



ISTANBUL MEDENİYET UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
DEPARTMENT OF PRIVATE LAW

**Sustainability Obligations In The Context of Turkish
Company Law**

Master's Thesis
Cansu Sönmez

December 2024



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Supervisor
Asst. Prof. Meltem Karatepe Kaya

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Declaration of Originality

I hereby declare that all information in this dissertation has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conducts, I have fully cited and referenced all material and results that are not original to this work.

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GENİŞ ÖZET

Türk Şirketler Hukuku Kapsamında Sürdürülebilirlik Yükümlülükleri

Sönmez, Cansu

Yüksek Lisans Tezi, Özel Hukuk Anabilim Dalı

Dr. Öğr. Üyesi Meltem Karatepe Kaya

Aralık 2024

Bu tez, sürdürülebilirlik kavramının Türkiye’deki hukuki düzenlemeler üzerindeki etkisini, çevresel, sosyal ve ekonomik boyutlarıyla ele almaktadır. Çalışmada, sürdürülebilirliğin uluslararası ve ulusal hukuk çerçevesinde nasıl şekillendiği ve bu çerçevenin Türkiye’nin mevcut yasal altyapısına nasıl entegre edildiği analiz edilmektedir. Özellikle Türk Ticaret Kanunu (TTK) ve Sermaye Piyasası Kanunu (SPK) gibi düzenlemeler üzerinden kurumsal yönetim ilkeleri ve ESG (çevresel, sosyal ve yönetim) kriterlerinin hukuki dayanakları incelenmiştir. Bunun yanı sıra Türkiye'nin uluslararası çevresel taahhütleri ve sürdürülebilirlik konusundaki yasal uyumu, kalkınma planları ve kurumsal politikalar bağlamında değerlendirilmiştir.

Sürdürülebilirlik kavramı, uluslararası hukukta ilk olarak 1987 tarihli Brundtland Raporu ile tanımlanmıştır. Rapor, çevre, ekonomi ve toplum dengelerini koruyan bir kalkınma modelini önerirken, Kyoto Protokolü ve Paris Anlaşması gibi uluslararası sözleşmeler, iklim değişikliğiyle mücadelede önemli bir hukuki zemin oluşturmuştur. Paris Anlaşması, küresel sıcaklık artışını 2°C’nin altında tutmayı hedefleyen bir çerçeve sunarken, Avrupa Birliği’nin Kurumsal Sürdürülebilirlik Raporlama Direktifi (CSRD) ve Kurumsal Sürdürülebilirlik Özen Yükümlülüğü Direktifi (CSDDD), şirketlerin çevresel ve sosyal etkilerini raporlamasını zorunlu kılarak, hukuki bağlayıcılığı artırmıştır. Türkiye’de ise 1982 Anayasası’nın 56. maddesi, sağlıklı bir çevrede yaşama hakkını anayasal güvence altına alarak çevre koruma politikalarının temelini oluşturmuştur. Ancak sürdürülebilirlik ilkesi bu düzenlemelerde dolaylı olarak yer almakta, uygulamada daha kapsamlı düzenlemelere ihtiyaç duyulmaktadır.

Türk Ticaret Kanunu, kurumsal yönetim ilkelerini benimseyen şirketlerin, sürdürülebilirlik kriterlerini iş süreçlerine entegre etmeleri için bir hukuki altyapı sunmaktadır. 6102 sayılı TTK, şirketlerin şeffaflık, hesap verebilirlik ve paydaş yönetimini esas alarak çevresel ve sosyal konuları daha görünür kılmasını sağlamaktadır. Yönetim kurulu düzeyinde alınan kararlar, sürdürülebilirlik stratejilerinin işleyişini doğrudan etkilemektedir. Örneğin, yönetim kurulları ESG kriterlerini benimseyerek çevresel risklerin azaltılması ve sosyal adaletin sağlanması gibi konularda somut adımlar atabilmektedir. Ayrıca TTK’nın bağımsız denetim ve

raporlama mekanizmaları, şirketlerin sürdürülebilirlik performansını ölçmelerine ve paydaşlarla şeffaf bir şekilde paylaşmalarına olanak tanımaktadır.

6362 Sayılı Sermaye Piyasası Kanunu, sürdürülebilirlik politikalarının sermaye piyasalarına entegrasyonunda kilit bir rol oynamaktadır. SPK'nın yayınladığı "Sürdürülebilirlik İlkeleri Uyum Çerçevesi," halka açık şirketlerin sosyal, çevresel ve yönetim konularında raporlama yapmalarını zorunlu hale getirmiştir. Bu çerçeve, şirketlerin iklim değişikliği, enerji tüketimi, insan hakları ve çeşitlilik gibi konularda ölçülebilir hedefler belirlemesini sağlamaktadır. Ayrıca, ESG raporlaması yatırımcılar açısından giderek daha büyük bir öneme sahip olmakta ve sermaye piyasalarında sürdürülebilirlik uygulamalarının yaygınlaşmasına katkı sunmaktadır. SPK düzenlemeleri, çevresel etkilerin yanı sıra sosyal sorumluluk politikalarının şirket stratejilerine dâhil edilmesini teşvik ederek uzun vadeli ekonomik faydalar sağlamaktadır.

Kurumsal sürdürülebilirlik raporlaması, şirketlerin çevresel, sosyal ve yönetim (ESG) konularındaki performansını ölçmesi ve şeffaf bir şekilde kamuya sunması için önemli bir araçtır. Bu bağlamda, sürdürülebilirlik raporlama standartları ve inisiyatifleri, şirketlerin performanslarını değerlendirmelerinde rehberlik sunmaktadır. En yaygın kullanılan raporlama çerçeveleri arasında Küresel Raporlama Girişimi (GRI), Karbon Saydamlık Projesi (CDP), Sürdürülebilirlik Muhasebe Standartları Kurulu (SASB) ve İklimle İlişkili Finansal Açıklamalar Görev Gücü (TCFD) yer almaktadır. Bu raporlama standartları, şirketlerin çevresel etkilerini ölçmelerini, karbon ayak izlerini azaltıcı stratejiler geliştirmelerini ve paydaşlarla sürdürülebilirlik taahhütlerini açıkça paylaşmalarını sağlamaktadır. Türkiye'de de SPK ve TTK kapsamında oluşturulan düzenlemeler, bu standartlarla uyum içinde ESG raporlamasının yaygınlaşmasına olanak tanımaktadır.

