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Review paper

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INTEGRATING ESG CRITERIA IN CANDIDATE COUNTRIES: THE CASE OF CORPORATE GOVERNANCE IN ALBANIA

ABSTRACT

In 2022, Albania opened the accession negotiation with the EU. Consequently, Albania as a candidate country, needs to harmonise domestic legislation with the EU acquis. One of the most important areas is the Environmental, Social and Governance (ESG) reporting of the companies. ESG criteria relate to companies' responsibility and their impacts on people and the environment. Evaluation of the sustainability performance of the companies will ensure a sustainable economy where no person or place is left behind. In this context, Albanian authorities are required to adapt the regulatory framework, emphasising sustainability so they can align with the Environmental, Social and Governance (ESG) criteria standards and regulations. This paper analyses to what extent the corporate governance in Albania aligns with the European Union acquis and the obligation of Albania to align with the European Union acquis. The paper seeks to give insights into the improvement of the legal infrastructure for ESG in Albania and for further legal reform to ensure compliance, accountability, and the long-term sustainability of corporate governance in the country. By using a combined research method based on a qualitative literature review analysis and normative legal analysis of existing EU acquis and Albanian legislation, the paper examines Albania's legal alignment with the EU acquis on corporate governance and sustainability. The paper concludes that the integration of ESG criteria contributes to modernising the legal landscape for the companies in Albania toward a sustainable future and a better understanding of corporate responsibility.

Keywords: *Corporate Governance, ESG, Albania, Transposition, Sustainability.*

1. INTRODUCTION

After the fall of the communist regime, in 1992, Albania established relations with the EC by signing the Trade and Cooperation Agreement, which allowed Albania

to become eligible to profit under the PHARE Programme.¹ From 1992 until 2000, Albanian relationships were characterised more by economic aspects rather than the clear perspective of EU membership. Albania profited roughly €1 055 million from this programme.² In mid-1995, Albania had the highest GDP compared with other Western Balkan countries.³ While the Commission initiated an assessment for Albanian EU membership perspective, the 1997 events stopped the process. With the end of Kosovo conflict, the EU understood that Regional Approach, introduced in 1996, was incapable to bring peace, security and transformation. For this reason, the EU upgraded its policy toward the Western Balkan countries named Stabilisation and Association Process. The new strategy consisted on: stabilisation of the region that had suffered from inter-ethnic conflicts and then association to the EU. As the new strategy was launched, the European Commission report recognised the European perspective for Albania. The EU/Albania High-Level Steering Group acknowledged the “serious” situation of Albanian efforts to align the legal system and legislation with EU standards.⁴ In 2003, negotiations for signing the Stabilisation and Association Agreement (SAA) started and lasted for three years. In April 2009, the SAA entered into force.⁵ The SAA's main goal, inter alia, is the legal transformation of Albania's legal order in line with the EU acquis. According to Article 70 of the SAA, parties [the EU, Member States and Albania] recognise the importance of the harmonisation process. Albania shall endeavour to approximate its existing and future domestic legislation with the EU acquis and must ensure the proper implementation.⁶ In this context, there has been a systematic and continuous alignment of Albanian legislation. The recent Commission report noted that “the transitional period of the SAA ended on 31 March 2019 and Albania is fully associated with the EU from 1 April 2019” and “Albania continued to implement its overall commitments under SAA.”⁷

Similarly to the Central European and Eastern countries, the EU perspective has boosted Albania toward legal reforms in different sectors, including the field of

¹ Agreement between the European Economic Community and the Republic of Albania, on trade and Commercial and Economic Cooperation [1992] OJ L 343/0002.

² Commission, Report from the Commission to the Council on the work of the High Level Steering Group, in preparation for the negotiation of a Stabilisation and Association Agreement with Albania, COM (2001) 300 final, p. 39.

³ Skara, G., *Europeanisation of Private Enforcement of Competition Law: The Case of Albania*, Springer 2007, pp. 236-237.

⁴ Commission, Report from the Commission to the Council on the work of the EU/Albania High Level Steering Group, in preparation for the negotiation of a Stabilisation and Association Agreement with Albania.

⁵ Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part [2009] OJ 107/166 (hereafter: SAA).

⁶ SAA, Art 70.

⁷ Commission, *Albania 2024 Report*, Brussels 2024, SWD(2024) 690 final, p. 95.

corporate governance and sustainability. The Albanian Law on Entrepreneurs and Companies provisions relating to the rules on formation and registration, disclosure of the structures of the companies, accounting and financial reporting, and statutory audit are aligned with EU laws.⁸ While Albanian Law on Entrepreneurs and Companies provisions are in line with the EU acquis, incorporation of the Environmental, Social, and Governance (ESG) into Albanian legal system remains a challenge. As noted by the 2024 Commission Report, Albania needs to further harmonise national company law.⁹

