioni\\_pubbliche/consultazioni\\_in\\_corso/consultazione\\_fintech/index.html](https://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazioni_in_corso/consultazione_fintech/index.html)



certain regulatory requirements or the issuance of a non-action letter—an assurance that no enforcement action will be taken during the sandbox period, provided participants comply with the sandbox conditions. A defining feature of regulatory sandboxes is the regulator’s ongoing supervisory oversight. Participants are expected to collect data on their performance and report regularly to the regulator. At the conclusion of the sandbox period, the outcomes are evaluated—this includes assessing the product or service’s innovativeness, its potential benefits, and the effectiveness of risk mitigation measures. Based on these insights, the regulator provides feedback and may, in some cases, consider adjustments to existing regulations as part of a broader process of regulatory learning. A common element to many regulatory sandboxes is their collaborative character. Regulatory sandboxes strengthen the regulatory learning and reduce information asymmetries as they promote a better exchange of information between industry, regulators, and other relevant stakeholders.

Regulatory sandboxes can take up different forms such as testing zones where rules are not applied temporarily to a specific geographical area or to a specific group (the cohort of participants). To illustrate, in 2021, the Danish government designated GreenLab, a green industrial park in Skive, as an official regulatory energy test zone. This involved exempting this park from existing electricity regulations. This enabled the experimentation of innovative solutions aimed at integrating substantial amounts of renewable energy into the energy system. This designation allowed GreenLab and its partners to test new business models and technologies that were previously constrained by current regulations.<sup>93</sup> By October 2022, GreenLab had successfully integrated 80 MW of wind power into its industrial park, directly supplying renewable energy to its industrial partners and forthcoming Power-to-X facilities.<sup>94</sup> In 2024,

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<sup>93</sup> See: <https://stateofgreen.com/en/news/new-danish-test-zones-show-the-way-for-european-energy-transition/>

<sup>94</sup> See: <https://www.greenlab.dk/knowledge/80mw-renewable-energy-for-industrial-production-and-power-to-x/>

GreenLab activated its regulatory test zone status. Additionally, another GreenLab's projects is GreenHyScale, which is exploring the use of pressurized alkaline electrolysis for large-scale onshore and offshore green hydrogen production<sup>95</sup>.

While many regulatory sandboxes have been created to foster innovation and competitiveness, several have also been designed with sustainability in mind, alongside financial considerations. For instance, in November 2022, the Hellenic Competition Authority launched a sandbox aimed at promoting innovation and competition while supporting environmental sustainability in the Greek economy. The initiative focuses on innovations that contribute to environmental goals and align with the objectives of the European Green Deal. The Greek regulator explained that the aim of the sandbox was “to increase legal certainty regarding the application of competition law for undertakings willing to invest in green transformation, to create new green products, to set green standards for the production of products, services, energy, etc., by facilitating their development through this initiative, for instance in order to raise funds from financial markets.”<sup>96</sup> When reviewing the applications, the Hellenic Competition Commission considered whether the proposal could “contribute positively to the public interest”, devoting particular attention to excluding potential anti-competitive practices that “simply contain[ed] some reference or a low contribution to sustainable development without overcoming the damage to competition caused (e.g. “green-washing” practices). On the contrary, [the sandbox] ma[de] it possible to fully evaluate practices which make a significant contribution to the public interest by enhancing sustainable development.”<sup>97</sup> This sandbox is an example of how regulatory sandboxes can be used to promote it.

4. In the context of sustainable finance, regulatory sandboxes can play a crucial role in accelerating the development of financial solutions that support the green and

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<sup>95</sup> See: <https://greenhyscale.eu/the-project-info/>

<sup>96</sup> See: <https://epant.gr/en/information/sustainability/sandbox.html>

<sup>97</sup> Ibid.

social transition. By enabling controlled experimentation, regulatory sandboxes could allow financial actors to design and test novel instruments and business models aligned with sustainability imperatives, while managing associated risks in a safe and adaptive manner. This section examines how regulatory sandboxes can be specifically tailored to support the sustainable transition and strengthen the effectiveness of the sustainable finance framework, thereby highlighting the importance of expanding their use in this domain.<sup>98</sup>

Despite the growing policy and market interest in sustainable finance, regulatory sandboxes have so far received limited attention. As a result, their application in this field remains relatively underexplored and has yet to reach its full potential. However, some pioneering initiatives are beginning to emerge, offering valuable insights into how sandboxes can be structured to meet the unique demands of the green transition. For instance, in 2021, the Financial Conduct Authority<sup>99</sup> launched a sustainability-focused digital sandbox to support firms and regulators in developing technologies that improve ESG data transparency, automate sustainability disclosure and help consumers better understand the ESG characteristics of financial products, hence to overcome some of the challenges associated with the green transition.<sup>100</sup> The initiative demonstrated that collaboration and access to data can stimulate beneficial innovation in the market, and the FCA is committed to

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<sup>98</sup>D. A. ZETZSCHE – M. BODELLINI, *A Sustainability Crisis Makes Bad Law! - Towards Sandbox Thinking in EU Sustainable Finance Law and Regulation*, in *EU Sustainable Finance Law and Regulation*, 2022, Available at:<http://dx.doi.org/10.2139/ssrn.4147295>

<sup>99</sup>The Financial Conduct Authority (FCA) is the UK's independent financial regulator, responsible for overseeing conduct in financial markets and protecting consumers.

<sup>100</sup>The FCA's Digital Sandbox Sustainability Pilot, conducted between November 2021 and March 2022, demonstrated the potential of digital testing environments to accelerate ESG-related innovation through enhanced collaboration, access to synthetic data, and expert mentorship. Participants welcomed the opportunity to test early-stage solutions and engage with a diverse ecosystem of stakeholders. However, limitations in data availability and thematic breadth posed challenges—some datasets were not sufficiently tailored or available in time, and collaboration between teams decreased as the pilot progressed. Platform engagement also remained relatively low. These findings highlighted not only the value of such initiatives, but also the need for more structured, scalable and data-rich testing environments going forward. See: <https://www.fca.org.uk/firms/innovation/green-fintech-challenge-and-digital-sandbox-which-service>

establishing a permanent digital testing environment, even though some important limitations were also identified.<sup>101</sup> Another example can be found in Kuwait, where in 2022, the Central Bank declared that priority would be given in its Regulatory Sandbox to the testing of products and services that support sustainability standards.<sup>102</sup> Indeed, through its Woloj Innovation Hub, the CBK launched a new application round for sandbox participation, explicitly encouraging proposals in the field of sustainable finance.<sup>103</sup>

While these examples highlight the early integration of sustainable finance within regulatory sandboxes, such initiatives remain limited in number and scope. To better understand the transformative potential of this model when applied to sustainable finance, it is useful to look at the more mature and widespread experience of sandboxes in the FinTech sector.<sup>104</sup>

In this sector, regulatory sandboxes emerged in response to the rapid pace of technological innovation and the need for supervisory authorities to adapt without stifling market development. Over the last few years, financial technology has been considered one of the most topical areas in the global financial services industry. Innovations such as distributed ledger technology, big data, smart contract, peer-to-peer lending platforms, biometrics, and new digital has motivated innovation in the financial services industry, prompting the need for flexible and adaptive regulatory frameworks. In this context, regulatory sandboxes have enabled the supervised testing of a wide range of innovative financial services—such as digital payments, blockchain-based solutions, and alternative credit scoring—under controlled conditions. These experiences have provided valuable insights into how flexible,

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<sup>101</sup> See the Final Report <https://www.fca.org.uk/publication/corporate/digital-sandbox-sustainability-pilot-report.pdf>

<sup>102</sup> See: <https://www.cbk.gov.kw/en/cbk-news/announcements-and-press-releases/press-releases/2022/11/202211240800-cbk-regulatory-sandbox-adopts-sustainable-fintech-products-and-services>

<sup>103</sup> See: <https://www.cbk.gov.kw/en/legislation-and-regulation/innovation-hub/apply>

<sup>104</sup> C. FORD – Q. ASHKENAZY, *The legal innovation sandbox*, in *the American journal of comparative law*, 2025, available at: <https://doi.org/10.1093/ajcl/avae029>

experimentation-based regulatory environments can foster financial inclusion, support competition, and inform more effective rule-making. This successful application of sandboxes in the FinTech space has laid the groundwork for extending their use to other areas of strategic importance—most notably sustainable finance.

Indeed, the sandbox model, which has proven effective in navigating innovation in FinTech, could be just as valuable in the sustainable finance domain—where rapid regulatory evolution, complex data requirements, and the imperative to align financial activity with environmental goals demand equally adaptive and innovation-friendly frameworks. Hence, the integration of financial innovation with sustainability objectives offers policymakers a valuable pathway to achieve ESG considerations when making investment and financing decisions, particularly when supported by adaptive regulatory tools such as sandboxes.<sup>105</sup> As the transition toward a greener and more inclusive economy gains momentum, the financial sector is increasingly called upon to mobilize capital in support of environmental and social goals. In this context, sandboxes can serve as structured environments for co-developing and testing new green financial instruments, helping to reduce regulatory uncertainty and overcome barriers to market uptake—all while maintaining oversight and safeguarding investor protection.

Furthermore, regulatory sandboxes have the potential to address several of the key problems of sustainable finance briefly identified earlier in this article. The first set of problems is the challenges faced by firms to raise capital, overcome information asymmetries, and comply with regulatory burdens. Regulatory sandboxes facilitate the exchange of information between regulators and sandbox participants, increasing information disclosure. Furthermore, there is evidence from UK Fintech sandboxes that sandbox participants see an increase of 15% in capital raise

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<sup>105</sup>N. NAIFAR – A. ELSAYED, N. NAIFAR – A. ELSAYED (Eds.), *Green Finance Instruments, FinTech, and Investment Strategies*, Springer, 2023, p. 261 available at: <https://link-springer-com.tilburguniversity.idm.oclc.org/book/10.1007/978-3-031-29031-2>

post-entry, higher survival and patenting rates, partly due to the existence of lower information asymmetries, reduced regulatory costs, and additional support.<sup>106</sup> Regulatory sandboxes could be particularly valuable to attract capital for specific sectors, promote eco-friendly investments, and engage with clients that support these goals. In the United Kingdom, the FCA launched a Green Fintech that has enabled a number of firms to test services in the field of sustainable finance. For example, the firm Tred used this regulatory sandbox to start building a UK green neobank. Its first product was a green debit card “that plants trees” as consumers spend, that is, it rewards ecofriendly behaviors and lets consumers track, reduce, and offset their carbon footprint.<sup>107</sup> While Tred no longer exists, it has inspired the creation of green cards in other countries (for example, in Korea). In the investment sector, Civeq also used this Green FinTech sandbox to develop its green investment service. Civeq is a decentralized green investment platform that monetizes the added value of natural climate solutions alongside clean energy. In partnership with Regener8 Earth, it verifies ecological and climate impacts using distributed ledger technology (DLT) to link verified outcomes with investors.

