

The role of sustainable corporate governance for EU climate policy

The answer to the question of whom companies serve, i.e., in whose interest they are run, is certainly umbilical for company law and corporate governance. This naturally stems from the fact that the company, as a conventional creation of the law “without a soul” (Coffee, 1981, citing Edward, First Baron Thurlow), requires an external assignment of purpose. The bursting planetary boundaries of economic development have reconditioned this question’s urgency and created a new set of facts that massively overthrow historical research on the subject. In light of the newest evidence from the natural sciences (IPCC report, 2022), human-induced climate change is increasingly being understood as the defining global challenge of our age. This has unleashed a profound societal and cultural transformation process – a sustainability revolution – which calls into question many basic organizing principles of economic activity. In particular, **notions on the role of companies within society are progressively being challenged**. Fundamentally, a stronger responsabilization of companies for meeting sustainability objectives is being pursued. Consequently, the question arises whether company law institutions could reshape corporate governance frameworks to align companies’ conduct with climate policy objectives. ‘Corporate sustainability’ is the flag under which the emerging debate sails.

Building upon the scientific findings of the natural sciences regarding the planetary boundaries of economic development, the project addresses the challenge of a sustainable reorientation of economic activity. The project aims to contribute to the debate on how businesses could contribute toward climate policy goals. In particular, the project’s scientific problem concerns the question of how climate policy objectives could be fostered through the design of legal institutions of private law (company law) that shape corporate governance. Consequently, **the project seeks to investigate the role of sustainable corporate governance for EU climate policy.**

In tackling climate change, companies must naturally be at the center of lawmakers’ attention. Their essential part in mitigating climate change by reducing their net emissions and by driving the innovation and adaptation that are necessary to bring about a net-zero economy, is widely recognized. Whereas public law instruments, for example direct regulatory controls on emissions or market solutions, have a long-standing tradition in serving as policy instruments for protecting the environment, most recent developments are increasingly emphasizing the role of private law, particularly company law, in implementing sustainability-driven policy goals.

The EU is in the vanguard of recognizing companies as agents for climate policy. Legislative milestones were the Non-Financial Reporting Directive 2014/95/EU and the Shareholder Rights Directive II 2017/828. Since the Action Plan on Financing Sustainable Growth in 2018, the idea of ‘sustainable companies’ has been indisputably present in the EU Commission’s political agenda, which resulted in the Sustainable Corporate Governance Initiative (July 2020). The ensuing proposal for a directive on Corporate Sustainability Due Diligence (CSDDD) was published on 23 February 2022. Several EU member-states (e.g., France, Italy, Germany) have also taken various national company law measures. While these initiatives signal a U-turn towards a sustainability-driven ‘hands-on’ policy approach in company law, in some EU member states, no significant policy debate has emerged on the topic.

The preliminary research leading to this proposal has identified several research gaps (methodological gap, normativity gap, accountability gap, customization gap). The project’s goal is to narrow these gaps. The interdisciplinary nature of the research mandates the widening of the methodological toolbox. In particular, the project aspires to escape the methodological narrowness within company law scholarship, which has led to a dominantly efficiency-centric approach driven by the law & economics method and has consumed and silenced the discourse on different potential goals of company law and corporate governance and caused a detachment of the scientific dialogue from a value-based and theory-driven discussion on the origins of authority and sources of normativity.