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## SUSTAINABLE FINANCE: THE RELATING ACTUAL HUNGARIAN LEGISLATION IN EU FRAME

**Abstract:** *In this paper, after a systematic presentation of the theoretical background of the European Union regulation, we examine the Hungarian regulation and legal practice (using the websites of five listed Hungarian companies and the Budapest Stock Exchange Corporate Governance Recommendations) in connection with the identification of shareholders by the company, the verifiability of the exercise of shareholder's rights, the remuneration policy and reporting of the public company limited by shares and the approval of legal transactions concluded with related party. We also focus on financial governance and certain viewpoints of product governance, with special attention to product approval process and the issue of greenwashing. We chose to emphasize these issues since one cannot find verbatim, translations of legal acts of European Union on these fields with respect to Hungarian legislation. The other reason is that there are available practical experiences in connection with them, therefore we reflect on different anomalies. Our aim is to highlight the need to transpose and implement a legal instrument with such wide-ranging implications as sustainable finance into a thoughtful and coherent set of rules that permeate the legal system.*

**Keywords:** *environmental social governance, identification of shareholders, confirmation of voting, product governance, financial governance.*

## 1. INTRODUCTION

Sustainable finance should not be seen as a single compass, but as a set of building blocks that contribute to seeing an investment as green, with the ability to serve the interests of its members. Based on the Commission's communication, "sustainable finance" generally refers to the process of taking due account of environmental and social considerations in investment decision-making, leading to increased investments in longer-term and sustainable activities. More specifically, environmental considerations refer to climate change mitigation and adaptation, as well as the environment more broadly and related risks (e. g. natural disasters).<sup>1</sup>

In companies, "systems of relationships covered by multifactorial networks of interests"<sup>2</sup> appear, and several theoretical approaches have emerged to explore, understand, and explain them.

In addition to the two basic theoretical approaches,<sup>3</sup> an investor model that favours the interests of its members (shareholder theory)<sup>4</sup> and a contractual model concluding by the management<sup>5</sup> that takes into account the interests of those who have an interest in the business relationship with the company (stakeholder theory),<sup>6</sup> several theoretical approaches embedded in the amendment of Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies in order to encourage long-term shareholder participation.<sup>7</sup>

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<sup>1</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions. Action Plan: Financing Sustainable Growth. Brussels, 8.3.2018. COM(2018) 97 final. (Communication) 2; Dirk A. Zetsche, Linn Anker-Sørensen, „Regulating Sustainable Finance in the Dark”, *European Business Organization Law Review* 23/2022, 50-57; for a European Union outline overview, see: Györgyi Nyikos, „Fenntartható finanszírozás és fejlesztés. Stratégia és szabályozás: átvizsgálás a fenntartható finanszírozási modellekre”, Budapest 2022. [https://mersz.hu/dokumentum/m949ffef\\_\\_11](https://mersz.hu/dokumentum/m949ffef__11), 22 September 2022; Green Finance Report. Status Report on the Sustainability of the Hungarian financial system, 81 *et seq.*, <https://www.mnb.hu/letoltes/20210303-zold-penzugyi-jelentes-angol.pdf>, 22 September 2022; Sustainable Finance Roadmap 2022-2024, [https://www.esma.europa.eu/sites/default/files/library/esma30-379-1051\\_sustainable\\_finance\\_roadmap.pdf](https://www.esma.europa.eu/sites/default/files/library/esma30-379-1051_sustainable_finance_roadmap.pdf), 22 September 2022.

<sup>2</sup> András Kisfaludi, „Társasági jogviták választottbíróság előtt”, *Acta Conventus de Iure Civili Tomus X.* (szerk. Tekla Papp), Szeged 2009, 119.

<sup>3</sup> Lucian Bebchuk, Kobi Kastiel, Roberto Tallarita, „Does enlightened shareholder value add value?”, *The Business Lawyer* 77/2022, 1-29; Mark Fenwick et al, „ESG as a Business Model for SMEs”, *ECGI Working Paper Series in Law* May 2022, 3-4, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4098644](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4098644), 18 September 2022.

<sup>4</sup> Milton Friedman, *Capitalism and freedom*, Chicago 1962, 133 *et seq.*

<sup>5</sup> Balázs Bodzási, „A hosszú távú részvényesi (befektetői) szerepvállalás ösztönzésére irányuló uniós törekvések”, *Fontes Iuris* 2/2018, 32-33.

<sup>6</sup> R. Edward Freeman, *Strategic management: a stakeholder approach*, Cambridge 1984.

<sup>7</sup> Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

Agency theory relates to investor theory. It describes the conflicts of interest in the relationship between the principal [member(s) of the company] and the agent (operative body of the company: executive officers, management) and identifies attitudes toward managerial decisions made to operate the organization (member's control, liability of the executive officer, preference for short-term benefits: profit maximization versus day-to-day management requiring specialized knowledge tailored to growing company size).<sup>8</sup> The long-term benefits of the investor model, stewardship theory, focuses on the priorities arising from the alignment of management's responsible corporate asset management activities with organizational goals (confidence and mutual value building, managerial sense of duty and loyalty).<sup>9</sup>

Resource dependence theory links to the contractual model; it measures the success of an organization in terms of its ability to subordinate, coordinate and control its internal and external resources to the corporate goal (the role of management qualifications and experience in shaping internal and external organizational environments).<sup>10</sup>

The approach to the relationship systems within the company has become more nuanced and management oriented.

In addition to the examination of the diverging, converging and conflicting interests of the companies that form and are associated with the company, the interests of the company as an entity are also important: the theory and practice based on this is Corporate Social Responsibility (CSR),<sup>11</sup> on this ground of which a company also operates in accordance with ethical standards, meeting the requirements of responsible business and investment.<sup>12</sup> It appeared under the umbrella of CSR,<sup>13</sup>

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<sup>8</sup> Roya Derakshan, Rodney Turner, Mauro Mancini, „Project governance and stakeholders: a literature review”, *International Journal of Project Management* 37/2019, 99-100; Melinda Muth, Lex Donaldson, „Stewardship theory and board structure: a contingency approach”, *Scholarly Research and Theory Papers* 1/1998, 5-6.: managerial control; Lorraine Talbot, “The coming of shareholders stewardship”, *Legal Studies Research Paper* 22/2010, 5.

<sup>9</sup> R. Derakshan, R. Turner, M. Mancini, 99-100; M. M. Muth, L. Donaldson, 6.: managerial empowerment.

<sup>10</sup> R. Derakshan, R. Turner, M. Mancini, 99-100; M. M. Muth, L. Donaldson, 6.: co-optation.

<sup>11</sup> Alessio Paccès, „Sustainable corporate governance: the role of the law”, *Sustainable Finance in Europe, Corporate Governance, Financial Stability and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), Cham 2021, 151-174.

<sup>12</sup> Guido Ferrarini, „Redefining corporate purpose: sustainability as a game changer”, *Sustainable Finance in Europe, Corporate Governance, Financial Stability and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), Cham 2021, 99.