Second, there is growing support for experimentation initiatives as a means to encourage innovation in Europe. In the context of accelerating the integration of AI into the European industry, the Draghi report mentions explicitly that “Experimentation should be encouraged via the opening up, EU-wide coordination and harmonization of national “AI Sandbox regimes” to companies participating in the plan. These experimental “sandboxes” would enable regular assessments of regulatory hindrances deriving from EU or national legislation and provide feedback

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<sup>106</sup>G. CORNELLI – S. DOERR – L. GAMBACORTA – O. MERROUCHE, *Regulatory Sandboxes and Fintech Funding: Evidence from the UK*, in *Review of Finance*, Volume 28, Issue 1, 2024, pp. 203–233. See also J. IVO – K. LAUER, *Regulatory sandboxes and financial inclusion*, CGAP, Washington, DC, 2017.

<sup>107</sup>See: <https://www.fca.org.uk/firms/innovation/green-fintech-challenge#:~:text=our%20eligibility%20criteria.-,Ten%20firms%20have%20been%20accepted%20into%20the%20Green%20FinTech%20Challenge,that%20will%20benefit%20from%20our>

from private companies and research centers to regulators.”<sup>108</sup> Besides this emphasis on AI, the Draghi report also discusses the need to adopt new strategies to improve the financing of the “massive investment needs that transforming the economy will entail.” Although the report does not explicitly address sustainable finance, it discusses the need to make fundamental choices about how to pursue its decarbonization policies while preserving the competitive position of its industry.<sup>109</sup> Given that sustainability is one of the core values of the European Union, this dimension should also be taken into account when interpreting Draghi’s recommendations in reshaping EU’s regulatory approach to innovation. The use of regulatory sandboxes as a tool to foster innovation suggests that regulation and innovation are not inherently in conflict. Rather, it highlights the importance of adopting an appropriate regulatory approach tailored to support innovative activity.

Third, legal scholarship has posited that regulatory sandboxes can be used to balance the need to promote innovation with the promotion of other public interests such as sustainability.<sup>110</sup> For example, the Monetary Authority of Singapore has a Fintech regulatory sandbox that though focused on innovation while also supporting projects that contributed to impactful sustainable finance ventures (Sandbox Plus).<sup>111</sup> This regulatory sandbox launched the ESG FinTech grant as part of the Financial Sector Technology and Innovation (“FSTI”) scheme to foster the financial sector’s adoption of ESG technology solutions.<sup>112</sup> Through the grant, MAS aimed to encourage financial institutions to adopt solutions to key ESG data and infrastructure challenges, and to support their mobilization of capital towards sustainable activities and tracking

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<sup>108</sup>The future of European competitiveness, 2024. See: [https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961\\_en?filename=The%20future%20of%20European%20competitiveness%20\\_%20A%20competitiveness%20strategy%20for%20Europe.pdf](https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf), p. 34.

<sup>109</sup>Ibid, p. 41.

<sup>110</sup>A. ARMANDO, *Introduction*, in F. BAGNI – F. SEFERI (Eds.), *Regulatory Sandboxes for AI and Cybersecurity: Questions and answers for stakeholders*, Maggioli, 2025, p. 8.

<sup>111</sup> See: <https://www.globallegalinsights.com/practice-areas/fintech-laws-and-regulations/singapore/>

<sup>112</sup> See: <https://www.mas.gov.sg/schemes-and-initiatives/fsti-esg-fintech-grant>

of their net zero transition plans and programmes.<sup>113</sup> In South America, several regulatory sandboxes have also sought to combine the promotion of innovation with the advancement of sustainability. In 2018, Colombia's financial regulator, the Superintendencia Financiera (Superfinanciera), launched a strategy to promote sustainable and responsible innovation within the financial sector.<sup>114</sup> As part of this initiative, it established *LaArenera*, a regulatory sandbox that enables firms to test new technologies and business models under appropriate regulatory oversight. According to a study by the Inter-American Development Bank, FinTech activity has grown significantly across Latin America, with Colombia ranking third—after Brazil and Mexico—in the number of FinTech companies and initiatives as of 2018. A key objective of *LaArenera* is to support financial inclusion by encouraging innovative business models in areas such as payment systems, remittance services, and access to finance. Notably, Colombia has also advanced the use of blockchain technologies in its financial ecosystem, including through the issuance of its first blockchain-based bond within *LaArenera*. We find another relevant example in Kazakhstan. Established in 2018, the Astana International Financial Centre (AIFC) is a regional financial hub based in this country, designed to attract international investment and promote financial innovation. It operates under a unique legal framework based on English common law and hosts its own independent court and international arbitration center, ensuring legal certainty and investor protection. The Astana Financial Services Authority (AFSA) serves as its regulatory body, overseeing licensing, supervision, and market conduct.

Fourth, regulatory sandboxes have also been used to test novel products and services that can help change consumers' and other stakeholders' behavior but for which further information is required. For example, the firm Karfu proposed to test

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<sup>113</sup> See: [https://www.globallegalinsights.com/practice-areas/fintech-laws-and-regulations/singapore/#\\_edn18](https://www.globallegalinsights.com/practice-areas/fintech-laws-and-regulations/singapore/#_edn18)

<sup>114</sup> See: <https://www.iadb.org/en/news/idb-group-and-davivienda-bank-issue-colombias-first-blockchain-bond>



their services that aimed to “helps consumers save money and uncover the financial and environmental costs of their mobility choices, beyond private car ownership, by showcasing more sustainable and local alternatives. The algorithm is led by user preferences, including environmental and sustainability interests.”<sup>115</sup> Other participants were more focused on promoting access to green finance. For example, the firm Dodo tested a service that “help[ed] companies to reach net zero by rapidly measuring their carbon footprint and using this data to facilitate access to green finance.”<sup>116</sup>

Fifth, regulatory sandboxes can serve as a preventive mechanism against greenwashing by allowing financial products and sustainability claims to be tested under supervisory oversight before being introduced to the market. We acknowledge that this potential can also come true if sandboxes are well designed from a methodological perspective, its results are interpreted within the limits of the testing environment, and it does not generate systemic risks. Within a sandbox, firms are required to demonstrate the coherence between their ESG claims and the underlying data, methodologies, and impact metrics used. This controlled setting allows regulators to assess the credibility of sustainability labelling practices, promote transparency, and establish clearer interpretative guidance. In doing so, sandboxes reduce the scope for misleading environmental claims and enhance investor trust in ESG-labelled products. At the same time, they contribute to narrowing information asymmetries among investors by promoting the development and testing of clearer, standardized, and verifiable disclosure practices, thereby levelling the playing field and enhancing transparency across the market.

Additionally, several of the challenges identified within the EU sustainable

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<sup>115</sup> See: Karfu, *What is Karfu*, <https://karfu.com/about/karfu>

<sup>116</sup> See: New Energy Nexus, Dodo a platform helping companies reduce emissions wins first Climate Fintech Cards & Payment Challenge, 18 November 2021, <https://www.newenergynexus.com/news/do-a-platform-helping-companies-reduce-emissions-wins-first-climate-fintech-cards-payments-challenge/>

finance framework (See Section II) could be at least partially addressed through the targeted use of regulatory sandboxes. First, the technical rigidity of the EU Taxonomy, especially its binary structure and its limited capacity to reflect sector-specific or transitional pathways, could be explored in a sandbox setting. These controlled environments allow firms and regulators to jointly test more holistic and dynamic classification approaches, including life-cycle-based assessments and context-sensitive criteria. The empirical evidence gathered through such experimentation may inform future refinements to the taxonomy framework, supporting a more flexible, credible, and proportionate regulatory evolution. Second, the ambiguity of the SFDR product classification—particularly between Article 8 and 9—could be addressed through the use of regulatory sandboxes to test disclosure models, ESG scoring methodologies, and communication strategies. Such experimentation would help reduce interpretative uncertainty and mitigate the risk of greenwashing. Third, the complexity and reporting burdens introduced by the CSRD could be eased by allowing them to prototype reporting practices, test data collection processes, and build internal capacity. Regulatory sandboxes can also mitigate the risk of over-reporting by allowing firms to test and calibrate their sustainability disclosure practices in a supervised setting. Through iterative feedback with regulators, companies can foster the development of scalable tools and proportional frameworks tailored to the needs and capacities of market actors as well as identify which information is material and decision-useful, thereby avoiding excessive or irrelevant data that may obscure core ESG impacts. This contributes to more targeted, comparable, and efficient reporting aligned with the principles of proportionality and clarity. Fourth, in the case of the Green Bond Regulation, sandboxes could support the testing of impact verification methods and performance-based instruments, helping refine KPIs and increase market credibility. More broadly, sandboxes provide a setting to tackle persistent data asymmetries and inconsistencies by experimenting with new ESG data models, verification systems, and digital technologies such as AI or blockchain. In the absence of a dedicated regulatory framework for sustainability-

linked bonds, sandbox experimentation can also serve as a preliminary step toward future standard-setting. For instance, India has recently launched a targeted support scheme offering grants of up to INR 7.5 million for the development of sustainable finance solutions, including sustainability-linked finance and ESG investment mechanisms—demonstrating a proactive approach that could be complemented by sandbox-based regulatory pilots.<sup>117</sup> Beyond their experimental function, regulatory sandboxes also serve as institutional mechanisms for regulatory learning. In this sense, the insights generated through sandbox experimentation could also inform a broader reflection on the enforceability of sustainable finance regulations, helping to identify obstacles to consistent supervision and supporting the design of more effective compliance and enforcement mechanisms. By enabling evidence-based testing under real-world conditions, they allow for the development of more proportionate, adaptive, and context-sensitive rules—grounded not only in abstract principles but in the complexity of actual market dynamics and sustainability goals.