Using a combined research method based on a qualitative literature review analysis and normative legal analysis of existing EU acquis and Albanian legislation, the paper examines Albania's legal alignment with the EU acquis on corporate governance and sustainability. It seeks to give insights into improving the legal infrastructure for ESG in candidate countries. Moreover, the paper recalls the need for further legal reform to ensure compliance, accountability, and the long-term sustainability of corporate governance in Albania. In writing this paper, the author is limited only to Albania as a candidate country. Albania has been selected because the author is conducting a doctoral study on this topic. Another limitation relates to the legislation. The author relies only on EU and Albanian primary and secondary legislation. Sometimes, academic articles, policy reports, OECD reports, or other financial research institutions' reports are taken into consideration with the purpose of showing the importance of the environmental, social, and governance aspects of corporates. After providing historical background on Albania's efforts to join the European Integration (section 1), the paper focuses on the legal provisions on the corporates and the effectiveness of corporate laws related to the promotion of transparency, ethical behaviour, and sustainability evaluating board responsibilities, the shareholders engagement and the stakeholder contribution under the legal impact of ESG reporting requirements (section 2). Section 3 highlights the obligation of Albania to harmonise domestic legislation with the EU Law, more specifically, Directive (EU) 2022/2464 on corporate sustainability reporting (CSRD) and Directive (EU) 2024/1760 on corporate sustainability due diligence (CSDDD). Section 4 identifies gaps and discusses the challenges of the Albanian legal approach to ESG integration. Section 5 concludes that the integration of ESG criteria contributes to modernising the legal landscape for the companies in Albania toward a sustainable future and understanding better the corporate responsibility.

⁸ Law 9901/2008 On Entrepreneurs and Companies, [2008] OJ 60 as amended by Law 129/2014 [2014] OJ 163 (hereafter: Law on Entrepreneurs and Companies).

⁹ Commission, *Albania 2024 Report*, *op. cit.* note 8, p. 66.

2. THE RELATIONSHIP BETWEEN CORPORATE GOVERNANCE AND ESG

In light of the emergency by the UN related to sustainable development and the slow implementation¹⁰ of the Sustainable Development Goals (SDGs),¹¹ the issue of corporate activities and their impact on social and environmental problems must be taken into consideration. Kaźmierczak argues that there is an increase in stakeholders' interest in more accountability and transparency from the companies about their activities in society and the ecosystem.¹² OECD calls for implementing sustainability matters in the companies' rules and principles.¹³ Such inclusion will help corporations to decrease costs in the long term and protect investors. On the other hand, increasing the awareness of the governing structures of the companies (shareholders, board members and executives) provides sustainability.¹⁴ Recommendation of the Council on Principles of Corporate Governance brings to attention the fact that an important action that needs to be taken by companies is the disclosure of reliable material information on sustainability.¹⁵ The G20/OECD Principles of Corporate Governance¹⁶ have been reviewed with a focus on helping countries improve the conditions of companies in accessing finance. They encourage corporate governance policies that have contributed to sustainability matters and a broader economy for the countries.¹⁷

Corporate governance is defined in different ways by scholars and researchers of law. This concept shall be consistent with the rule of law, transparency and enforcement.¹⁸ The International Finance Corporation (IFC) recommends that the company's performance shall consist of parameters as the commitment to environmental, social and governance (ESG), a qualified structure of the board and directors, financial and non-financial disclosures to the shareholders and

¹⁰ United Nations General Assembly, Resolution adopted by the General Assembly on 6 July 2017: Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development, UN 2017, A/RES/71/313; United Nations, The Sustainable Development Goals Report 2024, UN 2024.

¹¹ United Nations, Sustainable Development Goals- SDGs, available at: <https://sdgs.un.org/goals>, accessed 28 November 2024.

¹² Kaźmierczak, M., *A Literature Review on the Difference Between CSR and ESG*, Scientific Papers of Silesian University of Technology – Organization and Management Series, No. 162/2022.

¹³ OECD, Recommendation of the Council on Principles of Corporate Governance, 2025, OECD/LEGAL/0413.

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ OECD, OECD and G20, available at: <https://www.oecd.org/en/about/oecd-and-g20.html>, accessed 28 November 2024.

¹⁷ OECD, G20/OECD Principles of Corporate Governance 2023, Paris 2023.

¹⁸ *ibid.*

stakeholders, and the company's stakeholder governance engagement.¹⁹ On the other hand, environmental, social, and governance (ESG) is a set of criteria that companies integrate into their governance policies. The term ESG helps businesses have a well-structured and clear definition of environmental issues, understand what society needs, and address different issues of governance.²⁰ Some scholars have found that the organisations that implement the ESG pillars into their business policies and rules provide a good model of a corporation.²¹ According to them, this corporation is organised in a governance structure with a positive impact on environmental and social issues, resulting in maximising their profits in the long term, an active management of the stakeholders, and effective methods of data measurement and systems of reporting.²² Together with their financial statements and performance, the corporations have focused on the matters of sustainability. In addition, some scholars argue that the integration of ESG has challenged the legal principle of the shareholders' primacy vs stakeholder theory.²³ Companies have shifted their approach from profit maximisation to the integration of environmental, social and governance (ESG) criteria.²⁴ In this context, companies are not adopting sustainability only for ethics, but as well to mitigate social risks and environmental problems that can affect the corporate value by having a severe impact on it.²⁵

The ESG serves shareholders' interests because it helps companies identify and manage social risks to their business.²⁶ Gadinis and Miazad, in their study,

¹⁹ IFC, IFC Corporate Governance Methodology and Tools, Available at: <https://www.ifc.org/en/what-we-do/sector-expertise/corporate-governance/cg-methodology-tools>, accessed 1 March 2025.

