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Abstract

The thesis aims at investigating the role of sustainability in mergers and acquisitions (M&A) by mainly focusing on how the Environmental, Social and Governance (ESG) factors are reshaping the overall corporate acquisition strategies and the legal framework in the European Union regarding corporate transactions. Initially, the process was driven by financial metrics, however nowadays M&A activity has undergone a significant shift as sustainability has become a crucial element. The thesis examines how companies integrate ESG factors across the various stages of the M&A process, from initial target selection up to post-merger integration.

A central theme in the thesis is the exploration of the legal frameworks that regulate reporting and compliance. Key regulations such as the CSRD and the SFDR are analyzed so that it is possible to understand their impact on M&As. These regulations have mandated increased transparency and accountability, requiring from companies to disclose their sustainability performance and to consider the relevant ESG risks when making acquisition decisions. Additionally, the EU's regulatory landscape will be contrasted with the more lenient regime in the USA, where sustainability practices are often voluntary, thus creating challenges during cross border transactions.

Through the presentation of selected case studies, the thesis will illustrate the real-world application of sustainability in M&As. The Bayer-Monsanto case will be discussed as an a example of how poor environmental practices can lead to legal liabilities and damage corporate reputation. Additionally, Danone's acquisition of WhiteWave will demonstrate how a focus on sustainability has the potential to create new market opportunities by aligning with consumer demand for healthier, environmentally friendly products.

At the same time, the challenges that companies are faced with, during the integration of sustainability into M&A processes will be discussed, particularly the tension between short term financial goals and long-term objectives. Also, the complexity of assessing sustainability across different regulatory environments, the practice of "Greenwashing" and harmonization difficulties in cross-border deals will be addressed.

Ultimately, it will be argued that incorporating sustainability in an M&A is not just a mere matter of regulatory compliance but a modern strategic necessity. Companies that are able to effectively integrate ESG factors into an M&A transaction will manage to gain a competitive advantage, mitigate risks, and align with stakeholder expectations for responsible corporate behavior.

Keywords: Sustainability, M&A, ESG, Due Diligence, CSRD, SFDR, Risk management,

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Chapter 1

1.1Introductory Comments

Sustainability emerged as a concept chronologically between the 1980s and 1990s, a time where the world economy started to globalize as there were less barriers and commerce between countries started to increase in volume. Consequently, sustainability managed to influence how corporations (and organizations) operate, strategize, and grow because of all the corporate practices in effect. Even though, it was mainly related with environmental concerns such as the better management of scarce resources, it has evolved to include a wider spectrum of social and economic dimensions. As companies started to recognize the value of sustainable practices, which could lead to better economic results through better management of resources along with improvements in company reputation, these considerations permeated the field of mergers and acquisitions (M&As).

M&As are essentially financial tools that are used in order to carry out strategies such as the purchase of a company, the merger between two companies, to make a tender offer or even to stage a hostile takeover. The purpose of M&As is to essentially achieve increased growth, secure market position or gain access to new markets. One such glaring example is the CVC fund which has managed to acquire companies such as "ΔΕΗ", "Skroutz", "Metropolitan Hospital" and "ETHNIKI" insurance, managing to penetrate various sectors of the Greek economy.

Historically, M&A activity was mainly driven by financial metrics such as cost synergies, revenue growth potential and market share expansion. However, the emphasis that is now put on sustainability is changing these paradigms. Essentially, the incorporation of sustainability into M&A activity is showcasing a change in the way that value is perceived by corporations and financiers, which now reflects a focus on ethical considerations along with environmental and social impact. The increased importance of sustainability in M&A is due to a series of factors. More specifically, the recognition that sustainable business practices lead to long-term value creation along with the fact that companies that take into account sustainability are in a better position to survive in the current economic environment. This takes place because sustainability is able to bolster brand reputations and reduce corporate risks and can help corporations to align with consumer expectations regarding resource exploitation.

Additionally, regulatory frameworks in the E.U. such as the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR) are evolving in order to take into account sustainability regulations. In that regard, regulatory bodies are taking measures to promote environmental, social and governance (ESG) standards, that companies have to abide by, in order to ensure environmental protection, social responsibility and good governance practices. Such changes are having

an impact on M&A activities, as corporations have to consider the degree of sustainability in the business practices of the acquisition targets and the relative implications of such acquisitions in their own ESG ratings. Furthermore, the rise of socially responsible investing (SRI) is also a driving force in the integration of sustainability into M&A. Investors are demanding greater transparency and accountability from corporate entities regarding their practices. Consequently, an increasing number of corporations are issuing annually ESG reports along with their Financial Statements such as the Balance Sheet, the Income Statement and the Cash flows. This shift in investor preferences is influencing corporate behavior, as companies now have to practically prove their commitment to sustainability in order to attract and retain capital investments. Except for external pressures, at the same time there are internal factors that are taking part in the inclusion of sustainability into M&A strategies. The acquisition of companies that have strong sustainability credentials, can help bolster the acquirer, improve its own sustainability ratings, consumer reputation, and lastly to differentiate from competitors in the market.

It has to be written that the role of sustainability in M&A is not limited to the acquisition phase but includes the whole purchase stages such as the due diligence phase where the companies assess the performance of the acquisition targets, including their impact on the environment, their labor practices, the governance structures and their social responsibility initiatives. This assessment is usually carried out by professional services firms such as the BIG4 corporations and is crucial because it can help identify potential risks and opportunities related with the acquisition. Also, the phase of acquisition is another stage where sustainability considerations have become important. Valuation methods such as DCF analysis, Multiples and Precedent Transactions used to focus solely on financial metrics. Now they are being supplemented with ESG factors such as the CO2 impact, so that it is possible to provide a more thorough assessment of a company's value. Negotiation is another stage in the M&A process where sustainability considerations can have an effect. Companies negotiate terms that take into account the sustainability performance of the target company that are related to ESG risks by making price adjustments and earn-outs. Post-merger integration of the two companies is the most difficult stage in an M&A process. At this stage the integration of sustainability into the combined entity's activities is important, because companies have to create strategies that will enable the alignment of sustainability practices in the merged entities. This, process may include the integration of ESG reporting along with harmonizing sustainability policies.

Despite the fact that the inclusion of sustainability into M&A presents opportunities, at the same time it also comes with a set of challenges. The most important one, is the complexity of assessing sustainability performance in the context of cross-border M&A transactions. Different countries have different regulatory frameworks, cultural norms, and levels of awareness regarding sustainability issues, which in fact complicate the due diligence process and create uncertainties during the rest of the M&A phases. More specifically the

already mentioned frameworks in the EU are mandatory as they are part of the European Green Deal which aims to make the Union carbon-neutral by 2050. On the flip side, in the United States even though there are measures in effect such as the Clean Air Act and the Dodd-Frank Act, the country does not have a unified framework regarding sustainability. On the whole the US framework tends to be more lax and focuses on voluntary participation by companies. Also, it is possible that there are differences in the maturity of sustainability practices between the entities of the M&A, a situation which creates the challenge of synching the practices across the new formed entity after the merger takes place.

Another challenge is the possible conflicts between short-term financial goals and long-term sustainability objectives. M&A transactions aim at creating immediate financial gains from synergies or revenue increases, something that is true especially in the case of hostile takeovers. As a result, the process of acquisition itself is bound to present a conflict between long-term and short-term goals. In that regard, it is crucial to balance these two opposing priorities by using a careful approach that will focus on sustainability in the newly formed entity.

Catering to sustainability during an M&A creates the necessity to abide by legal and regulatory requirements. Companies have to navigate the complex and rapidly changing landscape of ESG regulations, which vary across industries. In the previous example of CVC, when the fund bought the Greek Utility company "ΔΕΗ" it's legal department had to take into account the European Union's Emissions Trading System, because "ΔΕΗ" uses various resources to produce energy (i.e. coal, natural gas and oil). If the legal department of the fund failed to comply with the regulations regarding the cap on CO2 emissions the conglomerate would be faced with legal and financial consequences after the M&A. The fines include 100 euros per CO2 tone in excess of the limit and forfeiture of allowances for the next calendar year. Therefore, legal departments that participate in M&As have to stay informed about the changes in ESG regulations in the home countries of the corporations of interest and consider them into the overall M&A strategy.

1.2 Scope and main research questions

The scope of the thesis is to qualitatively analyze the intersection of sustainability and M&As within the framework of modern business practices, mainly through literature

review. As sustainability has managed to emerge as a significant factor in modern corporate strategy, its influence on M&As warrants a thorough examination. Essentially, the focus will be on gaining a better understanding of the ways that sustainability considerations are accounted for into the M&A processes along with the legal and regulatory implications of this integration, and the trends around sustainability that are already shaping the future of company acquisitions. By analyzing these aspects, the thesis will aim at providing interesting insights into the challenges and opportunities that arise when sustainability is incorporated into M&A processes.

The thesis revolves around a set of specific key research questions that guide the whole research . More specifically, the first question that arises is how sustainability is factored into the legal M&A frameworks in the context of the European Union? Essentially, this question aims at exploring the current legal landscape that upper management has to navigate during an M&A process and how it supports or hinders the incorporation of sustainability in M&A transactions. By gaining a better understanding of the regulatory environment it will be possible to set the boundaries that companies have to take into account when they are considering sustainability in their M&A activities.

The second research question will try to find out what are the main drivers and hindrances to incorporating sustainability into M&A decisions. Essentially the analysis will focus on the motivations behind corporate decisions relative to the prioritization of sustainability in their M&A strategies, such as regulatory compliance, investor expectations, and the pursuit of long-term value creation. Also, through the thesis an effort will be made to identify the obstacles that companies are faced with when trying to integrate sustainability into M&A, such as the complexity of assessing ESG factors, conflicts between short-term and long-term goals and lastly the challenges of harmonizing sustainability across different companies.

Thirdly, the thesis will try to assess the impact of sustainability in the overall success of M&A transactions. This will be achieved by analyzing the ways in which sustainability considerations affect the various aspects of an M&A, such as due diligence, valuation, the negotiation process, and the post-merger integration, and how these factors affect the long-term success of the newly formed company. The last research question that will be answered revolves around what are the emerging trends and the possible alterations in this area? This question aims at identifying the evolving corporate governance models, the role of technology and the impact of globalization on the incorporation of sustainability on M&As.

1.3 Structure of the Thesis

Except for the introductory chapter, the thesis consists of five chapters. In chapter two the literature review will take place so that the reader will gain a better understanding regarding the existing research on sustainability and M&As, focusing on the interaction between

them and emphasizing significant legal frameworks and developments. Chapter three is the core of the thesis and is dedicated to a legal analysis of sustainability through the scope of the European Union, exploring how the regulatory environment in effect has the potential to impact the integration of sustainability into the M&A practice. In chapter four, the focus will be into the emerging trends and the future directions regarding sustainability, considering how the changing models of corporate governance, technological breakthroughs and globalization are changing the future of sustainability in M&As. Chapter five will include the discussion of the findings, while at the same time the integration challenges and opportunities related to sustainability will be addressed. In the last chapter of the thesis, all the conclusions that arose will be reported.

Chapter 2: Literature review

The second chapter is going to serve as the Literature Review of the thesis in order to examine the existing literature regarding the matter of sustainability integration in the field of M&As. This is necessary, in order to create a framework regarding the way that sustainability considerations have become integral to corporate stratagems, especially within the context of M&A activities. By taking, into account a wide array of academic sources and regulations, this chapter aims to pinpoint the evolution and current state of sustainability practices that take place in the corporate finance section of the global economy.

The review starts by locating the origins of sustainability within the business sphere, noting significant changes in practices in effect that were influenced to a great degree by globalization and economic integration. This specific historical context essentially paints the stage for discussing more recent developments where sustainability, on the one hand influenced corporate actions, and on the other hand became a pivotal factor in the M&A decision-making processes. Incorporating ESG criteria into M&A practices reflects a broader shift in corporate valuation practices, where now non-financial metrics are taken into account in order to measure the long-term value creation and better assess risk.

Additionally, in this chapter, the relevant regulatory frameworks that have affected such practices will be assessed by mainly focusing on the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR). At the same time, variations in the regulatory approaches between the EU and the US will be examined in order to assess their implications on M&A activities. As a final remark, the scope of the chapter includes not only exploring the theoretical framework regarding sustainability for M&A activities but also to possibly identifying potential gaps in literature.

2.1 Historical Overview of Sustainability in Business

Sustainability as a business concept is relatively new and has emerged in the past few decades. This emergence signifies the fact that higher management in modern corporations has started to understand the impact of economic activity on the planet in general and more specifically on the environment, society and the economic stability of the economic system as a whole [1]. Even though sustainability was a secondary concern, it has become a central theme in corporate strategy that was widely influenced by globalization and economic integration of peripheral economies. In the following section of the literature review, an

[1] Camilleri, M., 2017. Corporate sustainability, social responsibility and environmental management. Cham, Switzerland: Springer International Publishing.

effort will be made to trace the origins and development of sustainability in corporate practices and explore the ways it has expanded and redefined in the context of the global economy that we are currently in.

The initial genesis of sustainability begun during the 60s and 70s a period which was characterized by environmental movements along with two oil crises, one in 1973 and another in 1979 which took place due to the Yom Kippur War and the Iranian Revolution. All of these will be examined macroscopically in order to understand their relatedness to each other. Initially R. Carson in 1962 wrote the "Silent Spring", the book highlighted the dangers of chemical pesticides and more specifically DDT (Dichlorodiphenyltrichloroethane) [2]. DDT was a synthetic chemical compound firstly discovered in 1874. However, its insecticidal properties were discovered in 1939 by H. Muller [3]. DDT's use became mainstream during World War II and was used as an insecticide to kill mosquitos and insects that spread diseases like malaria, typhus and dengue fever and in agriculture to control pests affecting mainly staple corps such as cotton and corn [4]. There were many reasons why DDT became widely used. They included the fact that it was effective in disease control, and it managed to increase agricultural yields and at the same time it was cheap to produce in the USA after the country had increased its manufacturing capabilities during WWII [5]. Additionally, there was a lack of awareness of its risks, and it was institutionally supported by the American government and military. What Carson did was to point out all of the dangers of DDT. Those included its environmental persistence, the bioaccumulation of DDT in the fatty issues of living organisms and its ability to move up the food chain, its impact on wildlife as it caused the thinning of eggshells in birds, and its propensity to cause various types of cancer in humans, damage to the liver and the nervous system. Additionally, insects started to develop resistance to DDT, leading to a circle of increased usage.

As a result, the publication of the book led to an intense debate about the use of pesticides. Industrial producers such as Monsanto, Velsicol and American Cyanamid discredited the findings and her credibility as an author and scientist. However, public concern keeps growing and as a result President J.F. Kennedy ordered the Science Advisory Committee to investigate the findings of the book. The committee's report was published in 1963 and was in accordance with Carson's Findings. Afterwards grassroot movements took place. Their efforts managed to lead to the establishment of the U.S. Environmental Protection

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[2] Schmitt, J., 2016. From the Frontlines to Silent Spring: DDT and America's War on Insects, 1941-1962. pp. 1-29.
[3] Oberemok, V. et al., 2015. A short history of insecticides. Journal of Plant Protection Research, 55(3).
[4] Clarke, S. & Brown, R., 2022. Pyrethrum and the Second World War: Recontextualising DDT in the Narrative of Wartime Insect Control. HoST-Journal of History of Science and Technology, 16(2), pp. 89-112. https://doi.org/10.2478/host-2022-0017
[5] Mansouri, et al., 2017. The environmental issues of DDT pollution and bioremediation: a multidisciplinary review.. Applied biochemistry and biotechnology, Τόμος 181, pp. 309-339.

Agency (EPA) in 1970, which was a consolidated federal body that monitored and enforced rules relative to environmental protection. Furthermore, environmental concern rose above the boundaries of US society and became a worldwide phenomenon. As a result, it affects the way of thinking about the environment. This work, along with the work of others, such as the Malthusian theory of 1798, and the tragedy of the commons by G. Hardin led to the creation of the Club of Rome in 1968. The club's report, named "The limits to Growth" was published in 1972. It was based on a computer simulation model named World3 from MIT researchers [6]. The model was designed to simulate interaction between five key variables. They included population growth, industrial output, food production, resource depletion, and environmental pollution. To sum up its findings, it was reported that it is not possible to have an infinite exponential growth on a planet with finite resources and that there is a potential for a collapse scenario, where after a peak in population and industrial output there will be a sharp decline due to resource shortages and environmental destruction. The previous statement directly contradicts the liberal outlook on the economy which is focused on economic growth as a sine qua non condition to improve living standards.