Rather than suspending the law, sandboxes offer a space for regulatory calibration, where risks can be assessed in real time and appropriate safeguards gradually developed. By fostering structured dialogue and controlled exposure, they contribute to reducing uncertainty, enhancing transparency, and facilitating compliance — not merely by testing the market, but by shaping it. In this respect, several jurisdictions, including Italy, are currently revising their sandbox regimes to improve accessibility, simplify admission procedures, and differentiate levels of experimentation (real, predefined, simulated environments) based on the complexity of the project and market involvement.<sup>118</sup> As a result of this process, the role of public authorities has evolved: they are no longer merely regulators, but also facilitators and

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<sup>117</sup>See: <https://www.mondaq.com/india/fin-tech/1471602/empowering-financial-innovation-ifsc-fintech-incentive-scheme>

<sup>118</sup>See the public consultation launched by the Italian Ministry of Economy and Finance on the reform of the regulatory sandbox regime: *Consultation on the FinTech regulatory sandbox reform*, available at: [https://www.dt.mef.gov.it/it/dipartimento/consultazioni\\_pubbliche/consultazioni\\_in\\_corso/consultazione\\_fintech/index.html](https://www.dt.mef.gov.it/it/dipartimento/consultazioni_pubbliche/consultazioni_in_corso/consultazione_fintech/index.html)

actively engaged actors in the transition.<sup>119</sup> This shift reflects a broader understanding of regulation as a dynamic process—capable not only of controlling risks, but also of enabling solutions. In the specific context of sustainable finance, expanding the use of regulatory sandboxes would help promote sustainable financial innovation, validate new ESG metrics and technologies, and ensure that regulatory evolution remains grounded in the practical challenges of the sustainable transition. Supporting such initiatives—through dedicated funding schemes, cross-border cooperation, or integration within broader sustainable finance strategies—may prove essential to bridging the gap between market and regulatory ambition and market implementation.

Regulatory sandboxes are nonetheless far from perfect instruments. There is the risk that the conclusions will be drawn too quickly from limited testing environments, the evidence produced is biased or limited to the cohort of sandbox, and that regulators will be captured through sandboxing. We acknowledge thus the potential shortcomings of regulatory sandboxes, namely their limited scope and duration, and their inability to capture systemic problems.<sup>120</sup> However, with a constructive dialogue between regulators and private actors and a careful methodology, we also see the potential for important contributions to the field of sustainable finance.

5. Numerous regulatory and policy initiatives have been introduced to support sustainability. However, many of them fail to adequately address the need for capital mobilization and the creation of serious incentives for private investment in sustainable development. Regulatory sandboxes can help bridge this gap by

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<sup>119</sup> M. PELLEGRINI,  *Mercati finanziari e sviluppo sostenibile*, in M. PELLEGRINI,  *Diritto pubblico dell'economia*, Milano: Wolters Kluwer, 2023, p.321.

<sup>120</sup>For a critical perspective on regulatory sandboxes, see E. BROWN & D. PIROSKA, *Governing Fintech and Fintech as Governance: The Regulatory Sandbox, Riskwashing, and Disruptive Social Classification*, *New Political Economy*, 27(1), 2021, pp. 19–32, available at <https://doi.org/10.1080/13563467.2021.1910645>; S.T. OMAROVA, *Technology v technocracy: Fintech as a regulatory challenge*, in *Journal of Financial Regulation*, 6.1, 2020, pp. 75-124.

supporting the effective implementation of ESG goals, contrasting the greenwashing, addressing the problem of information asymmetries between intermediaries and investors, and reducing regulatory compliance burdens, while generating insights that can support the evolution of the current regulatory framework (see also Section 2). Scholars such as Dirk A. Zetsche and Marco Bodellini have also emphasized this potential, arguing that the “mutual learning” dynamic inherent in regulatory sandboxes could play a crucial role in advancing the sustainability transformation of the EU’s financial sector.<sup>121</sup>

This article has argued that regulatory sandboxes could emerge as a necessary complement to the regulation. By enabling controlled experimentation, adaptive supervision, and stakeholder co-design, sandboxes provide a pragmatic space for testing, refining, and aligning sustainable finance tools with real-world dynamics. They hold the potential to reduce uncertainty, foster compliance, and generate evidence for more proportionate and effective rule-making. Above all, regulatory sandboxes enable regulation to evolve not merely in response to risk, but through an ongoing dialogue with innovation—thereby paving the way for a regulatory framework inspired by ethical values. This reflects Capriglione’s scholarship on the potential for both economic activity and financial discipline to be imbued with value-based principles.<sup>122</sup> In an area as complex, urgent, and interdependent as sustainable finance, the flexible and learning-oriented approach presented in this article may help reconcile normative ambition with operational feasibility, thus making sustainable finance not only a policy goal, but a credible, trusted, and functional reality.

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<sup>121</sup>D. A. ZETZSCHE – M. BODELLINI, *A Sustainability Crisis Makes Bad Law! - Towards Sandbox Thinking in EU Sustainable Finance Law and Regulation*, in *EU Sustainable Finance Law and Regulation*, 2022, pp. 32 ff., available at: <http://dx.doi.org/10.2139/ssrn.4147295>

<sup>122</sup> According to the Author, it is once again the reference to ethics in behavioral choices that represents the anchor for his ambition to redefine the strategic orientations of politics and finance, with a view to integrating protection with the environmental and energy transition. See: F. CAPRIGLIONE, *Etica della finanza e finanza etica*, Bari, 1997; ID., *Etica della finanza mercato globalizzazione*, Bari, 2004.

# IMPROVING MANAGERIAL APPROACHES AND HUMAN RESOURCES STRATEGIES IN THE BANKING SECTOR REGARDING INCLUSION, DIVERSITY, SOCIAL EQUITY AND ORGANISATIONAL INTELLIGENCE

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**ABSTRACT:** *In today's increasingly globalized and interconnected economy, inclusion is more than a value it is a necessity for financial organizations seeking to thrive in a competitive and evolving environment. Inclusion for financial organizations can refer first to the process of ensuring access to appropriate, affordable, and timely financial products and services for all individuals and businesses, regardless of their income level, location, gender, or social background. It is about breaking down barriers that have historically prevented large segments of the population from participating in the formal financial system. In the competitive and fast-evolving landscape of banking, employee inclusion and their loyalty have become also one of the most critical assets an organization can cultivate<sup>1</sup>. Retaining skilled talent, reducing turnover costs, and*

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<sup>1</sup> Baskerville R., Capriglione F., Casalino N. (2020), "Impacts, challenges and trends of digital transformation in the banking sector", Law and Economics Yearly Review Journal - LEYR, Queen

*building a resilient internal culture are more important than ever. For workers with epilepsy and autism spectrum disorder (ASD), who have historically faced systemic barriers to employment and career progression, inclusive workplace practices represent a powerful and transformational commitment. When banks actively foster long-term inclusion, not just as a policy but as an embedded cultural value, they unlock a reciprocal relationship that promotes employee inclusion, loyalty, organizational stability, and broader social value<sup>2</sup>. Cultivating this loyalty goes beyond hiring it is about ensuring access, accommodation, opportunity, respect, and long-term growth<sup>3</sup>. From a business strategy perspective, the managerial literature is demonstrating that the inclusion of individuals with epilepsy and autism can enrich organizational diversity. Neurological diversity, often referred to as neurodiversity, brings fresh perspectives, unique problem-solving skills, and new ways of thinking that traditional hiring models often overlook. This article also summarizes the achieved results of the EpilepsyPOWER research project, focused on analysing the gaps in organisations regarding the dissemination and correct adoption of good practices for the inclusion of people with epilepsy, consciously or unconsciously, to support business processes. The contents, developed and validated with numerous organisations and experts, have been made available to propose new approaches to workplace design. Those who wish to specialise in human resources management or orientate their skills to prepare for certification as a disability manager can do so through special training modules. EpilepsyPOWER aimed to raise awareness, stimulate and strengthen the programmes offered by universities in Europe to improve curricula on the inclusion of fragile subjects and disseminate the good practices identified in the five countries involved (Italy, France, Ireland, Bulgaria and Germany) in corporate and university*

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Mary University, London, UK, vol. 9, part 2, pp. 341-362, ISSN 2050-9014.

<sup>2</sup> Casalino N., Ciarlo M., Fontana F., Panico M., Sassetti S. (2017), "An Innovative Managerial Model for the Digital Culture", The International Conference on E-Learning in the Workplace - Proceedings of ICELW 2017, June 14th-16th, Columbia University, New York, USA, pp. 1-7, ISBN 978-0-9827670-7-8.

<sup>3</sup> Prasad P., Pringle J.K. & Konrad A.M. (2006) "Examining the contours of workplace diversity: Concepts, contexts and challenges" in A.M. Konrad, P.K. Prasad and J.K. Pringle (eds) Handbook of Workplace Diversity, London, Sage.



*contexts. The three-year research project involved various professors, researchers, professionals, patients and identified several concrete solutions for workers inclusion in business contexts.*

**SUMMARY:** 1. The Critical Role of Inclusion in Financial Organizations. – 2. Enhancing Social Equity and Strengthening Institutional Resilience. – 3. The EpilepsyPOWER Research Project. – 4. Aligning Inclusion in the Organizations with Global Goals and Standards. – 5. Embracing Technological Innovation. – 6. Cultivating Long-Term Loyalty. – 7. Conclusions.

1. In today's increasingly globalised and interconnected financial system, inclusion is more than a value; it is a necessity for organisations seeking to thrive in a competitive and evolving environment. Financial inclusion is about ensuring that all individuals and businesses, regardless of income level, location, gender or social background, have access to appropriate, affordable and timely financial products and services. It is about breaking down the barriers that have historically prevented large segments of the population from participating in the formal financial system. Inclusion in the workplace is fundamental in financial organisations because it ensures that everyone has access to a job, regardless of their professional background, health, income level or social status. This is essential not only from a social justice perspective, but also for the sustainability and growth of the financial sector itself. When financial institutions focus on inclusion, they open their doors to a much wider audience, including those who have historically been underserved or excluded - such as people with health problems, low-income individuals, women and minority groups. By reaching these people, financial organisations can significantly expand their brand relevance and tap into new markets with untapped potential. In addition, inclusive financial practices help build trust and enhance an institution's reputation. In a sector where credibility and reliability are essential, being seen as fair, ethical and socially responsible strengthens public confidence. Customers are more likely to remain loyal and recommend institutions that they believe treat everyone fairly and equitably.



