

# Sustainable Finance in the EU

Edited by

Jens Ekkenga and Martin Winner

Mohr Siebeck

*Jens Ekkenga* holds the Chair of Civil Law, Commercial and Business Law, Comparative Law at the University of Giessen.

[orcid.org/0000-0001-8485-6217](https://orcid.org/0000-0001-8485-6217)

*Martin Winner* holds the Chair of Commercial Law at Vienna University of Economics and Business Administration.

ISBN 978-3-16-163722-3 / eISBN 978-3-16-163723-0

DOI 10.1628/978-3-16-163723-0

ISSN 1861-1893 / eISSN 2568-8464 (Jus Internationale et Europaeum)

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available at <https://dnb.dnb.de>.

© 2024 Mohr Siebeck Tübingen, Germany. [www.mohrsiebeck.com](http://www.mohrsiebeck.com)

This book may not be reproduced, in whole or in part, in any form (beyond that permitted by copyright law) without the publisher's written permission. This applies particularly to reproductions, translations and storage and processing in electronic systems.

The book was typeset by Martin Fischer in Tübingen using Minion typeface, printed on non-aging paper by Laupp & Göbel in Gomaringen, and bound by Nädele in Nehen.

Printed in Germany.

## Inhaltsverzeichnis

Preface .....	V
<i>Jens Ekkenga</i> Sustainable Finance in the EU – An Introduction .....	1
<i>Pierre-Henri Conac</i> The European Union and the Sustainable Finance agenda. Between ambition and reality .....	21
<i>Jens Ekkenga</i> Country Report Germany .....	37
<i>Philipp Fidler / Martin Winner</i> Country Report Austria .....	59
<i>Hanne S. Birkmose / Karsten Engsig Sørensen</i> Country Report Denmark .....	82
<i>Blanaid Clarke / Félix E. Mezzanotte</i> Country Report Ireland .....	106
<i>Pierre-Henri Conac</i> Country Report France .....	130
<i>Kateřina Eichlerová</i> Country Report Czech Republic .....	153
<i>Marco Lamandini / Elia Cerrato García</i> Country Report Italy .....	166
<i>Erik Lidman</i> Country Report Sweden .....	186
<i>Krzysztof Oplustil / Anne-Marie Weber</i> Country Report Poland .....	209

*Tekla Papp / János Dúl*  
Country Report Hungary ..... 233

*Mária Patakyová / Ján Mazúr*  
Country Report Slovakia ..... 257

*David Pérez Millán / Eva Recamán Graña*  
Country Report Spain ..... 274

*Christoph Van der Elst*  
Country Report Netherlands ..... 298

*Emőd Veress*  
Country Report Romania ..... 321

*Jens Ekkenga / Karl Björn Erlemann*  
Sustainable Finance in the EU – A Legal Comparison ..... 337

List of Authors ..... 355

# Country Report France

Pierre-Henri Conac

## A. Introduction

France has a large asset management industry and a long tradition of supporting and encouraging socially responsible investments. On many aspects, France has been, and sometimes even remains, ahead of European Union (EU) legislation on those issues. The French legislator expressed support for such policy as early as 2001 and has been in favour of shareholders' engagement since 2003.

The legal framework relating to investment funds choosing to support Environmental, Social and Governance (ESG) objectives is well developed. All French investment funds which are Undertakings for the Collective Investment in Transferable Securities (UCITS) or AIF (Alternative Investment Funds) can qualify as ESG funds.<sup>1</sup> However, employee funds have a special regime for them and have been allowed to adopt an ESG approach as early as 2001.<sup>2</sup> Furthermore, funds controlled by the French State are managed according to ESG principles. The rules regarding French asset managers and investment funds are located in the Monetary and Financial Code and in the General Regulation of the securities supervisor, the *Autorité des marchés financiers* (AMF). The legal regime is completed by company law provisions on public limited liability companies (*Sociétés anonymes* or SA) which are located in the commercial code.

## B. Sustainable Ownership/Shareholder Governance

### *I. General aspects on the use of voting rights by investment companies*

#### *1. Employee investment funds*

France has a long tradition of investments funds dedicated to employees. This dates back to De Gaulle who promoted employee participation in the profits of

---

<sup>1</sup> On AIF, see I. Riassetto & M. Storck, "Les organismes de placement collectif", Tome 2. *Les fonds d'investissement alternatifs*, Joly Editions, 2022, 1772 pp.

<sup>2</sup> On the evolution of the French regime, see I. Parachkevova, "Les obligations des fonds d'investissement au sein des sociétés cotées", *Revue des sociétés*, 2015, p. 75; E. Forget, "L'investissement éthique. Implications en droit des sociétés", *Revue des sociétés* 2015, p. 559; I. Riassetto & M. Storck, "L'engagement actionnarial des sociétés de gestion de portefeuille", *Mélanges en l'honneur d'Alain Couret*, Dalloz, 2022, p. 625.

the company as early as 1959 and then again in 1967. It served as a way to bridge the gap between capitalism and socialism. At this time, codetermination was not politically achievable in France due to the joint opposition of employers' representatives and workers' unions.

Employee participation in profits takes several forms. It can consist of direct individual payments but also of ownership in special employee funds which invest in shares. In this manner, a large investment fund industry investing in shares for the benefit of employees has developed in France. Employee investment funds are referred to as a company common contractual fund (*fonds commun de placement d'entreprise* or FCPE). FCPEs are themselves classified into two categories. A first category is required to invest more than one-third of its resources in the shares of the company where the employees work. A second category is called "diversified" FCPEs where a maximum of one-third of the resources can be invested in the shares of the company where the employees work.

Those funds tend more to have an ESG focus. They were the first in France to be allowed to integrate ESG concerns. A law of 19 February 2001 on employee then introduced provisions encouraging the inclusion of social and environmental criteria in their investment policies. Art. L. 214–39 of the Monetary and Financial Code provided at the time that: "The regulations (*of the FCPE*) shall specify, where applicable, the social, environmental or ethical considerations that the management company must respect in the purchase or sale of securities, as well as in the exercise of the rights attached to them. The fund's annual report shall report on their application, under conditions defined by the *Commission des Opérations de Bourse*." The *Commission des Opérations de Bourse* (COB) was the securities supervisor at the time and was replaced by the *Autorité des marchés financiers* in 2003. Art. L. 214–39 of the Monetary and Financial Code was remarkable because it mentioned "social, environmental or ethical considerations" as part of the investment policy of the FCPE even if adopting such policies was, and remains, noncompulsory. In addition, it referred to the "exercise of the rights attached" to those securities which implies exercising one's right to vote. Currently, this provision is found in Art. L 214–164 V. of the monetary and financial code. Its content is essentially unchanged compared to 2001.

As a further commitment to ESG, as of 2018, employee funds can invest in "solidarity funds" (*fonds solidaires*) whose assets are invested in solidarity companies (*entreprises solidaires*) whose shares are not admitted to trading on a regulated market.<sup>3</sup> The regime of the *Entreprise solidaire d'utilité sociale* (ESUS) was created in 2014.<sup>4</sup>

<sup>3</sup> Art. L. 3332–17 and L. 3332–171 of the Labour Code, Law n°2008–776 of 4 August 2008 modernising the economy (*de modernisation de l'économie*), JO 5 August 2008, text 1.

<sup>4</sup> Law n°2014–856 of 31 July 2014 relative à l'économie sociale et solidaire, JO 1 August 2014, text 2.