Türkiye'nin sürdürülebilirlik politikalarının gelişimi, kalkınma planlarında da belirgin bir şekilde görülmektedir. Altıncı Beş Yıllık Kalkınma Planı, çevresel sürdürülebilirlik kavramına daha fazla vurgu yaparken, Onuncu Kalkınma Planı, sürdürülebilir kalkınmayı temel bir hedef olarak benimsemiştir. Onbirinci Kalkınma Planı ise Birleşmiş Milletler Sürdürülebilir Kalkınma Amaçları ile uyumlu politikalar geliştirerek, sürdürülebilirlik konusunu daha kapsamlı bir şekilde ele almıştır. Ancak, kalkınma planlarında belirtilen hedeflerin uygulamaya geçirilebilmesi için hukuki ve kurumsal kapasitenin artırılması gerekmektedir. Planlarda belirtilen çevresel hedeflerin gerçekleştirilmesi, enerji, sanayi ve tarım sektörlerinde daha etkin politikaların hayata geçirilmesiyle mümkündür.

Türkiye, sürdürülebilirlik konusundaki uluslararası taahhütlerini yerine getirme çabası içindedir. Paris Anlaşması'nın 2021 yılında onaylanması, Türkiye'nin iklim değişikliğiyle mücadelede daha aktif bir rol üstlenmesini sağlamıştır. Ancak, ulusal katkı beyanlarının daha iddialı hedefler içerecek şekilde revize edilmesi gerekmektedir. Türkiye'nin yenilenebilir enerji kullanımını artırma ve sera gazı

emisyonlarını azaltma konularında daha somut adımlar atması, hem uluslararası arenada hem de yerel politikalar açısından önem taşımaktadır.

Sonuç olarak, bu tez, sürdürülebilirlik kavramının Türkiye'deki hukuki düzenlemeler üzerindeki etkisini kapsamlı bir şekilde analiz ederek, kurumsal yönetim ilkeleri, uluslararası taahhütler ve kalkınma planları bağlamında değerlendirmektedir. Türk Ticaret Kanunu ve Sermaye Piyasası Kanunu, ESG kriterlerinin iş süreçlerine entegrasyonunda önemli bir araç olarak öne çıkmaktadır. Ancak, bu düzenlemelerin daha etkin bir şekilde uygulanabilmesi için hukuki denetimlerin ve teşvik mekanizmalarının güçlendirilmesi gerekmektedir. Türkiye'nin uluslararası sürdürülebilirlik politikalarına uyumu, yalnızca çevresel etkileri azaltmakla kalmayıp, ekonomik büyümeyi destekleyecek ve uluslararası rekabet gücünü artıracaktır.

Anahtar Kelimeler: Sürdürülebilirlik, Kurumsal Sürdürülebilirlik, Kurumsal Sürdürülebilirlik Raporlama Direktifi, Türk Hukukunda Sürdürülebilirlik, Kurumsal Sürdürülebilirlik Özen Yükümlülüğü Direktifi

ABSTRACT

Sustainability Obligations in the Context of Turkish Company Law

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Master's Thesis, Department of Private Law

Asst. Prof. Dr. Meltem Karatepe Kaya

December 2024

This thesis explores the integration of sustainability principles into Türkiye's legal framework, focusing primarily on the TCC and the CML. It examines how ESG criteria are incorporated into corporate governance and reporting practices, reflecting global trends toward sustainable development. By analyzing national regulations in the context of international frameworks such as the Paris Agreement, the CSRD, and the CSDDD, the study evaluates Türkiye's progress and identifies areas requiring further improvement. Key findings indicate that while Türkiye has made significant strides in promoting sustainability, challenges persist in enforcement and the practical implementation of ESG principles. For instance, while companies are required to disclose sustainability-related information, inconsistent reporting standards and weak oversight hinder the effectiveness of these requirements. Furthermore, sustainability considerations often remain secondary to economic priorities, particularly in industries such as energy and manufacturing. The research also highlights the potential of corporate governance to act as a driver for sustainable practices. It emphasizes the importance of transparency, accountability, and stakeholder engagement in fostering sustainability, showing that businesses adopting ESG-focused strategies can enhance both their market competitiveness and social responsibility. Additionally, the thesis underscores the need for greater collaboration among government agencies, private sector actors, and civil society to create an inclusive and effective sustainability framework. Ultimately, the study concludes that integrating sustainability into Türkiye's legal, corporate, and policy frameworks are not only essential for aligning with global standards but also crucial for addressing national socio-economic and environmental challenges. By strengthening regulatory mechanisms, harmonizing reporting standards, and incentivizing sustainable practices, Türkiye can advance its sustainability agenda, enhance its international competitiveness, and contribute to the global effort toward a sustainable future.

Keywords: Sustainability, Corporate Sustainability, Corporate Sustainability Reporting Directive, Sustainability in Turkish Law, Corporate Sustainability Due Diligence Directive

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DEDICATION

Bu tezi, hayatım boyunca bana sevgi ve desteklerini esirgemeyen sevgili Annem ve Babama ithaf ediyorum.

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ABBREVIATIONS

AGM	: Annual General Meeting
Art.	: Article
BİST	: Borsa İstanbul
BoD	: Board of Directors
CBAM	: Carbon Border Adjustment Mechanism
CCACB	: Climate Change Adaptation and Coordination Board
CCAMCB	: Climate Change and Air Management Coordination Board
CCCB	: Climate Change Coordination Board
CDP	: Carbon Disclosure Project
CERES	: Coalition of Environmentally Responsible Economies
CMB	: Capital Markets Board of Türkiye
CML	: Capital Market Law
COP	: Communication on Progress
CSDDD	: Corporate Sustainability Due Diligence Directive
CSR	: Corporate Social Responsibility
CSRD	: Corporate Sustainability Reporting Directive
DPT	: State Planning Organization
EFRAG	: European Financial Reporting Advisory Group
EIRIS	: Ethical Investment Research Services Limited
EMAS	: Eco-Management and Audit Scheme
ESG	: Environmental, Social, and Governance
ESRS	: European Sustainability Reporting Standards

et al.	: et alia (=and others)
EU	: European Union
GRI	: Global Reporting Initiative
ICC	: International Chamber of Commerce
IFRS	: International Financial Reporting Standards
IIRC	: International Integrated Reporting Council
ILO	: International Labour Organization
INCD	: Intended Nationally Determined Contributions
IOSCO	: International Organization of Securities Commissions
IR	: Integrated Reporting
ISSB	: International Sustainability Standards Board
i.e.	: id est (=that is)
KAP	: Public Disclosure Platform
LLC	: Limited Liability Company
Ltd.	: Limited
NDC	: Nationally Determined Contributions
NFRD	: Non-Financial Reporting Directive
OECD	: The Organisation for Economic Co-operation & Development
para.	: Paragraph
PLC	: Public Limited Company
POA	: Public Oversight Accounting & Auditing Standards Authority
PRI	: Principles for Responsible Investment
RDS	: Royal Dutch Shell
SDGs	: Sustainable Development Goals