Inclusion also plays a critical role in meeting regulatory standards<sup>4</sup>. Many governments and international bodies are enforcing regulations that promote equal access to financial services and prevent discriminatory practices. By aligning with these standards, financial organizations ensure legal compliance and reduce the risk of sanctions or reputational damage. Another key aspect is innovation. Inclusive environments within financial institutions bring together individuals from diverse backgrounds, who offer different perspectives and experiences. This diversity of thought leads to more creative ideas, better problem-solving, and more innovative financial products and services that can meet a wider range of needs. On a broader scale, financial inclusion contributes to economic growth and stability. When people have access to secure ways to save, invest, or get credit, they are more likely to improve their financial well-being, start businesses, and contribute to the economy. This not only benefits individuals and communities but also strengthens the entire financial system. Inclusion is also important in managing risks. Excluding certain groups can push them towards informal and unregulated financial services, which increases vulnerability and instability. By integrating these individuals into the formal financial system, organizations can help promote financial education, increase repayment reliability, and support long-term stability.

Inclusion in financial organizations is not just a matter of ethics or compliance—it is a strategic necessity. It drives growth, fosters trust, encourages innovation, ensures regulatory compliance, and supports economic and institutional resilience. One of the primary reasons, inclusion is vital in financial institutions is the significant role it plays in expanding economic accessibility<sup>5</sup>. There are millions of individuals around the world who remain "unbanked" or "underbanked"—meaning

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<sup>4</sup> See Louiss S., Pigni F., Casalino N., Baker G., Assenza G., Narducci F., Walsh D., Sofia F., Tombini M., Di Lazzaro V. (2024), "Inclusion of People with Epilepsy in France – Epilepsy Power Research Project Findings", Conference: 7th Equity, Diversity and Inclusion Conference, Seville, Spain.

<sup>5</sup> Narducci F., Baker G., Walsh D., Sofia F., Casalino N., Borin B., Pigni F., Louiss S., Tombini M., Di Lazzaro V., Assenza G. (2023), "EpilepsyPOWER: surveys from a multicentric european study about epilepsy and employment", *Neurological Sciences*, vol. 44, issue no. 2, suppl. 2, pages 45-64, October 2023, Springer, Electronic ISSN 1590-3478, Print ISSN 1590-1874.

they either do not have access to a formal financial institution or have very limited access. This lack of access stifles their ability to save securely, invest in education or business ventures, or recover from financial setbacks. By incorporating inclusive policies and practices, financial organizations can create services tailored to these underserved populations. For instance, mobile banking, microloans, and simplified savings accounts have proven effective in reaching rural and low-income populations. The inclusion of these individuals doesn't just help them improve their financial lives; it also introduces a new customer segment into the organization's ecosystem, increasing deposits, loan demand, and overall activity within the financial system.

2. Inclusion also has profound implications for social equity and justice. Financial services are not just economic tools—they are enablers of empowerment. When individuals can access and control financial resources, they are better positioned to make choices that improve their lives, support their families, and contribute to their communities. Historically, many groups—particularly women, minorities, immigrants, and persons with disabilities—have faced systemic barriers to financial access. Inclusive financial institutions work actively to remove these barriers by offering tailored financial products, creating inclusive hiring practices, and engaging in community education efforts. For example, providing collateral-free loans for women entrepreneurs or offering services in multiple languages are ways financial organizations can level the playing field. Beyond individual empowerment, financial inclusion promotes broader social cohesion. Societies with wide disparities in financial access tend to experience more conflict, instability, and dissatisfaction. In contrast, inclusive financial systems foster trust, participation, and shared prosperity. From a business perspective, inclusion makes financial institutions more resilient and adaptable. A diverse and inclusive customer base reduces over-reliance on any one market segment, spreading risk and making institutions more robust in the face of economic downturns. For example, during times of crisis—such as the COVID-19

pandemic—financial organizations that had already built inclusive infrastructure were better able to reach marginalized groups with emergency aid, digital banking services, and financial literacy support<sup>6</sup>. Internally, inclusive hiring and management practices lead to stronger decision-making. Studies have consistently shown that organizations with diverse leadership teams outperform their peers in innovation, problem-solving, and profitability. Different cultural perspectives, experiences, and ways of thinking lead to a richer array of ideas and a more dynamic organizational culture.

Inclusion also enhances adaptability. In a rapidly changing digital landscape, having team members who understand different communities' needs helps organizations stay agile and responsive to shifting customer expectations. Enhancing social equity is a powerful imperative for banking institutions. Social equity refers to the fair and just distribution of resources, opportunities, and privileges within a society. When applied to the banking sector, it means ensuring all individuals—regardless of socioeconomic status, race, gender, disability, or geographic location—have equitable access to financial services, opportunities, and decision-making power. The promotion of social equity in banking is not just a matter of ethical responsibility; it is a foundational element of economic development, social cohesion, and long-term institutional credibility. For centuries, banking systems have played a central role in shaping economic power. However, the legacy of systemic exclusion—particularly toward marginalized communities—has resulted in deep-rooted disparities. Many individuals continue to face barriers to accessing credit, owning property, building businesses, or even opening a simple bank account. Women, for instance, in many parts of the world, are significantly less likely than men to have a bank account or access to credit. Racial minorities may be subject to discriminatory lending practices or geographic limitations imposed by historical redlining. By

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<sup>6</sup> Pellegrini M., Uskov V., Casalino N. (2020), "Reimagining and re-designing the post-Covid-19 higher education organizations to address new challenges and responses for safe and effective teaching activities", *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 9, part 1, pp. 219-248, ISSN 2050-9014.

committing to social equity, banks begin to reverse this trend. One way they do this is by developing products that address the unique challenges faced by underrepresented groups. For example, offering microloans to women entrepreneurs, low-income savings programs, or no-fee banking options for youth or the elderly helps level the financial playing field. Inclusive banking also requires attention to how services are delivered—making sure there are multilingual support services, digital accessibility for individuals with disabilities, and branch locations in underserved communities. The significance of social equity also lies in its broader impact on society. When banking organizations provide equal opportunities to grow wealth, invest in education, and start businesses, they contribute to a more inclusive economy. This can lead to increased employment, reduced poverty, and stronger local economies. It also diminishes the social unrest that often arises from economic disparity<sup>7</sup>. An equitable banking system helps people feel valued and included in society's financial and economic frameworks, promoting a sense of shared responsibility and trust. Moreover, promoting social equity strengthens a bank's moral legitimacy. In today's socially conscious environment, stakeholders—including customers, employees, investors, and regulators—are increasingly evaluating organizations based on their social impact. Banks that are seen to prioritize fairness and inclusion enhance their reputational capital, which can translate into increased customer loyalty and investor interest. Banks that champion social equity also attract a more diverse talent pool. Employees, particularly younger generations, prefer to work for institutions that reflect their values. A bank known for inclusive hiring, community engagement, and equitable practices is more likely to retain talent and benefit from the innovation and creativity that diverse teams bring. Ultimately, enhancing social equity transforms banks from being mere profit-driven entities into socially responsible institutions that play an active role in shaping a more just and

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<sup>7</sup> Kusku F., Araci O., Ozbilgin M. (2021), "What happens to diversity at work in the context of a toxic triangle? Accounting for the gap between discourses and practices of diversity management" in *Human Resources Management Journal*; 31:553-574.

prosperous society. This transformation not only benefits marginalized communities—it also strengthens the entire economic system by ensuring that growth is more broadly shared and sustainable. In an increasingly volatile and uncertain global environment, institutional resilience has emerged as a critical factor for banking organizations. Institutional resilience refers to the ability of a financial institution to withstand shocks, adapt to changes, and recover from disruptions while maintaining core functions and stability. This resilience is essential not just for the bank's own survival, but for the stability of the entire financial system, which depends heavily on banks as key intermediaries<sup>8</sup>. One of the primary reasons institutional resilience is vital is that banks operate at the heart of economic life<sup>9</sup>. Their services—ranging from deposits and payments to lending and investment—are essential for individuals, businesses, and governments alike. When banks are unable to function effectively due to financial crises, cyber-attacks, natural disasters, or pandemics, the resulting ripple effects can be catastrophic for the economy. A resilient bank is one that anticipates risk, prepares for disruptions, and has robust systems in place to ensure continuity. This includes both operational resilience (e.g., IT infrastructure, cybersecurity, disaster recovery plans) and financial resilience (e.g., capital buffers, liquidity management, diversified portfolios). The 2008 global financial crisis and the 2020 COVID-19 pandemic were wake-up calls that exposed the vulnerabilities of many banking systems. Institutions that had invested in resilience—by diversifying assets, digitizing services, and building strong governance structures—were better able to navigate these storms. But resilience goes beyond systems and capital. It also involves organizational culture and strategy. Resilient banks foster a culture of learning, adaptability, and proactive problem-solving. They invest in employee training, scenario planning, and transparent communication. Leadership in such organizations

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<sup>8</sup> Pellegrini M., Davola A., Casalino N., Bednar P. (2021), “Striking a balance between profit, people welfare, and ecosystem health in the transition towards a sustainable financial system”, *Law and Economics Yearly Review Journal - LEYR*, Queen Mary University, London, UK, vol. 10, part 2, pp. 295-324, ISSN 2050-9014.

<sup>9</sup> Amis J.M., Munir K.A., Lawrence T.B., Hirsch P., McGahan, A. (2018), “Inequality, Institutions and Organizations”, *Special Issue, Organization Studies*, Vol. 39(9) 1131-1152.

is open to feedback, quick to respond to change, and committed to continuous improvement. Importantly, inclusion and social equity actually contribute to resilience. When banks are inclusive and serve a diverse set of customers, they diversify their revenue streams and reduce dependency on any single market. For example, a bank that only serves corporate clients may struggle during an economic downturn, while one that also supports micro-enterprises and retail customers may experience greater stability. Serving varied customer segments also builds social capital and trust, which is crucial for recovery in times of crisis.

