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Environmental Sustainability and Economic Development

ABSTRACT: The article explores the multifaceted concept of sustainability within legal, economic, and environmental contexts. It examines sustainability's evolution from a focus on economic development to an integrated approach encompassing environmental and social dimensions, emphasizing its role in European Union (EU) policy and legal frameworks. The text highlights key principles such as sustainable development, the Do No Significant Harm (DNSH) criterion, and the principle of integration, demonstrating their impact on policy areas like agriculture, energy, and market regulation. It also addresses the transformative potential of sustainability in reorienting economic systems, emphasizing systemic approaches, legal advancements, and the interplay of law, economics, and ethics to foster a sustainable future.

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1. The Multifaceted Nature of Sustainability in Legal and Policy Frameworks

The concept of sustainability has a multifaceted character that varies according to the context, disciplinary fields, areas of knowledge, and the economic and social sectors in which it is employed to pursue diverse objectives.

As a cross-disciplinary and overarching term, it has prompted extensive scholarly exploration to define its legal significance. This has led to various interpretative perspectives and continues to raise critical questions, particularly regarding its practical enforceability.

Within the framework of EU legislation, for example, sustainability gains legal significance through the concept of sustainable development. Initially

used with an economic focus, this concept gradually evolved to encompass environmental and social dimensions as well. Sustainable development emphasizes, from a forward-looking perspective, the aim of guaranteeing rights for future generations and safeguarding ecosystems. This teleological perspective is embodied in Article 11 of the TFEU, which establishes the principle of integrating environmental protection requirements into EU policies, with a particular focus on advancing sustainable development. Moreover, sustainability is established as a political objective of the European Union, as indicated in Articles 3(3) and (5) and 21(2)(d) and (f) of the TEU. This objective aligns with the social market economy model, which, despite its varied interpretations and applications, includes as one of its defining elements a socio-environmental development outlook.

The *indication* of sustainability is now evident in many provisions within primary sources covering a wide range of fields and economic sectors, as well as in the expansive, multidisciplinary domain of soft law.

This is an integrated system of norms that could be described as having a networked structure, meaning that it comprises norms of various hierarchies that essentially operate in the same direction within the broader context of the legal order.

However, its definitive legal configuration does not appear fully formulated or clarified, as it often takes the form of a general clause, a guideline for political action, or a tool for technical analysis.

Indeed, sustainability acquires a particular legal character when the concept is linked or comparable to other normative precepts, thereby gaining legal significance.

Ultimately, it seems that sustainability becomes legally binding when associated with or interacting with other legal norms or principles, potentially serving as a vehicle for the legalization of certain phenomena or situations that require regulation.

The broad, vague, and indeterminate nature of its legal content, however, does not assist the jurist in their task of situating a specific norm—such as the ones that, for example, establishes sustainability constraints, parameters, or criteria—within the framework of the principle of legal certainty.

2. From Conflict to Compatibility: The Role of Environmental Transition

What emerges from recent legal experience is the predominant association of sustainability with environmental concerns, now increasingly framed in terms of transition. Indeed, there has been a shift from an earlier, somewhat conflictual phase – which set economic development and environmental protection at odds – to a phase in which development policies emphasize compatibility with environmental protection on one hand and market needs on the other.

The succession of crises has positioned ecological transition as a central element in the conduct of economic activities, thereby shaping a progressively dynamic legal framework aimed at building a path toward stabilization. This phase incorporates an awareness of the need to restore compromised conditions and lays the groundwork for a necessary process of development planning with a focus on environmental sustainability.

The environment can be viewed as a driver of economic development in a transitional phase characterized by a range of distinctive factors, some of which may be in conflict, while others might be seen as “conciliatory” or “transformative”. These include a shift from short-termism to a greater focus on long-term institutional and private investments, from regulatory measures to the use of investment tools aimed at steering markets, and from the intersection of environmental protection, health, and labor to a sort of “pan-environmentalism”.

Furthermore, this dynamic also envisions a redefined relationship between individual rights and markets, where the concept of sustainability has taken root. This involves a re-evaluation of individual and collective legal positions that were often marginalized during the peak of commercial and financial globalization.

