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**Taxonomy of sustainable economic activities
under the EU Regulation 2020/852 and its role in
the interplay between the green transition and
environmental law in Europe**

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Concept of sustainable development

- UN concept
 - Brundland Commission Report of 1987
 - Rio Declaration of 1992
- Three dimensions of sustainability
 - Economic
 - Social
 - Environmental
- Sustainable development and climate change
- UN General Assembly Resolution of 2015
 - UN 2030 Agenda for Sustainable Development
 - Sustainable Development Goals

Rio Declaration

- Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

- Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Legal basis - Art.3.3 TEU

- 3. The Union shall establish an internal market. It shall work for the **sustainable development** of Europe based on **balanced economic growth** and price stability, a highly competitive **social market economy**, aiming at full employment and social progress, and a **high level of protection and improvement of the quality of the environment**.

Sustainable development – towards green transition

- Green European Green Deal Com (2019) 640 final – general directions of the transition into sustainable development
- Objectives
 - Sustainable development in practice
 - Climate neutrality and adaptation
 - Resource and energy independence
 - Just transition (no one left behind)
 - Post-pandemic recovery

Policy agenda - European Green Deal Com (2019) 640 final

- Set of transformative policies (including climate neutrality by 2050) for mainstreaming sustainability in all EU policies based on the conviction that
 - **current growth path are unsustainable** and jeopardizing environmental livelihoods of future generations,
 - **substantial transformation is needed** with regard to key sector economies to achieve environmental sustainability, and
 - **the EU has to play a key role** in driving this transformation, as global problems need global answers.

Principles and follow up documents

- Three main principles as conditions for successful implementation:
 - „active public participation and confidence in the transition is paramount if policies are to work and be accepted”
 - „The Commission and the Member States must also ensure that policies and legislation are enforced and deliver effectively”
 - a green oath: ”do no (significant) harm” (DNSH principle)
- Follow up - set of legal acts and guidance documents to make the concept of sustainable development operational

New trends

- 1. Towards target oriented & programmatic steering with binding mid- and long term targets/budgets and obligations to plan, implement, review and revise programmes of measures**
 - Examples: Climate Law, Gov. Reg., water quality, waste recycling, nature restoration, pollutant emissions, agri-pollutants etc.)
- 2. Towards more direct and coercive regulation** regarding sust. production and product standards and circular economy.
- 3. Towards stronger fiscal steering via EU funds and finance policies**
- 4. Towards shift in corporate behaviour via reporting**
- 5. Towards an ever increasing role of the EU and the EU Commission as driver and watchdog of sustainability transformation**

Sustainability criteria and „do no significant harm” principle – legal basis

- 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 (*OJ L 317, 9.12.2019*)
 - includes environmental, social, economic and governmental aspects
 - defines „sustainable investment”, sustainability risk” and „sustainability factors”
 - Includes reference to „do no significant harm” principle

Regulation 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 (*OJ L 198, 22.6.2020*)

 - Focused on environmental aspects
 - Details on sustainability criteria, environmental objectives, „do no significant harm” principle
 - Minimum safeguards
- Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (*OJ L 57, 18.2.2021*)
 - „do no significant harm” principle included

Sustainability Criteria

- Art. 3 of Regulation 2020/852 – economic activity is environmentally sustainable if it:
 - a) contributes substantially **to one or more of the environmental objectives** set out in Article 9 in accordance with Articles 10 to 16;
 - b) **does not significantly harm** any of the environmental objectives set out in Article 9 in accordance with Article 17;
 - c) is carried out in compliance with the minimum safeguards laid down in Article 18; and
 - d) complies with technical screening criteria that have been established by the Commission.

Environmental objectives

- Art.9 of Regulation 2020/852 sets the following environmental objectives:
 - a) climate change mitigation;
 - b) climate change adaptation;
 - c) the sustainable use and protection of water and marine resources;
 - d) the transition to a circular economy;
 - e) pollution prevention and control;
 - f) the protection and restoration of biodiversity and ecosystems.
- The detailed requirements that an activity must meet in order to determine whether it “contributes substantially” to each of the above environmental objectives are set out in Articles 10-15

The „do no significant harm“ principle

- Detailed criteria in Art. 17.1 Reg. 2020/852 in relation to each of environmental objectives
- According to Art. 17.2 the DNSH principle covers not only economic activity itself but also environmental impact of related products and services throughout their life cycle
- Relation to integration principle in Article 11 of TFUE

Application of taxonomy

- Benchmark for
 - EU institutions and EU-financed activities
 - corporate reporting
- No clear application to planning and regulatory purposes at the Member States level
- Doubtful consistency
 - internally
 - with other EU environmental policies

The European Green Deal

Com (2019) 640 final -cd

- „The Commission will consider revising the Aarhus Regulation to improve access to administrative and judicial review **at EU level** for citizens and NGOs who have concerns about the legality of decisions with effects on the environment. The Commission will also take action to **improve their access to justice before national courts in all Member States.**

Communication (2020)643 on improving access to justice

- „The public is and should remain a driving force of the green transition and should have the means to get more actively involved in developing and implementing new policies” (para 2)
- „Individuals and NGOs play a crucial role in identifying potential breaches of EU law by submitting complaints to administrations or taking cases to courts” (para 9)
- At EU level – existing system already needs to be complemented by EC proposal to amend Aarhus Regulation to improve internal review (paras 3,10 and 17)
- Five priority actions at MS level to be undertaken by EC, including announcing inclusion of access to justice provisions in „legislative proposals for new or revised EU law concerning environmental matters” (para 33)

Key instruments

- According to EC
 - Regulatory impact assessment under the Better Regulation COM(2021)219/3
 - Public participation and access to justice
 - Climate proofing
 - Sustainability proofing
- They apply to all activities to be funded from EU funding – and only those!
- Unclear mention about EIA and SEA at MS level!

Climate change and Green transition vs other environmental policies – fundamental questions

- Climate change as fundamental threat and need for a green transition
- Key issues – debate in USA and (?) in EU
 - time for „trriage” (prioritisation)?
 - climate protection as a priority or business as usual
 - from „climate denial” to „tradeoff denial”
 - is a third way possible?
- Key aspects
 - Biodiversity
 - Water protection
 - Public involvement/scrutiny
 - Access to justice
 - International obligations
- Green Deal declarations and reality