Technology is another key pillar of resilience. Digitally advanced banks can pivot quickly in the face of disruptions. During COVID-19, for instance, banks that had already invested in mobile apps and online services were able to continue serving customers without interruption. Resilience also requires agility in product development—being able to quickly design financial relief packages, loan restructuring services, or new digital solutions in response to emerging needs. Furthermore, regulatory compliance and risk management frameworks play a central role in strengthening resilience. Banking regulators around the world now emphasize stress testing, capital adequacy, anti-money laundering (AML), and environmental and social risk assessments. Institutions that integrate these into their core practices not only meet compliance standards but also build a more solid foundation for long-term viability. Resilience is also about reputation management. In times of crisis, the public looks to financial institutions for support. Banks that are seen as reliable, empathetic, and responsive during challenging times often emerge stronger in terms of customer loyalty and brand trust. Conversely, institutions that fail to protect customers, deliver services, or communicate effectively can suffer reputational damage that lasts for years. Finally, resilience includes sustainability. In a world facing climate change, resource scarcity, and social upheaval, banks must factor in environmental, social, and governance (ESG) considerations. Sustainable banking practices—such as green financing, ethical investing, and community partnerships—

help institutions anticipate long-term risks and align with global shifts toward sustainability. Banks that embed resilience into their DNA are not only better prepared for immediate threats but are also strategically positioned to thrive in the long run. Both social equity and institutional resilience are deeply interlinked and critically important for banking organizations. Enhancing social equity ensures that all individuals and communities have fair access to financial services, which fosters economic empowerment, social justice, and broader market participation. Strengthening institutional resilience, on the other hand, ensures that banks can adapt, survive, and continue serving their communities during times of disruption or crisis. Banks that invest in both areas are not only building stronger institutions—they are building a more inclusive, stable, and sustainable financial future<sup>10</sup>. These priorities should not be viewed as optional add-ons, but as central pillars of a modern banking strategy committed to long-term success and meaningful impact.

3. The EpilepsyPOWER project<sup>11</sup>, conceived and coordinated by the Luiss Business School, is an applied EU funded research and training scientific initiative. This project aims at innovating and integrating the training offer of courses, providing support to the private and public organisations with which we collaborate, through updated and concrete training contents. The results of the project and the training modules to promote the corporate inclusion of people with epilepsy were presented at the “Inclusive Workplaces” conference at Luiss Business School Villa Blanc on 16 January 2025. Professor Nunzio Casalino was the coordinator of the EpilepsyPOWER project. The EpilepsyPOWER research project focused on analysing the gaps in organisations regarding the dissemination and correct adoption of good practices for the inclusion of people with epilepsy, consciously or unconsciously, to support

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<sup>10</sup> Capriglione F., Casalino N. (2014), “Improving Corporate Governance and Managerial Skills in Banking Organizations”, *International Journal of Advanced Corporate Learning (iJAC)*, Austria, vol. 7, issue 4, pp. 17-27, ISSN 1867-5565.

<sup>11</sup> See the EU project website at <https://epilepsypower-project.eu/>

business processes. The contents, developed and validated with numerous organisations and experts, have been made available to propose new approaches to workplace design. Those who wish to specialise in human resources management or orientate their skills to prepare for certification as a disability manager can do so through special training modules<sup>12</sup>.

EpilepsyPOWER aims to raise awareness, stimulate and strengthen the programmes offered by universities in Europe to improve curricula on the inclusion of fragile subjects and disseminate the good practices identified in the five countries involved (Italy, France, Ireland, Bulgaria and Germany) in corporate and university contexts. The three-year research project involved various professionals and patients and identified concrete solutions for work inclusion. International scientific articles were published mainly in Denmark, England and Norway, while literature is scarce at European level. We have also aimed to publicise success stories, from companies and public administrations, and made available an online tool that makes it possible to award the “label” of epilepsy-friendly organisation and validate in a certain way whether the training acquired by, for example, a head of personnel in an organisation has been correctly learnt. Thanks to the project, professors and researchers from different universities (Luiss, Guglielmo Marconi, Campus Bio-Medico, Grenoble Ecole de Management, Parthenope di Napoli) shared experiences and contributed to the report “Operational framework and learning methodology” with data and ideas to improve training for managers, executives and function heads. With the support of associations such as the International Bureau for Epilepsy (IBE), the task force Epilepsy Alliance Europe (EAE) and several Chambers of Commerce in Germany and Bulgaria, good organisational practices were promoted. In addition, a systematic review of European legislation and statistics on the employment inclusion of people with epilepsy was carried out<sup>13</sup>. Launching work inclusion initiatives in organisations not

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<sup>12</sup> See the Luiss Business School news section at <https://businessschool.luiss.it/news/epilepsypower-linclusion-passa-dalla-formazione/>

<sup>13</sup> See the Annual Activity Report 2023 - Employment, Social Affairs and Inclusion, Directorate-General for Employment, Social Affairs and Inclusion, European Commission.



only for people with epilepsy favours the creation of fairer and more welcoming working environments. From the point of view of human resources management, it translates into concrete actions: from adapting workstations to training staff to dispel prejudices and stigma, as well as, above all, knowing how to deal with any emergencies with greater capacity. This then demonstrates that an organisation does not just comply with regulations on access to work for disadvantaged groups, but is actively committed to ensuring equal opportunities. Often, people with epilepsy face obstacles in finding and keeping a job, due to stereotypes or unjustified fears. Promoting their inclusion means breaking down these barriers and valuing talent regardless of health condition.

In addition, when a company invests in diversity, employees perceive a fairer and more respectful environment, which increases engagement. Furthermore, raising awareness about epilepsy helps create an organisational culture based on empathy and collaboration, reducing the risk of discrimination or isolation. Today, customers and investors are increasingly attentive to corporate social responsibility practices and reward companies that demonstrate a genuine commitment to social issues<sup>14</sup>. A work inclusion project can therefore improve the public perception of the company and strengthen its brand. The inclusion of people with epilepsy at work depends on the people skills of colleagues. Creating a welcoming environment requires soft skills to deal with diversity with awareness. Empathy is key: understanding the difficulties of others without prejudice is essential for inclusion. It is important to communicate clearly about epilepsy, normalising the condition and preparing the work environment to handle any crisis without panic. Flexibility is crucial: adapting workspaces and hours to the needs of employees with epilepsy facilitates inclusion. Emotional intelligence helps to manage one's own and others' emotions, reducing

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<sup>14</sup> Pellegrini M., Casalino N., Krause V. (2016), "Challenges for expatriates returning: measures and approaches for a successful reintegration of employees in financial organizations", LAW AND ECONOMICS YEARLY REVIEW JOURNAL, Queen Mary University, London, UK, vol. 5, part 1, pp. 125-150, Humanistic Management Network, Research Paper Series No. 45/16, ISSN 2050-9014

insecurities and unfounded fears. Investing in these skills creates a fair and accessible working environment, making the organisation more innovative and competitive.

People with epilepsy often do not disclose their condition to employers to avoid stigma, which can be interpreted as a breach of trust. More than half hide their condition from potential employers when applying for a job. Fundamentals therefore become the role of specific training for those in charge of managing people who can redesign workplaces, foster listening skills, break down stigma, reduce misjudgements and indirectly foster the creation of truly more inclusive work environments. The training modules produced thanks to the EpilepsyPOWER project are designed to meet knowledge and experience needs, after in-depth discussions with colleagues Matteo Giuliano Caroli, Head of the Applied Research Area of the Luiss Business School, and Giovanni Assenza, Neurologist at the Campus Bio-Medico in Rome. Specifically, we have created two learning paths, containing 14 teaching modules to examine in depth, both from the point of view of company organisation and from the medical point of view, the issues of productivity and work safety in this field, which HR managers often find themselves having to deal with<sup>15</sup>. The EpilepsyPOWER project shows how the Luiss Business School can cooperate with international universities and companies on work inclusion and work process reorganisation, strengthening its leading role in Europe.

4. Financial inclusion is also aligned with international development goals and policy frameworks. For instance, the United Nations Sustainable Development Goals (SDGs) explicitly highlight the importance of inclusive economic growth and access to financial services in ending poverty, achieving gender equality, and reducing inequalities. Many countries have national financial inclusion strategies in place, and global financial institutions such as the World Bank and International Monetary Fund

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<sup>15</sup> Żuchowski I., Casalino N., Murat B. (2022), “Experience of academic staff in mentoring programs”, *International Journal of Management and Economics*, vol.58, no.2, 2022, pp. 23-41, ISSN 2543-5361, <https://doi.org/10.2478/ijme-2022-0019>.

actively promote inclusion as a cornerstone of sustainable development. Financial organizations that embrace inclusion are not only supporting their own growth but also contributing to these broader societal goals. This alignment strengthens their legitimacy in the eyes of stakeholders, investors, regulators, and the public. Furthermore, institutions that ignore inclusion risk falling behind, both in terms of compliance and competitive advantage. Another crucial aspect is the role of inclusion in reducing systemic risk. When significant portions of the population are excluded from formal finance, they are more likely to rely on informal or unregulated systems. These systems often charge exorbitant interest rates, offer no consumer protection, and can contribute to cycles of debt and exploitation. Such instability can ripple across the economy, especially during financial crises.

Inclusive financial systems, on the other hand, foster transparency, accountability, and stability. When more people participate in regulated financial activity, it becomes easier to monitor financial flows, prevent fraud, and ensure fair practices. This contributes to the overall health of the financial ecosystem and reduces the likelihood of systemic collapse due to over-leveraging or unregulated lending.

Banking organizations hold a unique and powerful position in society—not only as economic institutions but also as agents of social change. In recent years, the call for inclusive, equitable workplaces has grown stronger, supported by international frameworks such as the United Nations Sustainable Development Goals (SDGs)<sup>16</sup>, the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), ILO Convention No. 159, and various national disability inclusion policies. Aligning with

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<sup>16</sup> The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries - developed and developing - in a global partnership. They recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests. See the Department of Economic and Social Affairs Sustainable Development, United Nations, <https://sdgs.un.org/goals>.

these global standards is essential for ensuring that individuals with neurological and developmental conditions—specifically epilepsy and autism—are no longer left on the margins of employment<sup>17</sup>. In the context of banking organizations, inclusion is not only a human rights issue but also a strategic opportunity to diversify the workforce, improve resilience, enhance innovation, and boost reputation. This commitment must go beyond token gestures and be deeply rooted in global goals, translated into institutional policies and practices that ensure equity, accessibility, and long-term integration. One of the strongest reasons for aligning with global goals in the inclusion of epilepsy and autism workers is the moral and legal imperative to uphold human rights. The UN Convention on the Rights of Persons with Disabilities (UN CRPD) affirms the right of individuals with disabilities to work on an equal basis with others, in a work environment that is open, inclusive, and accessible. Epilepsy and autism are both conditions that, under this convention and under many national laws, qualify as disabilities deserving of accommodation and protection. By actively hiring and supporting workers with epilepsy and autism, banking institutions demonstrate their commitment to fundamental human rights. This is not only about complying with disability laws or avoiding discrimination lawsuits—it’s about embracing the ethos of global human rights initiatives. It’s about ensuring that every individual, regardless of neurological condition, has the dignity of work and the opportunity to contribute meaningfully to society<sup>18</sup>. Failing to align with these principles can leave banks exposed to legal and reputational risks, particularly as advocacy and awareness grow. On the other hand, a proactive approach to inclusion helps position banks as global leaders in social responsibility.