²⁰ Al-Issa, N., et al., *Impact of environmental, social, governance, and corporate social responsibility factors on firm's marketing expenses and firm value: A panel study of US companies*, Cogent Business & Management, 2022, 9(1).

²¹ Byrne, D., *ESG: A Comprehensive Guide to Environmental, Social, and Governance Principles*, The Corporate Governance Institute, available at: <https://www.thecorporategovernanceinstitute.com/insights/guides/esg-a-comprehensive-guide-to-environmental-social-and-governance-principles/>, accessed 1 March 2025; Eccles, R. G., Ioannou, I., & Serafeim, G., *The Impact of Corporate Sustainability on Organizational Processes and Performance*. Management Science 2014, 60(11), pp. 2835-2857.nis

²² *Ibid.*

²³ Rønnegard, D., Smith, N. C., *Shareholder Primacy vs. Stakeholder Theory: The Law as Constraint and Potential Enabler of Stakeholder Concern*. In: Harrison, JS., et al., (eds) *The Cambridge Handbook of Stakeholder Theory*, Cambridge University Press 2019.

²⁴ Gadinis, S., and Miazad, A., *Corporate Law and Social Risk*, *Vanderbilt Law Review* 2020, p. 1401.

²⁵ *ibid.*

²⁶ *ibid.*

illustrate through examples of Facebook²⁷ and Uber companies,²⁸ how privacy, diversity, and environmental responsibility failures can lead to considerable damage to the finances and the reputation of the companies.²⁹ The ESG reporting helps companies to identify and address these risks by obtaining clear figures from employees, civil organisations, and state monitoring authorities.³⁰ The top management of the companies is focused on accountability towards shareholders and the increase of their profit in the short term.³¹ So, if accountability mechanisms are the focus of corporate governance, they will ensure the alignment of the top managers with sustainability targets.³² In this context, the companies that have positive values and impact on sustainability matters, integrating ESG in their business policies, also have a better position to attract and retain the younger generation employees and enhance their resilience, affecting innovation and economic growth.³³ Also, it is seen that the investors are more interested and satisfied with companies that have a considerable level of disclosure of ESG because they recognise the impact of the sustainability risks on the business value.³⁴ It is important to emphasise that sustainability objectives should be an important cornerstone of corporate governance, as well as the fact that a failure in the integration of ESG in companies' policies will expose their own shareholders to environmental, social, and governance risks.³⁵ To manage these risks, European corporations prioritise compliance and transparency in corporate governance, which is different from North American corporations that put shareholder value at the centre of their priorities, and their governance policies are led by the situation of the market.³⁶

²⁷ Beslik, S., *How Sustainable Is Facebook? An ESG Analysis of the Social Media Giant*, available in: <https://medium.com/swlh/how-sustainable-is-facebook-an-esg-analysis-of-the-social-media-giant-8ad8adc3da23>, accessed 2 March 2025.

²⁸ Infortal, *Uber: A Legacy of Reputational Damage*, Available in: <https://infortal.com/uber-a-legacy-of-reputational-damage/>, accessed 2 March 2025.

²⁹ Gadinis and Miazad, *op. cit.* note 24, p. 1401.

³⁰ *Ibid.*

³¹ Shim, E. D., *Sustainability, Stakeholder Perspective and Corporate Success: A Paradigm Shift*, *International Journal of Business, Humanities and Technology* 2014, 4:5, pp. 64-67.

³² Passas, I., *The Evolution of ESG: From CSR to ESG 2.0*, *Encyclopedia* 2024 4(4), pp. 1711-1720.

³³ *ibid.*

³⁴ Harper Ho, V., *Sustainability in the Mainstream: Why Investors Care and What It Means for Corporate Boards*, *The Conference Board - Director Notes* 2017, Available at SSRN: <https://ssrn.com/abstract=3080033>. Accessed 1 March 2025.

³⁵ Gadinis and Miazad, *op. cit.* note 24, p. 1401.

³⁶ Passas, *op. cit.* note 32, p.

3. THE EVOLUTION OF ESG INTEGRATION AND SUSTAINABILITY IN THE EU LEGISLATION

Scientific statistics have shown that company boards' focus on sustainability engagement is very low.³⁷ Additionally, the UN Reports on sustainability matters have identified insufficient implementation of SDGs.³⁸ This is turning on the red emergency lights for all humanity and the ecosystem. Therefore, countries have started to integrate ESG criteria into their corporate governance policies and regulations.

As one of the principles of the Treaty of the European Union (TEU), sustainability has pushed the EU member states to have a serious engagement in the implementation of disclosure of the risks of ESG and their effects for the stakeholders and the environment.³⁹ The EU has developed a regulatory and mandatory legal framework that has given more substantial support to the promotion of sustainability through the implementation of ESG.⁴⁰ In addition, Directive 2013/34/EU has been amended due to matters of accountability and transparency,⁴¹ and the importance of non-financial reporting in corporate governance focused on environmental and social matters with an impact on long-term economic growth and employment.⁴² The remaining part of this section briefly analyses three main directives relating to the ESG.