SME	: Small and Medium-Sized Enterprises
SPDC	: Shell Petroleum Development Company of Nigeria
OECD	: Organization for Economic Co-operation and Development
TCC	: Turkish Commercial Code
TCFD	: Task Force on Climate-related Financial Disclosures
TEU	: Treaty on European Union
TFEU	: Treaty on the Functioning of the European Union
TSRS	: Turkish Sustainability Reporting Standards
UÇEP	: National Environmental Strategy and Action Plan
UFNDC	: Updated First Nationally Determined Contribution
UK	: United Kingdom
UN	: United Nations
UNCCD	: United Nations Convention to Combat Desertification
UNCED	: United Nations Conference on Environment & Development
UNFCCC	: United Nations Framework Convention on Climate Change
UNEP	: United Nations Environment Programme
UNGC	: United Nations Global Compact
UNGP	: Guiding Principles on Business and Human Rights
USA	: United States of America
WCED	: World Commission on Environment & Development

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INTRODUCTION

This thesis investigates the integration of sustainability principles within Türkiye's legal framework, focusing specifically on the Turkish Commercial Code (TCC) and the Capital Market Law (CML). The subject of research is grounded in the growing global emphasis on sustainability, particularly through Environmental, Social, and Governance (ESG) criteria. These criteria have become central to corporate governance and are increasingly influencing laws and regulations worldwide. Türkiye, as an emerging economy, has taken steps to incorporate sustainability within its legal and corporate systems, but there remain significant gaps in how these frameworks operate in practice.

Furthermore, examines how Türkiye's legal regulations, especially the TCC and CML, address ESG issues and whether they align with international sustainability frameworks, such as the Paris Agreement, the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDDD). By exploring the legal obligations placed on Turkish corporations regarding sustainability reporting and the extent to which these regulations are enforced, the research aims to understand how effectively Türkiye's legal system encourages businesses to adopt sustainable practices.

The thesis also addresses how Türkiye's unique socio-political and economic environment influences the implementation of sustainability laws and how businesses within different sectors, such as energy, manufacturing, and agriculture, respond to these regulations. Through this research, the study will provide an in-depth analysis of the Turkish legal approach to sustainability and offer insights into the barriers and opportunities for improving the country's sustainability efforts in the corporate sector.

AIM AND SCOPE OF THE THESIS

The primary aim of this thesis is to analyze the integration of sustainability principles into Türkiye's legal system, with a focus on the TCC and the CML. The study aims to assess the extent to which these key pieces of legislation reflect and promote ESG considerations in corporate governance, decision-making, and sustainability reporting. By exploring these laws, the research seeks to identify the legal mechanisms that encourage or hinder the implementation of sustainable practices within Turkish businesses.

The scope of this thesis extends beyond just a legal analysis; it also includes a comparative element, examining how Türkiye's legal framework is consistent with international standards and best practices in sustainability. This includes reviewing global frameworks such as the CSRD, CSDDD, and the Paris Agreement, and evaluating how well Türkiye has adopted these norms. The thesis will also consider the economic, social, and environmental dimensions of sustainability, exploring how these principles are operationalized within Türkiye's legal context and corporate culture.

Furthermore, the research will delve into the practical challenges faced by Turkish companies in complying with sustainability laws, particularly in high-impact sectors such as energy and manufacturing, where the stakes of sustainability are high.

The study will examine whether the legal infrastructure in Türkiye is adequate to support long-term sustainable development, or if there are gaps that need to be addressed. The thesis will also explore the role of enforcement and regulatory oversight in ensuring that sustainability requirements are met and the potential role of fiscal incentives and disincentives in promoting corporate responsibility.

PROBLEMS AND KEY RESEARCH QUESTIONS

Despite the increasing importance of sustainability, Türkiye faces a number of challenges in fully implementing sustainability principles within its legal system. These challenges include insufficient enforcement mechanisms, inconsistencies in regulatory frameworks, and a lack of integration between environmental and social concerns in corporate law. The key problems addressed in this research include:

- The gaps in regulatory enforcement and the practical challenges of ensuring corporate compliance with sustainability standards in Türkiye.
- The limited impact of the existing legal framework in encouraging companies to fully integrate ESG criteria into their operations, particularly in sectors with significant environmental and social impacts.
- The need for better alignment between Turkish legal standards and international frameworks, such as the CSRD and CSDDD, to ensure that sustainability practices are harmonized with global norms.

Key research questions guiding this study are:

1. How effectively are ESG principles integrated into the TCC and CML, and what impact do these laws have on corporate sustainability practices?
2. To what extent do Türkiye's legal frameworks align with international sustainability frameworks, and what are the key barriers to alignment?
3. What role does corporate governance play in promoting sustainability, and how can Türkiye improve its legal and regulatory mechanisms to better support sustainable business practices?

CONTRIBUTION AND ORIGINALITY OF THESIS

This thesis offers an original contribution to the field of sustainability and law by providing a detailed analysis of the Turkish legal system's approach to sustainability, with a particular focus on corporate governance and reporting. While much research has focused on sustainability frameworks in Western countries, this study addresses a significant gap in documentation by analyzing the challenges and opportunities specific to Türkiye's socio-economic and legal context. The research also makes a significant contribution by providing a critical evaluation of how well Türkiye's laws align with international sustainability standards, particularly the CSRD and CSDDD, and by identifying areas for improvement.

By combining legal analysis with practical recommendations, this thesis provides valuable insights for policymakers, legal scholars, and business leaders seeking to enhance Türkiye's sustainability performance. The findings contribute to the growing body of documentation on sustainability law and corporate governance, offering both theoretical and practical perspectives on how legal systems can drive sustainable development in emerging economies.