The 2030 Agenda for Sustainable Development, built on the 17 SDGs, includes clear mandates for disability inclusion in areas such as decent work (Goal 8), reduced

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<sup>17</sup> Ferdman B.M. (2017), “Paradoxes of Inclusion: Understanding and Managing the Tensions of Diversity and Multiculturalism”, in *Journal of Applied Behavioural Science*, 53(2), 235–263.

<sup>18</sup> Shore L.M. et al. (2011), “Inclusion and diversity in work groups: A review and model for future research” in *Journal of Management*.

inequalities (Goal 10), and quality education (Goal 4). Banking institutions that align their hiring practices with these goals can play a pivotal role in advancing disability rights on a global scale:

- Goal 8: Decent Work and Economic Growth explicitly calls for the promotion of “productive employment and decent work for all, including persons with disabilities.” By integrating workers with epilepsy and autism into the banking workforce, organizations contribute directly to this goal.

- Goal 10: Reduced Inequalities urges institutions to “empower and promote the social, economic and political inclusion of all,” regardless of ability or condition. Inclusion in the banking sector is particularly powerful because of its influence over access to capital, financial education, and economic participation.

- Goal 4: Quality Education indirectly connects through lifelong learning opportunities, which are essential for supporting neurodiverse workers. Banking organizations that provide on-the-job training, adaptive learning tools, and professional development for autistic or epileptic employees help bridge the gap between education and meaningful employment.

Aligning with these SDGs allows banks to publicly demonstrate their contribution to a global agenda while enhancing their credibility and impact as socially responsible institutions. From a business strategy perspective, the inclusion of individuals with epilepsy and autism enriches organizational diversity. Neurological diversity—often referred to as neurodiversity—brings fresh perspectives, unique problem-solving skills, and new ways of thinking that traditional hiring models often overlook. Workers on the autism spectrum, for example, often excel in tasks requiring attention to detail, pattern recognition, logical analysis, and routine-based workflows<sup>19</sup>. These skills are highly valuable in banking environments, especially in

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<sup>19</sup> Louiss S., Pigni F., Casalino N., Baker G., Assenza G., Narducci F., Walsh D., Sofia F., Tombini M., Di Lazzaro V. (2024), “Inclusion of People with Epilepsy in France – Epilepsy Power Research Project Findings”, Conference: 7th Equity, Diversity and Inclusion Conference, Seville, Spain.

areas such as compliance, data analysis, quality assurance, cybersecurity, and risk management. Meanwhile, many individuals with epilepsy demonstrate strong emotional resilience, determination, and adaptability—qualities essential in customer service and team-based roles. Inclusive banking organizations that align with neurodiversity frameworks can leverage these strengths, fostering a culture of innovation. Studies have shown that diverse teams consistently outperform homogeneous ones in creativity, problem-solving, and productivity. Inclusion of epilepsy and autism workers opens up new ways of thinking about process optimization, communication strategies, and customer service models. Furthermore, creating a neurodiverse workforce signal to customers and partners that the institution values differences—not only as a matter of compliance but as a core business asset. This can deepen brand loyalty among socially conscious consumers and investors. Aligning with global inclusion standards also strengthens institutional resilience. Resilience in banking is not only about managing financial risks and ensuring business continuity—it’s about building adaptive systems, inclusive cultures, and ethical decision-making frameworks. Workers with epilepsy and autism can thrive in the banking sector when proper accommodations are made, such as flexible scheduling, quiet working environments, supportive technologies, and epilepsy-aware safety protocols. These accommodations, once implemented, often benefit all employees—not just those with disabilities—by creating a more adaptable and supportive workplace culture. Moreover, inclusion programs create a sense of belonging and community within the workforce, which boosts morale, reduces turnover, and strengthens internal cohesion. Employees who feel respected and empowered are more likely to be loyal, motivated, and committed to the organization’s mission.

Banks that embrace disability inclusion also become more resilient in the face of societal change. As public expectations shift toward inclusivity and transparency, institutions that have already aligned with global standards will be better positioned

to maintain relevance and trust in an evolving marketplace. In a time when ESG (Environmental, Social, and Governance) reporting is becoming a key performance indicator for institutional investors and global stakeholders, disability inclusion—especially aligned with global standards—has become a reputational asset. Investors are increasingly looking beyond financial metrics to assess how institutions manage their impact on society. A commitment to hiring and retaining neurodiverse employees—supported by documentation, transparency, and alignment with global standards—can enhance ESG ratings, attract sustainable investors, and facilitate access to global capital markets. Additionally, global partnerships with organizations such as the International Labour Organization (ILO), World Health Organization (WHO), Autism Speaks, and Epilepsy Foundation can enhance a bank’s visibility, credibility, and access to expertise. These partnerships often lead to new business opportunities, training programs, and shared innovations that further support inclusion. Finally, by aligning with global goals, banks can position themselves as employers of choice for a new generation of workers who prioritize equity, ethics, and purpose. This not only improves talent acquisition but also builds a culture that is prepared for the future of work—a future that is inclusive, digital, and deeply human-centered. Banking organizations that align their inclusion practices with global goals and standards are not just doing the right thing—they are doing the smart thing. By ensuring meaningful opportunities for individuals with epilepsy and autism, they fulfill international obligations, support human rights, contribute to the SDGs, and unlock powerful sources of talent and innovation. The move toward inclusive hiring and workplace practices is not simply a compliance issue—it is a transformational strategy. A neurodiverse workforce strengthens a bank’s institutional resilience, builds public trust, and enhances its ability to lead in a rapidly changing world. In doing so, banks help create a more equitable, innovative, and sustainable future—for everyone.

5. Technological advancement, particularly in fintech, has made inclusion more



attainable than ever. Mobile banking, digital wallets, and blockchain technology have enabled financial services to reach remote, low-income, and marginalized populations with greater ease and lower costs. Financial organizations that prioritize inclusion are often at the forefront of adopting and refining these innovations. In fact, inclusive strategies often inspire technological innovation. For example, the design of ultra-low-cost remittance platforms or biometric identification systems for individuals without formal documentation has largely been driven by the need to include the previously excluded. Such innovations, though initially targeted at underserved markets, often have applications in mainstream finance as well, showcasing how inclusion can drive universal improvement<sup>20</sup>. As the global banking sector undergoes rapid digital transformation, the importance of embracing technological innovation has grown exponentially—not just for competitive advantage, but also for advancing diversity, equity, and inclusion. Specifically, technology has the power to level the playing field for individuals with neurological conditions, such as epilepsy and autism spectrum disorder (ASD), who often face unique challenges in traditional work environments. For banking organizations, the strategic integration of inclusive technologies creates an environment that enables meaningful participation, productivity, and long-term career development for neurodiverse employees. This not only aligns with international goals of disability inclusion, such as the United Nations Sustainable Development Goals (SDGs) and the UN Convention on the Rights of Persons with Disabilities (UN CRPD), but also enhances internal resilience, workforce innovation, and brand value. One of the most immediate ways technological innovation fosters inclusion is by removing practical and cognitive barriers in the workplace. People with epilepsy or autism may face difficulties with certain sensory stimuli, memory processing, communication, or physical environments. Innovations in assistive technology—such as voice-to-text software,

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<sup>20</sup> Casalino N., Cavallari M., De Marco M., Ferrara M., Gatti M., Rossignoli C. (2015), “Performance Management and Innovative Human Resource Training through Flexible Production Systems aimed at Enhancing the Competitiveness of SMEs”, *IJKM, IUP Journal of Knowledge Management*, vol. XIII, No. 4, October 2015, pp. 29-42, ISSN 0972-9216.

noise-canceling headphones, task-management tools, and screen readers—can dramatically improve how they work, communicate, and collaborate. For individuals with epilepsy, technology can help mitigate risks through wearable seizure alert systems, integrated emergency response protocols, or lighting and screen adjustments that reduce seizure triggers. In banking environments where stress and extended screen time are common, these technologies provide crucial safeguards that allow employees to thrive without compromising their health. For employees with autism, tools such as routine schedulers, visual communication aids, or AI-powered social support applications can reduce anxiety, provide predictability, and support their preferred ways of interacting. Some may also benefit from customizable digital workspaces that reduce distractions, filter stimuli, or break tasks into structured, digestible steps. The banking sector, with its deep investment in technology, is uniquely positioned to adopt and integrate these innovations, often with relatively low cost and high return on inclusivity. By offering adaptable, user-centered technologies<sup>21</sup>, banks can provide neurodiverse employees with the autonomy and tools needed to succeed in their roles. The rise of remote and hybrid work, accelerated by the COVID-19 pandemic, has unlocked powerful opportunities for inclusion, particularly for individuals with disabilities. For workers with epilepsy and autism, flexible work environments can reduce the stressors and barriers they often face in traditional office settings. Remote work enables employees with epilepsy to manage their health more comfortably without facing commuting risks or rigid scheduling. For those on the autism spectrum, remote work can mean avoiding over stimulating environments, such as noisy offices or unpredictable social interactions. With the help of digital collaboration platforms, cloud-based banking systems, and AI-powered scheduling assistants, remote work can still be highly productive, structured, and collaborative. Banks that embrace remote work through

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<sup>21</sup> Narducci F., Baker G., Walsh D., Sofia F. Casalino N., Borin B., Pigni F., Louiss S., Tombini M., Di Lazzaro V., Assenza G. (2023), “EpilepsyPOWER: surveys from a multicentric European study about epilepsy and employment”, *Neurological Sciences*, vol. 44, issue no. 2, suppl. 2, pages 45-64, October 2023, Springer, Electronic ISSN 1590-3478, Print ISSN 1590-1874.

technology are essentially removing one of the most significant historical barriers to employment for people with neurological conditions: the physical environment. By embedding inclusive design into their remote work systems<sup>22</sup>—like accessible video conferencing tools, neurodivergent-friendly interfaces, and asynchronous communication protocols—banks can extend equal opportunity employment more widely than ever before.