The areas of application pertain to the operating methods of public authorities and businesses within a shared, convergent, and cross-impact pathway. This pathway takes as its guiding axis the celebrated “new humanism” in economics, which entails transforming economic dynamics

through an eco-sustainability lens that influences market behaviors to refocus on the essential issue of human rights protection.

The regulation of the economy aimed at protecting the environment and ecosystems thus encompasses a multitude of sectors, including alternative energy sources (a field of public action that gained importance during the pandemic crisis and following the Russia-Ukraine war, with significant international implications), the development of sustainable infrastructure, economic incentives for enterprises and productive activities, the socio-environmental dimension of enterprises, sustainability criteria, and more. These efforts represent an attempt to move beyond functionalism and to build a (desirable) renewed *modus operandi* for policymakers.

In this context, intervention in the economy to support ecological transition is a strategic guiding axis of European policy.

Article 3 of the Treaty on European Union (TEU), in fact, by introducing the model of a highly competitive social market economy within the EU framework, makes a clear choice in terms of political options: the EU “works for sustainable development” while ensuring that these actions remain “compatible” with the principle of an open and competitive market. Sustainable development is a manifestation, or a form of implementation, of the concept of sustainability, emphasizing the importance of safeguarding the future and the consideration of time as a fundamental element in development actions.

Sustainable development as a normative factor appears in a variety of legal sources (both EU and national), indicating a stabilization in favor of

broader environmental protection. This is achieved both through compatibility reviews and through programming aimed at transforming the capitalist model – or, at least, mitigating the excesses resulting from market-oriented policies set by European authorities in recent years.

In addition, there is the principle of integration, according to which environmental policies must integrate with and condition other policies by assessing their environmental impact, as outlined in Articles 11 of the TFEU and 37 of the Charter of Fundamental Rights of the European Union.

3. The DNSH Criterion

Article 17 of the so-called Taxonomy Regulation introduces the *Do No Significant Harm* (DNSH) criterion as a horizontal super-norm that applies to all economic activities potentially impacting the environment. This serves as a preventive legal protection criterion and complements the cost-benefit analysis. It is an all-encompassing standard that builds upon existing norms, strengthening both the preventive aspect of sustainability (preventive character) and compatibility (adherence to principles related to competition protection).

The application of the DNSH criterion to sustainability reporting in the financial services sector, for instance, illustrates the transversal and pervasive nature of this principle in a non-harmonized sector, where

discrepancies could lead to potential market distortions, create confusion among end investors, and influence their investment decisions.

In the European regulatory framework concerning the implementation of the principle of sustainable development in its social dimension, it is notable that the programming of the Common Agricultural Policy (CAP) reflects and enacts the objectives outlined in various policy documents, including, among others, the Farm to Fork Strategy (focused on circular agriculture) and the Green New Deal (which significantly addresses the agricultural market and serves as a basis for the former). These objectives aim to mitigate the socioeconomic impact on the food supply chain and to implement tools supporting social rights as articulated in the European Pillar of Social Rights. This is achieved through national strategic plans that promote a multi-level guarantee of social sustainability, employing new legal instruments designed to balance value. For example, one could point to the contribution the agricultural sector can make toward implementing the European Climate Law, which aims to achieve climate neutrality by 2050, or to the potential for reshaping the food market as a means to influence dietary practices among individuals.

Another set of considerations relates to the provisions of the so-called economic constitution as they pertain to the concept of sustainability and its potential applications. In this regard, setting aside the matter of public debt sustainability mentioned in Article 97 of the Constitution, the reform introduced by Constitutional Law no. 1 of 2022 marks a significant

development in this regulatory framework, one that is likely to shape the course of legal experience in the near future.

Article 41, paragraphs 2 and 3, of the Constitution imposes restrictions on economic initiative, orienting economic planning toward environmental protection as a limitation on authority. This foundation finds its roots, among others, in Article 2 of the Constitution, which provides a fundamental basis for protecting human dignity, and in Article 3, paragraph 2, which establishes the legal basis for the legislative measures “necessary” to achieve economic and social equality.

Thus, the so-called economic constitution assigns the legislator the goal of (re)programming the economy not only in terms of social equity but also with the preservation of the environment, connecting economic and financial matters with environmental sustainability. Additionally, the need to ensure the right to sustainability for future generations indicates the permeable nature of constitutional norms, which have indeed enabled the introduction of this principle both de facto and de jure. This element highlights the “strength” of political and public opinion movements, as well as the soft law actions of international organizations and the European Union itself.