Afterwards, the two oil crises took place. The first one, in 1973 happened due to the Yom Kippur War were the ex OAPEC and current OPEC, imposed sanctions in Western countries for their support to Israel against the Egyptian and Syrian coalition [7]. In the second crisis in 1979, where the Iranian revolution took place, oil production was disrupted in Iran which was a major oil producer. Additionally in 1980 the Iran-Iraq war took place [8]. The combined effect of all the previous events was that the global supply was greatly reduced, and its prices rose to stratospheric levels. For example, in 1979 the price per oil barrel more than doubled to 39.50 US dollars [9] . These results highlighted the risks that are related with unsustainable business practices especially in energy-intensive sectors such as industrial manufacturing, and the need to explore sustainability as a strategic priority for survival not only for corporations but also for the human population itself. In 1987 the Brundtland Commission in its report named "Our Common future", essentially

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[6] Neurath, P., 2017. From Malthus to the Club of Rome and Back: problems of limits to growth, population control and migrations.

[7] Anveri, N., 2016. Iraq's oil war in the USA during the October 1973 War.. *Middle Eastern Studies,* 2(52), pp. 754-771. https://doi.org/10.1080/00263206.2016.1181621

[8] Ali, S., 2023. The Iran-Iraq War. In The Middle East. *Routledge,* pp. 217-224.

[9] Segbey, H., 2019. Assessing the E ects of Global Oil shocks on Carbon Emissions. https://doi.org/10.20381/ruor-23824

introduced the term "sustainable development" as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs [10]. This definition puts the emphasis on a longer-term view that companies have to adopt in order to balance economic growth along with environmental protection. As the pendulum swung, companies started to adopt sustainability concerns, initially only due to abide by regulatory compliance. Notable examples included DuPont, which is a chemical company, which was faced with significant pressure in the 1980s stemming from litigation regarding its productions of CFCs like freon. Another example includes 3M, the industrial manufacturer which in the 1970s launched the "Pollution Prevention Pays (3p) "program, aimed at reducing pollution by reducing waste, conserving power and resource and improve the manufacturing processes [11]. Additionally, General Electric was faced with increased scrutiny over its production practices mainly because of the pollution of the Hudson River. As a result, the company launched "Ecomagination" in 2005 in order to reduce its general environmental impact [12]. Based on the previous three examples it can be inferred that even though management chose to just confirm with the law, as time carried on sustainability evolved from a reactive practice to a proactive one integrating ESG factors into strategic thinking and planning.

During the 90s when globalization took place, a significant phase in the integration of sustainability into business practices occurred. As barriers to trade started to be abolished, markets became more interconnected, and many companies were faced with a new economic reality where they had to adapt to it. The increased connectivity of the markets was the result of a series of policies including the creation of the European Economic Community in 1957, through the Treaty of Rome, the creation of World Trade Organization in 1995 which promoted free trade and acted as a mediator, so that disputes could be resolved and trade agreements such as the Transatlantic Trade and Investment Partnership (TTIP). Consequently, the market expansion was faced with scrutiny by a series of parties including the now international consumers, activist groups (i.e WWF and Greenpeace) and governments demanding increased accountability and sustainable practices from corporations. During the same time the spread of information and technology took place.

[10] Choy, Y., 2015. 28 years into "Our Common Future": sustainable development in the post-Brundtland world. *WIT Transactions on The Built Environment* , Τόμος 168, pp. 1197-1211. 10.2495/SD151032

[11] Murphy, M., 2020. "Early Industrial Roots of Green Chemistry-II: International "Pollution Prevention" Efforts During the 1970's and 1980's.. *Substantia,* 4(2).

[12] George, S. & Regani, S., 2019. 'Ecomagination'at Work: GE's Sustainability Initiative.. *Managing Sustainable Business: An Executive Education Case and Textbook,* pp. 417-434. Doi: 10.1007/978-94-024-1144-7_20

More specifically, the Internet (World Wide Web) became commercially available in 1991 after the removal of restrictions imposed by the U.S. National Science Foundation. This led to increased competition among companies because they were able to provide their wares and at the same time to advertise to consumers and attract investors by using the first online channels and to demonstrate their commitment to sustainability. Essentially, the internet became a critical driver of sustainability, pushing companies such as AMAZON and Microsoft to innovate in areas such as supply chain management, better resource allocation and community engagement [13].

Economic integration led to the need for sustainable business practices. As companies started to "move" between national boundaries, they were faced with environmental legislations and social expectations. One glaring example is the fact that most of the industrial production of developed countries was transferred to China. This allowed for countries to claim that they were able to reduce their impact on the environment, something which is partially true, as emissions and waste were actually "exported" to China [14]. The fact of the matter is that a more adaptable and comprehensive sustainability strategy had to be implemented across different regulatory environments and cultural contexts. Lastly, the role of multinational corporations has been instrumental in propagating sustainability standards. Many multinationals, such as Toyota and Nestle have voluntarily adopted sustainability standards such as the ISO 14001 regarding the application of environmental management systems [15]. As a result, standards such as the previously aforementioned one have become de facto requirements for conducting operations on a global scale.

2.2 The Emergence of Sustainability in M&A

Mergers and acquisitions (M&As) have been used by companies as a tool in order to foster excess growth, diversify their product portfolios, increase their market share by penetrating new markets and lastly achieving economies of scale by increasing their productive output. [16]Traditionally, decisions regarding M&As were evaluated through financial lens, such as the use of metrics including changes in revenues, profitability margins, market synergies and lastly opportunities to curtail cost through streamlining the operations of the newly formed entity. However, the increasing importance of ESG factors in recent years, introduced a paradigm change in the way that the transactions were evaluated. More

[13] Fund, E.C., 2019. Sustainability in the Age of Platforms.

[14] Tracy, E.F., Shvarts, E., Simonov, E. and Babenko, M., 2017. China's new Eurasian ambitions: the environmental risks of the Silk Road Economic Belt. *Eurasian Geography and Economics*, *58*(1), pp.56-88. https://doi.org/10.1080/15387216.2017.1295876

[15] Bester, T.V., 2022. CORPORATE SUSTAINABILITY AND THE SUSTAINABLE DEVELOPMENT GOALS. *LATIHAN JURNAL*, *1*(1), pp.1-37.

[16] DePamphilis, D., 2019. *Mergers, acquisitions, and other restructuring activities: An integrated approach to process, tools, cases, and solutions*. Academic Press.

specifically, various parties such as investors, consumers and regulators were increasingly demanding that companies operate in a more socially responsible and environmentally sustainable manner. In that regard, companies with strong ESG credentials were often seen as more attractive targets for acquisitions, as they were perceived in a better condition to manage risks and capitalize on probable market opportunities in a vastly changing economic environment [17]. In more detail the risks included regulatory and reputational risk whereas the opportunities included the possibility to commence transactions in new markets in order to satisfy consumer demand [18]

Such cases include the case of Royal Dutch Shell in 2016. The company was faced with increased scrutiny by the EU due to its carbon emissions stemming from the company's fuel production. That was due to the EU ETS, which in 2005 was into effect, which is an emissions trading system based on a cap-and-trade principle that allows companies to buy and trade emission allowances as needed. As a result, the company was forced into participating in this specific system and was faced with possible financial repercussions in the case were its emissions were above limits and the company did not take the appropriate measures. As management started to realize the regulatory risks, it decided to acquire the BG group which was a leader in natural gas production in the UK which had already taken measures to become carbon neutral by 2050 as per the government's requirements [19]. Consequently, Shell managed not only to mitigate the regulatory risks which was faced with, but also to diversify its energy portfolio and reduce exposure to possible risks related to carbon-intensive oil production. Another example related to possible market opportunities is the acquisition of Seventh Generation by Unilever in 2016. Seventh Generation was a company known of its environmentally friendly household and personal care products [20]. The company had managed to establish itself as a leader in sustainability, by using plant-based ingredients, recycled packaging materials and transparent labeling, where all of those actions did resonate with the consumer market segment which put emphasis on sustainability.

Additionally, the legal and regulatory environment has evolved to place greater emphasis on sustainability. In the EU sphere of influence, certain companies are now required to disclose their ESG performance to the public. These include entities such as Public-Interest Entities, Large corporations (such as those defined by Law 4308/2014 in Greece) and parent companies of large groups. Such regulations are included in the EU's Non-Financial Reporting Directive -NFRD- (Directive 2014/95), which stipulates that companies have to disclose information regarding their environmental, social impact and governance

[17] Mortkovitch, N., 2024. Assessing the Impact of ESG Scores on M&A Performance: A Theoretical and Empirical Examination.
[18] Gadinis, S. and Miazad, A., 2020. Corporate law and social risk. *Vand. L. Rev.*, *73*, p.1401.
[19] Grigas, A., 2017. *The new geopolitics of natural gas*. Harvard University Press.
[20] Schouppe, D., Running header: UNILEVER'S ACQUISITION OF SEVENTH GENERATION.

structures. Regarding the environmental impact, companies have to report their CO2 emissions, information of air pollutants released into the atmosphere, their water and energy use, waste management procedures and the relevant health and safety impacts that are related to their operations [21]. On the social aspect they have to report, about gender equality, working conditions and health and safety at work, and regarding governance structures they have to report the composition of the board and the roles of the various committees such as audit and risk. Additional information includes Human Rights respect, anti-corruption and bribery matters, business model and strategy, principal risks and KPIs. On the whole, such regulations manage to increase transparency and to highlight the materiality of ESG factors in assessing the long-term viability and risk that companies are faced with.

Due diligence is a crucial step in the M&A process, one that involves a comprehensive assessment of the target company's assets, liabilities, operations and financial performance. This process includes the analysis of the main financial statements which (mainly) include the income statements (Net Results), the balance sheet (Assets & Liabilities) , and the cash flow statement (allocation of funds between the operating, investing and financing activities) [22]. Traditionally, due diligence focused on financial (Financial Due Diligence) and legal (Legal Due Diligence) aspects, such as making sure that there are no irregularities in the financial statements and books and that the company has all its legal regulatory and compliance manners managed (including pending litigation up to property rights). However, with the rise of sustainability as a key consideration in M&A led to the inclusion of ESG due diligence in the process.

ESG due diligence includes assessing the target company's environmental impact, social responsibilities, and governance practices. This includes evaluating factors such as the company carbon footprint, waste management practices, labor rights and working conditions, the sustainability of supply chain and corporate governance structures [23]. If one observes carefully, these factors are the factors that are essentially described in the NFRD directive. The aim of ESG due diligence is to identify all the ESG related risks that could possibly affect the long-term success of the acquisition and the relevant opportunities to improve the entity's in question sustainability profile. For example, in the case of a company that is considering the acquisition of a manufacturing corporation the firm will have to conduct ESG due diligence in order to assess the target company's profile regarding its environmental compliance, its energy usage and the waste management procedures that

[21] Venturelli, A., Caputo, F., Cosma, S., Leopizzi, R. and Pizzi, S., 2017. Directive 2014/95/EU: are Italian companies already compliant?. *Sustainability*, *9*(8), p.1385. https://doi.org/10.3390/su9081385

[22] Fridson, M.S. and Alvarez, F., 2022. *Financial statement analysis: a practitioner's guide*. John Wiley & Sons.

[23] Gary, S.N., 2019. Best interests in the long term: Fiduciary duties and ESG integration. *U. Colo. L. Rev.*, *90*, p.731.

are being followed. If the target company has a history of environmental violations or is heavily reliant on the use of non-renewable resources, this could pose a significant risk for the purchaser in terms to possible regulatory fines, damage to the corporate image along with increased costs, associated with the necessary changes to abide by the law [24]. On the other hand, if the target of the merger has a strong record regarding sustainability, this will lead to an improvement in the buyers' ESG ratings and credentials and create new opportunities for growth and development. Additionally, through ESG it is possible to find possible synergies that are related to sustainability. For example, if the purchaser's main activities focus in renewable energy, and the target company has significant energy needs it would be possible to curtail its energy dependency from non-renewable sources and costs from third party vendors and consequently to improve this fact as a means to improve the social impact and brand reputation of the newly formed entity.

Additionally, ESG considerations have been added to firm valuation methods. Such methods include Discounted Cash Flow Analysis (DCF), which focuses on calculating a company's value by discounting its cash inflows and outflows per year, for a series of years with an interest rate that is defined by the analyst. The interest rate that is usually used is the WACC, which is the weighted interest rate stemming from the various methods of raising capital, such as bank loans, issuance of stocks and corporate bonds [25]. However, the growing importance of sustainability has led to the creation of valuation models that incorporate ESG factors.

Such models include the incorporation of ESG scores on WACC, where depending on the score the interest rate changes and consequently the results of the DCF fluctuate. Regarding the CAPM, which is used to estimate the cost of equity by taking into account the risk-free rate, the market risk premium and the company's beta. ESG scores involve adjusting the BETA to change the company's valuation. In Gordons Model (Dividend Discount Model) and especially in the multi-stage model, which essentially projects dividends into the future and then discounts and sums them to calculate a firm's value, higher ESG ratings will lead to higher growth rates (the discounting factor in this case) due to consumer preferences, regulatory compliance and operational efficiencies. It can be inferred that ESG factors have the potential to affect corporate valuations to a great degree due to the fact that they can affect the effect of the discounting factors and other parameters that effectively, changing a firm's valuation [26]. Therefore, companies with a better ESG profile will command a valuation premium, whereas in the case of poor ESG performance the valuation will be

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[24] Sassen, R., Hinze, A.K. and Hardeck, I., 2016. Impact of ESG factors on firm risk in Europe. *Journal of business economics*, *86*, pp.867-904. Doi: 10.1007/s11573-016-0819-3

[25] Magni, C.A., 2015. Investment, financing and the role of ROA and WACC in value creation. *European Journal of Operational Research*, *244*(3), pp.855-866. Doi: https://doi.org/10.1016/j.ejor.2015.02.010

[26] Kao, F.C., 2023. How do ESG activities affect corporate performance?. *Managerial and Decision Economics*, *44*(7), pp.4099-4116. Doi: https://doi.org/10.1002/mde.3944

subject to -increased- discounting due to the higher risks associated with environmental liabilities and governance failures.

One of the main challenges in M&As is managing to align strategically the acquiring company and the target company. Such a task involves making sure that both companies share similar goals, values and corporate cultures. The integration of ESG factors into M&As has given a new dimension to the challenges, as now companies have to consider the degree of alignment between the sustainability strategies followed by the two entities before the merger [27]. If there are discrepancies between the two strategies followed by the two entities, the success of the M&A will be severely affected. If the acquiring company is committed to follow sustainability measures, whereas the target company has a poor target record, this misalignment could create the need to create a strategy that could alleviate these difficulties and lead to the success of the merger. If both companies have strong ESG scores, then the possibility for successful integration and the creation of shareholder value is possible to be achieved [28].

2.3 Regulatory Impact on Sustainability in M&A

Regulations regarding the field of M&A activities have become quite influential in shaping the field, especially in the European Union. Frameworks such as the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR) lay all the necessary requirements that influence corporate governance and at the same time impact the strategic decisions involved in M&A transactions.

The CSRD is a regulation (Directive 2022/2464) that entered into force in January 2023. It aims at enhancing and standardizing the corporate sustainability disclosures among the states of the union. Essentially, the CSRD is the replacement of the Non-Financial Reporting Directive (NFRD), as it extends the scope of reporting requirements to a wider range of companies (article 1), such as publicly exchanged SMEs, large public-interest entities (employing more than 500 employees), and even non-EU companies, that have significant operations in EU [29].

[27] Barros, V., Matos, P.V., Sarmento, J.M. and Vieira, P.R., 2022. M&A activity as a driver for better ESG performance. *Technological Forecasting and Social Change*, *175*, p.121338. Doi: https://doi.org/10.1016/j.techfore.2021.121338

[28] Renneboog, L. and Vansteenkiste, C., 2019. Failure and success in mergers and acquisitions. *Journal of Corporate Finance*, *58*, pp.650-699. Doi: https://doi.org/10.1016/j.jcorpfin.2019.07.010

[29] Hostert, T., 2023. Assessing the corporate readiness for sustainability reporting: An analysis of companies subject to the Non-Financial Reporting Directive (NFRD) in anticipation of the forthcoming Corporate Sustainability Reporting Directive (CSRD). Louvain School of Management, Université catholique de Louvain. Prom.: Philippe Lambrecht.