<sup>13</sup> Holger Fleischer, „Corporate purpose: a management concept and its implications for company law”, *European Company and Financial Law Review* 2/2021, 166-167; Edit Knoll-Csete, András Tóth, „Vállalatok társadalmi felelősségvállalása. A fenntartható gazdaság etikus marketing stratégiája”, *Glossa Iuridica* Különszám/2021, 157; Ádám Auer, *Corporate governance. A felelős társaságirányítás jelenkori dimenziói*, Budapest 2017, 26-27. Ádám Angyal worked on the subject in Hungary as a monograph. See: Ádám Angyal: *Vállalatok társadalmi felelőssége, felelős társaságirányítás. Corporate social responsibility*, Budapest 2009, 1-270; A. M. Paccès, 151-174; Livia

(as its ribs/spokes):<sup>14</sup> the corporate governance (CG),<sup>15</sup> the sustainable finance (SF), the corporate governance that takes environmental and social aspects into account (ESG: environmental social governance,<sup>16</sup> RBC: responsible business conduct)<sup>17</sup> and the concept of a higher social purpose that provides social legitimacy and “increasing its value”<sup>18</sup> (CP: corporate purpose),<sup>19</sup> which are connected to each other. There is a need to include public good / public interest CPs in the memorandum of association that also serve long-term corporate success, to vote (make decisions) based on company reports that also explain their implementation, and to establish dual-purpose companies (public benefit-oriented for-profit organizations: the Italian *società benefit*, the French *société à mission*, the American benefit corporation, the German *GmbH im Verantwortungseigentum*).<sup>20</sup>

Sustainable finance can be summarised very briefly as the way in which people with capital can invest their wealth, or part of it, in financial products that help to protect the environment and nature and to fight environmental crises.<sup>21</sup>

A study in the frame of the Studies in Banking and Capital Markets Law conducted by the European Banking Institute, analyzes the responsible corporate governance codes/recommendations of the EU Member States, including the Budapest Stock Exchange Corporate Governance Recommendations (BSE CGR or CGR),<sup>22</sup>

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Ventura: „Philanthropy and the For-profit Corporation: The Benefit Corporation as the New Form of Firm Altruism” *European Business Organization Law Review* 23/2022, 603-632.

<sup>14</sup> *Climate Change and Corporate Governance*, Corporate Governance, OECD Publishing, Paris, (17 June 2022) 14 *et seq.*, <https://doi.org/10.1787/272d85c3-en>, 18 September 2022.

<sup>15</sup> Auer, 26. For a brief summary of corporate governance, see also: János Dúl, *Gondolatok a corporate governance és az ököklési jog szinergiájáról*, Budapest 2019, 10-26.

<sup>16</sup> Fenwick et al, 7-12; <https://elemzeskozpont.hu/esg-befektetesek-mit-jelent-milyen-hozamalesz-mennyire-jo-az-esg>, 22 June 2022; Iris H-Y Chiu, Lin Lin, David Rouch, „Law and Regulation for Sustainable Finance”, *European Business Organization Law Review* 23/2022, 1-7; Iain MacNeil, Irene-marie Esser, „From a Financial to an Entity Model of ESG”, *European Business Organization Law Review* 23/2022, 9-45.; Celine Tan: „Private Investments, Public Goods: Regulating Markets for Sustainable Development”, *European Business Organization Law Review* 23/2022, 241-271; Gy. Nyikos, [https://mersz.hu/dokumentum/m949ffef\\_12](https://mersz.hu/dokumentum/m949ffef_12), 22 September 2022.

<sup>17</sup> Ágnes Puskás, „A felelős üzleti magatartás elveinek megjelenése az Európai Unióban”, *Közjogi Szemle* 1/2021, 38-44.

<sup>18</sup> European Model Company Act, Chapter 1 General Provisions and Principles, Section 1.06 Purpose of Company (1) <https://cesifin.it/wp-content/uploads/2018/09/EMCA.pdf>, 15 June 2022.

<sup>19</sup> G. Ferrarini, 100; H. Fleischer, 161-189; Colin Mayer, “The Governance of Corporate Purpose”, *ECGI Working Paper Series in Law. Working Paper* 609/2021. [https://ecgi.global/sites/default/files/working\\_papers/documents/mayerfinal\\_1.pdf](https://ecgi.global/sites/default/files/working_papers/documents/mayerfinal_1.pdf), 22 June 2022.

<sup>20</sup> H. Fleischer, 182-186; from other aspect see: G. Ferrarini, 108-118.

<sup>21</sup> See among others: Andrea Elekes, „Fenntartható növekedés – fenntartható pénzügyi szolgáltatások az Európai Unióban”, *Pénzügyi Szemle* 3/2018, 328-344; Ildikó Zsupanekné Palányi, „A fenntartható növekedés makrogazdasági és vállalati szinten”, *EU Working Paper* 4/2005, 49-59; E. Knoll-Csete, A. Tóth, 153-164.

<sup>22</sup> <https://www.bet.hu/Kibocsatok/Ajanlasok-kibocsatoknak/Felelos-tarsasagiranyitas>, 9 March 2022; the BSE is a soft law and has no additional function against Hungarian law. See:

in terms of CSR implications (Corporate Governance, Sustainable Finance, Environmental and Social Governance).<sup>23</sup> Regarding the examined sustainability factors, the Hungarian corporate governance recommendations were not well presented: the purpose of the CGRs is not linked to CSR, these do not contain the definition of CG in any interpretation, these do not cover sustainability requirements, and the stakeholders are mentioned but not defined. The CSR committee and the report on sustainability compensation and the enforcement of non-financial aspects (such as Environmental and Social Governance, ESG) and its publication were omitted, but these did include the validation of employee interests and the pursuit of gender balance, as well as ethical clauses (without a code of ethics).<sup>24</sup>

“Hungary is lagging behind in achieving the Sustainable Development Goals (SDGs), especially in terms of environmental goals. Hungary ranks 19th in Europe overall in terms of SDGs and faces significant challenges in terms of affordable and clean energy (Goal 7), climate protection (Goal 13) and the protection of terrestrial ecosystems (Goal 15). These not only threaten the quality of life of the population, the livability of our planet and our country, but also have a negative effect on long-term economic performance and, through this, on the financial system.”<sup>25</sup>

The Act XLIV of 2020 on climate protection confirms some of the already identified objectives, and sets new objectives, too, for Hungary:

- reduce greenhouse gas emissions by at least 40% until 2030 compared to 1990;
- in case final energy demand exceeds the level of 2005 after 2030, agree to use only carbon-neutral energy sources to satisfy extra demand;
- increase the share of renewable energy sources to at least 21% in the gross final energy consumption by 2030;
- achieve complete climate neutrality by 2050, i.e. make sure that the remaining domestic greenhouse gas emission and its absorption will be in balance by 2050.<sup>26</sup>

Some of these objectives also generate significant demand for investments; therefore it is necessary to create the best possible financing background.<sup>27</sup>

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András Peti, „Az állami vállalatok kormányzása és teljesítményközpontú felelős társaságirányítása”, Draft of PhD-dissertation, Budapest–Kolozsvár 2022, 120 *et seq.*

<sup>23</sup> Michele Siri, Shanshan Zhu, „Integrating sustainability in EU Corporate Governance Code”, *Sustainable Finance in Europe, Corporate Governance, Financial Stability and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), Cham 2021, 175-224.