Ultimately, the constitutional amendment underscores at the highest level the need to balance environmental priorities with sustainable economic development, which is projected as not only a transitional phase but also a potential stabilization of economic-political direction, becoming a driving force of public policy.

The integration of environmental priorities into the economic constitution as a guiding principle for sustainable economic development represents an irreversible turning point in a committed process, notwithstanding occasional resistance often driven by broadly opportunistic considerations.

This evolution underscores a shift towards recognizing environmental sustainability not merely as a policy goal but as a structural and binding framework for decision-making. It also highlights the necessity of aligning economic activities with ecological imperatives to ensure long-term resilience and equity across sectors, fostering a comprehensive approach to addressing climate and environmental challenges.

4. Sustainability in the Economic Constitution

Setting constraints for future legislators may seem bold, given that material constitutional dynamics, the shifting nature of political majorities, and political decision-making require caution regarding such outcomes, particularly in light of the European model of a social market economy, which remains fundamentally rooted in a market-based economy and serves as a benchmark for EU policies in all areas.

However, while public and private economic activities have occasionally referenced environmental goals, they have lacked a specific guiding directive in this regard. In any case, one could argue that efforts to reorient

the economy toward environmental goals now find a “partner” in the Constitution itself in terms of political legitimacy.

Indeed, in examining the legal nature of the concept, the argument supporting its integration is reinforced by its correlation or connection with other legal and extra-legal principles that convey prescriptive elements.

Sustainability is not an isolated concept situated in a static position within the legal framework; rather, it is part of other legal principles or serves as a point of attraction for other legal content, or as a vehicle for legal structuring (as is often the case with contracts). Its dynamic nature thus allows, on a case-by-case basis, for an identification of its legal character, indicating provisions that reference it as extended-scope rules, inclusive of links to other legal principles or norms, including those at the constitutional level that are not purely programmatic.

Legislation is now thoroughly infused with the term “sustainability,” not only in its economic aspect but also, as a direct consequence of the aforementioned constitutional provision, in environmental and social dimensions. In this sense, the application of the sustainability clause has seen an unexpected surge across various levels of norms and regulatory frameworks.

In recent years, there has been a growing recognition that the right to a sustainable future addresses the need to preserve biodiversity, also as an attribute of applied ethics, which is now reflected throughout economic

regulation, revitalized by a focus on human well-being in response to social movements that have emerged globally.

5. Environmental Sustainability as a Catalyst for Economic and Legal Evolution

Environmental sustainability now covers a broad spectrum, influenced by waves of change that both set political direction and shape legal frameworks in individual countries, though often with significant distinctions and negotiations due to opportunities perceived by certain nations from the mobilized financial resources.

Furthermore, liberal market-driven economics, which reduced the state's role to that of managing scarcity and overlooked human rights, is now reaching a cultural inflection point. While there has not been a full return to Keynesian policies, social and environmental concerns are finding renewed resonance with the public, subsequently catalyzing legal processes previously overshadowed by technological and microeconomic concerns. Even “Roosevelt-scale investments” are now widely viewed as essential to “transform production, distribution, and consumption throughout the economy.” In this sense, the European Green Deal evokes the North American experience as an instrument designed to work with a long-term vision.

One might infer that this shift, in perspective, is, to some extent, driven

by the need to reorient the economic system, rediscovering the state as its primary support. Admittedly, some argue that this interest in the State's return is not entirely "authentic," as businesses have increasingly "turned back" to the State especially when significant resources are made available to restore dynamism and prospects to the economy.

As for human rights, sustainability has softened the often-frictional relationship between economy and law, allowing latent legal issues to resurface along with interests and topics that had seemed destined for oblivion.

The "return," albeit conditioned, of state aid in terms of proactive measures cannot be overlooked. The process of relaxing the regulations on the prohibition of state aid aims to give public economic intervention a new theoretical configuration in response to the global dynamics concerning environmental protection and sustainability.

The interconnections among the environment, health, and economy are such that they do not allow for fragmented interventions; instead, these require a global dimension and interconnectedness between systems, economies, and legal frameworks. Indeed, the discipline in question is based on compatibility criteria, given the nature of state aid regulations, which are primarily designed as a deterrent to the state's presence in the economy. Moreover, the so-called Recovery and Resilience Facility conditions the granting of incentives on both environmental sustainability and public finance sustainability, effectively "safeguarding", so to speak, resources from potential excesses or dystopias.