THE PLANNED STRUCTURE OF THE RESEARCH

The structure of this thesis has been designed to address the research objectives systematically and provide a comprehensive analysis of Türkiye's legal framework for sustainability. The thesis begins with an introduction to the concepts of sustainability and ESG, establishing the theoretical foundations for the subsequent analysis. Following the introduction, First Chapter offers an overview of sustainability as a global concept, exploring its environmental, social, and economic dimensions and how it relates to corporate governance and legal frameworks. This chapter sets the stage for understanding the importance of legal integration of sustainability principles.

Second Chapter focuses on corporate sustainability reporting, analyzing key international frameworks such as the CSRD and CSDDD, and comparing them with Türkiye's existing reporting standards. This chapter also examines the role of corporate sustainability disclosures in promoting accountability and transparency.

Third Chapter takes a detailed look at the Turkish Commercial Code, examining the legal provisions related to corporate governance, transparency, and sustainability. This chapter assesses how well the TCC promotes ESG principles and whether it provides an adequate framework for businesses to adopt sustainable practices.

Fourth Chapter analyzes the Capital Market Law and its role in integrating ESG criteria into Türkiye's capital markets. The chapter explores the regulations surrounding sustainability reporting in the financial sector and how these laws align with international standards.

Finally, Conclusion Chapter presents the key findings of the thesis, identifying the main challenges in Türkiye's legal system and offering policy recommendations for improving the integration of sustainability principles into Turkish law. This chapter also provides a roadmap for future research and policy development in the field of sustainability and corporate governance.

CHAPTER 1 - SUSTAINABILITY THROUGH THE LENS: A COMPREHENSIVE EXPLORATION

1.1 A Little History of Sustainability

A helpful place to begin is with etymology. "Sustainable" and "sustainability" both originally derive from the Latin word "sustinere" with the meaning of "to

restrain", "maintain", and "support".¹ Many associations and organizations have given the concept of sustainability definitions since it became a current issue.

Hans Carl von Carlowitz used the concept of sustainability for the first time in *Sylvicultura Oeconomica* in 1713, to maintain the balance between harvesting old trees and planting young trees to replace them, in order to maintain the existence of forests resources.² As can be understood from this, the concept of sustainability was first used in forestry.

Also in the 18th century, concerns began to arise about population growth and its consequences for the consumption of resources. However, studies such as Thomas Malthus's *Principle of Population* in 1798 regarding the principle of population as it affects the future improvement of society made important contribution to the sustainability literature.³ Notably, the publication of *Silent Spring* in 1962 by Rachel Carson, which highlighted the environmental damage caused by the widespread use of agricultural pesticides during the Green Revolution, sparked the beginning of the environmental movement.⁴ Beyond this, the emergence and conceptualization of sustainability as a thought involves a process that encompasses long-term studies by many institutions and organizations.

The mentioned studies are chronologically listed below:

1.1.1. Limits to Growth (1972)

In 1972, the report titled "*Limits to Growth*", commissioned by a group of scientists from MIT by the Club of Rome, revealed for the first time the contradiction between unlimited and uncontrolled growth and the World's limited resources and drew attention to the options available to the society for a sustainable progress process compatible with environmental constraints.⁵ In this study, five different variables, namely population, industrial production, foodstuffs, raw materials and environmental pollution, and the relationship amongst them were emphasized and a rather pessimistic picture was drawn for the future of the World. It was emphasized that if the current development policies continue to exist, humanity will be at risk of extinction caused by dwindling of raw materials and escalating environmental issues.⁶

After the effect of the *Limits to Growth*, governments announced measures to address local environmental problems perfunctorily due to public pressure; however,

¹ Jeremy L. Caradonna, *Sustainability: A history* (New York: Oxford University Press, 2014), 7.

² Jacobus A. Du Pisani, "Sustainable Development – Historical Roots of the Concept," *Environmental Sciences* 3, no.2 (2007): 92, <https://doi.org/10.1080/15693430600688831>

³ Henk Van Zon, *Geschiedenis & Duurzame Ontwikkeling* (Nijmegen: Netwerk Duurzaam Hoger Onderwijs, 2002) 87-92.

⁴ Alex Lockwood, "The Affective Legacy of Silent Spring," *Environmental Humanities* 1, no.1 (2012): 123 -124, <https://doi.org/10.1215/22011919-3610003>

⁵ Onur Yeni, "Sürdürülebilirlik ve Sürdürülebilir Kalkınma: Bir Yazın Taraması," *Gazi Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 16, no.3 (2014): 184, <https://dergipark.org.tr/tr/download/article-file/287214>

⁶ Recep Bozlağan, "Sürdürülebilir Gelişme Düşüncesinin Tarihsel Arka Planı," *Journal of Social Policy Conferences* 50 (2005): 1015, <https://dergipark.org.tr/tr/download/article-file/9155>

they remained insensitive to environmental problems on a global scale. In the following years, the environmental movement was interrupted, and various writers who participated in the debate on the *Limits to Growth* claimed that the situation was exaggerated. Critics of the views set forth in *The Limits to Growth* argued that developing technology and innovations would be solutions to environmental problems. In this process, governments have been lax in implementing the environmental measures they have adopted.⁷

1.1.2. Stockholm Declaration (1972)

In the same year, the UN organized the "United Nations Conference on the Human Environment" from June 5–16, 1972, in Stockholm, Sweden, under the name "World Problematic" to analyse and find solutions to social, economic, environmental, and cultural issues on a transnational platform. As a result of this conference, the United Nations Environment Programme (UNEP) was established. In this context, June 5 was recognized as World Environment Day, and a declaration was issued to commemorate it.⁸ During this conference, a common perspective on the necessity of protecting and enhancing the human environment was developed.⁹ The conference addressed the global human impact on the environment, taking steps to establish goals and objectives for the development of environmental policies, and ultimately, a declaration was prepared.

The Declaration stated that a better environment, capable of meeting both present and future generations' needs, could be achieved through rational action and consistent, diligent, and determined efforts. It emphasized that achieving the goal of improving the human environment for current and future generations requires the responsibility of individuals, communities, enterprises, and organizations at all levels. It also highlighted that national governments and local authorities have significant responsibility for comprehensive environmental policies and actions within their jurisdictions. Furthermore, the significance of providing necessary assistance to developing countries to fulfill their obligations and the imperative of global collaboration to tackle environmental challenges were emphasized.¹⁰

Following the Stockholm Declaration, global awareness of environmental issues significantly increased.¹¹

⁷ Matthew Cole and Andrea Lucchesi, "Economic Growth and the Environment," in *Handbook of Sustainable Development*, 2nd ed., eds. Giles Atkinson, Simon Dietz, Eric Neumayer and Matthew Agarwala (Birmingham: Edward Elgar Publishing, 2014), 241.