<sup>24</sup> M. Siri, S. Zhu, 195-224.

<sup>25</sup> Green Finance Report. Status Report on the Sustainability of the Hungarian financial system, 7 and 14-16 <https://www.mnb.hu/letoltes/20210303-zold-penzugyi-jelentes-angol.pdf>, 22 September 2022.

<sup>26</sup> Act XLIV of 2020 Art. 3.

<sup>27</sup> Opportunities for jump-starting the green bond market in Hungary, 3 <https://www.mnb.hu/letoltes/opportunities-for-jump-starting-the-green-bond-market-in-hungary.pdf>, 22 September 2022.

## 2. THE ENCOURAGING LONG-TERM SHAREHOLDER ENGAGEMENT IN HUNGARY

### 2.1. The regulation of long-term shareholder engagement

The CSR is now a global operation that functions in accordance with multi-level sustainability criteria, and includes tools to encourage long-term shareholder engagement<sup>28</sup> by avoiding inadequate corporate governance and corporate performance resulting from short-term risk-taking.<sup>29</sup> The European Commission's Communication "Action Plan: European Company Law and Corporate Governance – A Modern Legal Framework for Greater Shareholder Involvement and Sustainable Companies",<sup>30</sup> which serves as a starting point for these goals, is rooted in the interpretations detailed in the Introduction. The personal scope of Directive 2017/828/EU on the promotion of long-term shareholder engagement, based on the Action Plan, covers listed companies, institutional investors and asset managers in EU Member States, as well as shareholder representation advisers.<sup>31</sup> The main regulatory directions of Directive 2017/828/EU, approaching the approach described above and focusing specifically on the company law aspects,<sup>32</sup> are as follows:

- the identification of shareholders in order to facilitate the exercise of shareholder rights and direct communication between the company and the shareholder,<sup>33</sup>
- the proof that the votes have been taken into account in connection with the exercise of shareholder rights,<sup>34</sup>
- the impact of shareholders to the remuneration of company directors,<sup>35</sup> and
- the approval of the company's transactions with related customers.<sup>36</sup>

The engagement policy is not mandatory in Austria<sup>37</sup> and in Poland:<sup>38</sup> it purely functions on practise comply-or-explain. The Italian Corporate Governance

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<sup>28</sup> Iris H-Y Chiu, „Governing the purpose of investment management: how the 'stewardship' norm is being (re)developed in the UK and EU”, *ECGI Working Paper Series in Law* August/2021, 1-45.

<sup>29</sup> 2017/828/EU Directive Preamble (2).

<sup>30</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0740:FIN:EN:PDF>, 18 September 2022.

<sup>31</sup> 2017/828/EU Directive Art. 1, para. (1), pt. (a).

<sup>32</sup> Without prejudice to the transparency of the investment strategy of institutional investors and asset managers; see Preamble 14 to 23 and the role of shareholder representation advisers; see Preamble (25) to (26) and sanctions [see Preamble (50)].

<sup>33</sup> 2017/828/EU Directive Preamble (4)-(7).

<sup>34</sup> 2017/828/EU Directive Preamble (8)-(11).

<sup>35</sup> 2017/828/EU Directive Preamble (28)-(41).

<sup>36</sup> 2017/828/EU Directive Preamble (42)-(44).

<sup>37</sup> Philipp Fidler, Martin Winner, „Country Report Austria”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law.

<sup>38</sup> Krzysztof Oplustil, Anne-Marie Weber, „Country Report Poland”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law, 1-4.

Code recommends connecting of the remuneration policy and the performance of company in terms of ESG requirements.<sup>39</sup> The Stock Exchanges in Warsaw<sup>40</sup> and in Budapest<sup>41</sup> published an ESG Guidelines for reporting for listed companies.

The idea of a company articulating long-term sustainability operations and shareholder engagement has already been the subject of numerous criticisms in the European literature.<sup>42</sup> Based on the diverse shareholder composition of listed companies, the critiques draw attention to the passive behaviour of shareholders (they do not seek to make informed and factual decisions) and their willingness<sup>43</sup> to make only low-cost and short-term profits.<sup>44</sup> Some evaluations link low-quality corporate governance reports to low-level shareholder engagement (their lack of interest in corporate governance and risk management) and point to the problem that shareholder engagement does not necessarily require an immediate return investment;<sup>45</sup> the opposite experience is observed for the Swedish (and Nordic) corporate governance model.<sup>46</sup> From the point of view of shareholder rights, the lack of exercising shareholder control and the role of corporate self-promotion in linking sustainability goals are identified as problems.<sup>47</sup> It should also be noted that in German company law, the extension of the powers of general meetings of public limited companies to include ESG-consultative powers has not been typical so far.<sup>48</sup>

## 2.2. The identification of shareholders by the company in Hungary

The regulation on the identification of shareholders by the company in order to facilitate the exercise of shareholder rights and direct communication between the company and the shareholder has remained unchanged in the Act V of 2013 on

<sup>39</sup> Marco Lamandini, Elia Garcia Cerrato, „The Italian implementation of the European Acquis on Sustainable Finance: A Country Report”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law, 3.

<sup>40</sup> K. Oplustil, A-M. Weber, 1-4.

<sup>41</sup> <https://www.bet.hu/Kibocsatok/Ajanlasok-kibocsatoknak/bet-esg-esg-guide>, 17 June 2022.

<sup>42</sup> Alain Pietrancosta, „Codification in Company Law of General CSR Requirements: Pioneering Recent French Reforms and EU Perspectives”, *ECGI Working Paper Series in Law* 639/2022. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4083398](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4083398), 18 September 2022.

<sup>43</sup> Demetra Arsalidou, „Institutional investors, behavioural economics and the concept of stewardship”, *Law and Financial Markets Review* 11/2012, 412.

<sup>44</sup> I. H-Y Chiu, 6.

<sup>45</sup> Eva Micheler, „Facilitating investor engagement and stewardship”, *European Business Organization Law Review* 14/2013, 32 *et seq.*

<sup>46</sup> Erik Lidman, „Country Report Sweden, The role of the national corporate governance systems in sustainable finance and trading”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law.

<sup>47</sup> Rocco Mezzatesta, *Shareholder stewardship: global trends and challenges*. 11 *et seq.* [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3730129](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3730129), 18 September 2022.

<sup>48</sup> Philipp Jaspers, *Sustainable Shareholder Activism – bald auch in Deutschland?*, <https://blog.otto-schmidt.de/gesellschaftsrecht/2022/01/31/sustainableshareholderactivism2/>, 20 March 2022.