Moreover, remote work technologies also allow banks to recruit talent across geographies, including individuals in rural or underserved communities who might otherwise lack access to inclusive employment. This contributes not only to greater social equity, but also to the institution’s capacity for innovation and regional representation. Technology also plays a pivotal role in inclusive recruitment, onboarding, and training processes. Many traditional hiring practices—such as unstructured interviews, fast-paced assessments, or ambiguous social cues—can unintentionally disadvantage candidates with epilepsy or autism. However, AI-powered hiring platforms, gamified assessments, and customized onboarding portals can help banks evaluate skills more fairly and adapt the recruitment process to individual needs. For example, a digital assessment system can be programmed to:

- Offer extended time for candidates who need it.
- Use plain language or visual questions for better comprehension.
- Reduce the emphasis on verbal communication and emphasize skill-based tasks.
- Flag potential accommodation needs early, so support systems can be put in place from the start.

Once hired, e-learning platforms and VR training environments can simulate

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<sup>22</sup> Casalino N. (2014), “Learning to Connect: a Training Model for Public Sector on Advanced E-Government Services and Inter-Organizational Cooperation”, *International Journal of Advanced Corporate Learning (iJAC)*, Austria, vol. 7, no.1, pp. 24-31, ISSN 1867-5565

banking scenarios in a structured, repeatable, and low-stress way<sup>23</sup>. These tools are especially helpful for individuals on the autism spectrum, who may benefit from predictable, hands-on learning rather than ambiguous classroom training. Incorporating closed captioning, visual reinforcement, and multi-sensory instructional design into digital training programs ensures that all employees—regardless of learning style—can succeed. This not only benefits neurodiverse workers, but all staff, creating a more effective and inclusive learning culture across the organization. Advanced analytics, including HR analytics and predictive modeling, offer new ways to track and improve inclusion efforts. Through anonymized data, banking institutions can assess:

- Representation of employees with epilepsy or autism across roles and levels.
- Retention and promotion rates among neurodiverse staff.
- Utilization of support services or workplace accommodations.
- Feedback on accessibility, culture, and training effectiveness.

Such data enables banks to make evidence-based decisions, identify systemic barriers, and tailor interventions to meet real needs. It also supports transparency and reporting on ESG metrics—particularly around “Social” impact, which is increasingly scrutinized by stakeholders. Importantly, ethical data practices are essential<sup>24</sup>. Data collection around disability must be consensual, anonymous, and safeguarded. With thoughtful implementation, however, analytics can shift banks from reactive compliance to proactive inclusion strategy.

As banking increasingly moves to digital platforms—mobile banking, AI

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<sup>23</sup> Casalino N. (2014), “Simulations and Collective Environments: New Boundaries of Inclusiveness for Organizations?”, *International Journal of Advances in Psychology (IJAP)*, Science and Engineering Publishing, USA, vol. 3, issue 4, pp. 103-110, ISSN online 2169-4958, ISSN print 2169-4942 (IF 0,24).

<sup>24</sup> Casalino N., Cavallari M., De Marco M., Ferrara M., Gatti M., Rossignoli C. (2015), “Performance Management and Innovative Human Resource Training through Flexible Production Systems aimed at Enhancing the Competitiveness of SMEs”, *IJKM, IUP Journal of Knowledge Management*, vol. XIII, No. 4, October 2015, pp. 29-42, ISSN 0972-9216

chatbots, virtual assistants—internal collaboration also shifts to digital. Tools like Slack, Microsoft Teams, Zoom, and Notion, when optimized for accessibility, create digital work cultures that are flexible and inclusive. For workers with epilepsy, asynchronous communication reduces pressure to respond instantly, which is helpful during recovery or stress. For autistic employees, tools that emphasize written communication or visual collaboration allow them to engage in ways that align with their strengths. AI tools can also provide real-time support, such as:

- Speech-to-text for those who prefer written formats.
- Emotion detection to help users interpret tone and intention in messages.
- AI scheduling assistants that help manage routines and minimize conflicts.

Moreover, AI-driven feedback systems can help managers adapt their communication styles and recognize bias, fostering a more empathetic and inclusive leadership culture. Inclusion is no longer just about policies—it's about designing systems that reflect the full diversity of the human experience. For banking organizations, embracing technological innovation is not a luxury—it is a responsibility and an opportunity. By investing in inclusive technologies, banks can:

- Empower employees with epilepsy and autism to perform and thrive.
- Unlock untapped potential and cognitive diversity.
- Align with global inclusion goals and regulatory expectations.
- Enhance their resilience, adaptability, and relevance in the future of work.

More than a tool for efficiency, technology is a pathway to equity—and for banking institutions that embrace it fully, the reward is a stronger, smarter, and more inclusive organization that mirrors the world it serves.

6. Inclusion also plays a key role in cultivating long-term customer loyalty and

satisfaction. People want to do business with organizations that understand and value them. By actively working to understand the needs of diverse communities and designing inclusive products and services, financial institutions build deeper relationships with their clients. These relationships translate into sustained engagement, higher retention rates, and increased advocacy. In contrast, institutions that fail to consider inclusion may alienate certain customer groups, missing out on opportunities and risking reputational damage. In today's environment, where consumers are increasingly values-driven, being seen as inclusive can be a major competitive advantage.

In the competitive and fast-evolving landscape of banking, employee loyalty has become one of the most critical assets an organization can cultivate. Retaining skilled talent, reducing turnover costs, and building a resilient internal culture are more important than ever<sup>25</sup>. For workers with epilepsy and autism spectrum disorder (ASD)—who have historically faced systemic barriers to employment and career progression—inclusive workplace practices represent a powerful and transformational commitment. When banks actively foster long-term inclusion, not just as a policy but as an embedded cultural value, they unlock a reciprocal relationship that promotes employee loyalty, organizational stability, and broader social value. Cultivating this loyalty goes beyond hiring—it is about ensuring access, accommodation, opportunity, respect, and long-term growth. One of the clearest benefits of cultivating loyalty through inclusion is a reduction in employee turnover. Workers who feel seen, valued, and supported are more likely to remain committed to their employer over time. For individuals with epilepsy and autism, finding an employer who understands and accommodates their unique needs can be rare—so

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<sup>25</sup> Veglianti E., Magnaghi E., Casalino N., Gennaro A., De Marco M. (2023), “Organizing the University 4.0: new goals and insights to promote the digital transformation of Higher Education Institutions to succeed next e-learning era”, in volume *Smart Education and e-Learning—Smart University* - edited by Uskov, Vladimir L., Howlett, Robert J., Jain, Lakhmi C., pp. 211-229, Springer Nature, Hardcover ISBN 978-981-99-2992-4, Softcover ISBN 978-981-99-2995-5, 10.1007/978-981-99-2993-1\_11.

when such a supportive environment is established, loyalty tends to be deep and long-lasting. In the banking industry, where high employee turnover can incur significant costs—both financial and operational—investing in long-term inclusion strategies pays dividends. Training new hires, managing transitions, and mitigating the productivity loss of onboarding new staff consumes time and money. Retaining neurodiverse talent can offset these costs and build a more consistent and stable workforce. Moreover, loyal employees often serve as culture carriers. Employees with autism or epilepsy who stay long-term and succeed can become mentors, advocates, and positive examples that reinforce inclusive values internally. Their presence also helps destigmatize disability, encouraging future hires and opening doors for other diverse talents. Long-term loyalty is sustained not just by initial inclusion, but by growth opportunities. Many neurodiverse employees face career stagnation in workplaces that fail to recognize or nurture their unique talents. Banking organizations that invest in tailored professional development programs for workers with epilepsy and autism help ensure that these employees don't just stay—they thrive. These programs might include:

- One-on-one mentorship tailored to communication preferences.
- Inclusive leadership development tracks.
- Role-based training that matches the employee's cognitive strengths.
- Flexible upskilling opportunities using visual or gamified formats.

When neurodiverse workers are provided with personalized support, they can advance just like any other employee—taking on supervisory roles, contributing to innovation, and shaping the direction of the institution. Their long-term presence within the organization sends a powerful signal: that disability does not limit career potential in banking. This focus on development is especially important for people with autism and epilepsy, who may have been discouraged in the past or underestimated due to stereotypes. Providing a clear, supported pathway for



advancement builds confidence and loyalty while unlocking hidden leadership potential<sup>26</sup>. Inclusive practices that support long-term loyalty for epilepsy and autism workers do not just benefit individuals—they reshape organizational culture. When banks embrace neurodiversity and create psychologically safe spaces for people to be authentic, the broader culture becomes more empathetic, open, and human-centred. This cultural transformation leads to higher morale across the board. Employees who see their employer make genuine efforts to support all kinds of workers—especially those historically marginalized—tend to feel more engaged and prouder of where they work. They are more likely to support inclusive values themselves, leading to a virtuous cycle of acceptance, empathy, and mutual support. In fact, neurodiverse inclusion can inspire broader equity-focused practices: better mental health supports, improved work-life balance, and greater flexibility. All of these contribute to a loyal and resilient workforce—one that's not only skilled, but deeply aligned with the institution's mission and values<sup>27</sup>. Banking institutions that cultivate loyalty through inclusion also enhance their reputation as employers of choice<sup>28</sup>. In today's socially conscious job market, many professionals—especially younger generations—seek employers who demonstrate real commitment to equity and social justice. A bank that prominently includes and promotes neurodiverse individuals, including those with epilepsy and autism, positions itself as a leader in ethical employment. This reputation extends beyond the workforce. Customers, investors, and partners increasingly prefer to work with institutions that reflect their own values. A proven record of loyalty cultivation and neurodiverse inclusion can attract clients who value corporate responsibility. It can also help in securing partnerships with government,

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<sup>26</sup> Shore L.M. et al. (2009), "Diversity in organizations: Where are we now and where are we going?", *Human Resource Management Review* 19 (2009) 117–133.

<sup>27</sup> Cavallari M., De Marco M., Rossignoli C., Casalino N. (2015), "Risk, Human Behaviour, and Theories in Organizational Studies", *Proceedings of Wuhan International Conference on E-Business, WHICEB 2015, Wuhan, China, AIS, Association for Information Systems, AIS Electronic Library (AISeL)*, pp.283-297, <http://aisel.aisnet.org/whiceb2015/55>, ISBN 978-0-9800510-8-7.

<sup>28</sup> Casalino N. (2014), "Behavioural Additionality and Organizational Impact of European Policies to Promote Internationalisation of High-growth Innovative SMEs", *Journal of International Business and Economics*, American Research Institute for Policy Development, USA, vol. 2, no. 4, pp. 17-44, ISSN online: 2374-2194, ISSN print: 2374-2208.