⁸ Aslıhan Nakiboğlu and Şeyma Bozkaya, "Environmental Summits in The Scope of Sustainable Development," *Route Educational and Social Science Journal* 6, no.11 (2019): 939.

⁹ Louis B. Sohn, "The Stockholm Declaration on the Human Environment," *The Harvard International Law Journal*, 14 (1973): 423.

¹⁰ Bozlağan, "Sürdürülebilir Gelişme," 1016.

¹¹ Günther Handl, "Declaration of The United Nations Conference on the Human Environment Stockholm Declaration, 1972 and the Rio Declaration on Environment and Development," *United Nations Audiovisual Library of International Law* 11, no. 6 (2012): 1, <https://www.globalhealthrights.org/wp-content/uploads/2014/06/Stockholm-Declaration1.pdf>

1.1.3. Our Common Future (Brundtland) Report (1987)

The *Our Common Future* (Brundtland) Report was prepared in 1987 by the World Commission on Environment and Development (WCED), chaired by Norway's Prime Minister Gro Harlem Brundtland. The report was commissioned by the United Nations General Secretary at the time and involved participants from twenty different countries. It was later submitted to the United Nations General Assembly in 1987.

According to this report, the definition of sustainability; “*Meeting the needs of the present without compromising the ability of future generations to meet their own needs*”¹². This definition emphasizes that while meeting the needs of the present generation, the needs of future generations should not be overlooked. It underscores that today’s economic development should not compromise the economic prospects of future generations, ensuring that their economic situation is not worse than that of the current generation. This can be summarized as "not allowing personal well-being to diminish over time."¹³

The Brundtland Report primarily emphasized the needs and interests of humanity, advocating for the achievement of global equity by redistributing resources to poorer nations. This approach aimed to promote their economic growth and ensure that all individuals could meet their basic needs. Furthermore, the report highlighted the importance of sustainable development, balancing environmental protection with economic progress to safeguard the well-being of both present and future generations.¹⁴

One of the important outcomes of the Brundtland Report is the decision of the UN General Assembly to hold a conference in Rio de Janeiro, Brazil.

1.1.4. United Nations Conference on Environment and Development (1992)

Informally known as the Earth Summit, the United Nations Conference on Environment & Development (UNCED) of 1992 has become a symbol of the shared responsibility of all the World’s nations. The conference, attended by heads of state from 178 countries, emphasized that humanity, being at the center of sustainable development, has the right to live in harmony with nature in an efficient and healthy manner.¹⁵

¹² World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future*, 1987, 16, <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>

¹³ Iris Borowy, *Defining Sustainable Development for Our Common Future* (London: Routledge: 2013), 3.

¹⁴ Pisani, “Sustainable Development,” 92.

¹⁵ Hayrettin H. Tıraş, “Sürdürülebilir Kalkınma ve Çevre: Teorik Bir İnceleme,” *Kahramanmaraş Sütçü İmam Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 2, no.2 (2012): 63, <https://dergipark.org.tr/tr/download/article-file/107656>

The international documents adopted as a result of this conference are; Rio Declaration, Forest Principles, Framework Convention on Climate Change, Convention on Biological Diversity, Convention to Combat Desertification and Agenda 21. Agenda 21 is the most important document among these five agreements, as it represents the international political and economic acceptance of the concept of sustainable development, proposing a balance between development and the ecological environment.¹⁶

Agenda 21 not only proposes a balance between development and the ecological environment but also defines the principles upon which this balance should be built. Recognized as a turning point for environmental movements worldwide and often regarded as an environmental manifesto, Agenda 21 is significant because it established the necessary mechanisms and processes for this balance and secured political commitments from the United Nations and national governments.¹⁷

1.1.5. Human Settlements Conference - Habitat II (1996)

Human Settlements Conference, organized by the United Nations in Istanbul in 1996, 20 years after the first conference took place in Vancouver in 1976.

The meeting focused on two main topics: "adequate housing for all" and "sustainable human settlements and development," under the overarching goal of "objectives." Debates emerged regarding how successful the conference would be in achieving its intended purpose, particularly in addressing the housing issue.¹⁸

During the Habitat II process, essential societal stakeholders - including local governments, non-governmental organizations (NGOs), civil society organizations, the private sector, parliamentarians, academics, and trade unions played significant roles and were heavily involved. The inclusion of these actors in the United Nations' decision-making processes sets Habitat II apart from, and above, other global conferences, including the Rio Conference.¹⁹

1.1.6. Kyoto Protocol (1997)

The Kyoto Protocol, adopted in 1997 and entering into force in 2005, marked an initial effort to outline measures for addressing climate change. The flexibility mechanisms developed to achieve the reduction targets and the penalties applied in cases of non-compliance are among the key features that distinguish the Kyoto Protocol from other international environmental agreements. The Kyoto Protocol is

¹⁶ Urungu Akgül, "Sürdürülebilir Kalkınma: Uygulamalı Antropolojinin Eylem Alanı," *Antropoloji* 24 (2010): 137, <https://dergipark.org.tr/tr/download/article-file/646131>

¹⁷ Akgül, "Sürdürülebilir Kalkınma," 138.