Civil Code<sup>49</sup> (HCC): the rules for shareholder quality certification<sup>50</sup> and ownership matching<sup>51</sup> have not changed. The implementing act<sup>52</sup> establishes the company's right to identify its shareholders, with reference to the European Commission's Implementing Regulation<sup>53</sup> on the details, and shortly amended Act CXXXVIII of 2007 on investment enterprises and commodity exchange service providers and Act CXX of 2001 on capital market; these modifications are the following:

- the provision of data by the securities account manager to the public company limited by shares to provide shareholder identification to the public company limited by shares does not constitute a breach of securities secrecy;<sup>54</sup>
- the ownership matching shall be carried out without prejudice to the shareholder identification requirements provided for in a separate legal act for a public company limited by shares.<sup>55</sup>

The BSE CGRs<sup>56</sup> do not contain a recommendation regarding the identification of shareholders, nor is there any reference to a new type of shareholder identification on the websites of the examined Hungarian listed companies: there is no trace of any information for their members [*Magyar Olaj- és Gázipari Nyrt.* (MOL), *OTP Bank Nyrt.*, *Richter Gedeon*, *Zwack Unicum*, and *Magyar Telekom*].<sup>57</sup>

### 2.3. The confirmation of the shareholder's voting in Hungary

The Implementing Regulation of the European Commission applies a four-step solution to the assurance and verification of the exercise of shareholder rights: identification of the shareholder, confirmation of the right to exercise the shareholder's rights at the general meeting, notification of participation in the general

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<sup>49</sup> We used the translation of Ministry of Justice of Hungary for terminus technicus, therefore in case of the Hungarian Civil Code we use the term "Section" instead of "Article" among others. [https://njt.hu/translation/J2013T0005P\\_20210701\\_FIN.PDF](https://njt.hu/translation/J2013T0005P_20210701_FIN.PDF), 18 September 2022.

<sup>50</sup> HCC Section 3:254.

<sup>51</sup> HCC Section 3:248.

<sup>52</sup> Act LXVII of 2019 on the encouraging of long-term shareholder engagement and the amendment of certain laws for the purpose of legal harmonization.

<sup>53</sup> Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights.

<sup>54</sup> Act CXXXVIII of 2007 Art. 120.

<sup>55</sup> Act CXX of 2001 Art. 149 para. (1).

<sup>56</sup> <https://www.bet.hu/Kibocsatok/Ajanlasok-kibocsatoknak/Felelos-tarsasagiranyitas>, 1. The shareholders' rights and the general meeting, 22 March 2022.

<sup>57</sup> <https://molgroup.info/hu/befektetoi-kapcsolatok/kozgyules>; [https://www.otpbank.hu/static/portal/sw/file/220311\\_kgy\\_hird\\_027.pdf](https://www.otpbank.hu/static/portal/sw/file/220311_kgy_hird_027.pdf); <https://www.gedeonrichter.com/hu-hu/befektetok/kozgyulesek>; <https://www.zwackunicum.hu/hu/befektetoknek/kozgyulesek/> [https://www.telekom.hu/rolunk/befektetoknek/befektetoi\\_kozlemenyek/2022/marcius\\_10](https://www.telekom.hu/rolunk/befektetoknek/befektetoi_kozlemenyek/2022/marcius_10), 22 March 2022.



meeting and formalizing the confirmation of the casting, recording and counting of the vote.<sup>58</sup> The implementing act amended the Civil Code only with regard to the provability of the vote, but not in full and with respect to the same voting moment:

- at the request of a shareholder, the board of directors shall confirm to the shareholder, or a person designated by him that the shareholder's vote has been duly *recorded and counted* at the general meeting, unless the necessary information is available to the shareholder;<sup>59</sup>
- if a vote is taken at a conference general meeting by electronic means, it shall be ensured that the shareholder voting by electronic means receives an electronic confirmation of the *casting* of the vote.<sup>60</sup>

The implementing act<sup>61</sup> penalizes the failure to confirm the vote (treated as a corporate obligation): in such a case, the shareholder may initiate a judicial review of the resolution passed by the general meeting (even if he or she has consented to the resolution). We do not consider this legislation to be an adequate solution because

- the decision is not illegal here; it does not infringe any law or the memorandum of association;
- here the participation in the decision-making/voting and the vote were not confirmed. In this case, it is not a question of the shareholder not being able to exercise his/her voting rights, but of the fact that the public company limited by shares does not prove that the voting process per shareholder (voting/casting the vote, recording, counting and confirming) has taken place in accordance with legal regulations. In view of this, and taking into account who is entitled to sue in the judicial review of decisions (a person who has not consented to the adoption of a decision by a vote),<sup>62</sup> and without breaking this clause, we consider it much more appropriate to initiate the judicial oversight proceedings of the court of registration: judicial oversight proceedings are appropriate if ... the firm does not comply with the legal provisions concerning its organization and operation and the provisions of its memorandum of association during its operation.<sup>63</sup>

The BSE CGRs<sup>64</sup> do not contain any express recommendation or reference to the certificates, nor does the website of the studied Hungarian listed [*Magyar*

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<sup>58</sup> 2018/1212/EU Regulation Art. 4 and Schedule 3, Art. 5 and Schedule 4, Art. 6 and Schedule 5, Art. 7 and Schedules 6, 7.

<sup>59</sup> HCC Section 3:273 para. (5): participation in the general meeting.

<sup>60</sup> HCC Section 3:281 para. (3): conduct of a conference general meeting.

<sup>61</sup> Act LXVII of 2019 Art. 7 para. (3).

<sup>62</sup> HCC Section 3:34.

<sup>63</sup> Act V of 2006 on firm disclosure, firm court procedure and winding-up proceeding Art. 74 para. (1).

<sup>64</sup> Neither at 1.2. The convening of a general meeting, 1.3. The holding of a general meeting, nor at 1.4. The other matters concerning the general meeting. <https://www.bet.hu/Kibocsatok/Ajanlasok-kibocsatoknak/Felelos-tarsasagiranyitas>, 25 March 2022.

*Olaj- és Gázipari Nyrt. (MOL), OTP Bank Nyrt., Richter Gedeon, Zwack Unicum, and Magyar Telekom].*<sup>65</sup>

## **2.4. The remuneration policy and report of company directors in Hungary**

The Hungarian implementing legislation<sup>66</sup> applies a consultative solution to the remuneration policy and reporting of directors: shareholders only could express their views and in the event of a resolution of the general meeting rejecting the remuneration policy, but the payments must be made to the company's directors on the ground of rejected remuneration policy. The consultative powers of the general meeting of public companies limited by shares are strange in company law with German roots: first, this implementing act establishes this new type of competence of general meeting in Hungarian company law. In our view, with this regulation, the shareholders and the general meeting were given “likelihood” authority: the Hungarian Civil Code regulates that in the event of a significant change in the remuneration policy, but at least every four years, it shall be placed on the agenda of the general meeting.<sup>67</sup> The new competence of the supreme body of public company limited by shares or triggers a continuous dialogue and cooperation between the decision-making and the operating bodies in order for the company to operate for legitimate and public interest purposes, or results in the management becoming self-sufficient and the opinion of the general meeting on the remuneration policy not being validated. The BSE CGRs show a passive attitude, arranged to wait; reference to that some practical experiences will be summarized after a few years later.<sup>68</sup> The websites of the examined Hungarian listed companies show a somewhat mixed picture:

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<sup>65</sup> <https://molgroup.info/hu/befektetoi-kapcsolatok/kozgyules>; [https://www.otpbank.hu/static/portal/sw/file/220311\\_kgy\\_hird\\_027.pdf](https://www.otpbank.hu/static/portal/sw/file/220311_kgy_hird_027.pdf); <https://www.gedeonrichter.com/hu-hu/befektetok/kozgyulesek>; <https://zwackunicum.hu/hu/befektetoknek/kozgyulesek/> [https://www.telekom.hu/rolunk/befektetoknek/befektetoi\\_kozlemenyek/2022/marcius\\_10](https://www.telekom.hu/rolunk/befektetoknek/befektetoi_kozlemenyek/2022/marcius_10), 25 March 2022.