3.1. Directive (EU) 2014/95 the Non-Financial Reporting Directive

The EU has adopted Directive (EU) 2014/95, the Non-Financial Reporting Directive (NFRD), which amended Directive 2013/34/EU as regards the disclosure of non-financial and diverse information by certain large undertakings

³⁷ Harper Ho, *op. cit.* note 34.

³⁸ United Nations General Assembly, Resolution adopted by the General Assembly on 6 July 2017: Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development, *op. cit.* note 10; United Nations, The Sustainable Development Goals Report 2024, *op. cit.* note 10.

³⁹ Consolidated Version of the Treaty on European Union [2024] OJ C 202/1.

⁴⁰ 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 [2019] OJ L 317/1 (hereinafter: Regulation (EU) 2019/2088).

⁴¹ Ullah, Zain., et al., *The Impact of Corporate Accountability & Transparency on the Performance of Manufacturing Firms Listed on KSE*, SSRN 2016, available at: <https://ssrn.com/abstract=2756977>, accessed 1 March 2025.

⁴² Commission, Disclosure of non-financial and diversity information by large companies and groups - Frequently asked questions, 2014, available at: https://ec.europa.eu/commission/presscorner/detail/en/memo_14_301, accessed 1 March 2025.

and groups.⁴³ According to the European Commission, the disclosure of social and environmental impacts may reduce the gap between companies and stakeholders and help identify possible sustainability risks.⁴⁴ Pursuant to Article 2 of Directive 2014/95, the Commission published non-binding guidelines on preparing the non-financial report,⁴⁵ “taking into account the best practices, international developments and the results of related Union initiatives.”⁴⁶ According to these guidelines, companies were left flexible to report under the scope of the NFRD Directive.⁴⁷ An important step was the publication of the non-financial reports to ensure that stakeholders will have the needed information on corporate sustainability efforts.⁴⁸

The Non-Financial Reporting Directive (NFRD) has an important role as it has pushed further the EU agenda related to corporate social responsibility (CSR). In addition, the NFRD has pushed the EU Member States toward greater responsibility related to their business activity's impact on social and environmental issues.⁴⁹ Also, the NFRD Directive was an important step in increasing business accountability and transparency on sustainability matters and pushing stakeholders, investors, and civil organisations to request detailed information from companies about their performance and effects on social and environmental issues.⁵⁰ Nevertheless, the Commission identified some problems with reporting flexibility and the limited scope. These shortfalls led to the review of the NFRD Directive.⁵¹

⁴³ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text (with EEA relevance) [2014] OJ L 330/1 (hereafter: NFRD).

⁴⁴ Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels 2011, COM(2011) 681 final.

⁴⁵ Commission, Guidelines on non-financial reporting (methodology for reporting non-financial information), [2017] OJ C 215/1.

⁴⁶ NFRD, Recital 17.

⁴⁷ NFRD, Recital 9.

⁴⁸ NFRD, Art 29a.

⁴⁹ Hahnkamper-Vandenbulcke, N., *Non-financial Reporting Directive*, Briefing Implementation Appraisal, EPRS 2023.

⁵⁰ *ibid.*

⁵¹ Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, 2021 COM(2021) 189 final.

3.2. Directive (EU) 2022/2464 Corporate Sustainability Reporting Directive

The EU commitment to sustainability matters evolved with the adoption of the Directive (EU) 2022/2464 on Corporate Sustainability Reporting Directive (CSRD).⁵² The European Commission proposed the revision of the NFRD scope of reporting by including all the large and listed companies, except micro-enterprises.⁵³ The main amendment relates to: i) the detailed reporting in line with mandatory EU sustainability reporting standards;⁵⁴ ii) assurance and iii) the disclosure to the public of information on ESG together with the management report.⁵⁵ As explained in the Proposal Directive document, the objective is to improve transparency in corporations, fulfilling the gaps of SFDR⁵⁶ and Taxonomy Regulation.⁵⁷

Article 1 of the CSRD Directive increases the number of enterprises that are under the scope of the CSRD Directive. The CSRD obligation also includes the third countries companies that generate a turnover of more than 150 million Euros in the EU and the companies that have a subsidiary or a branch in the EU.⁵⁸ Consequently, the number of companies that must report is increased.⁵⁹ In parallel to CSRD, the EU introduced a standardised reporting framework for the companies with the purpose of providing reliable and consistent information on ESG.⁶⁰ The European Sustainability Reporting Standards (ESRS)⁶¹ are developed

⁵² Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting [2022] OJ L 322/15 (hereafter: CSRD).

⁵³ Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, 2021 COM(2021) 189 final.

⁵⁴ EFRAG, B, available at: <https://www.efrag.org/en>, accessed 1 March 2025.

⁵⁵ Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, 2021 COM(2021) 189 final.

⁵⁶ Regulation (EU) 2019/2088.

⁵⁷ 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 [2020] OJ L 198/13.

⁵⁸ CSRD, Art 1.

⁵⁹ Baumüller, J., and Grbenic, O. S., *Moving from Non-Financial to Sustainability Reporting: Analyzing the EU Commission's Proposal for a Corporate Sustainability Reporting Directive (CSRD)*, FACTA UNIVERSITATIS Series: Economics and Organization 2021, 18(4), pp. 369 – 381.

⁶⁰ Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards [2023] OJ L 1/184.