¹⁸ Alim Arlı, "Habitat II Tartışmaları ve İstanbul'da Toplumsal Dönüşüm. Türkiye Araştırmaları," *Literatür Dergisi* 8, no.16 (2010):374-375, <https://dergipark.org.tr/tr/download/article-file/652837>

¹⁹ Nuran Talu, "Rio'dan İstanbul'a," *Yeni Türkiye Dergisi* Habitat II Özel Sayısı, 8 (1996): 238.

the first global agreement to establish specific emission reduction targets for its signatories.²⁰

The Kyoto Protocol is a globally established treaty aimed at addressing the issue of climate change, which affects the entire World, and minimizing its impacts as much as possible. The protocol focuses specifically on reducing greenhouse gas emissions, with a binding target and a clear roadmap outlined to achieve this. According to the protocol, member countries pledged to reduce CO₂ and other greenhouse gas emissions by 5% compared to 1990 levels during the initial commitment period from 2008 to 2012. For the second commitment period, established under the Doha Amendment and set to extend through 2020, the reduction target was significantly increased to 18%.²¹ This ambitious framework aimed to combat climate change by enforcing stricter emission reductions, encouraging the adoption of cleaner technologies, and promoting international collaboration to achieve a sustainable future. Additionally, the protocol proposed measures such as imposing higher taxes on entities with excessive fuel consumption and carbon emissions, promoting the use of biofuels instead of fossil fuels, and encouraging companies with high energy consumption to reassess their production processes.²²

There were certain aspects that the Kyoto Protocol failed to address effectively. Like other international agreements and initiatives, the strength of this protocol largely depends on the willingness and commitment of its participating countries to collaborate and the importance they attribute to the issue. The enforceability of the protocol was enhanced by countries that incorporated its principles into their domestic legal systems. At least 55 countries, which are parties to the United Nations Framework Convention on Climate Change (UNFCCC), implemented changes in their domestic laws to bring the protocol's principles into effect. By 2003, the number of countries that had integrated the protocol into their legal systems reached 104. However, the United States of America (USA), which is the largest emitter of greenhouse gases in the World, did not become a party to this protocol.²³

1.1.7. Millenium Summit (2000)

The summit was held at the United Nations Headquarters in New York, USA, from September 6-8, 2000. This summit provided an opportunity to present new sustainable development strategies to address the changing realities and needs of the

²⁰ İklim Değişikliği Bakanlığı, *Kyoto Protokolü*, accessed 23 Apr 2023, <https://iklim.gov.tr/kyoto-protokolu-i-35#:~:text=Kyoto%20Protokol%C3%BC%2C%20Ek%2DI%20taraf%20konferans%C4%B1'nda%20kabul%20edilmi%C5%9Ftir>

²¹ Sefer Uçak and Bilge Villi, "Avrupa Yeşil Mutabakatının Çelik Sektörüne Olan Etkileri," *Uygulamalı Ekonomi ve Sosyal Bilimler Dergisi* 3, no.2 (2021): 97, <https://doi.org/10.46959/jeess.987971>

²² Ceren Aksu, "Sürdürülebilir Kalkınma ve Çevre," *Güney Ege Kalkınma Ajansı* 1 (2011): 17.

²³ İdris Demir, "Kyoto Protokolü Amaçlarına Ulaşabilme Yolunda Dünya Enerji Kullanımında Meydana Gelebilecek Değişiklikler," *Gazi Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 8, no.2 (2006): 247, <https://dergipark.org.tr/tr/download/article-file/287567>

21st century. With the participation of 189 state representatives, the "Millennium Development Goals" were established.²⁴

The Millennium Development Goals consist of 8 objectives and 18 targets beneath these objectives, focusing on the eradication of poverty and hunger, the right to basic education, the improvement of women's status and gender equality, measures to reduce child mortality, improvements in maternal health, fight against epidemic diseases, environmental sustainability, and the development of global partnerships for development. These goals were intended to be achieved by 2015. Most of these goals were agreed upon by all parties involved.²⁵

In the Millennium Declaration, the importance of local governments, civil society organizations, and other local actors taking ownership of these goals was emphasized. These ideas were also reflected in the 2002 UN Johannesburg Summit.²⁶

1.1.8. Rio+10 - World Summit on Sustainable Development (2002)

In 2002, the UN held the World Summit on Sustainable Development in Johannesburg, focusing on "10 years of progress and development since the UN Conference on Environment and Development." The summit, often referred to as "Rio+10," was held ten years after the Rio Conference. The event saw broad participation from 104 heads of state and government, along with delegations and civil society organizations.²⁷

At the summit, issues such as poverty alleviation, the use of natural resources, and the connections between development and the environment were closely examined. It was emphasized that the gap between developed and developing countries continued to widen, and that both ends of the spectrum had different perspectives on these issues.²⁸ As a result of the summit, two key documents were produced. One is the "Plan of Implementation," and the other is the "Political Declaration," which reflects the political will.²⁹

In conclusion, decisions were made to swiftly advance and initiate implementations by 2005 in order to eradicate poverty, diversify energy supplies, increase the global sharing of renewable energy resources, reduce biodiversity loss, enhance corporate social responsibility and accountability, effectively enforce

²⁴ United Nations, *Millennium Summit*, accessed 23 Apr 2023, <https://www.un.org/en/conferences/environment/newyork2000>

²⁵ Aksu, "Sürdürülebilir Kalkınma ve Çevre," 18.

²⁶ Murat Aygen, "Kent Konseylerinin Kent Yönetimine Katkıları Üzerine Bir İnceleme: Elazığ Örneği," *The Journal of Academic Social Science Studies* 29, no.1 (2014): 222.

²⁷ Harun Bora Tunç and Tunahan Çınar, "İklim Değişikliğinin Siyasi Nitelik Kazanması Üzerine Bir İnceleme," *Bilge International Journal of Social Research* 3, no.2 (2019):49, <https://dergipark.org.tr/tr/pub/busad/issue/51552/664600>

²⁸ Aksu, "Sürdürülebilir Kalkınma ve Çevre," 19.

²⁹ Akgül, "Sürdürülebilir kalkınma,"140.

intergovernmental agreements and common standards, and establish National Sustainable Development strategies.³⁰

1.1.9. Rio+20 - United Nations Conference on Sustainable Development (2012)

UN Conference on Sustainable Development 2012 took place in Rio in order to review progress on the results of recent summits, address current emerging global issues, and ensure political cohesion.³¹ At the end of the conference, the final report titled “*The Future We Want*” was published. According to this report, to achieve sustainable development goals, it is necessary to integrate the economic, social, and environmental dimensions and understand their intersections well.³²

At the Rio+20 Conference, the process of developing the "Sustainable Development Goals" (SDGs), intended to replace the eight "Millennium Development Goals" was initiated. In addition, the concept of a green economy was emphasized, leading to the creation of a new strategy for financing sustainable development.³³



Figure1: Sustainable Development Goals

Source: <https://sdgs.un.org/goals>

1.1.10. Paris Agreement (2015)

³⁰ Ecehan Ozmehmet, “Dünyada ve Türkiye Sürdürülebilir Kalkınma Yaklaşımları,” *Yaşar Üniversitesi E-Dergisi* 3, no.12 (2008): 11, <https://doi.org/10.19168/jyu.48930>

³¹ Jennifer Elliott, *An Introduction To Sustainable Development*, 4th ed. (Oxon: Routledge, 2013) 11.