<sup>66</sup> Act LXVII of 2019 Art. 16 para. (5).

<sup>67</sup> HCC Section 3:268 para. (2).

<sup>68</sup> 1.5. Remuneration – Repealed: During the 2020 review of the recommendations, the Corporate Governance Committee repealed the recommendations in Chapter 1.5 and Section 1.6.7 on remuneration and amended Sections 1.6.2, 1.6.9 and 2.2.2 points and No. 1. Annex accordingly, having regard to the fact that, from July 2019, the rules on remuneration are laid down in Article LXVII of 2019 settled these. However, the Committee intends to make explanatory and guidance recommendations to issuers in the future to supplement these legal provisions, but this will require the development of practices related to the new legal provisions. The new recommendations and proposals that will be adopted by the Corporate Governance Committee, which will replace the repealed points, will summarize these practical experiences. <https://www.bet.hu/Kibocsatok/Ajanlasok-kibocsatoknak/Felelos-tarsasagiranyitas>, 27 March 2022.

- MOL published its detailed remuneration policy,<sup>69</sup>
- OTP, Zwack Unicum and Hungarian Telekom included less detailed remuneration guidelines on their websites,<sup>70</sup>
- Richter Gedeon's remuneration policy is not published on the website, it can only be concluded that there is: from the 2022 general meeting proposal.<sup>71</sup>

And these public companies limited by shares did not make easier to find their remuneration reports: they can be accessed with a few searches and many clicks on their websites, at the end of the general meeting submissions.<sup>72</sup>

## 2.5. The transactions with related partners in Hungary

The implementing act, generally, gives the company's management the power to approve transactions with related parties,<sup>73</sup> allowing a derogation from the company's articles of association to refer matters to the general meeting or supervisory board (provided that the company has a dualistic organizational model). In line with the preamble to EU Directive,<sup>74</sup> we find the interests of companies and shareholders to be better served and more appropriate in terms of legal certainty, for the supreme body (general meeting) or internal controlling body (supervisory board) to have the power to validate or invalidate the transactions with related parties. On the other hand, we consider the provision that the person directly involved in the related party transaction, including the person concerned is the related party, not to be involved in the approval decision,<sup>75</sup> to be correct.

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<sup>69</sup> [https://molgroup.info/storage/documents/altalanos\\_dokumentumok/fobb\\_tarsasagiranyitasi\\_dokumentumok/mol\\_remuneration\\_policy\\_2020\\_hun.pdf](https://molgroup.info/storage/documents/altalanos_dokumentumok/fobb_tarsasagiranyitasi_dokumentumok/mol_remuneration_policy_2020_hun.pdf), 10 April 2022.

<sup>70</sup> <https://docplayer.hu/30422536-Az-otp-bank-nyrt-javadalmazasi-iranyelvei.html>; [https://zwackunicum.hu/files/befektetoknek\\_vallalatiranyitasi-elvek\\_ertekelesi-es-javadalmazasi-iranyelvek\\_hu\\_1559567250/zwk20200625\\_or03h.pdf](https://zwackunicum.hu/files/befektetoknek_vallalatiranyitasi-elvek_ertekelesi-es-javadalmazasi-iranyelvek_hu_1559567250/zwk20200625_or03h.pdf); <https://www.telekom.hu/static-tr/sw/file/2020-AGM-Javadalmazasi-Politika.pdf>, 10 April 2022.

<sup>71</sup> <https://bet.hu/newkibdata/128693174/Igazgatosag%20eloterjesztese%20a%202022%20evi%20kozgyulesre.pdf>, 10 April 2022.

<sup>72</sup> [https://molgroup.info/storage/documents/eves\\_rendes\\_kozgyules/agm\\_documents\\_2022\\_hu.pdf](https://molgroup.info/storage/documents/eves_rendes_kozgyules/agm_documents_2022_hu.pdf); [https://www.otpbank.hu/static/portal/sw/file/220322\\_kozgy\\_eloterjesztések\\_h.pdf](https://www.otpbank.hu/static/portal/sw/file/220322_kozgy_eloterjesztések_h.pdf); <https://bet.hu/newkibdata/128693174/Igazgatosag%20eloterjesztese%20a%202022%20evi%20kozgyulesre.pdf>; [https://zwackunicum.hu/files/befektetoknek\\_tozsdei-bejelentések\\_2021\\_javadalmazasi-nyilatkozat\\_hu\\_1622014405/zwk20210526or\\_02h.pdf](https://zwackunicum.hu/files/befektetoknek_tozsdei-bejelentések_2021_javadalmazasi-nyilatkozat_hu_1622014405/zwk20210526or_02h.pdf); [https://www.telekom.hu/static-tr/sw/file/2022-AGM\\_eloterjesztések\\_0321\\_boritoval.pdf](https://www.telekom.hu/static-tr/sw/file/2022-AGM_eloterjesztések_0321_boritoval.pdf), 10 April 2022.

<sup>73</sup> Act LXVII of 2019 Art. 25 para. (1).

<sup>74</sup> 2017/828/EU Directive Preamble (42).

<sup>75</sup> Act LXVII of 2019 Art. 25 para. (3).

### 3. APPEARANCE OF FINANCIAL GOVERNANCE AND PRODUCT GOVERNANCE IN HUNGARY

#### 3.1. ESG and the European Union

At the end of 2016,<sup>76</sup> the Commission appointed a High Level Expert Group on Sustainable Finance, which published a report outlining a comprehensive vision on how to develop a sustainable financing strategy for the EU. Based on the recommendations of the High Level Expert Group, the Commission presented the "Action Plan: Financing Sustainable Growth."<sup>77</sup> The European Commission appointed in late 2019 has promised to implement a Green Deal Action Plan and adopted a Strategy for financing the transition into a sustainable economy in two steps on 21 April 2021 and 6 July 2021, with a view to accelerating the efforts which the previous European Commission had proposed as the before-mentioned Sustainable Finance Action Plan in March 2018.<sup>78</sup> Therefore, the EU's sustainable finance reforms include the Sustainability Disclosure Regulation 2019 and Taxonomy Regulation 2020, as well as follow-on initiatives for the regulation of investment firms, funds and benchmarks.<sup>79</sup>

As the society is increasingly faced with the catastrophic and unpredictable consequences of climate change and resource depletion, urgent action is needed to adapt public policies to this new reality. The financial system has a key role to play here.<sup>80</sup> The EU's sustainable finance and climate change agenda has brought forward a package of sustainable finance legislation. The Taxonomy Regulations sit alongside the Sustainable Finance Disclosure Regulations (SFDR) and the Low Carbon Benchmarks Regulation as part of this package. The Taxonomy Regulation establishes an EU framework for classification of sustainable economic activities. It aims to provide transparency to investors and businesses and to prevent "green-washing" by defining the criteria under which a financial product or activity can be described as "environmentally sustainable".<sup>81</sup>

ESG seems to be at a very early stage in Europe, and there are only limited empirical data; it is only used for short-term loans, such as construction financing.