⁶¹ *Ibid.* Annex I

based on the principle of double materiality.⁶² On one hand, the ESRS gives a figure of the impact of the companies' activity on ESG. On the other hand, the ESRS shows the effects of this impact in the companies' financial performance.⁶³ ESG disclosures on climate change, pollution, water resources, circular economy, the conditions at work, employees' rights, community engagement, board diversity, and anti-corruption are being reported under mandatory limited assurance information by the companies.⁶⁴ This is a step forward related to sustainability requirements.

Despite the fact that the CSRD Directive will produce costs for the companies (which are included in the scope of the directive) to comply and to operate,⁶⁵ it increases the accountability of the corporates and improves the approach of the corporates towards their stakeholders by providing them with accurate information on a standardised ESG statement. The establishment of a legal framework focused on accountability, transparency and values in the long term shows a transformative shift in sustainability reporting of corporates within the scope of the CSRD Directive.

3.3. Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence Directive (CSDDD)

The lack of companies having clear rules that address the risks of sustainability in the best interest of the companies⁶⁶ led to the adoption of Directive 2024/1760 on Corporate Sustainability due Diligence (CSDDD). The CSDD Directive's subject matter is to enforce companies through "due diligence" to check the negative internal and external impacts of their activity and the activity of all the other businesses (including SMEs)⁶⁷ established within the whole chain of activity.⁶⁸ Due Diligence is a process that continuously supports companies in identifying evidence to evaluate the possible risks on the issues of adverse human rights, fair

⁶² *Ibid.* Annex I (see section 3)

⁶³ *Ibid.* (see section 9)

⁶⁴ CEAOB, CEAOB guidelines on limited assurance on sustainability reporting, CEAOB 2024.

⁶⁵ CSRD, Art 1.

⁶⁶ Commission, Impact Assessment Report Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels 2022, SWD(2022) 42 final.

⁶⁷ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate due diligence in the area of sustainability and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L 1/58 (hereafter: CSDDD), Art.3 (i).

⁶⁸ CSDDD.

work, and the ecosystem.⁶⁹ Due diligence reporting is a mandatory requirement of the agreements between large companies and small businesses, their partners or SMEs within the chain of production. In other words, these companies are obligated to report through due diligence within the reporting processes of the main corporation,⁷⁰ strengthening the accountability beyond EU-based companies.⁷¹

The CSDDD stipulate the necessity of integrating due diligence procedures into corporate policies and management systems.⁷² In addition, the CSDDD sets out the measures for identification and access to the human rights and climate negative impacts of the companies' activity, the activity of subsidiaries or their partners within the value chain.⁷³ The CSDDD goes further, requiring the companies to put priorities on identifying actual and potential adverse impacts and addressing these issues⁷⁴ by taking measures to prevent, mitigate,⁷⁵ and bring to an end these adverse impacts⁷⁶ through action plans within certain deadlines in cooperation with multi-stakeholder initiatives.⁷⁷ Moreover, the CSDDD helps the stakeholders fulfil their needs regarding information through the notification mechanism and complaint procedure on violations,⁷⁸ as well as monitoring and publishing due diligence practices in their annual statements.⁷⁹ In this way, stakeholders have access to the European single access point (ESAP),⁸⁰ as established by Regulation (EU) 2023/2859.⁸¹ Also, the companies established out of the EU but operating in the Member States will include the information for the authorised representative in their annual statement according to article 23 of CSDDD.⁸² The enforcement mechanism provided by CSDDD has been strengthened not only through penalties and administrative sanctions but also by establishing companies' civil liability

⁶⁹ Rijksdienst voor Ondernemend Nederland, Internationaal MVO-wetten en -regels, September 2022, available at: <https://www.rvo.nl/onderwerpen/mvo-wetten-en-regels>, accessed 2 March 2025.

⁷⁰ CSDD, Recital 46.

⁷¹ OECD, Due Diligence Guidance for Responsible Business Conduct, OECD 2018.

⁷² CSDD, Arts 5, 6, 7

⁷³ CSDD, Art 8.

⁷⁴ CSDD, Art 9.

⁷⁵ CSDD, Art 10.

⁷⁶ CSDD, Art 11.

⁷⁷ CSDD, Art 9-11.

⁷⁸ CSDD, Art 14.

⁷⁹ CSDD, Art 16.

⁸⁰ Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 Establishing a European Single Access Point Providing Centralised Access to Publicly Available Information of Relevance to Financial Services, Capital Markets and Sustainability (Text with EEA Relevance) [2023] OJ L 1/22.

⁸¹ CSDD, Art 17.