The directive mandates a series of requirements, including reporting, the double materiality principle and assurance among others. In more detail, regarding reporting (article 19a and article 29a) a company has to report on a wide range of topics including climate change, biodiversity, use of water and resources along with social factors such as employee matters, respect for human rights and corruption [30]. Also, governance factors have to be reported including business ethics, corporate governance structure and the composition of the board and its diversity. Additionally, the report has to cover both retrospective and forward-looking information addressing past performance and possible future risks and opportunities by using both quantitative and qualitative data and methods. Essentially, it can be understood that on the matter of reporting the CSRD includes all of the requirements of the NFRD and it also incorporates some additions to the final report. The reports have to use the European Sustainability Reporting Standards (ESRS) which were designed by the EFRAG advisory group in order to ensure the comparability, reliability and relevance of sustainability information across companies operating in the EU.

On the matter of double materiality principle (article 19b and article 29b), it requires that companies report the ways that sustainability affects the company financial (financial materiality) and how the company itself affect the society and the environment as a whole (environmental and social materiality) [31]. Furthermore, the reports have to be issued by independent auditors so that accuracy can be ensured (article 34 and article 48b) [32]. This is in contrast to the NFRD which did not require such a mandatory assurance. However, one could write that imposing such a measure, essentially burdens the companies with additional costs for an activity which could be done inside the company's quarters at a fraction of the cost, also many of the big auditing firms are constantly faced with fines for reasons such as negligence, or even fraud raising questions about the quality of the "independent" auditors.

Carrying on, companies have to report also about their value chain which includes their suppliers and downstream activities (article 19a(1)(d) and article 29a(1)(d). This specific requirement aims to provide a holistic view of the company's impact recognizing the environmental and social risks associated with its economic activities. Regarding the implementation timeline (article 5), listed companies, banks and insurance companies with

[30] Förster, P., 2022. The Double Materiality Principle (Article 19a NFRD) as Proposed by the Corporate Sustainability Reporting Directive: An Effective Concept to Tackle Green Washing?. In *European Yearbook of International Economic Law 2022* (pp. 345-364). Cham: Springer International Publishing. Doi: 10.1007/8165_2022_90

[31] Mezzanotte, F.E., 2023. Corporate sustainability reporting: double materiality, impacts, and legal risk. *Journal of Corporate Law Studies*, *23*(2), pp.633-663. Doi: https://doi.org/10.1080/14735970.2024.2319058

[32] Goicoechea, E., Gómez-Bezares, F. and Ugarte, J.V., 2019. Integrated reporting assurance: Perceptions of auditors and users in Spain. *Sustainability*, *11*(3), p.713. Doi: https://doi.org/10.3390/su11030713

more than 500 employees will be the first to comply starting from 2024, and large companies will follow in 2025, lastly SMEs that are listed will be the last to start reporting by 2026.

The impact of the CSRD on M&A deals is profound. Compliance with the mandate means that the due diligences processes have to increasingly consider the sustainability practices of target companies. Firms, now have to evaluate the sustainability practices of companies along with their financial and operational aspects. Such a paradigm shift encourages companies to purse targets that align with their sustainability goals and excluding potential companies that even though they may exhibit adequate financial results, their ESG score will not make them a suitable candidate for a merger [33].

A directive which compliments the CSRD is the Sustainable Finance Disclosure Regulation (SFDR) which further complicates M&A activities by imposing a set of disclosure obligations on financial market participants and financial advisers (directive 2016/801). The SFRD required the provision of information regarding the way that sustainability risks are integrated into their investment decisions and the adverse impacts of their investments on sustainability factors [34]. In that way, M&As are affected by SFDR because companies now have to assess the sustainability risks and impacts that will occur due to their investment decisions. According to the SFDR there are three financial products based on their sustainability characteristics (articles 6,8,9). Article 6 describes the general financial products that need to disclose sustainability risks. Article 8 , describes the products that promote environmental and social characteristics. And in article 9 are the products described that have sustainable investment as a primary goal.

When comparing the EU's approach to regulation regarding sustainability in M&A practices with that of the United States, it can be observed that several differences emerge, especially regarding the character of compliance. Whereas in the EU the approach that was adopted was mandating sustainability reporting and disclosures through the CSRD and SFDR directives, the United States followed a more lax approach that relied mainly on the voluntary adoption of guidelines and specific regulations per sector. In relation to that the Securities and Exchange Commission (SEC) took steps to enhance sustainability disclosure through the rule named "The Enhancement and Standardization of Climate-Related Disclosures for Investors "which was released in 2022 [35]. This rule is based on five axis which include the mandatory disclosure of climate-related risks, the disclosure of gas emissions, providing information about clime-related targets and goals such as timeframes

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[33] Martín Lorente, S., 2022. The backdrop to Socially Responsible Investment (SRI).

[34] Partiti, E., 2024. Addressing the Flaws of the Sustainable Finance Disclosure Regulation: Moving from Disclosures to Labelling and Sustainability Due Diligence. *European Business Organization Law Review*, pp.1-34. Doi: 10.1007/s40804-024-00317-6

[35] Georgiev, G.S., 2022. The SEC's Climate Disclosure Rule: Critiquing the Critics. *Rutgers L. Rec.*, *50*, p.101.

for achievement, the integration of risk into company governance and risk management processes and lastly disclosure of the effect of climate risks in the financial statements (i.e. how they affected revenues, expenses, capital allocations such as divestitures etc.). This rule was a first attempt at steering the sustainability wheel in the US in a different direction. However, it has sparked large public discourse and has been faced by significant political and industry pushback. The political resistance on a Federal level was due to the opposition of Republican lawmakers such as Senators P. Toomey, M. Crapo and J. Kennedy [36]. On a State level the pushback was coming from Republican led States such as Texas, Louisiana and Alabama [37]. Whereas opposition from Industry originated from the Business Roundtable the U.S. Chamber of Commerce, and the American Petroleum Institute (API).

As it stands, there is a stark contrast between the European approach that focuses on the mandatory character of sustainability implementation and the U.S. approach that rests solely on the decisions of the corporate board. The ramifications of these differences are significant for M&A activities. In the European Union ESG performance is a critical aspect of the M&A process, as buyers have to conduct thorough due diligence on the ESG practices of the acquisition target, so that compliance with regulatory requirements can be ensured and to avoid potential reputational and financial risks that are associated with low ESG scores [38]. In contrast, in the U.S., the voluntary character of sustainability reporting allows for greater simplicity in the M&A process but creates the problem of inconsistency that rises from the different incorporations of firm ESG reporting. As a result, variability ensues in the methodology that is used to factor sustainability into company valuations and due diligence processes. The valuation of companies that follow strong sustainability practices does not take fully into account their efforts and consequently this leads to an undervaluation in the M&A process. Also, this regime allows companies with poor sustainability scores to escape scrutiny during the valuation process, thus posing a longer-term risk for the acquirer. Additionally, the framework that has been created in the EU has leveled the field for companies by essentially providing the template for ESG reporting [39]. Consequently, disclosures are standardized, thereby facilitating comparability across firms and the final valuation that takes place before each deal. Another critical difference has to do with the enforcement and the penalties that are associated with non-compliance. In the

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[36] Donnelly, S., 2024. Political party competition and varieties of US economic nationalism: Trade wars, industrial policy and EU-US relations. *Journal of European Public Policy*, *31*(1), pp.79-103. Doi: https://doi.org/10.1080/13501763.2023.2226168

[37] Donnelly, S., 2024. Political party competition and varieties of US economic nationalism: Trade wars, industrial policy and EU-US relations. *Journal of European Public Policy*, *31*(1), pp.79-103. Doi: https://doi.org/10.1080/13501763.2023.2226168

[38] Barros, V., Matos, P.V., Sarmento, J.M. and Vieira, P.R., 2022. M&A activity as a driver for better ESG performance. Technological Forecasting and Social Change, 175, p.121338. Doi: https://doi.org/10.1016/j.techfore.2021.121338

[39] Bose, S., 2020. Evolution of ESG reporting frameworks. *Values at work: Sustainable investing and ESG reporting*, pp.13-33. Doi: 10.1007/978-3-030-55613-6_2

Union under CSRD and SFDR, companies are faced with penalties for non-compliance. It has to be written that these penalties are not specific and rest upon each Member State to create mechanisms for enforcement including significant fines and restrictions on economic activities (directive 2022/2464) [40]. This uniformity directly impacts the valuation process in M&As. Macroscopically, these differences in selected approach leads to an even bigger problem, namely the need to navigate the different regulatory expectations and aligning the less complex U.S. practices with the more thorough EU requirements, leading to increased costs, such as labor, and complexities in post-merger integration after the M&A has taken place.

2.4 Sustainability evaluation in M&A processes

As the focus regarding ESG matters intensified gradually, it finally became incorporated into due diligence reports along with strategic decision-making. In this part of the review, the role of sustainability evaluation during M&A activities will be analyzed, by examining the ways that changes in corporate reporting in the EU as a whole, dictated changes into the due diligence processes brought about by the CSDDD directive and the ways that valuation models incorporated sustainability.

2.4.1 Due diligence under ESG reporting mandates in the EU

Previously it was discussed that the two main directives towards the application of ESG in European corporations were the NFRD and the SFDR. These two main directives, essentially, had a different purpose. The NFRD directive was an effort that required large companies to only disclose information regarding their sustainability-related activities [41]. The focus of the directive was to increase transparency and accountability by making their performance regarding the ESG factors more visible to investors and the general public so that it was possible to face scrutiny. However, NFRD primarily focuses on disclosure and not regulation of corporate behavior. The next directive, namely SFDR, exemplified a change in perspective moving from voluntary corporate reporting to a more comprehensive legal framework on the matter of ESG reporting. This directive along with the Taxonomy regulation, tried to tackle corporate practices that mislead the public into believes that corporations were implementing environmentally friendly measures where in fact they

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[40] Sousa Ferro, M., 2022. Binding Effect of Public Enforcement Decisions. *Research Handbook on Competition Law Private Enforcement in the EU, Edward Elgar*.

[41] Baumüller, J. and Grbenic, S.O., 2021. 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*, (1), pp.369-381. Doi : https://doi.org/10.22190/FUEO210817026B

were not doing so ("Greenwashing") . Such behaviors took the form of making vague claims such as "eco-friendly" products, creating false labels, or placing tremendous emphasis on small efforts. The most notable, examples of such behavior include Volkswagen with the "Diesel gate" scandal where emissions were underreported [42] and Shell in the Netherlands which has been accused of creating advertisements regarding investments in renewable energy all while the company mainly uses fossil fuels.

The changes brought about by the SFDR created the framework for a more structured approach towards ESG reporting by standardizing disclosures, making them mandatory and laying the foundations for future regulations. The directive which essentially imposed changes in due diligence processes was the Corporate Sustainability Due Diligence Directive (CSDDD) or directive EU 2024/1760. CSDDD was published in 2022 and provided a monumental shift in corporate governance by changing the focus on corporate disclosure from an ex-post to an ex-ante approach, that bears great impact on corporate decisions and economic behaviors [43]. This specific directive imposed mandatory due diligence obligations on companies, so that it was possible to identify, prevent, mitigate and remedy impacts on human rights, the environment and the climate. One crucial aspect of the directive can be found in article 4, which states that the obligations of European companies extend not only to the parent company, but also to subsidiaries and business partners such as suppliers around the world. This specific article extends the boundaries of corporate responsibility beyond traditional legal frameworks. In articles 7 and 8 of the directive, the focus is placed on supply chain due diligence. In those two articles it is stated that large companies, especially if they are operating in high impact sectors such as energy, have to implement plans and actions in order to protect human rights and the environment [44]. In the context of M&A activity this means that purchases have to assess the targeted company on the manners of compliance regarding ESG standards and the evaluation of sustainability practices throughout the supply chain.

In article 15 of the CSDDD it is stated that companies have to make provisions regarding climate change as part of their obligations. This article underscores the importance of ESG considerations. In M&As. More specifically, companies are required to adopt a business model and a strategy that are compatible with the transition to a more sustainable economy and with limiting global warming to a maximum of 1.5 degrees Celsius. In the context of

[42] Majláth, M. and Ricordel, P., 2021. European Motor Vehicle Manufacturers' CSR Trends–The Effect of the Emission Scandal. *Acta Polytechnica Hungarica*, *18*(11), pp.29-48. Doi: 10.12700/APH.18.11.2021.11.3

[43] Pietrancosta, A., 2022. Codification in company law of general CSR requirements: Pioneering recent French reforms and EU perspectives. *European Corporate Governance Institute-Law Working Paper*, (639).

[44] Schall, A., 2024. The CSDDD: Good Law or Bad Law?. *European Company Law*, *21*(3). Doi: https://doi.org/10.54648/eucl2024009

M&As this means that the purchaser now has to additionally evaluate whether the target company's business model and practices is truly aligned with these climate-related objectives. This evaluation is important because it affects the overall sustainability strategy of the acquiring company's along with its ability to satisfy regulatory requirements. The directive, in article 25 effectively tried to harmonize the fiduciary duties of directors across European companies [45]. After the application of the directive, directors have to act in accordance with the best interests of the company, by taking into account the consequences of their decisions on sustainability matters. The broadening of directors' duties has implications for M&A activities, as it introduces new legal risks for directors who do not consider ESG factors during the due diligence process. This means for directors that it is now possible to be faced with liability for breaches of their duty of care and oversight if they fail to find and address ESG risks that are closely associated with the possible acquisition.

It is inferred from the above that the culmination of the directives was the shift towards the application of mandatory ESG practices, moving from voluntary measures and soft law applications to stringer statutory requirements. This marked a change regarding sustainable practices moving from the "comply or explain" because of the nil effect of such measures. This means, in the context of M&As that corporations cannot rely solely on voluntary ESG assessments, but they have to conduct comprehensive due diligence in order to locate possible areas for improvement and mitigate potential ESG risks [46]. This has to occur not only to comply with the requirements of the law, but also in order to protect corporate reputation and ensure the viability and success of the merger, because failure to do so could signify a potential legal and financial consequences such as civil liabilities. Also, by expanding the scope of due diligence to subsidiaries, the boundaries of firms are affected. This stems from the fact that companies now have to manage not only their direct operations but also the actions of their business partners [47]. Such expansions in responsibilities have implications for M&As as acquiring companies have to expand the factors that are evaluated during the evaluation of a potential target company.

2.4.2 Incorporation of sustainability into valuation models

It was discussed previously that the main forms of valuation methods during M&As are the DCF model, multiples and precedent transaction analysis. These models have been

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[45] Mares, R., 2023. Directors' Duties During the Green Transition under EU Law: Reform And Ramifications from Corporate Sustainability Due Diligence. *Nordic Journal of European Law*, *6*(3), pp.75-102. Doi: https://doi.org/10.36969/njel.v6i3.25717

[46] David, Y., 2024. Environmental, Social, and Governance (ESG) Factors in M&A Due Diligence: Legal Obligations, Risk Assessment, and Integration Strategies. *Risk Assessment, and Integration Strategies (May 15, 2024)*.

[47] Engström, R., 2024. CSDDD-A New Order in International Trade?.

adapted after the application of all of the directives imposed by the European Union, in order to take into account, the new factors of evaluation.

More specifically, the DCF model, which focuses on the discounting of future cash flows, now includes sustainability metrics. One adaptation like this, is the incorporation of the "carbon adjusted discount rate". This adjustment accounts for the financial impact of carbon pricing and relevant taxes on the future cash flows of a company [48]. This application is especially critical for companies that are emitting higher carbon emissions and are consequently faced with associated costs and risks stemming from such externalities, thus necessitating the use of a higher discount rate to measure the additional risk. At the same time, the projections of future cash flows now include the costs that are associated with having to comply with environmental regulations, investments in alternative technologies (i.e solar energy) and possible revenue earned from carbon credits [49]. Regarding multiples, ratios such as EV/EBITDA or P/E have to be adjusted so that they incorporate sustainability performance. Companies with higher ESG ratings in fact command higher adjustments relative to other companies due to their lower risk profile and their potential for long-term value creation [50]. This is achieved through the use of the sustainability premium which is based on ESG scores. Lastly, regarding precedent transactions analysis, changes involve focusing on the sustainability profiles of target companies. Results gathered from such transactions are adjusted based on ESG performance and carbon footprint, while the deals that involve companies with a strong sustainability record set the valuation multiples higher, while those with low records dictate the use of higher discounts [51].