NGOs, and impact investors who prioritize inclusivity.

Furthermore, long-term neurodiverse employees often become public-facing ambassadors. Their stories—when shared ethically and with consent—can humanize the brand, illustrating how banking can be a force for social good. This emotional connection helps build trust and brand loyalty with the wider community, strengthening the institution’s long-term social license to operate. Loyalty does not arise by accident—it must be designed into the organizational ecosystem. Banking institutions must create inclusive HR policies that explicitly support long-term success for employees with epilepsy and autism. These may include:

- Health accommodations policies that support epilepsy management and seizure-safe environments.
- Flexible work arrangements, including remote options and flexible hours for medical appointments.
- Neurodiversity-friendly recruitment and promotion frameworks.
- Employee resource groups (ERGs) for disabled and neurodivergent staff, offering peer support and advocacy.
- Manager training programs to educate leaders on how to support neurodiverse team members.
- Confidential feedback loops, so concerns can be addressed early and constructively.

By embedding these supports, banks create not only a foundation for inclusion, but a framework for retention. When neurodiverse employees see that their needs are anticipated and respected, they are more likely to commit their energy, creativity, and loyalty to the institution. Loyal employees—especially those who have overcome barriers—are often some of the most motivated and innovative contributors. Employees with autism often bring exceptional focus, pattern recognition, and

analytical thinking to roles in data science, compliance, and operations. Individuals with epilepsy, too, often possess deep resilience, attention to safety, and empathy born of lived experience. When supported over the long term, these strengths become deeply embedded in institutional knowledge. Neurodiverse employees who stay for years not only contribute as individuals, but also help to evolve systems—offering insight into better design, better service, and more human-centred products<sup>29</sup>. Their loyalty helps the bank become more innovative and competitive—not in spite of disability, but because of how inclusion deepens the organization’s collective intelligence. They also bring critical insight into how the bank can better serve neurodiverse customers, opening new market segments and designing more inclusive financial services. Cultivating long-term loyalty among workers with epilepsy and autism is both a moral imperative and a strategic advantage. It is about recognizing that inclusion is not a checkbox, but a living, evolving commitment to people. In return, banking organizations receive something invaluable: employees who are not only capable and committed, but who help shape a culture of resilience, equity, and innovation. Loyalty, when rooted in authentic inclusion, transforms both individuals and institutions. In the world of banking—where trust, long-term relationships, and continuity are core values—this transformation is not just beneficial; it is essential. By investing in the long-term success of neurodiverse workers, banks build not only better teams, but also a better future for their industry, their communities, and the global economy.

7. Improving managerial approaches and business strategies in the banking sector with a strong focus on inclusion, diversity, social equity, and organisational

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<sup>29</sup> Casalino N., De Marco M., Rossignoli C. (2015), “Extensiveness of Manufacturing and Organizational Processes: an Empirical Study on Workers Employed in the European SMEs”, in SMART DIGITAL FUTURES 2015, Neves-Silva R., Tsihrintzis G.A., Uskov V. (Eds.), Smart Education and E-Learning 2015, Uskov V., Howlett R.J. and Jain L.C. (Eds.), IOS Press, Springer KES Smart Innovation Systems and Technologies series (TBC), ISBN print 978-1-61499-404-6, ISBN online 978-1-61499-405-3.

intelligence is not just a matter of ethics or compliance—it's increasingly a competitive necessity. The banking industry, traditionally viewed as conservative and hierarchical, is now navigating a rapidly evolving global landscape marked by digital transformation, shifting customer expectations, and heightened social awareness. In this context, embedding inclusive practices and equitable strategies becomes a strategic lever for growth, innovation, and long-term sustainability. Inclusion and diversity contribute to more dynamic decision-making processes by bringing varied perspectives and experiences to the table. This diversity of thought fosters creativity, reduces groupthink, and enhances problem-solving, which are essential qualities for navigating complex financial markets and regulatory environments. Social equity, on the other hand, ensures that policies and services are designed to serve a broader spectrum of the population, particularly historically underserved or marginalized communities<sup>30</sup>. This not only fulfils a moral imperative but also opens new market opportunities and strengthens customer trust and loyalty. From an internal standpoint, prioritizing these values helps in building a more engaged and resilient workforce. Employees who feel seen, respected, and valued are more likely to contribute meaningfully to the organisation's goals. This in turn increases productivity, reduces turnover, and creates a more adaptive and intelligent organisational culture—one that can anticipate change rather than merely react to it. Organisational intelligence, which encompasses the ability to learn from data, feedback, and internal communication patterns, is significantly enhanced when diverse voices are integrated into decision-making structures. A more inclusive environment ensures that the intelligence gathered across the organisation is not filtered or distorted by bias, allowing for more accurate insights and strategic foresight.

Ultimately, banks that actively improve their managerial and strategic

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<sup>30</sup> Prasad P., Pringle J.K. & Konrad A.M. (2006), "Examining the contours of workplace diversity: Concepts, contexts and challenges" in A. M. Konrad, PK Prasad and J. K. Pringle (eds) *Handbook of Workplace Diversity*, London: Sage.

approaches in line with these values are better positioned to innovate responsibly, build stronger stakeholder relationships, and maintain a reputation for integrity and leadership in a socially conscious marketplace. Inclusion is not a peripheral concern—it is central to the mission and sustainability of modern financial organizations. It can effectively support organizational inclusion, economic growth, fosters social equity, drives innovation, reduces risk, and enhances institutional resilience. In an era defined by rapid change, uncertainty, and increasing diversity, financial organizations must prioritize inclusion not only as a moral imperative but as a strategic necessity<sup>31</sup>. A major international bank might develop a targeted financial literacy program for immigrant communities who are typically underserved by traditional banking services. By understanding cultural differences and language barriers, the bank creates tailored products and outreach efforts. This inclusive approach not only empowers the community but also taps into a previously neglected customer base, expanding the bank's market share and demonstrating social responsibility. Another example could be seen in recruitment and leadership development<sup>32</sup>. A forward-thinking bank may implement inclusive hiring practices by partnering with universities and organizations that serve underrepresented groups. It could also use blind résumé screening and diverse interview panels to minimize unconscious bias. Over time, this builds a leadership pipeline that reflects the broader society, enhances the organisation's reputation, and supports smarter, more innovative decision-making at the top. In terms of organisational intelligence, a bank could invest in AI-driven analytics platforms that track employee engagement and inclusion metrics—such as participation in meetings, access to mentorship, and promotion rates across demographic groups. With this data, leadership can identify inequities, design more equitable career development plans, and foster a culture where all employees

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<sup>31</sup> Casalino N., Borin B., Pizzolo G., Cavallini S. (2019), "Awareness and Cooperation of Relevant Stakeholders in Developing Competences Related to Green Tourism", Smart Engineering Education - SEE-2019, 2019 IEEE Global Engineering Education Conference (EDUCON), Dubai, April 9-11, IEEE, Springer Germany, DOI 10.1109/EDUCON.2019.8725085, ISSN 2190-3018.

<sup>32</sup> Nkomo S. & Cox T. (1996), "Diverse identities in organizations", in S.R. Clegg, C. Hardy & W.R. Nord (Eds), Handbook of organization studies. London, Sage, pp. 338-56.

contribute to strategic dialogue. Lastly, from a product development standpoint, a bank embracing these values might redesign its lending criteria to reduce discriminatory bias that historically disadvantaged certain communities. For instance, instead of relying solely on credit history, they might integrate alternative data sources like rental and utility payment history to evaluate creditworthiness. This more equitable model opens the door for responsible lending while promoting financial inclusion. These examples and the EpilepsyPOWER project results show that when organizations align their managerial strategies with inclusion, diversity, equity, and intelligence, the impact extends well beyond internal culture—it reshapes customer relationships, community engagement, and market relevance. Inclusion, diversity, social equity, and organisational intelligence are not optional ideals—they are strategic imperatives for financial institutions aiming to thrive in a changing world. By prioritising these values, banks and financial organisations can foster innovation, earn long-term trust, expand their customer base, and enhance their internal culture. Institutions that embed these principles into their managerial practices and business strategies will be better equipped to respond to social shifts, regulatory demands, and emerging market opportunities. Ultimately, this approach strengthens both organisational performance and public legitimacy. To move toward greater inclusion, financial organisations should begin with a clear and visible commitment from top leadership, recognising that inclusivity must be woven into the core identity of the institution. A thorough internal review of current practices—across hiring, promotion, customer engagement, and product development—should follow, identifying structural gaps and potential biases. From there, the organisation can begin transforming its recruitment and leadership development strategies to ensure equitable representation, and invest in meaningful training that builds awareness and cultural sensitivity at every level. Product and service design should also reflect the needs of diverse communities, including those historically underserved or excluded by traditional banking models. This may involve rethinking credit criteria or introducing tailored services for immigrants, women, or low-income populations.

Equally important is the use of data and analytics to track the progress of inclusion initiatives, with transparent reporting that drives accountability and improvement over time<sup>33</sup>. Financial institutions should also actively engage with external communities—partnering with grassroots organisations, educational institutions, and minority-owned businesses—to strengthen trust and extend their reach. Within innovation processes, diverse voices must be involved from the outset to ensure that digital transformation and technological advances are not only efficient but also equitable and accessible<sup>34</sup>. By taking these steps, financial organisations can evolve into more inclusive, intelligent, and socially responsive institutions—ones that reflect and serve the full diversity of the societies in which they operate. Organizations that embed inclusive values into their operations, services, and culture will be better positioned to navigate the future, serve their communities, and achieve long-term success<sup>35</sup>. Inclusion, therefore, must be viewed not as a one-time initiative but as an ongoing commitment to building a financial system that works for everyone.

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<sup>33</sup> Janssens M. & Zanoni P. (2005), “Many diversities for many services: Theorizing diversity (management) in service companies”, in *Human Relations* 58(3), pp.311-40.

<sup>34</sup> McLellan D.L. (1987), “Epilepsy and employment”, in *Journal of the Society of Occupational Medicine*, 37, pp. 94-9.

<sup>35</sup> Winters M.F. (2014), “From diversity to inclusion: An inclusion equation”, in B. M. Ferdman, & B. R. Deane (Eds.), *Diversity at work: The practice of inclusion* (pp. 205-228). San Francisco, CA: Jossey-Bass.