⁸² CSDD, Art 23.

towards stakeholders and their right to compensation for the damages caused.⁸³ Implementation of these articles is ensured by a supervisory authority that will supervise compliance with the obligations of the Member States.⁸⁴

The implementation of ESG has evolved from the non-financial reporting provided by the NFRD Directive to a standardised legal framework of the CSRD Directive, increasing accountability, transparency and values in the long term, transforming non-financial reporting into sustainability reporting. The CSDDD is in line with international standards and best practices.⁸⁵ Despite some criticism,⁸⁶ the CSDDD brings a mandatory due diligence process on adverse human rights and environmental impact and imposes direct legal obligations on companies demonstrating the commitment of the EU to sustainability.⁸⁷

4. THE IMPACT OF ESG INTEGRATION IN THE ALBANIAN LEGAL FRAMEWORK

Since 2003, when the European Council declared that the future of Western Balkan countries is the EU membership, Albania is struggling to harmonise the existing and future legislation in line with the EU *acquis* as a condition of eligibility agreed upon by the European Council.⁸⁸ According to the 2024 Commission Report, Albania has been engaged seriously in the four pillars of integration to the EU, making deep reforms, including the business environment, human capital, digitalisation, energy and green transition and also fundamental rights and the rule of law.⁸⁹ In addition to these reforms, Albania has gone through a deep reform and amendment of legislation for the promotion of sustainability and ESG.⁹⁰ This section analyses the Albanian efforts to incorporate ESG into domestic legislation as a result of the EU pressure of membership.

⁸³ CSDD, Art 29

⁸⁴ CSDD, Art 24-25.

⁸⁵ CSDDD, Recitals 1-17.

⁸⁶ Ferrarini, G., Corporate Sustainability Due Diligence and the Shifting Balance between Soft Law and Hard Law in the EU, Oxford Business Law Blog 2022, available at: <https://blogs.law.ox.ac.uk/business-law-blog/blog/2022/04/corporate-sustainability-due-diligence-and-shifting-balance-between>, accessed 1 March 2025.

⁸⁷ Commission, *Sustainable Development Goals*, available at: https://commission.europa.eu/strategy-and-policy/sustainable-development-goals_en?utm_source=chatgpt.com, accessed 1 March 2025.

⁸⁸ Consolidated Version of the Treaty on European Union, Art.49.

⁸⁹ Commission, Albania 2024 Report, *op. cit.* note 8.

⁹⁰ *ibid.*

4.1. Environmental dimension of ESG integration

After the signing of the Paris Agreement⁹¹ in 2016, Albania prepared the Nationally Determined Contribution⁹² (NDC) with a target of reducing GHG emissions by 2030.⁹³ The Nationally Determined Contribution was revised in 2020.⁹⁴ The Laws on Environmental Protection set out environmental standards for companies and industrial activities and provide administrative measures and penalties for violators.⁹⁵ Although the Law on Environmental Protection is in compliance with the EU *acquis*, the accuracy of the implementation of the action plans of Albania remains a matter of concern due to the lack of qualitative data in measuring emissions.⁹⁶ The corporations and sustainability reporting have an important role in defining ESG metrics and making them public.⁹⁷ The Law on Environmental Protection does not provide a comprehensive due diligence process for companies.

4.2. Social Dimension of ESG Integration

On the second pillar of ESG, the social aspect, Albania has integrated this pillar mainly into the Labour Code.⁹⁸ This law provides some mandatory human rights issues in line with diversity and inclusion at the workplace, such as the prohibition of forced or obligatory work,⁹⁹ fair treatment and the prohibition of discrimination

⁹¹ United Nations, *Paris Agreement*, 2015, available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf, accessed 1 March 2025.

⁹² UNFCCC, Intended Nationally Determined Contribution (INDC) of the Republic of Albania following decision 1/CP.19 and decision 1/CP.20, available at: <https://unfccc.int/sites/default/files/NDC/2022-06/Albania%20First.pdf>, accessed 1 March 2025.

⁹³ UNDP, UNDP helps Albania meet obligations deriving from Paris Climate Change Accord, 2021, available at:

<https://www.undp.org/albania/press-releases/undp-helps-albania-meet-obligations-deriving-paris-climate-change-accord>, accessed 1 March 2025.

⁹⁴ UNFCCC, Albania Revised NDC, available at: <https://unfccc.int/sites/default/files/2022-08/Albania%20Revised%20NDC.pdf>, accessed 1 March 2025.

⁹⁵ Law No.10 431/2011 "On Environmental Protection" as amended; Law No. 10440/2011 "On Environmental Impact Assessment" as amended; Law No. 162/2014, "On the Protection of Air Quality in the Environment," as amended; Law No. 9587, dated 20.7.2006, "On the Protection of Biodiversity," as amended; Law No. 10 463, dated 22.9.2011, "On Integrated Waste Management" as amended, Law no.155/2020, "On climate change"

⁹⁶ ICG Research, ESG in Albania Sustainability Reporting Assessment Report Paper, available at: <https://www.icgresearch.org/publications>, accessed 1 March 2025.

⁹⁷ *ibid.*

⁹⁸ The Labour Code of Albania as amended.

⁹⁹ *ibid.*, Art 8 (Prohibition of obligatory work).

at work.¹⁰⁰ The amendments done to the Labour Code in 2015 brought special protection to child labour¹⁰¹ and women's rights.¹⁰² The protection of pregnant employees, maternity leave, prohibition of dismissal during this period, and parental leave granted to each parent are important protective issues of family well-being. There are mandatory provisions for employers (including companies) to ensure safe working conditions and protect workers' health. Equal importance is given to employees' rights to form trade unions and engage in collective bargaining.¹⁰³

The corporation's social responsibility integrating ESG is provided in Law no. 9901/2008 "On Entrepreneurs and Companies", even though the related provisions are at a limited level.¹⁰⁴ The law provides the establishment of the council of workers, considering them in the stakeholder category.¹⁰⁵ But stakeholders, as actors that play an important role in corporate governance, are not limited to the employees; this category also includes subcontractors, creditors, businesses in the whole chain and sometimes the entire community.¹⁰⁶ The companies shall consider the participation of the worker representatives/councils in decision-making without providing any enforcement for the adverse worker's rights in this aspect.¹⁰⁷ There are no provisions on mandatory due diligence for human rights and environmental standards across corporate supply chains.