2.5 Difficulties in merging sustainability practices

In this section of the literature review, the complexities of merging sustainability with business practices in the newly formed company will be analyzed by exploring the internal and external problems that companies are faced with. This is going to include the alignment

[48] Visconti, R.M., 2021. DCF metrics and the cost of capital: ESG drivers and sustainability patterns. *Research Gate, preprint. Disponível em: https://www. researchgate. net/publication/344953641_DCF_METRICS_AND_THE_COST_OF_CAPITAL_ESG_DRIVERS_AND_SUSTAINABILITY_PATTERNS. Acesso em*, *5*.

[49] Oosterom, J. & Hall, C., 2022. Enhancing the evaluation of Energy Investments by supplementing traditional discounted cash flow with Energy Return on Investment analysis.. *Energy Policy.,* Τόμος 168, p. 112953. Doi : https://doi.org/10.1016/j.enpol.2022.112953

[50] Fulton, M., Kahn, B. and Sharples, C., 2012. Sustainable investing: Establishing long-term value and performance. *Available at SSRN 2222740*.

[51] Bersagel, A., Juillard, I., Thompsen, C.F.A. and Siri, M., Norsif Guide to ESG Integration in Fundamental Equity Valuation.

of sustainability goals with current corporate strategies that can be used to overcome resistance from stakeholders. The difficulties that are bound to occur from this process pinpoint to the need for a comprehensive approach regarding sustainable development. By understanding the problems that will take place, companies will be able to navigate the intricate landscape of sustainability integration and foster the creation of more responsible business models.

One of the main challenges that arise when merging the sustainability practices into the newly formed entity is related to the alignment of initiatives with the target company's former strategy. This is due to the fact that in the new corporation the strategic priorities will be evolving post-merger [52]. Consequently, there will be a tendency to place an emphasis on short-term financial gains over achieving long-term sustainability objectives. Such a misalignment has the ability to lead to conflicts across the different departments of the corporation or stakeholders, as sustainability initiatives may be viewed as secondary or even contradictory to the main business goal which is to serve stakeholders by creating monetary gains to reward them for their investment. Another problem that arises is connected with corporate communications. In the new entity, an amount of time, that cannot be measured objectively, will be needed to pass so that leadership and corporate culture will be able to be defined. This factor acts negatively into the alignment of policy in the entity because top management won't be able to offer strong commitment regarding the achievement of sustainability [53].

At the same time, the creation of the new entity involves the occurrence of cultural changes. By the time of the M&A , the legacy entity in question will already have formed its own approach regarding sustainability shaped by its operations, values and its main economic activities through the years. In that regard, combining the different cultures in order to create a combined approach regarding sustainability will be a difficult task to achieve successfully [54]. At the same time, it is possible that the process of alignment will bring about cultural resistance to change. Employees who are used to certain approaches regarding sustainability and have a fixed modus operandi will perceive the efforts to align

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[52] Osarenkhoe, A. and Hyder, A., 2015. Marriage for better or for worse? Towards an analytical framework to manage post-merger integration process. *Business Process Management Journal*, *21*(4), pp.857-887. https://doi.org/10.1108/BPMJ-07-2014-0070
[53] George, R.A., Siti-Nabiha, A.K., Jalaludin, D. and Abdalla, Y.A., 2016. Barriers to and enablers of sustainability integration in the performance management systems of an oil and gas company. *Journal of cleaner production*, *136*, pp.197-212. Doi : https://doi.org/10.1016/j.jclepro.2016.01.097
[54] Witzmann, N. and Dörrenbächer, C., 2016. The link between cultural due diligence and sociocultural post-merger integration management as a critical success factor in M&As. In *Mergers and Acquisitions in Practice* (pp. 213-235). Routledge.

the policies as adding complexity and disrupting established workflows [55]. This means that a change in management is necessary in overcoming the cultural barriers to change. Apart from communication, employees need to receive training and support so that they can adapt to new corporate practices. Higher management will have a key role in this specific process, as it will have to actively promote sustainability and the needed changes and model sustainable behaviors. In that way, it will be possible to shift the corporate culture towards higher levels of acceptance and integration on the matter of sustainability practices.

After the merger has taken place, the new entity will often operate under severe resource constraints for three reasons. Namely, limited access to capital because of the inexistence of a tract record that will enable strong borrowing. Pressure to achieve immediate profitability, so that investments from stakeholders will start to materialize and lastly, because the new entity will not have stable revenue streams [56]. This dire situation will pose a challenge to the implementation of sustainability practices, as the above constraints will make it more difficult to make investments in technologies, processes and initiatives that are in tandem with the sustainability goals. Furthermore, after the merger, the company will be facing limitations in matters of human resources regarding employees whose main tasks will cater to sustainability. That is due to the need to divert all available manpower and expertise into more critical areas such as production and sales. This means that the effective integration of sustainability into the new entity may struggle to come to fruition.

Previously, it was demonstrated that the European legal framework is now quite complex, this poses a challenge for the new entity that will seek to integrate sustainability into its practices. That is because, if the target of the acquisition was located in an area outside the E.U. the regulations will exhibit differences, that can be severe as in the case of the USA where sustainability regulations are mostly voluntary in character. This means that the whole process of harmonizing the practices in the new entity will be daunting, especially in the case of a new company that will be trying to establish its operations. If the company fails to comply with the letter of the law, then along with its directors , it will be faced with severe legal and financial repercussions and reputational damage [57]. This necessitates a knowledge of the regulatory environment of the target company ex-merger along with the practices that were in effect before the merger so that the task of creating a homogeneous sustainability policy is easier. When the company manages to obtain this necessary

[55] Seele, P., 2017. Predictive Sustainability Control: A review assessing the potential to transfer big data driven 'predictive policing'to corporate sustainability management. *Journal of cleaner production*, *153*, pp.673-686. Doi: https://doi.org/10.1016/j.jclepro.2016.10.175
[56] Feldman, E.R. and Hernandez, E., 2022. Synergy in mergers and acquisitions: Typology, life cycles, and value. *Academy of Management Review*, *47*(4), pp.549-578. Doi: https://doi.org/10.5465/amr.2018.0345
[57] Gadinis, S. and Miazad, A., 2020. Corporate law and social risk. *Vand. L. Rev.*, *73*, p.1401.

baseline, it will be in a better position to achieve higher internal standards and to adopt best practices that will exceed the regulatory requirements.

2.5.1 Impact of sustainability on M&A outcomes

The impact of sustainability on M&A outcomes is increasingly recognized as an important factor that can affect the success of the deal. Companies are increasingly faced with growing pressure, not only in the EU but also around the world, regarding the adoption of sustainability-oriented practices. As a result, sustainability has become a central factor that influences the success of a merger. In this section, the implications of sustainability on the outcomes will be analyzed throughout the various stages of the M&A processes, from target selection up to post-deal performance.

In the current economic environment, companies that are exhibiting higher sustainability performance as measured by their ESG scores, are more likely to become targets for M&A transactions [58]. Purchasers are increasingly seeking suitable targets that exhibit strong sustainability credentials. This strategy is employed so that purchasers are able to reduce risks that are related to environmental and social governance issues and to further improve their sustainability profiles. This specific trend is especially prominent in industries that are faced with heightened environmental risks and regulatory scrutiny by lawmakers where the purchase of a sustainable company will lead to the mitigation of potential liabilities that may occur and align with long-term strategic goals [59].

Sustainability also influences the premiums that are paid during M&A transactions. Acquirers will pay higher premiums for companies that are exhibiting strong sustainability credentials, especially in the case where such attributes are aligned with the buyer's strategic objectives, or it is possible to lead to the reduction of risks. This is especially true in cross-border deals such as between the EU and the USA, where the differences in the regulatory framework increase the perceived value of sustainable practices. At the same time, the relationship that exists between sustainability and bid premiums is complex and varies based on regional and industry specific factors. It is possible for high sustainability performance from a company to lead to lower bid premiums if an acquirer believes that the target's sustainability practices have already been incorporated in its market value [60]. On

[58] Barros, V., Matos, P.V., Sarmento, J.M. and Vieira, P.R., 2022. M&A activity as a driver for better ESG performance. *Technological Forecasting and Social Change*, *175*, p.121338. Doi: https://doi.org/10.1016/j.techfore.2021.121338

[59] David, Y., 2024. Environmental, Social, and Governance (ESG) Factors in M&A Due Diligence: Legal Obligations, Risk Assessment, and Integration Strategies. *Risk Assessment, and Integration Strategies (May 15, 2024)*.

[60] Salvi, A., Petruzzella, F. and Giakoumelou, A., 2018. Green M&A deals and bidders' value creation: the role of sustainability in post-acquisition performance. *International Business Research*, *11*(7), pp.96-105.

the other hand, in industries where sustainability is a major concern, buyers will be willing to pay a premium so that they can secure a company that exhibits strong sustainability credentials.

The method of payment in an M&A transaction, which mainly includes cash paid through bank transfers, stocks or a combination of both, can be influenced by sustainability considerations. Purchasers who have high sustainability scores often exhibit a preference for payments in cash, because the use of such a method reduces risks and agency costs [61]. On the other hand, in regions such as China, high-sustainability purchasers prefer payments in equity, thus reflecting differences in strategies priorities and market conditions. Additionally, the sustainability performance of the target also affects the payment methods that are used in a deal. Targets that have high sustainability scores will attract more cash offers, because these firms are generally considered by purchasers less risky and more likely to deliver value after the merger [62].

Also, the short-term financial performance of M&A deals is an area where sustainability plays a crucial role. Such a performance is reflected by the ways in which the stock market as a whole reacts to the deal around the announcement period. Purchasers that have high sustainability scores are usually experiencing positive market reactions to their M&A announcements, especially in the case of non-hostile takeovers [63]. Such a phenomenon is attributed to the "insurance" effect of sustainability, where strong ESG performance essentially signals lower risks and the possibility for long-term value creation. It has to be noted that the impact of sustainability regarding market reactions during announcements can vary. Especially when there are concerns regarding overinvestments in sustainability. In this specific situation the market reaction will be more negative. On the whole, the nature of investor perceptions on the matter of sustainability is nuanced and necessitates a balance between costs and benefits.

Also the impact of sustainability on long-term financial performance after the merger it is in general positive. Purchasers with high sustainability scores exhibit a propensity to achieve better financial outcomes in the years following the merger. This is attributed to the fact that synergies can be realized by integrating sustainable practices across the board and improving corporate reputation and stakeholder trust due to the strong ESG credentials of the combined entities [64]. Additionally, companies that prioritize sustainability in their

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[61] Gleißner, W., Günther, T. and Walkshäusl, C., 2022. Financial sustainability: measurement and empirical evidence. *Journal of Business Economics*, *92*(3), pp.467-516.
[62] Bose, S., Minnick, K. and Shams, S., 2021. Does carbon risk matter for corporate acquisition decisions?. *Journal of Corporate Finance*, *70*, p.102058. Doi: https://doi.org/10.1016/j.jcorpfin.2021.102058
[63] Kayser, C. and Zülch, H., 2024. Understanding the Relevance of Sustainability in Mergers and Acquisitions—A Systematic Literature Review on Sustainability and Its Implications throughout Deal Stages. *Sustainability*, *16*(2), p.613. Doi: https://doi.org/10.3390/su16020613
[64] Neuvonen, A., 2024. Integrating ESG and Corporate Social Performance.

M&A strategy tend to outperform competitors who don't place such an emphasis. This is proved by employing market and accounting based metrics that assess performance, where sustainable companies often incur improvements in profitability, market value and ratios such as return on assets (ROA) [65].

Lastly, the impact that an M&A has on the sustainability performance of an acquirer is a critical factor. Acquirers are able to improve their sustainability performance after a deal by integrating the sustainable practices that are used by the targeted companies. Such is the case in cross-border M&As, where acquirers from regions with lower sustainability standards are able to adopt practices of targets that are located geographically in more regulated environments. Additionally, the impact of sustainability after the merger is beneficial for the purchaser's long-term performance but also for its reputation with its stakeholders [66]. This can lead to a perpetual cycle of improvements in financial performance and sustainability.

2.6 Critical Perspective and Debates

Even though it is theorized that sustainability is essential for long-term value creation and risk management, many critics have questioned the sincerity and effectiveness of such effort in the M&A context. Furthermore, the tension between short term and long-term goals places tremendous pressure on companies that are engaged in M&A activities. This section will explore such critiques regarding sustainability and examine the balancing act between financial goals and sustainability performance.

2.6.1 Critiques of Sustainability in M&As

One of the main primary critiques focuses on the probable superficiality of sustainability commitments of companies in M&A deals. Criticism includes that many companies, as reported previously, engage in "greenwashing" practices, so it can seem that they are incorporating sustainability principles in their operations. At least in jurisdictions that have a more lax regulatory framework in comparison to the EU. In the M&A context, this means that acquirers or targets in fact exaggerate their sustainability credentials so that they can improve their attractiveness to possible suitors or to manipulate the M&A deal price through higher bid premiums [67]. Superficial commitments like that may result in deals that

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[65] Lassala, C., Apetrei, A. and Sapena, J., 2017. Sustainability matter and financial performance of companies. *Sustainability*, *9*(9), p.1498. Doi: https://doi.org/10.3390/su9091498

[66] Bettinazzi, E.L. and Zollo, M., 2017. Stakeholder orientation and acquisition performance. *Strategic Management Journal*, *38*(12), pp.2465-2485. Doi: https://doi.org/10.1002/smj.2672

[67] Bergamin, S. and Braun, M., 2018. Mergers and Acquisitions. *Integration and Transformation Management as the Gateway to Success. Cham: Springer International Publishing (Management for Professionals). Doi: org/10.1007/978-3-319-60504-3.*

are not able to deliver the value creation and sustainability results that they are promising, this leading to dissatisfaction among stakeholders and the loss of trust from them.

Another critique aims at commenting on the lack of rigorous methods of measurement and accountability regarding sustainability claims, that are associated with M&As. Even though companies actively highlight ESG achievements in deal announcements often there is a gap between the claims and the post-merger integration and performance .This is mainly due to the lack of standardized methodologies that can be used to assess sustainability in M&A transactions, consequently creating difficulties in comparing sustainability outcomes across deals and creating opportunities to “improve” sustainability measurements by placing emphasis on certain metrics or only reporting practices that foster a more favorable picture [68]. Such a lack of transparency undermines the credibility of sustainability initiatives.

Furthermore, the alignment of sustainability initiatives with the strategic goals of M&A deals has been questioned. In a traditional M&A deal motivations include the achievement of economies of scale, market expansion, or the acquisition of new technologies and limited resources. This means that the pursuit of sustainability is only an afterthought that is added in the deal in order to satisfy regulatory requirements rather than being a genuine factor of value creation [69]. This dissonance leads to a situation where sustainability initiatives are not properly integrated into the M&A strategy, resulting in suboptimal outcomes.

Due to the regional and cultural differences regarding sustainability in a portion of the M&A deals additional challenges are created. International deals include companies that are under different regulatory regimes and cultural attitudes regarding sustainability. In those cases, sustainability initiatives will be probably unevenly applied in order to cater to local shareholders or directly fail to resonate with them. If the latter is true then, resistance to sustainability will arise and the use of a one-size-fits approach will not be suitable in such a case [70].

Lastly, sustainability can be used as medium to exercise soft power over global trade. Companies that are located in regions with strong ESG regulations are able to push their agenda for similar regulations to be adopted on an international scale, thereby aligning global markets with their own practices and exploiting competitive advantages. Consequently, it seems that sustainability is less about the protection of environment and

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[68] Mantzanas, C., 2023. *Acquirer's ESG performance, Value and M&A abnormal returns* (Master's thesis, University Piraeus).
[69] Widmer, T., 2023. Sustainable customer solutions: an institutional theory approach to link resource integration and value creation.
[70] van Oorschot, K.E., Nujen, B.B., Solli-Sæther, H. and Mwesiumo, D.E., 2023. The complexity of post-mergers and acquisitions reorganization: Integration and differentiation. *Global Strategy Journal*, *13*(3), pp.673-699. Doi: https://doi.org/10.1002/gsj.1454

the minimization of social impact that corporations have , but more about controlling commerce in favor of a few conglomerates.