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<sup>76</sup> For antecedents see: Nicolas de Sadeleer, „Sustainable development in EU law: still a long way to go”, *Jindal Global Law Review* 1/2015, 39–60.

<sup>77</sup> Communication 2; <https://eionet.kormany.hu/fenmtarthato-finansziroz-as-velemenyez-es-re>, 22 June 2022.

<sup>78</sup> D. A. Zetzsche, L. Anker-Sørensen, 48.

<sup>79</sup> Iris H-Y Chiu, „The EU Sustainable Finance Agenda: Developing Governance for Double Materiality in Sustainability Metrics”, *European Business Organization Law Review* 23/2022, 88.

<sup>80</sup> Communication 1.

<sup>81</sup> Taxonomy Regulation Disclosures. A snapshot, <https://assets.kpmg/content/dam/kpmg/ie/pdf/2021/06/ie-taxonomy-regulation-disclosures.pdf>, 22 June 2022.

Of course, these focus mainly on environmental or climate issues.<sup>82</sup> In Poland, due to a crawling market of ESG-driven financial products, neither national ESG quality seals, national regulation, national supervisory practice nor national case law on liability claims regarding sustainable trading have emerged so far.<sup>83</sup>

### 3.2. On the role of Hungarian National Bank

The intention of Hungarian National Bank (HNB) as a supervisory authority is to make the green, sustainable, investment and savings and expand the range of credit products and information on product offerings for investors be more informative, understandable and reliable, for which SFDR is an extremely important structural means a step.<sup>84</sup> “Association of Hungarian Investment Fund and Asset Management Companies maintains a register of ESG-rated valuation companies accepted by the market and publishes up-to-date on its website ([www.bamosz.hu](http://www.bamosz.hu)) the most important data of the investment funds managed by its members, which will include the fund from 1 January 2021. It is also a category according to ESG criteria. Investors interested in such products will easily find these funds on the website.”<sup>85</sup>

Institutional investors (investment funds, pension funds, life insurance companies) are becoming increasingly dominant in raising funds from households and are using part of these funds to buy bonds issued by banks on the markets, thus wedging themselves between savers and banks on the funding side in Hungary, too.<sup>86</sup> Despite the impact of the epidemic, the institutional investment sector has grown. At the same time, institutions faced increasing volatility risks and asset depreciation,<sup>87</sup> and assets managed by institutional investors as a share of GDP remain below the EU average.<sup>88</sup> Looking at the issuers, the top 3 stocks in terms

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<sup>82</sup> “Sustainable Finance and Ownership – a Danish Perspective”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law.

<sup>83</sup> K. Oplustil, A-M. Weber, 1-4.

<sup>84</sup> Executive circular of HNB 17 March 2021 2 <https://www.mnb.hu/letoltes/129526-3-2021-sfdr-vezetoi-korlevel.pdf>, 22 June 2022. See also: Green Finance in Hungary. Consultation document by the Central Bank of Hungary 4, <https://www.mnb.hu/letoltes/green-finance-in-hungary-consultation-paper.pdf>, 22 September 2022.

<sup>85</sup> <https://www2.deloitte.com/hu/hu/pages/jog/articles/befektetesi-alapok-esg-minosites.html>, 22 June 2022.

<sup>86</sup> András Bethlendi, Katalin Mérő, „A pénzügyi közvetítés struktúrájának változásai – a kelet-közép-európai régió speciális fejlődése a nemzetközi és európai folyamatok tükrében”, *Külgazdaság* 3-4/2020, 47.

<sup>87</sup> <https://www.napi.hu/magyar-vallalatok/viharos-idokban-is-megoriztek-stabilitasukat-az-intezmenyi-befektetok-biztosito-penztar-alapkezeslo-brokerceg.754298.html>, 22 June 2022.

<sup>88</sup> Magyar Nemzeti Bank: Biztosítási, pénztári, tőkepiaci kockázati és fogyasztóvédelmi jelentés 2022. (Report 2022) 7, <https://mnb.hu/letoltes/kockazati-jelentes-2022-hun-0613-2.pdf>, 22 June 2022.

of stock market turnover – OTP (banking sector), MOL (petrol sector), Richter (pharmaceutical sector) – remain unchanged in 2021, but their order has changed: OTP remained in first place, while Richter, which was second in 2020, has slipped to third place in 2021, replaced by MOL. Equity market concentration in 2021 increased further from its previous high level: the share of the 3 largest issuers in total equity market turnover increased from 92.8% in 2020 to 93.5% in 2021 (83.4% in 2019).<sup>89</sup>

### 3.3. Certain aspects of Product Governance

The label “Product Governance” originates from Commission Delegated Directive (EU) 2017/593 supplements Directive 2014/65/EU of the European Parliament and of the Council (MiFID II). Among its core elements is the regulatory obligation for financial service providers to approve formally newly issued financial products and to continuously monitor product distribution, including distribution chains. The original aim of the regulation was to prevent “dangerous” financial products with excessively high-risk potential from coming into circulation in the first place. MiFID II by further specifying, among other things, product governance obligations. This Directive clarifies that sustainability factors and sustainability related objectives should be taken into account in both the product oversight and governance process.<sup>90</sup> “Product governance” has so far been synonymous with risk avoidance to protect the end customer. The system of product approval and monitoring according to MiFID II has so far been designed to eliminate “dangerous” financial products from the market, i.e. to consistently restrict the market. In German law, the “ultimately responsible” distributor in the retail business must work towards such a restriction by issuing warning notices.<sup>91</sup>

In view of the EU’s ESG ambitions, several amendments are underway affecting the investment services industry. MiFID II introduced several requirements applicable to financial market participants providing investment services, including in relation to their own governance, product manufacturing and distribution (“product governance”) and transparency. These rules are amended and integrated to ensure that sustainability and ESG become part of the DNA of investment firms.<sup>92</sup>

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<sup>89</sup> Report 2022, 111.

<sup>90</sup> See also: M. Lamandini, E. G. Cerrato, 9. E. Lidman, 27.

<sup>91</sup> Jens Ekkenga, “Sustainable Finance in the EU. German Report – Guidelines”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law. See further: Antonio Marcacci, „European Regulatory Private Law Going Global? The Case of Product Governance”, *Eur Bus Org Law Rev* 18/2017, 305–332.

<sup>92</sup> Marieke Driessen, „Sustainable Finance: „An Overview of ESG in the Financial Markets”, *Sustainable Finance in Europe, Corporate Governance, Financial Stability and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), Cham 2021, 346.