³² Ingrid Boas and Frank Biermann and Norichika Kanie, “Cross-Sectoral Strategies In Global Sustainability Governance: Towards A Nexus Approach,” *Politics, Law and Economics* 16, no.3 (2016): 458-459, <https://doi.org/10.1007/s10784-016-9321-1>

³³ Elif Yücel, *Entegre Raporlama Kurumsal Sürdürülebilirlik Kapsamında Kurumsal Raporlamanın Gelişimi* (Bursa: Dora Basım–Yayın Dağıtım, 2018) 44.

The latest Conference of the Parties, known as COP-21, was held in Paris. The Paris Summit aimed to establish an agreement that would cover the period after 2020, marking the end of the Kyoto Protocol. On December 12, 2015, the Paris Agreement was adopted by unanimous vote of the states that are parties to the existing UN Framework Convention on Climate Change.

The Paris Climate Agreement marked the beginning of a new era in the international climate regime. The unanimous adoption of the Agreement by all countries and its entry into force in less than a year indicates that the regime has become much more inclusive and widely accepted compared to the Kyoto Protocol era.³⁴

The ultimate goal of the Agreement is to limit the global average temperature increase to 2°C above pre-industrial levels, while striving to keep it below 1.5°C. This is to be achieved within the framework of enhancing the implementation of the UNFCCC, in the context of sustainable development and efforts to eradicate poverty.³⁵

Unlike the Kyoto Protocol, the Paris Agreement does not reference the annexes of the UNFCCC (Annex-I and Annex-II lists). Instead, it adopts a different categorization, distinguishing between "developed countries" and "developing countries." Under the Agreement, developed countries are obligated to provide financial support to developing nations for climate adaptation and greenhouse gas emission reductions through the "Green Climate Fund." This arrangement aims to incentivize developing countries to reduce their greenhouse gas emissions. Additionally, the Paris Agreement does not impose specific emission reduction targets on countries, as was the case under the Kyoto Protocol. Instead, emission reduction commitments are determined based on the "Intended Nationally Determined Contributions" (INDCs) submitted by each country, covering a specified time frame.³⁶

Another significant feature of the Paris Agreement is its emphasis on transparency in reporting and assessment.³⁷ Countries are required to monitor their national contribution plans every five years and evaluate their progress in alignment with the overarching goals of the Agreement. The first global stocktake is scheduled for 2023 and will occur every five years thereafter.³⁸ While the Agreement envisions

³⁴ Gökhan Orhan ve Semra Cerit Mazlum ve Yasemin Kaya, *Uluslararası Çevre Rejimleri* (Bursa: Dora Yayınları, 2017), 95-96.

³⁵ Gökalp, "Paris Anlaşması ve Türkiye'ye Yansımaları," 8.

³⁶ Sefa Furkan Selçuk, "Uluslararası İklim Değişikliği Anlaşmaları ve Türkiye'nin Tutumu," *Ulusal Çevre Bilimleri Araştırma Dergisi* 6, no.1 (2023): 16, <https://dergipark.org.tr/tr/download/article-file/2798304> ; Mehmet Emin Birpınar, "Küresel Sorun: İklim Değişikliği Gelişimi, Uluslararası Müzakereler ve Türkiye," *Çevre Şehir ve İklim Dergisi* 1, no.1 (2022): 27; Süheyla Suzan Gökalp, "Paris Anlaşması ve Türkiye'ye Yansımaları," in *İklim Krizi ve Hukuk*, eds. Sultan Tahmazoğlu Üzeltürk, Kutluhan Bozkurt and Duygu Kulaç (İstanbul: Legal Yayıncılık, 2022) 10-11.

³⁷ Selim Kılıç and Mehmet Özel, "Küresel Bir Sorun Olarak İklim Değişikliği ve İklim Politikaları," *İ.Ü. Siyasal Bilgiler Fakültesi Dergisi* 34 (2006): 154.

³⁸ Kılıç and Mehmet Özel, "İklim Politikaları," 156.

mechanisms to compensate for losses incurred by developing countries, the operational details of these mechanisms remain unclear. In the context of the Paris Agreement, nuclear energy, as a non-carbon-based energy source, is expected to play a significant role in achieving the net-zero carbon target by 2050.³⁹

1.1.11. European Green Deal (2019)

The regulations introduced by the EU to combat climate change, the incentives provided in this area, and the steps it aims to take continue with the European Green Deal following the Paris Agreement.⁴⁰ The European Green Deal is a program designed to create a sustainable future aimed at reducing the impact of climate change in Europe.⁴¹

The European Green Deal is designed to have a significant impact on both medium-term goals for 2030 and long-term goals for 2050. The most prominent of these targets is for EU countries to reduce carbon emissions by 55% by 2030 and to achieve carbon neutrality by 2050.⁴²

The Fit for 55 packages, announced within the framework of the European Green Deal, focuses on areas directly related to emission reduction. The European Commission has introduced a series of interconnected proposals aimed at ensuring the EU's net greenhouse gas emissions are reduced by at least 55% by 2030 compared to 1990 levels, while also promoting a fair, competitive, and green transition. Overall, the package strengthens eight existing legislations and introduces five new initiatives across various policy areas and economic sectors, including climate, energy and fuels, transport, buildings, land use, and forestry.⁴³

Key elements of the packages include increasing the use of renewable energy sources, promoting energy efficiency, raising the cost of carbon emissions through the Carbon Border Adjustment Mechanism (CBAM), and expanding the use of sustainable fuels in the transportation sector.⁴⁴

³⁹ M. Özgür Yanardağ and Kurtuluş Bozkurt, "Bedavacılık Sorununun Paris İklim Anlaşması Çerçevesinde Analizi," *Dumlupınar Üniversitesi Sosyal Bilimler Dergisi* 53 (2017): 72, <https://dergipark.org.tr/en/download/article-file/331134>

⁴⁰ Göktuğ Şahin and Hatice Gül Önder, "Atık Yönetimi Sera Gazı Emisyonları ve Türkiye: Avrupa Yeşil Mutabakatı Çerçevesinde Bir Değerlendirme," *Akademik Sosyal Araştırmalar Dergisi* 9, no.112 (2021): 196, <https://doi.org/10.29228/ASOS.47802>