2.6.2 Balancing Financial and Sustainable Goals

The differences in scope between the short-term objectives (financial) and the long-term ones (sustainability) is a main topic of discussion in the integration of sustainability into M&A practices [71]. M&A transactions are driven by financial imperatives (value creation, synergies), however such goals are in conflict with longer-term views that favor sustainability objectives that require constant investments, and a commitment to ethical practices that do not yield immediate financial results. One of the key challenges in balances those two goals can be found in the traditional tools that are used to assess the success of an M&A deal. The metrics that are used to assess the deal include earnings per share (EPS) , return on investment (ROI) and total market share. However, such metrics are often unable to capture the full range of benefits that sustainable practices bring about such as improvements in corporate reputation, customer loyalty, or risk management [72]. This creates a window for sustainability initiatives to be undervalued or not being factored at all in favor of immediate financial results. Such pressures for the achievement of financial goals can be especially found in publicly traded companies, where the management is held accountable to shareholders whose main interest lies in achieving immediate returns. This leads to a view that is at odds with the longer-term nature of sustainability investments. Such views may lead to divestitures of assets or units that are deemed necessary to achieve long-term sustainability objectives, but they are not able to contribute to the financial performance of the entity [73].

However, it is possible for companies to use strategies that are able to balance these contradictory goals. By integrating sustainability into the core strategic objectives of the M&A process from the outset of the deal and aligning sustainability with the mission of the combined entity, it can be ensured that sustainability is not a secondary consideration for the entity but a fundamental part of its value creation strategy. Such a strategy should

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[71] Haessler, P., 2020. Strategic decisions between short-term profit and sustainability. *Administrative Sciences*, *10*(3), p.63. Doi: https://doi.org/10.3390/admsci10030063

[72] Tamuntuan, U., 2015. Analysing the effect of return on equity, return on assets and earnings per share toward share price: an emperical study of food and beverage companies listed on indonesia stock exchange. *Jurnal Berkala Ilmiah Efisiensi*, *15*(5).

[73] Silva, P. and Moreira, A.C., 2019. A systematic review of the literature on industrial divestment. *Baltic Journal of Management*, *14*(3), pp.443-461. Doi: https://doi.org/10.1108/BJM-01-2018-0040

include tying sustainability goals with financial performance measurements thus ensuring that sustainability can lead to the achievement of both goals.

Chapter 3: Legal Analysis

The changes in the legal landscape effectively changed the ways that M&A deals are taking place, as corporations are obliged to account for ESG compliance in all the phases of the merger process. The new directives, such as those in the EU, that as it was discussed earlier include the CSRD and the SFDR essentially enforce mandatory sustainability disclosure and reporting procedures. These new legal frameworks force companies to include the ESG impact that potential acquisitions have along with the traditional financial metrics that are being used.

In a more practical way, these legal standards diverge from theoretical discussions and often require companies to effectively navigate into the complex regulatory environments that are being imposed and comply with them. In this chapter, the intricacies of the legal mechanisms that drive the integration of sustainability in M&A deals, will be analyzed by examining how bodies such as courts, regulators, and corporate governance have evolved in recent years to abide by the new rules. By analyzing specific cases of law and regulatory developments, the reader will gain an insight into the more practical aspects and opportunities that occur from the legal shift towards sustainability in M&A deals.

3.1 Case Law and Legal Precedents in Sustainable M&As

3.1.1Bayer's Acquisition of Monsanto

By the time Bayer bought Monsanto in 2018 it was one of the most important and controversial M&A deals in recent transaction history, especially regarding the terms of deal that were concerned with sustainability and its legal implications. The total monetary amount of the deal was $63 billion. By acquiring Monsanto, Bayer made an effort at strengthening its position in the global agricultural market by combining its crop science division along with Monsanto's portfolio of genetically modified seeds and pesticides [74]. However, the transaction itself managed to trigger a series of legal challenges and public reactions that were mainly concerned with the sustainability factors and the relevant environmental concerns. As a result, the deal managed to affect Bayer's corporate

[74] Myers, R.C., 2019. *The State and Industrial Agriculture: An examination of political dynamics emerging from the Bayer-Monsanto acquisition* (Doctoral dissertation, Virginia Tech).

reputation and led to legal proceedings. This specific case serves as an example of the ways that courts the regulatory bodies interpret sustainability obligations in the context of M&A deals.

Monsanto used to be a U.S. company that its main activities were related to agriculture and biotechnology. In the past the company had sparked the interest of the Press and the public because of controversies regarding the production of genetically Modified Organisms (GMOs) and the herbicide glyphosate, which was sold under the commercial name Roundup. Glyphosate was a compound which was widely used in agriculture; however, it was found that it was allegedly a carcinogen. At the same time, the widespread use of Roundup led to biodiversity loss, water contamination and the creation of resistant weeds to the compound which led to a perpetual reliance on more toxic herbicides [75]. Furthermore, the company used unscrupulous business practices such as protecting its patents aggressively suing small farmers for alleged patent infringement and the manipulation of scientific studies and regulatory processes so that the risks of its products could be underreported to the public. As a result, the company faced scrutiny from environmentalist groups such as Greenpeace and a series of legal disputes. Starting from 2010, Monsanto was faced with thousands of lawsuits regarding Roundup that caused non-Hodgkin lymphoma. One of the most notable cases was *Dewayne Johnson v. Monsanto*, where the jury rewarded Johnson with an important monetary amount.

Bayer is a well-known German multinational company in the pharmaceutical and life sciences field. The company made an announcement regarding its intention to purchase Monsanto in 2016. As soon as the announcement was made, concerns arose regarding the sustainability and environmental impact of the merger. Groups such as the Organic Consumers Association, European Commission the US department of Justice and the US Environmental Protection Agency posed questions regarding whether Bayer would be in a position to manage Monsanto's ongoing legal battles and if the merger could lead to further environmental degradation and scandals. Despite the controversies, the deal was completed in June 2018. However, the legal repercussions continued as Bayer inherited all of Monsanto's legal liabilities. As soon as the acquisition was finalized, Bayer as the owner of the new entity was faced with a series of litigation from plaintiffs regarding Monsanto's product Roundup.

The lawsuits accused the company of not providing information to the consumers regarding the associated risks of Roundup, violating in that way the laws regarding consumer protection and product liability globally. The most notable case that went to court was Dewayne *Johnson v. Monsanto Company*. In this case, the plaintiff, Dewayne Johnson,

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[75] Hasanuzzaman, M., Mohsin, S.M., Bhuyan, M.B., Bhuiyan, T.F., Anee, T.I., Masud, A.A.C. and Nahar, K., 2020. Phytotoxicity, environmental and health hazards of herbicides: challenges and ways forward. In *Agrochemicals detection, treatment and remediation* (pp. 55-99). Butterworth-Heinemann.Doi: https://doi.org/10.1016/B978-0-08-103017-2.00003-9

claimed that his exposure to Roundup was the main reason that caused his cancer. The jury ruled Johnson to be awarded $289 million in damages. The company appealed twice to the ruling and the reward was cut to $78 million and then $21 million after appeal [76]. The jury ruled that the company had acted in a malicious manner by failing to inform consumers and the public regarding the associated risks of its product.

This specific ruling led to a significant legal precedent, as on the one hand, it implicates the business practices of Monsanto, and on the other hand it set the stage for Bayer's future legal battles. In subsequent cases, such as the *Bader Farms Inc. v. Monsanto Company,* courts began scrutinizing deeply internal corporate documents, which effectively revealed that the company had attempted to manipulate scientific research and regulatory reviews regarding the associated risks of its product such as the Dicamba herbicide [77]. The interpretation of the company's actions as intentionally misleading consumers and the public, had a critical role in shaping the legal outcomes of subsequent cases. As more cases of glyphosate were sent to trial, Bayer was increasingly faced with enormous legal liabilities. By 2020, the company settled around 100.000 lawsuits for a total of $10.9 billion. Even though the settlement itself was not an admission of guilt, it reflected the legal and financial risks that were associated with the merger and the sustainability-related concerns in relation to Monsanto's product lines.

On the whole, the merger led to a series of questions regarding sustainability obligations during an M&A transaction, especially in the case where the target company has a controversial environmental record. In cases like that, courts put increased emphasis on prior conduct, including manipulation of data, consumers and the public and regulators regarding safety. This raised the issue of corporate responsibility, regarding the ethical obligations of the new entity so that public safety and the protection of the environment could be ensured. Court rulings in such cases highlight the importance of sustainability in corporate governance and legal obligations. In the case of *Johnson v. Monsanto Company,* the decision of the jury pinpoints to the view that corporations cannot just prioritize profits over public health and environmental concerns because they will be held accountable for their actions [78]. Something more that can be derived from this specific merger is related to the principle of successor liability, which has a lot of implications for M&A transactions. Fact of the matter is that Bayer has been faced with many lawsuits due to Monsanto's products and practices. In that regard Bayer should have conducted a thorough ESG due diligence before the merger regarding the practices of Monsanto, so that the board of the company could make a better-informed decision and proceed or pass with the deal, because , even though this acquisition led to a short term expansion of market share and product

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[76] Lahav, A.D., 2019. The Knowledge Remedy. *Tex. L. Rev.*, *98*, p.1361.
[77] Hagerman, P., 2022. Growing Confidence: A Proposal for Herbicidal Registration Procedures That Protect Both Farmers and the Environment. *U. Ill. L. Rev.*, p.447.
[78] Dilbeck, M., 2020. Monsanto: Creator of Cancer Liability?. *DePaul Bus. & Comm. LJ*, *18*, p.105.

portfolio on the whole it lead to a series of legal challenges that affected Bayer's bottom line and corporate reputation .

3.1.2 Microsoft's Acquisition of Blizzard

In January 2022, Microsoft announced the acquisition of Activision Blizzard, which was a major video game publisher for $68.7 billion [79]. The magnitude of the transaction made it the largest in tech history and an important moment in the gaming industry. Despite the financial and strategic implications of the deal, it also brough significant attention to social governance issues, such as corporate responsibility, workplace culture and legal obligations regarding ESG factors. This specific case highlights how these factors have a critical role in an M&A deal, especially in the case where the target company is faced with reputational challenges.

It is well known that Microsoft is a software conglomerate. The management of the company wanted to expand in the market of video games except for consoles where its main product included Xbox. More specifically the segments that were targeted were the subsections of mobile gaming, cloud gaming and computer gaming. At the time Activision Blizzard was the owner of some of the most widely known franchises around the world, including Warcraft III: Reforged, World of Warcraft, along with Call of Duty and Candy Crush. Consequently, such a purchase could significantly boost Microsoft's gaming portfolio. Additionally, through the deal Microsoft could leverage Blizzard's large market base in order to expand its own Xbox subscription service. By purchasing Blizzard Microsoft could accelerate its growth in the gaming section and manage to compete with giants such as Steam and Tencent [80]. Despite these goals, Microsoft had to handle a series of legal and reputational challenges that were associated with Blizzard in the matters of corporate governance and workplace culture.

In 2021, Blizzard was in serious legal disputes and allegations that were related to workplace misconduct. The allegations included: employee sexual harassment, gender discrimination, and a toxic workplace culture. As a result, during July in 2021, the Department of Fair Employment and Housing (DFEH) in California filed a lawsuit against the company, by accusing it of creating a culture where female employees were constantly subjected to harassment, unequal pay rates, and retaliatory behavior if they complained. In the lawsuit it was claimed that senior management including the former company president

[79] Nichols, R., 2022. The Microsoft/Activision Blizzard Merger. *The Political Economy of Communication*, *10*(1).
[80] Pales, E., 2023. Microsoft and Activision-Blizzard: Examining the largest tech acquisition of all time. *Berkeley J. Ent. & Sports L.*, *12*, p.17.

Allen Brack, and the Chief Compliance Officer Frances Townsend failed to address misconduct and allowed inappropriate behavior [81]. The legal risks of the company posed significant challenges for Microsoft and the company needed to ensure that it could mitigate these legal liabilities regarding governance and at the same time to address the reputational damage that impacted Blizzard.

When Microsoft announced the acquisition, it also announced that it was intending to address the workplace culture issues at Blizzard. In that regard, the company implemented a multi-step approach. The first step was its public commitment regarding workplace culture. The CEO, Satya Nadella, emphasized the creation of a safe and inclusive workplace after the merger. Also, Microsoft announced that it was intending to improve Blizzards culture, by reforming policies that were related to harassment, discrimination and corporate accountability. On the matter of legal liabilities, Microsoft had to urgently address the matter of workplace misconduct. Blizzard had already settled with the Commission of Equal Employment Opportunity for $18 million, and some of the claims related to sexual harassment were resolved [82]. However, a series of lawsuits was still pending, and the company was faced with legal action from shareholders because of the handling of the issues that arose. Due to the due diligence that was implemented Microsoft's board was aware of all the issues and its legal team worked to negotiate terms that could limit the legal risks.

At the same time, shareholder activism had a critical role in influencing the M&A process. As the scandals became public, Blizzard's shareholders were concerned regarding the governance failures that had occurred and the associated impact on the company's value. A series of lawsuits were filed against Blizzard, including the Rosen Law Firm Class Action Lawsuit in 2021 and the Robbins and Geller Rudman & Dowd LLP Class Action in the same year. These lawsuits were claiming that top management had breached its fiduciary duties by failing to disclose the misconduct that was taking place and to address employee complaints in an effective manner [83]. The lawsuits highlighted the influence of activism by shareholders who were demanding accountability on ESG matters.

Except for the social issues that were existent in the deal, the acquisition was faced with significant scrutiny by antitrust authorities. Due to the magnitude of the deal and the current position of Microsoft in the gaming industry, concerns among regulatory bodies in both the US and Europe arose regarding fears related to Microsoft gaining too much control over

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[81] Jenson, J., de Castell, S., Kanapelka, O. and Skardzius, K., 2024, April. Gaming Equity: Women, Videogame Companies, and Public Discourse. In *International Conference on Gender Research* (Vol. 7, No. 1, pp. 107-115). Doi: https://doi.org/10.34190/icgr.7.1.2110

[82] Bloomberg, N., 2023. Empowering the EEOC: An Enforcement Strategy to Tackle Workplace Sexual Harassment. *Lincoln Mem'l UL Rev.*, *11*, p.13.

[83] Choi, S., Erickson, J.M. and Pritchard, A.C., 2024. The Business of Securities Class Action Lawyering. Indiana Law Journal, 99(3), p.3.

the gaming market as a whole. In order to counter such claims, Microsoft announced that it would make Blizzards titles available on competing platforms such as PlayStation. Despite these efforts, the acquisition was faced with a lot of hurdles because the U.S. Federal Trade Commission and the UK's Competition and Markets Authority took a close glimpse at the potential anticompetitive impacts of the deal.

On the whole, this deal is an example of how ESG considerations have become critical to M&A deals globally. While the main aim of Microsoft was to increase its market reach through the acquisition of Blizzard, the company had to address social and legal risks. By making commitments to improve the workplace environment and culture and to address the legal liabilities Microsoft managed to restore Blizzard's reputation and incorporate the company's operations into its own more robust ESG framework.

3.1.3 Acquisition of WhiteWave Foods by Danone

In 2016, Danone announce the acquisition of WhiteWave Foods for a price of $12.5 billion [84]. WhiteWave was an American organic and plant-based food and beverage manufacturer. The deal was completed in 2016, and at the time was the largest one in the food sector and managed to place Danone as a leader in the market for health-conscious and sustainable food products. Apart from the strategic importance of the deal for Danone, the deal was important because if a series of matters related to competition law, sustainability commitments and the integration of ESG factors into M&A activities.

Danone targeted WhiteWave because of its foothold on the US market for healthy and organic products in a time were demand for healthier and more sustainable foods was growing around the world. From the matter of sustainability perspective, this specific acquisition allowed Danone to further prove its commitment to providing a series of healthier and more sustainable foodstuff. Danone which was a French company that was widely known for its dairy products managed to understand the shifting consumer preferences towards plant-based and organic foods as part of ethical consumerism. The purchase of WhiteWave essentially positioned the company to satisfy these demands and better align its portfolio with global sustainability standards. Through this deal, Danone was able to diversify its product portfolio and reduce its sales reliance on traditional dairy products that were associated with higher environmental footprint due to extensive land use, water and grains consumption along with greenhouse gas emissions . WhiteWave's

[84] Sarason, Y. and Dean, T.J., 2019. Lost battles, Trojan horses, open gates, and wars won: How entrepreneurial firms co-create structures to expand and infuse their sustainability missions in the acquisition process. *Academy of Management Perspectives*, *33*(4), pp.469-490. Doi: https://doi.org/10.5465/amp.2017.0133

portfolio which included brands such as Silk, So Delicious and Earthbound Farm could complement Danone's sustainability strategy, which was focused on reducing its environmental impact and promoting healthier eating habits.