Financial markets have focused on sustainable finance already for many years, without a legal and regulatory framework imposing such focus on them. The EU legislator has taken inspiration from current market practices and seeks to accelerate the move to “green finance” by elevating existing market principles and guidelines to legal requirements applicable to all throughout the European Union.<sup>93</sup>

Compliance with the relevant EU rules in Hungary can be found in Act CXXXVIII of 2007, in the Decree<sup>94</sup> of the Ministry of National Economy on the product approval process to be applied by the investment enterprise, and in the Recommendation<sup>95</sup> of the Hungarian National Bank in relation to product approval requirements governing the capital market.

### 3.4. The rating of financial products

An investment enterprise that develops financial instruments for sale to clients shall maintain, operate and review a process for approving individual financial instruments and approving significant adjustments to existing financial instruments (“product approval process”) before placing a financial instrument on the market or distribute to customers.<sup>96</sup> The product approval process establishes the identified end-user target market within each customer category of financial instruments and ensures that all relevant risks in that identified target market are assessed and that the planned marketing strategy is appropriate to the identified target market.<sup>97</sup>

An investment enterprise that develops financial instruments shall make available to any distributor all information regarding the financial instrument and the product approval process, including the identified target market for the financial instruments.<sup>98</sup> In Ireland, for example, the product approval includes the determination of “an identified target market of end clients within the relevant category of clients for each financial instrument” making sure that “all relevant risks to the identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.”<sup>99</sup> However, no specific guidelines have

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<sup>93</sup> M. Driessen, 350. See also: Veerle Colaert, „Integrating Sustainable Finance into the MiFID II and IDD Investor Protection Frameworks”, *Sustainable Finance in Europe, Corporate Governance, Financial Stability and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), Cham 2021, 462-468.

<sup>94</sup> 16/2017. (VI. 30.) Decree of the Ministry of National Economy.

<sup>95</sup> 25/2018. (VII. 5.) Recommendation of the Hungarian National Bank.

<sup>96</sup> Act CXXXVIII of 2007 Art. 17/A para. (1).

<sup>97</sup> Act CXXXVIII of 2007 Art. 17/A para. (2). See also: E. Lidman, 28-29.

<sup>98</sup> Act CXXXVIII of 2007 Art. 17/A para. (4).

<sup>99</sup> Blanaid Clarke, Felix Mezzanotte, “Sustainable Finance: Ireland. April 2022. Handout”, *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law, 41.

been created by the Central Bank of Ireland on product governance, and the industry has relied on the detailed explanations found in the European Securities and Markets Authority's (ESMA) MiFID II Product Governance Guidelines.<sup>100</sup>

In the area of risk rating of products, the HNB identified anomalies at several institutions, where the risk ratings assigned to certain products or product groups by the service provider did not reflect the actual risk of the products or where products with different risk ratings according to objective measures were assigned similar risk ratings. These anomalies have been addressed by the HNB in individual institutional decisions, but the importance of doing so has also been highlighted in the Circular, to ensure that the classification is based on a documented, traceable methodology.<sup>101</sup> From this point of view, Hungary has a better standpoint compared to Ireland.

### 3.5. Determination of target market

For a financial instrument, the investment enterprise shall identify the potential target market in sufficient detail and identify the type or types of clients for which the financial instrument is compatible with its needs, characteristics, and purposes. As part of this process, the investment enterprise shall identify the group or groups of clients whose needs, characteristics and objectives are incompatible with the financial instrument.<sup>102</sup> The investment enterprise shall decide on the suitability of the financial instrument for the identified needs, characteristics and objectives of the target market, in particular the compatibility of the risk and reward profile of the financial instrument with the target market, and ensures that the design of the financial instrument is guided by characteristics that benefit the client and does not use a business model that results in a loss to the client.<sup>103</sup>

By publishing 25/2018. (VII. 5.) HNB Recommendation, the HNB ensures compliance with the European Securities and Markets Authority's Guidelines on MiFID II requirements for product governance. The potential target market cannot be identified solely based on quantitative criteria; the designer must also take due account of qualitative aspects. For mass-market services, process automation based on formulae or algorithm-based methods that process quantitative criteria for products and customers may be relevant. The HNB expects that the enterprise should not rely exclusively on quantitative criteria when identifying the target market but should also balance them with qualitative criteria to a sufficient extent.<sup>104</sup>

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<sup>100</sup> Ibid, 48.

<sup>101</sup> Report 2022, 125.

<sup>102</sup> 16/2017. (VI. 30.) Decree of the Ministry of National Economy Art. 5 para. (1).

<sup>103</sup> 16/2017. (VI. 30.) Decree of the Ministry of National Economy Art. 5 para. (4).

<sup>104</sup> 25/2018. (VII. 5.) Recommendation of HNB Point 3.



The identification of a potential target market by the developer, categories to be examined are set out in Point 8 of 25/2018. (VII. 5.) Recommendation of HNB.

To strengthen supervisory convergence, ESMA has requested the involvement of supervisors in this area, and in 2021 the HNB launched a thematic study for the third time, this time involving 16 institutions. The thematic study will be completed in 2022. The HNB did not detect any serious irregularities but identified practices of concern from a consumer protection perspective at several institutions. A recurring problem was that the target market criteria for certain products and product groups were not always properly established. In some cases, some elements of the criteria required by the HNB were not assessed, while in others, although all criteria were included in the assessment, there was insufficient differentiation between products or inadequate target market characterisation for higher risk products.<sup>105</sup>

The investment enterprise shall regularly review the financial instruments it offers or places on the market, taking into account any event that may materially affect the potential risk of the identified target market, at least to assess whether the financial instrument continues to meet the identified target market and whether the planned marketing strategy remains appropriate.<sup>106</sup> The HNB expects regular reviews to take place at least annually.<sup>107</sup> In Italy, Legislative decree 254/2016 on the disclosure of non-financial information, which implemented EU Directive 2014/95 in Italy, requires public-interest entities to report periodically sustainability information, including the company's business activity impact on environmental, social, anti/corruption and human rights matters.<sup>108</sup> We are convinced that the scope of the before-mentioned reviews should be widened to cover more aspects, like human rights matters in Italy. One can say these reviews would more complicated, however, the effects of financial market have a big influence on these rights even though these effects have only indirect ways. The financing of a polluting industrial branch could affect for example the health of people.

The aim of the HNB is to facilitate the transition of domestic credit institutions to sustainable operations and to prepare them opportunity in terms of climate change and environmental risks relevant legislative changes: in this respect, the website "www.zoldpenzogyek.hu" was created. The "Knowledge Base" section provides practical help with examples, good practices and usable data, and a collection of methodological resources.<sup>109</sup>

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<sup>105</sup> Report 2022, 127.

<sup>106</sup> Act CXXXVIII of 2007 Art. 17/A para. (3).

<sup>107</sup> 25/2018. (VII. 5.) Recommendation of HNB Point 46. Just like in Ireland, see: B. Clarke, F. Mezzanotte, 54-55.

<sup>108</sup> PIEs are defined in Art. 16 of Legislative Decree 39/2010 as national companies issuing securities admitted to trading in national and European markets; banks; insurance and reinsurance companies with registered office in Italy. See: M. Lamandini, E. G. Cerrato, 10.

<sup>109</sup> 5/2021. (IV. 15.) Recommendation of HNB Point I.