4.3. Governance dimension of ESG integration

As discussed in the previous sections, corporate governance does not have a certain definition used worldwide. Albanian commercial law and corporate governance principles are generally in line with the EU legal framework.¹⁰⁸ However, the 2024 Commission Report recommends further alignment.¹⁰⁹

¹⁰⁰ *ibid*, Art 9 (Prohibition of discrimination and fair treatment).

¹⁰¹ *ibid*, Art.98-103 (child labor).

¹⁰² *ibid*, Art.104-108 (woman rights).

¹⁰³ *ibid*, Art 176-197/10

¹⁰⁴ ICG Research, *op. cit.* note 97.

¹⁰⁵ Law on Entrepreneurs and Companies, Arts 19, 20, 21.

¹⁰⁶ Malltezi, A., *E drejta tregtare e shoqërive shqiptare*, Shtëpia Botuese Mediaprint 2011, p. 191

¹⁰⁷ Dine, J., and Blecher, M., *Ligji Për tregtarët dhe shoqëritë tregtare: Teksti me shpjegime*, Gent Grafik 2016.

¹⁰⁸ Beci, S., *Albania Albanian Commercial law towards EU Academic*, Journal of Business, Administration, Law and Social Sciences 2022, 8 (3), pp. 83-88.

¹⁰⁹ Commission, Albania 2024 Report, SWD(2024) 690 final.

According to G20/OECD Principles on Corporate Governance 2023, “*the corporate governance framework should provide incentives for companies and their investors to make decisions and manage their risks, in a way that contributes to the sustainability and resilience of the corporation.*”¹¹⁰ Albanian Law on Entrepreneurs and Companies provides rules for the company formation and disclosure structure of management, governance, financial reporting and statutory audit.¹¹¹ OECD Principles¹¹² constitute the base of Albania's corporate governance framework.¹¹³ Board responsibilities are defined in accordance with OECD Principles. The Albanian Law on Entrepreneurs and Companies does not provide clear and comprehensive rules related to the sustainability and the disclosure of the adverse human rights and environmental impact of the companies. Furthermore, while the Albanian Law on Entrepreneurs and Companies includes provisions relating to business regulations, commercial contracts, and company formation and statutory audit, it remains silent on sustainability reporting or due diligence process. The 2024 Commission Report acknowledges this gap in the company law as amended.¹¹⁴

The Albanian Law on Entrepreneurs and Companies contains some main elements of corporate governance in Albanian commercial law.¹¹⁵ It defines the structure and the relations between shareholders, the board and administrators. Moreover, it stipulates shareholders, the board and administrators' duties and rights and pays attention to the equilibrium between all stakeholders for an efficient decision-making procedure.¹¹⁶ The Albanian Law on Entrepreneurs and Companies considers the interest of all stakeholders during mergers or spin-offs of the company.¹¹⁷ Protection of the rights of the minor shareholders on getting the information, the amendment of the company statute or the right to complain in front of a court for the possible violation of the statute or unlawful decision of the General Assembly¹¹⁸ shows the attitude of the law-makers on the equal treatment of the stakeholders. In addition, the interest of the employees is also considered.¹¹⁹ However, there are still no specific obligations related to sustainability at the board level.

¹¹⁰ OECD, G20/OECD Principles of Corporate Governance 2023, *op. cit.* note 17, p. 46

¹¹¹ Law on Entrepreneurs and Companies.

¹¹² Kodi i Drejtimit të Brendshëm të shoqërive tregtare në Shqipëri; OECD, Parimet e drejtimit të brendshëm të shoqërive tregtare, OECD 2004, p. 11

¹¹³ Malltezi, *op. cit.* note 108, pp. 185-217.

¹¹⁴ Commission, Albania 2024 Report, *op. cit.* note 8.

¹¹⁵ Law on Entrepreneurs and Companies.

¹¹⁶ Malltezi, *op. cit.* note 108, pp. 185-191.

¹¹⁷ Law on Entrepreneurs and Companies, Arts 214-227.

¹¹⁸ *Ibid*, Arts 10-15.

¹¹⁹ *ibid*, Arts 19-21.

4.4. Harmonising further Albanian legal framework with EU acquis

The Law on Accounting and Financial Statements¹²⁰ represents a novelty in the Albanian legal system. It introduces limits for the classification of enterprises and groups for financial reporting purposes. Moreover, it obliges large public interest entities to include in their performance report a non-financial report containing information on the entity's performance and impact on environmental, social and employment issues as well as human rights, anti-corruption and bribery issues.¹²¹ While such a step is welcomed for further harmonisation, the Law on Accounting and Financial Statements¹²² is partially harmonised with the Directive 2013/34/EU.¹²³ In 2020, the Albanian National Council of Accounting published the Guideline on Non-Financial Reporting.¹²⁴ This Guideline is harmonised with the Directive no. 2014/95/EU dated 22.10.2014 "On Non-Financial Reporting" and the related guideline issued by the European Commission.¹²⁵ It guides companies to disclose non-financial information that provides sustainable growth, employment and transparency for interested stakeholders.¹²⁶ Moreover, the amendment to the Law on Statutory Audits and Audit Profession,¹²⁷ which partially transposed the CSRD Directive on corporate sustainability reporting.¹²⁸ Also, Albania is a signatory country of the UN Guiding Principles on Business and Human Rights.¹²⁹ While the state authorities intend to give an incentive to the

¹²⁰ Law no. 25/2018 dated 10.05.2018 "On Accounting and Financial Statements".