Theoretically, this purchase made strategic sense. However, it was presented with legal and regulatory challenges that were related to competition law and antitrust concerns. Because of the size of the merger, regulators scrutinized the deal because they were concerned about market concentration and reduced competition. In that regard Danone had to secure approval by the US Department of Justice by addressing all the antitrust concerns that were related to the competition aspects of the merger in the organic dairy sector. The Department of Justice was concerned that such a merger would result in Danone gaining too much control of the organic milk market, thus potentially reducing competition on the whole and increasing prices for consumers. As a result, to comply with such concerns Danone's management agreed to make a divesture in its own Stonyfield organic dairy brand by selling the entity to Lactalis for $875 [85]. This sale of assets was important in making sure that the purchase of WhiteWave was in accordance with US antitrust laws and an example that regulatory bodies have an important role in ensuring that large M&A deals do not lead to market concentration.

Furthermore, the purchase raises additional considerations regarding ESG commitments, as both companies had already established reputations regarding their sustainability efforts. WhiteWave was a leader in promoting organic farming practices, and environmentally friendly packaging. Danone, had a strong commitment to environmental sustainability and social responsibility, which was established by its "One Planet. One Health" initiative where the company was committed to the production of healthier products, sustainable agricultural practices , and the reduction of its environmental footprint [86]. The integration of operations of the two entities required to carefully ensure that the sustainability practices of both companies were aligned and legally compliant. Danone announced that it would maintain WhiteWave's standards regarding sustainability and would further expand them across its operations. The legal complexities included the fact that the French Danone had to navigate the US regulatory framework regarding certifications, labeling and advertising and at the same time to make sure that WhiteWave's practices were in accordance with European sustainability standards.

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[85] Lee, M. and Jay, J., 2015. Strategic responses to hybrid social ventures. *California Management Review*, *57*(3), pp.126-147. Doi: https://doi.org/10.1525/cmr.2015.57.3.126

[86] Izquierdo-Yusta, A., Méndez-Aparicio, M.D., Jiménez-Zarco, A.I. and Martínez-Ruíz, M.P., 2023. When responsible production and consumption matter: The case of Danone. In *Responsible Consumption and Sustainability: Case Studies from Corporate Social Responsibility, Social Marketing, and Behavioral Economics* (pp. 199-211). Cham: Springer International Publishing.

The impact of the deal on the global food industry was lasting, because it highlighted the importance of sustainability in M&A transactions. Essentially, it underscored the demand for healthier food options and demonstrated that large corporations are focusing more on ESG factors before they make a strategic acquisition that will severely impact their bottom line. The acquisition of WhiteWave also set a precedent for future deals in the sector, as it managed to place sustainability and corporate responsibility as key drives of value creations. Danone's success in including WhiteWave's operations into its own, while keeping its integrity showcased that it is possible to both achieve financial growth and social impact at the same time.

3.1.4 Total's Acquisition of Saft Groupe

In 2016, Total S.A., a French energy company purchase Saft Groupe, which was a leading manufacturer of batteries, for €950 million [87]. This purchase took place, so that Total could better align itself with cleaner energy sources and its ambition to diversify its traditional operations which were focused on the exploitation of fossil fuels such as oil and gas. By purchasing Saft, Total made an approach towards the energy storage sector and managed to expand its renewable energy portfolio and commitment to sustainable energy products.

In this M&A, even though there were financial reasons for the purchase of Saft, however an additional goal imposed by Total was the transition from a restricted oil and gas energy portfolio to a broader one that was encompassing the global trends towards sustainable energy. At the time of the purchase, the majority of Total's portfolio was comprising of traditional energy products and some investments into solar energy namely through the mediums of Total Solar, SunPower Co. and Tenesol. On the other hand, Saft Groupe was a leader in the development of heavy-duty batteries used for industrial purposes and energy storage. Consequently, this purchase had tremendous meaning for Total's strategy [88].

Energy storage is a key aspect of renewable energy as it allows to store surplus energy and manage the intermittency of solar and wind power. Through this merger Total's management tried to further diversify the company in the growing renewable energy market and gain access to battery technologies that could augment its efforts in energy production. The acquisition of Saft was signaling the move towards more sustainable business practices and reduction of reliance on fossil fuel from the part of Total. By

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[87] Lourenço, P.M.N., 2019. *Equity Research: TOTAL, SA* (Master's thesis, Universidade de Lisboa (Portugal)).
[88] Adolfsson-Tallqvist, J., Ek, S., Forstén, E., Heino, M., Holm, E., Jonsson, H., Lankiniemi, S., Pitkämäki, A., Pokela, P., Riikonen, J. and Rinkkala, M., 2019. Batteries from Finland. *Business Finland*.

integrating Saft's products it would be possible to achieve this specific target and additionally bolster the growth of the company and the viability of its renewable energy systems.

Even though most major acquisitions require careful attention regarding legal and regulatory considerations, especially regarding competition law, in this case the acquisition of Saft did not raise significant concerns because Total's main activities in fossil fuels were vastly different from Saft's focus on battery technology and energy storage. Because of the strict environmental requirements towards renewable energy imposed by the EU, Total had to ensure that the integration of Saft's technologies was in accordance with EU regulations. Those included the Renewable Energy Directive (EU 2018/2001), the Energy Efficiency Directive (2012/27/EU) and the Article 15 of the EU Electricity Directive (EU 2019/944) , regarding trans- European Energy infrastructure and integration of energy storage technologies.

At the time of the Merger in 2016 the EU was already developing policies that came into fruition later such as the European Green Deal, the energy storage regulation (EU 2019/943) and the Battery Directive (2006/66/EC). These policies aimed to promote the adoption and use of energy storage solutions. By purchasing Saft, Total was able to better align itself with these regulatory trends and regarding decarbonization and renewable energy. By making such an investment, the company tried to comply with the future regulations that would mandate the use of alternative forms of energy and fewer emissions. Furthermore, this purchase was in accordance with Total's efforts regarding CSR and its commitments to climate change agreements such as the Paris Agreement.

From a governance perspective, the acquisition of Saft showcased Total's commitment to more transparent and responsible business practices. The company ensured that current operations of Saft would continue to meet the standards of ethical conduct, environmental protection and social responsibility [89]. This was important due to the fact that investors were demanding energy companies to better align their operations with ESG principles. On the whole, the deal highlighted the importance of energy storage as it can enable further development of renewable energy productions and the electrification of transportation. Additionally, it demonstrated that traditional energy companies are altering their portfolios so that they include renewable energy and more sustainable technologies. This trend will continue in the future as energy production shifts to alternative forms as counters to climate change and environmental exploitation.

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[89] Datta, P., Gopalakrishna-Remani, V. and Bozan, K., 2015. The impact of sustainable governance and practices on business performance: An empirical investigation of global firms. *International Journal of Sustainable Society*, *7*(2), pp.97-120. Doi: https://doi.org/10.1504/IJSSOC.2015.069912

Chapter 4: Emerging Trends and Future Directions in Sustainability and M&A

Sustainability as a concept keeps evolving constantly, affecting this way the adoption of ESG factors into M&As at a faster pace. In this chapter, the key trends and future directions regarding sustainability and how they influence M&A transactions will be discussed. The chapter will begin by analyzing the role of technology and innovation ,by taking into consideration how changes in clean energy and big data are changing the ways that sustainability is considered into M&A deals. Also, the effect of globalization will be visited by focusing on the ways that supply chains, cross-border transactions and different regulatory environments are influencing corporate behavior. Furthermore, the rise of socially responsible investing and its impact on modern corporations will be discussed. Lastly, the chapter will conclude the possible future legal developments and predictions and how they are going to be included in M&A activities.

4.1 Evolving Corporate Governance Models

As it was previously discussed in the merger of Total S.A. with Saft Gruppe, technology and innovation have emerged as critical aspects of the transformation of sustainability practices in the context of M&A deals. As ESG considerations consist the basis of corporate strategy, technological advancements are having an increasingly important role regarding the sustainability of M&As. Technological breakthroughs such as batteries that allow to store excess energy , has led companies to better assess, manage and improve sustainability outcomes in ways that previously were not available. This change is changing the ways that companies approach M&A transactions by providing new tools to implement due diligence, operational integration and the achievement of long-term sustainability initiatives.

One of the main ways that technology is affecting the deal process is through the improvement of the due diligence capabilities. In the past, the due diligence process focused mainly on the financial, legal and operational factors, thus failing to encapsulate critical factors, such as the ESG performance of potential acquisition targets. The use of technological tools, such as big data analysis, are being used to streamline and boost this process. These tools are widely commercially available or developed to suit each company's needs. They use a variety of computer languages and software such as Java, Python and R to achieve their purpose. They are used in order to analyze large datasets from sources that include the yearly financial reports, ESG disclosures and regulations , in order to help the user (analyst) to be able to make useful conclusions regarding a company's

sustainability performance [90]. In that way it is now possible for firms to identify in advance potential risks that are related to environmental impact, labor practices, governance in a more effective manner with less critical mistakes.

Another area where technology has an important role is after the merger has taken place and during the integration of the two companies. This step is one of the most challenging aspects of the M&A process due to changes in the ways of operation and regulatory frameworks. This is true especially in the case of aligning sustainability goals among the two entities. The integration is possible to be carried out through the use of enterprise resource planning systems (ERPs), which can facilitate the process by tracking and managing sustainability data across the newly formed entity, ensuring in this way that the company is able to meet its sustainability goals and keep up with the regulatory obligations [91]. Furthermore, cloud-based systems allow the real-time monitoring of sustainability indicators, providing up-to-date information regarding the company's total performance regarding ESG factors. Such examples include water consumption in the case where a company wishes to limit its water usage and improve its consumption rates.

Additionally, technological changes create new opportunities for portfolio diversification and reductions in carbon emissions. Companies are able to adopt new technologies that will help them achieve their sustainability goals. Even though the technologies that can be used are numerous, they have to be related to the main economic activities of the corporation. For example, for a company that is active in the field of cryopreservation it would be meaningful to adopt technologies that are related with the vitrification process. Another innovation that is widely used is the Internet of Things (IOT). IoT essentially is about the connection of devices among them through sensors, so that it is possible for companies to collect and analyze data from consumers in real time [92]. This specific technology is used to monitor metrics from energy usage and emissions up to waste management. In the context of M&As, IoT technology can help companies acquire insights into the environmental performance of the acquisition target, so that it is possible for a purchaser to identify areas for improvements in sustainability, such as ESG reporting.

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[90] Goloshchapova, I., Poon, S.H., Pritchard, M. and Reed, P., 2019. Corporate social responsibility reports: topic analysis and big data approach. *The European Journal of Finance*, *25*(17), pp.1637-1654. Doi: https//doi.org/10.1080/1351847X.2019.1572637

[91] Chofreh, A.G., Goni, F.A., Klemeš, J.J., Malik, M.N. and Khan, H.H., 2020. Development of guidelines for the implementation of sustainable enterprise resource planning systems. *Journal of Cleaner Production*, *244*, p.118655. Doi: https://doi.org/10.1016/j.jclepro.2019.118655

[92] Mouha, R.A.R.A., 2021. Internet of things (IoT). *Journal of Data Analysis and Information Processing*, *9*(02), p.77. Doi: 10.4236/jdaip.2021.92006

4.2 Globalization and Sustainability in M&A transactions

The power of globalization has reshaped the business environment around the world over more than 30 years essentially after the fall of the Soviet Union in 1991, allowing companies to move their operations in most parts of the world without problems. This trend essentially affected M&As as now companies are able to target new markets, diversify their product portfolios and gain competitive advantages over their competitors. However, as globalization evolved, so did the emphasis on sustainability. Now, M&A transactions are being heavily influenced by ESG factors. This intersections of globalization and sustainability has brought about both opportunities and challenges in the modern M&A field, as companies have to navigate complex and different regulatory environments, cultural expectations of the local markets along with sustainability standards.

The most important effect of globalization on M&A deals was the fact that companies were able to access new markets that previously were out of reach. This expansion allowed firms to grow faster, enter additional sectors and spread their operations in different geographical areas. However, the cross-border nature of these transactions means that companies have to operate under different environments, a condition which can complicate the daily operational processes [93]. In the context of sustainability, globalization has amplified the need for companies to factor in the ESG regulations that differ across regions.

One of the main challenges of globalization regarding M&A is the integration of sustainability practices between different jurisdictions. When companies purchase cross-border entities, they have to align the different sustainability practices and policies among the two entities. This predicament can lead to challenges during the post-merger integration phases, as the acquirer may probably need to implement new ESG policies and practices to the purchased entity that align with its sustainability commitments [94]. On the flip side, if a firm purchases an entity in a region such as the European Union were the regulatory environment is less lenient, then it may be forced to adapt its own practices to meet those stingiest standards, thus increasing the overall complexity and costs of the new entity.

At the same time, except from the different regulatory regimes, globalization brings along a set of cultural expectations regarding sustainability. In some markets, such as those in the Baltics or Northern Europe consumers and the various stakeholders put a great emphasis on sustainability, demanding from companies to adopt their operations so that they are environmentally friendly and socially responsible. In other regions such as the Balkans,

[93] Tian, X., Zhu, J., Zhao, X. and Wu, J., 2024. Improving operational efficiency through blockchain: evidence from a field experiment in cross-border trade. *Production Planning & Control*, *35*(9), pp.1009-1024. Doi: https://doi.org/10.1080/09537287.2022.2058412

[94] Manocha, P., 2024. *Sustainable supply chains enabled by mergers & acquisitions: motivations, strategic considerations, and integration outcomes* (Doctoral dissertation).

sustainability may be less of a priority for local consumers. The above differences can lead to possible challenges for companies that are involved in M&As, as they put them in a position where they have to navigate varying consumer expectations while at the same time maintaining their global sustainability commitments. One such example, was the acquisition of the logging company Greengold in Romania by IKEA. More specifically, IKEA bought Greengold in 2015, in order to secure a cheap supply of wood for its furniture production. However, it was faced with sever backlash from Greenpeace because the country has a severe problem with deforestation [95], especially after the fall of the Ceausescu regime in 1989.

Despite the challenges that globalization brings about, it also offers companies opportunities to improve their sustainability strategies through M&As. By purchasing companies that exhibit strong sustainability records, it is possible for firms to accelerate their transition to more sustainable business models. For example, the purchase of Direct Energie which was operating in the field of clean electricity production by Total in 2018, allowed the company to expand its portfolio and to satisfy consumer demand for more sustainable business practices. Additionally, through M&As it is possible for companies to gain access to new technologies that can improve their sustainability performance, as was analyzed in the example of Total when it bought Saft Groupe.

Also, supply chains have a critical role in the context of sustainability in M&A transactions. Global supply chains are complex networks that essentially connect multiple countries, and they are a critical component of corporate sustainability. Transactions that include companies with large or complex supply chains will probably bring various sustainability challenges [96]. As the acquiring companies will necessarily have to assess the sustainability of the target's supply chain, including issues like labor practices, impact on the environment, and resource sourcing. Global supply chains are often the focus of scrutiny by regulators, especially in regions with strict standards such as the European Union. However, these challenges can be addressed when companies conduct a thorough ESG due diligence on the supply chains of potential acquisition targets. Such a kind of due diligence includes the assessment of the environmental impact of production, the social responsibility of labor practices, and the governance structures that are in place to manage sustainability risks.

[95] Meghișan, F., 2015. Sustainable Development versus Irrational Exploitation of Romanian Forests. *Journal of Advanced Research in Economics and International Business*, *3*(4), pp.27-39.
[96] Sarfaty, G.A., 2015. Shining light on global supply chains. *Harv. Int'l LJ*, *56*, p.419.