### 3.6. Issue of greenwashing

The HNB conducted a long-term climate stress test to identify systemic risks arising from climate change and environmental degradation.<sup>110</sup> According to the HNB, it is important to avoid that any expanding green funding turns green transactions and products that have been set up but do not have an actual environmental benefit: this is the definition of risk of greenwashing.<sup>111</sup> There are several definitions for greenwashing, one of them is the following: “practice of promoting environmentally friendly programs to deflect attention from an organization’s environmentally unfriendly or less savoury activities”.<sup>112</sup> A more appropriate definition is when greenwashing “intuitively refers to market practices, both intentional and unintentional, whereby the publicly disclosed sustainability profile of an issuer and the characteristics and / or objectives of a financial instrument or a financial product either by action or omission do not properly reflect the underlying sustainability risks and impacts associated to that issuer, financial instrument or financial product”.<sup>113</sup>

As to appearance of greenwashing in everyday life, in Italy there has been at least one case of private litigation for “greenwashing” decided by the Tribunal of Gorizia, with interim measures of cease and desist granted on 26 November 2021 (such interim measures have been revoked, though, on appeal, in March 2022).<sup>114</sup>

The HNB will analyse in detail the extent to which it is appropriate to rely on external rating agencies in connection with green products. Based on the experience abroad, the range of possibilities is very wide: it is conceivable that certification companies offering affordable services and satisfactory they provide a (purely market) solution, but there is also an example of a well-functioning model in which non-profit organizations, perhaps a public institute, play this role.<sup>115</sup> The HNB stated in a report that the delay in EU sustainability regulation is a major challenge for fund managers. In an uncertain environment, the risk of greenwashing, the sale of fake green products, increases.<sup>116</sup>

As we are examining other European countries, there is no specific Swedish regulation on greenwashing today, that is, other than the general rules on that

<sup>110</sup> Viktória Deák, „MNB Zöld Program”, *Polgári Szemle* 4–6/2021, 109.

<sup>111</sup> <https://www.mnb.hu/letoltes/zold-penzugyek-konzultacios-dokumentum-2.pdf>, 22 June 2022.

<sup>112</sup> S. Vieira de Freitas Netto *et al.*, „Concepts and forms of greenwashing: a systematic review”, *Environmental Sciences Europe* 19/2020, 1–12. <https://doi.org/10.1186/s12302-020-0300-3>.

<sup>113</sup> Sustainable Finance Roadmap 2022–2024, 8, see also 11 *et seq.*, [https://www.esma.europa.eu/sites/default/files/library/esma30-379-1051\\_sustainable\\_finance\\_roadmap.pdf](https://www.esma.europa.eu/sites/default/files/library/esma30-379-1051_sustainable_finance_roadmap.pdf), 22 September 2022.

<sup>114</sup> M. Lamandini, E. G. Cerrato, 13. See also B. Clarke, F. Mezzanotte, 59.

<sup>115</sup> <https://www.mnb.hu/letoltes/zold-penzugyek-konzultacios-dokumentum-2.pdf>, 22 June 2022. See more in the Green Financial Product Search Concept of HNB (professional consultation document) <https://www.mnb.hu/letoltes/mnb-zold-penzugyi-termekkereso-szakmai-konzultacios-dokumentum-ifua-final.pdf>, 22 June 2022.

<sup>116</sup> Report 2022, 124.

information on products and services may not be misleading, which of course applies to greenwashing as well, as well as the EU Regulation 2019/2088 on sustainability-related disclosures in the financial services sector (the disclosure regulation).<sup>117</sup>

In connection with environmental and ethical claims used in marketing of goods or activities, guidelines by the Danish consumer ombudsman were issued. Among them, one of the aims is to protect consumers against greenwashing. This is described as general statements, like climate friendly, green etc.; however, the product should be among the best (not just one of many green products). This feature must be able to be documented, normally based on a lifecycle analysis. Using statements about sustainability can be risky, therefore they should be documented based on lifecycle analysis showing it does not impede the possibilities of future generations, also must be considered health, social and ethical implications as well. It is very difficult to call a product sustainable, but easier to claim that the aim is to become sustainable. All consumers may complain to the consumer ombudsman, who may issue injunctions and may sue for damages on behalf of a group of consumers.<sup>118</sup>

#### 4. CONCLUSIONS

In our opinion, the measures to encourage long-term shareholder engagement is embodied in the declarations in Hungary and these are not easily accessible. From this point of view, there is still work to be done for the regulation of Hungarian public companies limited by shares, for example to create harmony with the joint proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence.<sup>119</sup>

It is very important to underline that ESG-related labels should only be given to companies that are genuinely associated with sustainable finance. The Hungarian legislation on sustainable finance has not been coherently incorporated into the legal system, as the provisions of the separate implementing law are not in line with, for example, the Civil Code. On the other hand, the legislator has not made use of the directive's mandate, which was by given the European Union room for manoeuvre. A third problem is the lack of coherence in the scope and subject matter of the legislation: for example, Act LXVII of 2019 is applicable to public limited companies, institutional investors, asset managers among others (Art. 1), however, Act CXX of 2001 is applicable to Hungarian issuer, excluding

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<sup>117</sup> E. Lidman, 31.

<sup>118</sup> "Sustainable Finance and Ownership – a Danish Perspective", *Sustainable Finance in European Jurisdictions*, April 2022, Budapest, Ferenc Mádl Institute of Comparative Law.

<sup>119</sup> COM(2022) 71 final 2022. 02. 23.

the Hungarian State; a publicly traded company incorporated in Hungary or listed on a regulated market in Hungary; stock exchange, central securities depository, central counterparty established in Hungary (Art. 1-1/B). These persons do not cover each other in all cases. Apart from the statements of the Hungarian National Bank, there is no traceable practice, and the practice of HNB is fragmented and central bank-focused.

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## Одрживо финансирање: стварно мађарско законодавство у оквиру ЕУ

**Сажетак:** У овом раду, после систематској приказу теоријске позадине регулативе Европске уније, испитујемо мађарску регулативу и правну праксу (помоћу интернеј страници пет мађарских компанија кофираних на берзи и Прејорукe за корпоративно управљање Будимпештанске берзе) у вези са идентификацијом акционара од стране друштва, проверљивости отворивања права акционара, политиком нартавања и извешавања јавној акционарској друштву и одобравањем правних послова закључених са повезаним лицем. Такође се фокусирамо на финансијско управљање и једине аспекти управљања производима, са посебном пажњом на процес одобравања производа и ишање greenwashing-а. Одлучили смо да ипакнемо ова ишања јер се не могу наћи дословни преводи правних акција Европске уније из ових области у односу на мађарско законодавство. Други разлој је што послоје дослујна практична искуства у вези са њима, те се осврћемо на различите аномалије. Нај циљ је да ипакнемо потребу за преносом и имплементацијом правној инструменти са тако широким импликацијама као што је одрживо финансирање у промишљен и кохерентан сеј правила која прожимају правни систем.

**Кључне речи:** еколошко друштвено управљање, идентификација акционара, ишврда ласања, управљање производима, финансијско управљање.

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