6. The Green Energy Transition: A Systemic Approach to Sustainability

Environmental protection has become not only a necessity but also an opportunity for technological innovation and the establishment of a systemic strategy to achieve the green energy transition. This transition serves as an operational tool aimed at multiple objectives, including ensuring the production of sustainable, secure, and affordable energy—an objective that echoes one of the goals of the United Nations agenda—while remaining within the framework of EU competition law applicable to states.

Environmental transition cannot be separated from state intervention in terms of financial, structural, and programmatic measures, given the economic and social implications involved. This dimension encompasses broader conceptual territories, including solidarity (at least in a partial form of risk-sharing among European countries), articulated in terms of social, economic, and territorial cohesion—an element that carries universal, cross-cutting, and interdisciplinary value. It also considers the multifaceted relationships with the environment that the complex society imposes on nature and ecosystems.

Article 194, §1, TFEU presupposes the sharing of energy policies as a guiding principle for the EU's actions in this field. Thus, this commitment

must be followed by the EU itself and its member states to achieve the objective of energy solidarity, both in emergency situations and as a preventive action against supply shortages. This position is emphasized by the EU Court, which considers that the legitimacy of EU acts, including those of the Commission, should be evaluated in light of the principle of energy solidarity. This principle could also be extended to other economic sectors, to the point that scholars hypothesize a change in the principle of solidarity, as enshrined in the original law, to reinterpret the prohibition of financial aid to member states for these purposes.

Green transition and access to energy are part of the same strategy, also serving as a tool for the so-called Global Gateway that the European Union has implemented to make investments worldwide for these operational purposes. In this context, economic tools and climate and energy diplomacy contribute to the (certainly ambitious) goal of European energy independence through methods that fulfill the aims of the numerous initiatives undertaken in this regard at various institutional levels within the EU. This explains the diplomatic and economic dynamism observed in the last two years concerning bilateral and multilateral agreements with several gas and renewable hydrogen-producing countries, with which the EU aims to initiate programming for investment activities in the sectors involved in the joint initiative.

The term “Just Transition” evokes a growing awareness of social justice: initially opposed even by trade unions, it has now become a priority, particularly regarding compensatory policies for disadvantaged workers,

potential adjustments to market structures, and renewed public intervention in the economy both as a corrector of market failures and as a driving force for change.

The specific instrument is primarily designed to finance initiatives aimed particularly at decarbonisation processes. Its founding regulation is fundamentally based on the principle of economic and social cohesion, especially to support areas that, more than others, suffer from environmentally complex situations regarding both energy and climate aspects.

Public aid for environmental protection is characterized by a systemic approach with multiple conditionalities: the global and widespread significance of euro-state programming interventions highlights its systemic complexity as a driving force for a broad change process, consisting of attempts to change the economic system or, at least, to mitigate the critical issues that have emerged regarding the environmental impacts of economic activities. Gradualness is inherent in this process, considering that systemic changes require a plurality of interventions on multiple operational fronts and a timeline that is not short for implementation.

Positive conditionalities, such as those referencing the aforementioned criterion of “not causing significant harm” to the environment or focusing on interventions that are not only restorative but also promote a renewed environmental entrepreneurial culture, constitute the guiding compass of this new legal and economic course.

The favorable context created by the significant public resources available encourages the concentration of economic initiatives aimed at environmental protection, with a view toward safeguarding future generations and in accordance with the principle of sustainability. This also forcefully revitalizes the necessary composition/interdependence between law and economics, which, in turn, finds in the emergence of ecological interest the key to public intervention in the economy: two driving forces that ultimately combine intervention in the economy from the perspective of economic humanism, the ethical and legal frontier that will likely characterize public action in the new millennium.

This leads to a concentric movement whose reference axis is economic development not detached from environmental and social factors to the extent that it permeates the general and sectoral multi-level regulation in the name of pursuing the aforementioned extra-economic or otherwise non-economic objectives. Each link in the chain becomes a fundamental element for realizing the project delineated by EU programming that characterizes the season of collaborative projects between states and between states and the European Union.