4.3 Future Legal Developments and Predictions

As the importance of sustainability becomes even more prevalent in the future, both in the corporate world and in sociate, future legal developments will have a critical role in the field of M&A activities. The integration of sustainability has become a legal necessity, especially in the European Union, driven by regulations that are going into effect, the rise of ESG criteria and a public demand for more corporate transparency. All in all, the changes in the legal environment are not only influencing the ways that companies assess probable acquisition targets but also the ways in which they structure deals and incorporate sustainability into the operations of the combined entity post-merger. In this subsection of the thesis the potential future legal developments and predictions regarding sustainability and M&A will be theorized regarding a series of topics.

One of the most probable legal developments that are likely to occur and affect the M&A processes as a whole in the future is the further strengthening of ESG reporting standards. Regulations such as the CSRD and SFDR have already paid the way for mandatory sustainability disclosures. However, it is probable that these standards will become obsolete in the future, and more rigorous ones will take their place in the coming years. Global bodies such as the IFRS Foundation, have already established initiatives such as the International Sustainability Standards Board (ISSB) in order to create the global framework for ESG reporting standards [97]. The aim of the ISSB is to enable companies to disclose sustainability information that is material in a way that is aligned with financial statements, so that decision-making processes by investors are facilitated and corporations become more transparent about their operations.

As standards such as the ISSB are adopted by more corporations around the world, their data output will be more detailed and comparable. Such a development will naturally impact M&A strategies because ESG due diligence will become a more critical component after the merger takes place for a variety of reasons that include: The need for increased regulatory compliance, mitigation of risks, investor expectations and post-merger integration. In essence, acquirers will need to assess the totality of ESG performance of target companies with greater scrutiny, as a failure to comply with reporting standards will result in legal and financial liabilities and reputational damage. All of these will directly affect the company's bottom line [98].

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[97] Petersen, A., Herbert, S. and Daniels, N., 2022. The likely adoption of the IFRS Foundation's proposed sustainability reporting standards. *The Business and Management Review*, *13*(2).
[98] Hammerstad, S., 2022. *Assessing ESG risks and opportunities for photovoltaic companies operating in Norway: what are future focus points?* (Master's thesis, Norwegian University of Life Sciences, Ås).

Another probable legal development regarding sustainability and M&As is the expansion of climate-related financial disclosures. Governments and regulators around the world are increasingly recognizing the financial risks that are posed by climate change which include extreme weather events and changes in market dynamics. To address risks like these, many jurisdictions have taken measures to implement mandatory climate related disclosures. In 2021, the UK was the first country to impose disclosures of this kind through the TCFD mandate which requires publicly listed companies to report about climate related risks and opportunities in their yearly financial reports [99]. The European Union has essentially done the same through CSRD and SFDR.

Developments such as the above are very likely to affect M&A deals. Acquiring companies will exhibit the need to assess the climate-related risks of the acquisition targets and decide whether those risks could severely impact the financial performance of the merged entity. On the other hand, companies that exhibit robust climate risk management policies and strategies will be more attractive goals for a probable acquisition, as they will be positioned in a better way to navigate the transition to a more sustainable economy.

Additionally, corporate responsibility regarding human rights has been the focus of attention. As of now, legal frameworks exist, such as the UNs' Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. These frameworks have established expectations for companies regarding human rights due diligence. However, they have been voluntary, or they are based on soft law principles [100]. When their application becomes, mandatory companies will have to assess the targeted company's Human Rights policies in order to identify risks, consequently this will mean increased costs and complexity during an M&A transaction. Regarding company valuation, discounts will have to be applied to the valuation of companies that are non-compliant with Human Rights Protection and lastly there will be an increased need for post-merger integration regarding human rights practices across the two entities.

Antitrust law has traditionally focused on the promotion of healthy competition and prevention of monopolies, while almost disregarding sustainability. However, antitrust policies can be a part in advancing sustainability goals by encouraging companies to adopt more sustainable practices [101]. Such a shift in perspective will lead to future legal developments that take into account sustainability into antitrust reviews of M&As. One possibility is the introduction of exemptions in antitrust laws, where companies could be

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[99] Borghei, Z., Linnenluecke, M. and Bui, B., 2024. The disclosure of climate-related risks and opportunities in financial statements: the UK's FTSE 100. *Meditari Accountancy Research*, *32*(3), pp.1031-1063. Doi: https://doi.org/10.1108/MEDAR-05-2023-1998

[100] Ruggie, J.G. and Nelson, T., 2015. Human rights and the OECD Guidelines for Multinational Enterprises: Normative innovations and implementations challenges. *Brown J. World Aff.*, *22*, p.99.

[101] Balmer, P., 2020. Colluding to Save the World: How Antitrust Laws Discourage Corporations from Taking Action on Climate Change. *Ecology L. Currents*, *47*, p.219.

allowed to collaborate regarding sustainability matters without being flagged as violating the rules [102]. In that case, they would be able to combine efforts in order to reduce their total footprint on the environment.

As sustainability becomes a central focus in M&A transactions, it will be natural that greenwashing policies will be heavily scrutinized by regulators through the introduction of stricter rules regarding transparency so that companies are prevented from overstating their sustainability credentials. Among these lines in the US, SEC has already proposed some new rules, such as the GHG emissions reporting, Proxy Voting and Engagement, and lastly the "Names Rule", where a fund has to possess at least 80% of its assets in ESG investments so that it can use the term "ESG" in the fund's name [103]. In the context of M&As, such developments will require companies to conduct due diligence on potential targets so that it can be ensured that they are not engaging in greenwashing activities. This can probably require the review of sustainability reports, ESG metrics audit, and the assessment of sustainability initiatives along with claims that have been made public about sustainability.

A last prediction regarding the future of sustainability and M&A is related to the growing influence of shareholder activism. Shareholders such as institutional investors are already using their voting power so that they can push for greater accountability regarding ESG issues [104]. Such a trend will be further intensified in the future as sustainability becomes a major concern for investors. This means that M&A activity will be affected, especially in the case where shareholders disagree with deals that are not in accordance with their sustainability objectives.

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[102] Hanawalt, C., Hearn, D. and Field, C., 2024. Recommendations to Update the FTC & DOJ's Guidelines for Collaborations Among Competitors. *Cynthia Hanawalt, Denise Hearn, and Chloe Field,"Recommendations to Update the FTC & DOJ's Guidelines for Collaborations Among Competitors," Sabin Center for Climate Change Law and Columbia Center on Sustainable Investment (May 2024)*.

[103] Fisch, J.E. and Robertson, A.Z., 2022. What's in a Name? ESG Mutual Funda and the SEC's Names Rule. *S. Cal. L. Rev.*, *96*, p.1417.

[104] Wang, K., 2021. Why Institutional Investors Support ESG Issues. *UC Davis Bus. LJ*, *22*, p.129.

Chapter 5: Discussion

5.1 The Role of Leadership and Governance in Driving Sustainability

In the current corporate landscape, the role of leadership and governance regarding sustainability post-merger is an essential part of the success of the M&A deal. As the global regulatory frameworks and business environment puts heightened emphasis on ESG factors, leadership commitment along with robust corporate governance structures are the crucial drivers for the integration of sustainability into the newly formed entity's operations. In the context of M&As, where companies are faced with a series of integration challenges, the leadership and governance structures can effectively affect the success of the sustainability agenda.

Leadership commitment regarding sustainability is critical for several reasons. At the forefront it sets the tone regarding the direction of the corporation, especially in the case of an M&A where the integration of two different cultures and practices is already an important challenge. Leaders who emphasize sustainability signal to stakeholders that ESG factors are a central part of the company's strategy. In this regard, leadership has to embed sustainability by aligning short-term financial goals and long-term sustainability goals [105]. Given the current regulatory frameworks in Europe that have been discussed earlier, leadership extends beyond operational guidance and requires a proactive stance that will ensure legal compliance within a framework that keeps constantly evolving.

Furthermore, as has already been discussed, the process of merging two companies involves a series of complexities that include harmonizing operations and cultures. This means that it is probable that leadership will be overlooked in favor of short-term goals. In that regard, leaders who are committed to sustainability will have to ensure that sustainability is not a side goal to achieved at some point in the distant future but a core component of the company's value proposition to the consumer [106]. Effectively, this means that leaders will have to promote the application and achievement of ESG objectives in board meetings, set measurable goals, and ensure that enough resources are allocated to achieve these goals. By doing so, the new entity will be able not only to achieve regulatory

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[105] Broman, G., Robèrt, K.H., Collins, T.J., Basile, G., Baumgartner, R.J., Larsson, T. and Huisingh, D., 2017. Science in support of systematic leadership towards sustainability. *Journal of Cleaner Production*, *140*, pp.1-9. Doi: https://doi.org/10.1016/j.jclepro.2016.09.085

[106] Kurucz, E.C., Colbert, B.A., Luedeke-Freund, F., Upward, A. and Willard, B., 2017. Relational leadership for strategic sustainability: Practices and capabilities to advance the design and assessment of sustainable business models. *Journal of Cleaner Production*, *140*, pp.189-204. Doi: https://doi.org/10.1016/j.jclepro.2016.03.087

compliance, which is the bare minimum, but also a broader objective of corporate responsibility marking a shift from a reactive stance to a more proactive one.

An important aspect of leadership commitment is the ability to influence corporate culture. This is especially needed during the post-merger phase because often enough the companies that are brought together usually hold different values, operational models and approaches regarding sustainability [107]. In these cases, leadership's role is to foster a unified vision that can overcome these differences and help align the merged entity around a common set of sustainability principles, this can occur through the development of a sustainability strategy, that will assess the cultures and set clear sustainability goals. This is a daunting task to achieve, especially in the case where one of the merging entities has historically emphasized the achievement of financial goals and disregarded sustainability. However, leaders who can demonstrate a strong commitment to ESG principles can influence the culture of the corporation as a whole through the promotion of sustainability culture along with accountability.

At the same time, governance structures play an equally important role in fostering sustainability post-merger as governance provides the formal mechanisms that will lead to the integration of sustainability into the company's strategy and operations and will ensure that ESG factors are not overshadowed by other business priorities. Corporate structures such as board oversight will lead to the establishment of oversight frameworks , accountability, and reporting, all of which are necessary for maintaining sustainability as the central focus of the merged entity. Additionally, governance mechanisms such as sustainability committees, independent audits by outside parties such as Big4 firms will help ensure that the company is aligned with its sustainability commitments long after the merger is completed [108].

Regarding legal obligations, corporate governance has a critical role in ensuring compliance with sustainability regulations. The current frameworks in effect require companies to disclose non-financial information regarding their ESG performance. This means that companies have to adopt governance structures that are capable of collecting, analyzing, and reporting sustainability data in such a way that satisfies legal requirements set by regulators. Effectively governance bodies such as the BOD, sustainability committees and audit committees will have to ensure that the company is in a position to meet these obligations satisfactorily. By doing so, these structures will provide the platform for strategic discussions regarding sustainability, making it easier for the company to align its goals with its responsibilities. Additionally, these governance structures also provide

[107] Bodner, J. and Capron, L., 2018. Post-merger integration. *Journal of Organization Design*, *7*, pp.1-20. Doi 10.1186/s41469-018-0027-4
[108] Almasria, N.A., 2018. The relationship between internal corporate governance mechanisms and the quality of external audit process-empirical evidence from Jordan.

transparency to external stakeholders, such as investors and regulators by ensuring that the company's sustainability reporting is accurate and credible.

Furthermore, governance structures support sustainability objectives by integrating it into the company's decision-making processes. The Board of Directors has a central role in this matter, especially in the case of incorporating ESG considerations into strategic decisions, such as allocation of capital, risk management and operational planning. This is important especially during the post-merger phase of the deal, where the newly formed company will be faced with competing priorities and limited resources. Governance structures will ensure that sustainability will be factored into key business decisions.

Another critical role of the governance structures is related to its ability to manage and mitigate ESG related risks. M&A transactions often expose companies to new risks, especially when the target company operates in industries or regions that are characterized by severe environmental or social challenges [109]. Governance bodies are responsible for conducting ESG due diligence before the purchase of the targeted company during the deal in order to locate possible risks that are related to sustainability, such as regulatory compliance and environmental liabilities. After the merger takes place the same governance structures will ensure that the new company has robust risk management frameworks in place that address these risks, minimizing the potential for legal or financial consequences. By integrating ESG risk management into the company's overall risk framework, governance structures protect the value of the company while at the same time promoting sustainable business practices. Also, governance structures are necessary for fostering engagement with stakeholders regarding sustainability issues as governance bodies provide the medium for engaging with stakeholders, ensuring that their concerns are here and addressed by upper management [110]. By fostering stakeholder engagement, governance structures foster trust and improve the company's standing with stakeholders.

[109] Strobl, A., Bauer, F. and Matzler, K., 2020. The impact of industry-wide and target market environmental hostility on entrepreneurial leadership in mergers and acquisitions. *Journal of World Business*, *55*(2), p.100931. Doi: https://doi.org/10.1016/j.jwb.2018.03.002
[110] Wehn, U., Collins, K., Anema, K., Basco-Carrera, L. and Lerebours, A., 2020. Stakeholder engagement in water governance as social learning: lessons from practice. In *OECD Principles on Water Governance* (pp. 34-59). Routledge.

5.2 Accountability in M&A: Mechanisms for Sustainability attainment post-merger

Accountability is an essential element in an M&A transaction, especially when sustainability promises are at the forefront. When two companies merge, usually they commit to aligning their ESG goals. However, in order to achieve such promises specific mechanisms have to be in place so that the entity will be held accountable, because in the case where there is a failure to meet these commitments calamities will occur [111]. In this part of the discussion, the mechanisms that are usually used will be explored by examining the legal, contractual, and operational approaches that companies and their stakeholders can utilize to ensure that these commitments are met.

Despite the legal frameworks that are in effect, it is possible for a company to be faced with legal consequences if it fails to meet sustainability commitments that were made to the public before the merger took place. More specifically, shareholder litigation is one area where accountability can be enforced. Investors are able to bring lawsuits against companies that are not able to keep up with their sustainability promises, especially if such commitments were made as part of the deal, but afterwards the company acted in a way that was contrary to these promises. One glaring example is the case of ExxonMobil in 2017, where the company misrepresented its climate risks background to investors, by failing to disclose the risks that were related to its business model, making public statements about sustainability and continuing investing in fossil fuels. As a result, the company was faced with a series of lawsuits such as *the Ramirez v. ExxonMobil corp.*, the *people of the State of New York v. ExxonMobil Corporation* and the *New York Attorney General v. ExxonMobil Corp.,* which was filed under the Martin Act, which allows the attorney general to investigate fraud without needing to prove intent to deceive [112].

Additionally, contract law offers another avenue for enforcing sustainability promises post-merger. During the negotiation phase of an M&A, commitments about sustainability can be included in the terms of the contract, establishing this way the legal grounds for recourse if these promises are not fulfilled. Such clauses can be tied to performance metrics that are related to ESG outcomes. If these conditions are not met, the contract may specify penalties or reasons for investors to sue for breach of contract. It can be understood that contractual

[111] Sarwar, F.I., 2021. *How can international institutions be improved to ensure accountability and justice for violations that occur in humanitarian and counter-terrorism operations?* (Doctoral dissertation, University of Bradford).

[112] Epstein, R.A., 2017. Regulatory Enforcement Under New York's Martin Act: From Financial Fraud to Global Warming. *NYUJL & Bus.*, *14*, p.805.

enforcement is a powerful tool, but it requires that commitments about sustainability are clearly outlined during the negotiation process.

Previously the role of governance structures was analyzed regarding the ways in which it can foster sustainability within the company. However, the mechanisms by which this could be achieved were not thoroughly analyzed. Such a mechanism is the establishment of sustainability committees within the board of directors. One of the key functions of the sustainability committee is to ensure accountability within the company. In order to achieve this, reports are collected from the various departments of the company, such as accounting and risk management, in order to assess how sustainability targets are being met. Such an oversight allows the committee to advise the board on the changes that are needed to company policies and practices and to ensure alignment with sustainability standards and expectations. Furthermore, the committee liaises with the stakeholders, so that the company's sustainability efforts are clearly communicated to them [113].

Apart from employing committees, a company can use an audit function (internal or external) regarding the assessment of ESG performance. The audits essentially evaluate in an objective manner the company's adherence to its sustainability commitments by identifying areas of underperformance and proposing corrective actions. The final result of an audit is the report which highlights the risks that are associated with non-compliance and is used by the management and the board in order to make a decision regarding future directions regarding sustainability [114]. These audits include key performance indicators (KPIs) such as carbon emissions, energy efficiency and diversity statistics, such as income based on gender. KPI's are used as benchmarks that allow the company to track its progress against the promises that were made during the merger.