¹²¹ KPMG, New Law on Accounting and Financial Statements, 2018, available at: <https://assets.kpmg.com/content/dam/kpmg/al/pdf/News-Albania.pdf>, accessed 1 March 2025.

¹²² Law no. 25/2018 dated 10.05.2018 "On Accounting and Financial Statements" as amended.

¹²³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (Text with EEA relevance) [2013] OJ L 182/19.

¹²⁴ Keshilli Kombetar i Kontabilitetit, *Udhëzues për Përgatitjen e Raportit Jofinanciar (metodologjia për raportimin e informacionit jofinanciar)*, available at: https://www.kkk.gov.al/foto/uploads/File/Udhezuesi%20i%20raportimit%20jofinanciar_publikuar.pdf, accessed 1 March 2025.

¹²⁵ Commission, OJ C 215/1.

¹²⁶ Boga & Associates, Guideline on nonfinancial reporting and Performance Reporting of Non-For-Profit Organizations, 2021, available at: <https://www.bogalaw.com/pdf/Guideline%20on%20Non-Financial%20Reporting.pdf>, accessed 1 March 2025.

¹²⁷ Law no. 25/2018 dated 10.05.2018 "On Accounting and Financial Statements" as amended, Art.18.

¹²⁸ CSRD; Law no.126/2024 "On some additions and amendments in Law on Statutory Audits and Audit Profession no.10091 date 5.3.2009 as amended 47/2016 [2025] OJ 7.

¹²⁹ United Nations and United Nations Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy'

enforcement of sustainability requirements and standards for the companies, the Law on Statutory Audits and Audit Profession do not impose broad obligations on companies to conduct due diligence with respect to human rights and environmental standards. As the negotiations are opening, further alignment with the CSDDD Directive is necessary. Also, it is expected that in 2025, the companies will provide more comprehensive information on ESG,¹³⁰ supporting the environment and human rights.

5. CONCLUSION

The National Strategy for Development and European Integration (2021-2030),¹³¹ among other objectives, shows the continuous commitment of the Albanian Government to sustainable development and EU integration.¹³² While the commercial laws provide a foundation for corporate governance, they lack explicit provisions on mandatory disclosures, due diligence and enforcement mechanisms for the integration of ESG. As Albania aspires to join the EU in 2030, Albania needs to fully harmonise its commercial legal framework by adopting a new company law and amending the corporate governance provisions. In this aspect, it is necessary to integrate ESG into corporate governance for European accession and to ensure the sustainable development growth of the country. Even though this will be a challenging task due to the increase in costs, and lack of human capital as a result of the “brain drain” because of the migration of the young population, lack of awareness of the companies and their decision-making structures, scepticism, it is important for the corporates to increase the awareness on ESG reporting. The new harmonised laws shall bring stronger enforcement mechanisms and capacity-building. Researchers show that Albanian corporates and their stakeholders have done a shift toward sustainability compared to SMEs and small businesses. The latter needs further understanding of sustainability and an increase in awareness.¹³³ Banks and the other financial institutions in Albania play a distinguished role in sustainable financing based on the measurement of ESG.¹³⁴ Corporate accountability, investor protection, and business sustainability will be strengthened by further harmonising the EU legal framework.

Framework, United Nations 2011; OECD, OECD Guidelines for Multinational Enterprises, OECD Publishing 2011.

¹³⁰ KPMG, The move to a mandatory reporting, Survey of Sustainability Reporting 2024.

¹³¹ SASPAC National Strategy for Development and European Integration 2022–2030, Tirana 2022.

¹³² *ibid.*

¹³³ Deloitte Audit Albania SH.P.K., Sfidat dhe mundësitë e tregut Shqiptar në tranzicionin drejt raportimit të Qëndrueshmërisë dhe dhënies së Sigurisë, Deloitte Audit Albania SH.P.K 2024.

¹³⁴ *ibid.*

In conclusion, further alignment of Albanian legislation with the EU *acquis* will bring new opportunities for Albanian companies, making them more reliable and compatible with other European and world markets. Global trends in ESG reporting will attract investors, consumers, civil organisations, and employees, who will collaborate on common values. The harmonised legal framework of Albania will further push for the sustainable wealth of people and economic growth, protecting human rights and the ecosystem. Future research on the implementation of ESG principles should be extended to other Western Balkans countries. The accession process of Western Balkans countries requires an alignment of environmental, social and corporate governance with the EU legal framework. In this context, a comprehensive legal study should be conducted to analyse to what extent and whether the Western Balkan countries have incorporated ESG into their legislation as a result of EU conditionality.

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