The use of executive compensation structures is another powerful mechanism for the application of accountability. In most corporations around the world executives are mainly compensated through yearly bonuses, due to the fact that are severely less taxed in comparison to wages from paid labor [115]. By linking executive bonuses to the achievement of sustainability goals, companies will be able to ensure that leadership is heavily incentivized to meet ESG commitments. This is a very common practice that is applied by many corporations. For example, in 2021, Royal Dutch Shell tied 75 % of the executive pay to the company's ability to meet carbon emissions targets affecting even at the time the

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[113] Journeault, M., Perron, A. and Vallières, L., 2021. The collaborative roles of stakeholders in supporting the adoption of sustainability in SMEs. *Journal of environmental management*, *287*, p.112349. Doi: https://doi.org/10.1016/j.jenvman.2021.112349

[114] Rija, M. and Ernesto Rubino, F., 2018. The internal control systems integrated into the various profiles of governance, audit, risk and compliance. *International Journal of Business and Management*, *13*(5), p.21.

[115] Edmans, A., Gabaix, X. and Jenter, D., 2017. Executive compensation: A survey of theory and evidence. *The handbook of the economics of corporate governance*, *1*, pp.383-539.

CEO of the company Ben van Beurden [116]. By making such changes in the compensation structures of higher management it can be ensured that the top executives will be motivated to ensure that the company will deliver on its sustainability promises.

Even though there are many robust mechanisms for holding companies accountable regarding sustainability promises post-merger, still there are many challenges that exist. One of the biggest challenges is the misalignment of sustainability goals between the merging companies. Often enough, the acquiring company will have a stronger commitment to sustainability than the targeted company, or the reverse [117]. In this case the integration of the different philosophies regarding corporate strategies will be difficult, especially when the operational models or the corporate cultures differ vastly. This means that in order to achieve the sustainability promises that were made during the M&A process significant changes will need to take place, affecting the cost and timeframe of sustainability achievement.

Moreover, the long term-nature of sustainability goals presents challenges to accountability. Many sustainability objectives require sustained effort over the course of many years. This is in direct conflict with the short-term financial pressures that come along with mergers and acquisitions, where the focus is typically on the realization of synergies and cost savings, in order to improve the immediate cash flows of the company. In order to address this, companies need to adopt a long-term perspective regarding their post-merger strategy, ensuring that sustainability is one of the highest priorities even when the company is faced with short-term pressures to achieve financial results.

Lastly, another challenge is the lack of standardized metrics that can be used to assess the sustainability performance of the company. Even though the GRI and SASB frameworks do indeed provide some guidance, there is still enough variation in the ways that companies report their ESG performance [118]. This makes it difficult to compare the performance of different companies without the need for adjustments in the reports, or to hold the companies accountable for failing to meet industry KPI benchmarks. A solution for this is the standardization of sustainability methodologies, so that it is possible to gain a better understanding regarding ESG attainment from the yearly corporate reports.

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[116] Kenner, D. and Heede, R., 2021. White knights, or horsemen of the apocalypse? Prospects for Big Oil to align emissions with a 1.5 C pathway. *Energy Research & Social Science*, *79*, p.102049. Doi: https://doi.org/10.1016/j.erss.2021.102049

[117] Varadarajan, R., 2017. Innovating for sustainability: A framework for sustainable innovations and a model of sustainable innovations orientation. *Journal of the Academy of Marketing Science*, *45*, pp.14-36. Doi: 10.1007/s11747-015-0461-6

[118] Cort, T. and Esty, D., 2020. ESG standards: Looming challenges and pathways forward. *Organization & Environment*, *33*(4), pp.491-510. https://doi.org/10.1177/1086026620945342

5.3 Policy Adjustments

Despite the progress that has been made in addressing ESG concerns, there remains a significant gap between rhetoric and action. In the last part of the discussion section possible policy recommendations will be addressed that can be utilized to bridge the gap, focusing on two main areas: regulatory adjustments that can be implemented to incentivize sustainable practices in M&As, and voluntary initiatives and frameworks that can bolster sustainability in M&A transactions.

One of the most effective ways to foster sustainable practices in M&A transactions is through regulatory intervention. Governments have a crucial role to play in shaping the landscape within which M&A deals take place, by offering incentives for the adoption of sustainable behavior, and disincentivizing unsustainable practices. More specifically, competition law and antitrust law adopts a narrow focus that fails to take into account the potentially significant sustainability consequences of corporate consolidations by examining an M&A solely on the basis of whether the merger will lead to the creation of monopolistic or anti-competitive conditions [119]. In order to alleviate this situation, regulators should revise merger approval frameworks so that they include mandatory ESG assessments, where companies would be required to demonstrate how the proposed merger will enhance or undermine sustainability goals. Mergers that fail to meet certain ESG thresholds should be rejected or modified in order to be approved. Such a measure could lead to the promotion of more sustainable business practices and at the same time ensure that companies consider the longer-term picture of their environmental and social impacts of their expansion. Additionally, governments can further incentivize sustainable practices by offering tax cuts for transactions that meet specific sustainability criteria. In this way corporations will be encouraged to pursue sustainability-driven M&A deals. However, in order to prevent possible abuse, companies that benefit from such incentives should be required to report their sustainability progress over time, with penalties for non-compliance.

Transparency is a key factor of accountability in corporate governance. While many corporations have adopted voluntary ESG reporting, until now there is no universal standard for incorporating sustainability into M&A disclosures. In order to foster a culture of sustainability, it is essential that companies involved in M&A transactions disclose how their activities align with environmental and social goals [120]. This could happen if

[119] Spulber, D.F., 2023. Antitrust and innovation competition. *Journal of Antitrust Enforcement*, *11*(1), pp.5-50. Doi: https://doi.org/10.1093/jaenfo/jnac013

[120] Arvidsson, S. and Dumay, J., 2022. Corporate ESG reporting quantity, quality and performance: Where to now for environmental policy and practice?. *Business strategy and the environment*, *31*(3), pp.1091-1110. Doi: https://doi.org/10.1002/bse.2937

regulatory bodies mandate the disclosure of sustainability metrics as part of the M&A deal. Disclosures of this kind should include details that refer to the ways in which the transaction will affect several key ESG areas, such as climate change, human rights, and resource exploitation. Public disclosure of this information could potentially allow stakeholders to better understand the implications of a possible M&A deal.

Even though initiatives can be an effective tool that can be used to promote sustainability, penalties could be implemented for unsustainable actions in order to drive corporate behavior. If an M&A deal contributes to environmental degradation or social problems, then the company should be faced with regulatory sanctions. Such penalties could range from fines to restrictions on future M&A activity. The introduction of such penalties would serve as a deterrent to companies that aim at exploiting loopholes in sustainability regulations or externalize their environmental and social costs to the rest of society.

While regulatory measures are necessary, voluntary initiatives could be used in order to encourage sustainability in M&A. Such initiatives can possibly foster a culture of sustainability that goes beyond mere compliance with legal requirements. More specifically, companies that take place in an M&A should voluntarily adopt the current ESG frameworks as part of their due diligence. The CSRD offers a comprehensive set of recommendations regarding climate-related risks, which can be integrated into M&A risk assessments [121]. By adhering to a framework like this, companies can demonstrate their commitment to sustainability, while at the same time identifying potential risks and opportunities related to ESG factors in the context of corporate consolidation.

Additionally, with the adoption of established ESG frameworks there is a need for M&A sustainability codes. Such codes would provide us with useful guidance on how sustainability considerations could be embedded in every stage of the M&A process. For that matter, industry groups in collaboration with sustainability experts and regulators, could develop voluntary codes of conduct for sustainable M&A. These codes could include best practices regarding ESG due diligence, integration of sustainability goals into valuation methods, and setting measurable post-merger sustainability objectives in the new entity.

The bulk of corporate sustainability efforts are often driven by pressure from shareholders and stakeholders such as customers. M&A transactions, which have the dynamic to affect a company's sustainability trajectory, should be conducted in a manner that is aligned with the expectations and values of such groups. In such a way, companies should proactively engage with those groups so that they can collect their input through shareholder meetings and public disclosures regarding sustainability goals and concerns related to the

[121] Marczis, D., Mihálovits, Z. and Sebestyén, G., 2023. Sustainability and climate risk data: a new era for investment decision-making in the age of climate change. *Cognitive Sustainability*, *2*(2). Doi: https://doi.org/10.55343/cogsust.64

transaction. By involving shareholders in the M&A processes, companies can ensure that a deal is aligned with broader societal expectations and that potential risks are averted.

Lastly, the incorporation of sustainability into M&A is a complex task that often requires specialized skills. Consequently, it is possible that corporations do not have the necessary capacity in-house to fully understand the sustainability implications of a potential merger or acquisitions, especially in cases that involve international transactions [122]. Essentially, this means that corporations will have to seek to hire external experts such as financial consultants and auditors among other that can help provide valuable insights into the potential sustainability risks and opportunities that are associated with an M&A deal, helping companies make better decisions that will increase the long-term value of the combined entity

[122] Özgür, Ş. and Wirl, F., 2020. Cross-border mergers and acquisitions in the oil and gas industry: An overview. *Energies*, *13*(21), p.5580. Doi: https://doi.org/10.3390/en13215580

Chapter 6: Conclusions

It became clear throughout the thesis that sustainability has increasingly emerged as a significant factor that has a direct impact on mergers and acquisitions. Consequently, the focus has shifted from traditional financial metrics such as the return on investments and return on assets to a more inclusive approach that incorporates environmental, social and governance factors. This paradigm shift reflects both the external pressures from regulatory bodies around the world and especially European Union and from international motivations that were driven by the recognition of sustainability's long-term value creation potential.

Historically, M&A deals were mainly driven by financial motives that include revenue growth, market share expansion and the attainment of cost synergies through economies of scale. Matters that were related to ESG factors were classified as externalities to the environment and their societal costs were disregarded. As a result, the deals were assessed only through the use of financial tools such as DCF analysis and multiples without any consideration for long-term environmental and societal impacts. However, as resources started to become scarcer and pollution more prevalent in Western societies as a whole, sustainability became more prevalent in corporate strategies mainly through regulations that were imposed on companies and despite efforts for voluntary compliance to of ESG factors, in that way the landscape of M&A practices was severely affected. Today, corporations and investors are increasingly recognizing that incorporating sustainability into corporate strategy can lead to improved risk management, better corporate reputation and most importantly lead to value creation on the long-term.

The main Directives such as the CSRD and the SFDR within the European Union were the driving forces behind the adoption of better ESG practices due to their nature which imposed sustainability requirements regarding reporting and disclosure of ESG factors such as resource use, labor practices, and the overall carbon footprint. This was a catalyst in the integration of sustainability considerations into M&A transactions, as the regulations mandated that companies had to disclose their overall environmental and societal impacts along with their mitigation efforts and their governance structures, something that one the one side increased transparency and accountability within corporations and in the M&A deal process but also placed sustainability at the forefront of corporate governance. Furthermore, these frameworks had a significant effect on the due diligence process that takes place during an M&A transaction, which now has expanded to include ESG factors. This shift led to the emergence of new valuation methodologies that were factoring ESG performance and based on the results of corporations the valuation of a company would alter by changing the discount rates and altering the premium or the discount that a company could yield. If a company exhibited poor ESG records then it would be faced with discounts due to higher risks that are associated with environmental and governance

liabilities, if the opposite was true then the company would command a premium to its valuation due to the use of best practices regarding ESG factors.

Despite the strong emphasis on sustainability, the integration of ESG factors into M&A deals exhibited a series of challenges. One such challenge was the conflict between short-term financial goals and long-term sustainability objectives. M&A deals were mainly driven by the need to achieve financial synergies, due to the fact that the new entity was not able to exhibit any past behavior and was faced with suspicion by stakeholders and regulators and the fact that there was an immediate need for the creation of cash flows because the same process of the merger had depleted the cash reserves of the company as it was necessary to spend money in order to purchase the shares of the other investors in the target company , such as institutional ones along with private individuals. In that way long-term sustainability objectives were sidelined as their achievement would necessitate a constant need to actualize investments in various areas of business operations such as energy usage. This specific conflict is especially prevalent in hostile takeovers, where the main reasons for the deal were financial.

Furthermore, the alignment of sustainability practices between the two merging entities presents another challenge. In many merger cases, the acquirer company may have stronger sustainability commitments that the target company, or vice versa, as in the case of Total when it purchased Safte Grupe in order to improve its ESG profile because at the time Total was heavily invested in fossil fuel exploitation. This misalignment between the two companies has the propensity to create integration challenges, as the newly formed entity will have to navigate differing corporate cultures and operational practices so that it can create a unified sustainability strategy. Achieving such an alignment often requires significant changes to corporate practices and governance structures, which eventually leads to increased costs and extended integration timelines.

Another challenge lies in the complexity of navigating diverse regulatory landscapes, especially when the M&A transaction transcends national borders. Companies that operate in different jurisdictions such as the USA and EU must adhere to varying sustainability regulations which can complicate the due diligence process because of the regulatory differences and post-merger integration. For example, European companies are faced with stricter regulatory requirements compared to their counterparts in the United States, where sustainability still remains voluntary despite efforts to change from bodies such as the SEC. Such differences increase the costs and complexity of the M&A transactions, as companies have to ensure compliance with more severe standards

While the integration process of sustainability into M&A deals is filled with challenges that are significant, there are also substantial opportunities and benefits. One such advantage is the potential for improved risk management. Companies that have exhibit strong ESG credentials are better equipped to mitigate environmental and social risks, such

as regulatory compliance and reputational damage. As investors increasingly demand more transparency and accountability in corporate practices, due to the existence of the agency problem because their interests are different than those of the higher management, companies that place an emphasis on sustainability are more likely to attract capital and maintain a positive corporate reputation.

Sustainability also offers opportunities for innovation and value creation. Technological advancements in various fields such as big data analytics have allowed companies to better assess and manage their sustainability risks. This means that companies are able to use tools such as data analytics to streamline ESG due diligence processes, by identifying potential risks that are related to environmental impact, labor practices and governance structures more efficiently as the probability for a clerical error is nil. Another benefit of incorporating sustainability into M&A transactions is the potential for portfolio diversification. Companies that purchase entities that have strong sustainability credentials are able to improve their own ESG performance scores and gain access to new markets and customer segments that put heightened emphasis on environmental and social responsibility. This diversification can improve a company's competitive position but also helps to future-proof the business against the changing regulatory and market conditions.

Leadership commitment and strong governance structures have a crucial role in the successful integration of sustainability into M&A transactions. Leaders who prioritize sustainability set the tone for the whole company by signaling to shareholders that ESG factors are central to the company's strategy. This commitment has to be reflected in the post-merger integration process, where leadership has to align short-term financial goals with long-term sustainability objectives. By setting measurable sustainability targets and ensuring that sufficient resources are allocated for the achievement of these goals, leadership can embed sustainability into the core operations of the newly formed entity. Governance structures are equally important in fostering sustainability post-merger. The establishment of sustainability committees that are independent and directly report to the board of directors helps ensure accountability and monitor the company's progress towards the achievement of its ESG goals. Such committees can also engage with stakeholders, thus ensuring that their concerns are addressed and that the company remains transparent about its sustainability efforts.

Lastly, as sustainability keeps evolving in the future, there are several key trends that are likely to shape the future of M&A transactions. First, the rise of socially responsible investing (SRI) is expected to have a significant impact on corporate behavior. Institutional investors are using their voting power so that ESG issues can be put in the corporate agenda, this directly influences the types of companies that are considered as attractive goals for an acquisition. Secondly, regulatory developments will keep evolving, thus driving the integration of sustainability into M&As. Their change from voluntary to mandatory, the application of stricter rules regarding ESG reporting, greenwashing

prevention, and human rights protection are expected to be further refined, especially in the European Union. Such developments will require companies to conduct more thorough due diligence on probable acquisition targets to ensure compliance with sustainability standards. Finally, shareholder activism is likely to intensify, with investors using their influence to challenge M&A deals that are not in accordance with their sustainability objectives. This trend will place further pressure on companies to ensure that their M&A strategies put an emphasis on sustainability and that they are transparent about their ESG performance.

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