⁴¹ Rümeyza Gevher and Hakan Acet "Avrupa Birliği'nde sürdürülebilir kalkınma ve yeşil ekonominin gelişimi," *Anadolu Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 24, no.1 (2023): 239, <https://doi.org/10.53443/anadoluibfd.1184407>

⁴² European Commission, *The European Green Deal Sets Out How To Make Europe The First Climate-Neutral Continent By 2050, Boosting The Economy, Improving People's Health And Quality Of Life, Caring For Nature, And Leaving No One Behind*, Dec 11, 2019 https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6691

⁴³ European Council, *Fit for 55*, accessed 05 May 2023, <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55/#:~:text=Fit%20for%2055%20refers%20to,line%20with%20the%202030%20goal>

⁴⁴ Marten Ovaere and Stef Proost, "Cost effective reduction of fossil energy use in the European transport sector: An assessment of the Fit for 55 packages," *Energy Policy* 168 (2022): 1, <https://doi.org/10.1016/j.enpol.2022.113085>

CBAM is generally a set of measures aimed at "altering competitive conditions, redefining the elements of competition in international trade, and incorporating the costs of natural resource use into production costs by pricing greenhouse gas emissions." Through this regulation, a financial charge will be imposed on products exported to the European Union based on their carbon footprint.⁴⁵

The transition period from October 1, 2023, to January 1, 2026, is intended to serve as a learning phase for producers and importers, allowing for the system's development and the collection of detailed data through the reporting of embedded emissions. During this phase, the CBAM will be gradually implemented, and all businesses will only be required to report their greenhouse gas emission data without incurring any financial obligations. However, after January 2026, under the permanent system, the greenhouse gas emissions of products imported into the Union will need to be declared, and the necessary number of CBAM certificates must be submitted. The price of these certificates will be determined based on the weekly average auction price of the Union's Emissions Trading System (ETS) allowances, with prices reflecting the amount of CO₂ emitted, expressed in euros per ton.⁴⁶ The Union has announced that the CBAM will become fully operational after a three-year transition period, starting in January 2026. The system's initial scope will include carbon pricing for sectors such as cement, steel, iron, fertilizers, and aluminium.⁴⁷

The European Green Deal aims to implement transformative changes in sustainability and environmental protection, underpinned by a robust legal framework. As part of the EU's effort to reshape its economic growth model through a green and sustainable transformation, the Deal draws its legal foundations from key EU treaties, particularly the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU). Articles 191 and 192 of the TFEU define the objectives of environmental protection and the instruments to achieve these goals. The European Green Deal's objectives and mechanisms are firmly rooted in this legal framework. Article 191 outlines the foundational principles and targets of EU environmental policies, emphasizing the importance of sustainable development and environmental integrity. Meanwhile, Article 192 provides detailed guidance on the implementation of these policies, ensuring that the necessary measures align with the broader goals of the EU. These provisions serve as the cornerstone for the legal and operational structure of the European Green Deal, reinforcing the EU's commitment to environmental and climate action.⁴⁸

⁴⁵ Filiz Yılmaz, "Enerji Yönetimi ve Türkiye: Avrupa Yeşil Mutabakatı Çerçevesinde Bir Değerlendirme," *Akademia Doğa ve İnsan Bilimleri Dergisi* 8, no. 1 (2022): 30, <https://dergipark.org.tr/tr/download/article-file/2105703>

⁴⁶ European Commission, *Carbon Border Adjustment Mechanism*, Nov 4, 2024, https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

⁴⁷ Erdal Eroğlu and Göksu Gonca Güngör, "Kamu Maliye Politikaları Perspektifinden Çevresel Sürdürülebilir Kalkınma," *T.C. Sayıştay Başkanlığı* (2023): 109.

⁴⁸ "The Treaty on The Functioning of The European Union," Oct 26, 2012, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT>

One of the most significant steps in strengthening the legal foundation of the European Green Deal is the European Climate Law. This legislation makes the EU's goal of achieving climate neutrality by 2050 legally binding, providing a more robust legal framework for the Union's climate policies. The law explicitly defines the roles and responsibilities of member states in combating climate change and enhances the enforceability and sustainability of EU climate policies, thereby improving their effectiveness and coherence. The targets set forth by the European Climate Law require member states to align their national policies with these objectives, ensuring consistency across the Union. In this regard, the law plays a pivotal role in harmonizing the EU's internal policies with its international climate commitments. Thus, the European Climate Law is a cornerstone of the European Green Deal, serving as a key element in the EU's strategy to achieve its climate goals and solidifying its central position in the Union's climate action framework.⁴⁹

The European Green Deal encompasses comprehensive legal regulations across various sectors, including energy, transportation, agriculture, and industry, aimed at achieving sector-specific climate targets and forming the foundation of the EU's carbon reduction strategy. Key legislative frameworks such as the Renewable Energy Directive (RED II) and the ETS play pivotal roles in reducing carbon emissions in the energy and industrial sectors. RED II promotes the increased use and integration of renewable energy sources into energy systems, fostering a sustainable and low-carbon energy transition while reducing dependency on fossil fuels.⁵⁰ Meanwhile, the ETS employs a market-based mechanism to cap and reduce carbon emissions by enabling the trading of emission allowances, thus imposing an economic cost on emissions and incentivizing reductions. This system aims to minimize environmental impacts by targeting emission reductions in key sectors like energy and industry. Collectively, these legal frameworks under the European Green Deal provide a structured and measurable approach to achieving climate objectives while driving sectoral transformations necessary for a broader environmental transition. Consequently, the European Green Deal serves as a critical framework for effective environmental reform at both sectoral and systemic levels.⁵¹

In conclusion, the journey towards sustainability has been shaped by a series of significant studies, international agreements, and actions that reflect the growing recognition of the need to balance development with environmental, social, and economic responsibilities. From the early recognition of the concept in forestry by Hans Carl von Carlowitz to the establishment of international frameworks like the Paris Agreement and the European Green Deal, the importance of sustainable practices has gained global momentum. These milestones highlight the continuous

⁴⁹ Karin Bäckstrand, "Towards a Climate-Neutral Union by 2050? The European Green Deal, Climate Law, and Green Recovery," in *Routes to a Resilient European Union* eds. Antonina Bakardjieva Engelbrekt et al. (Stockholm: Springer International Publishing, 2022): 42, https://doi.org/10.1007/978-3-030-93165-0_3

⁵⁰ Jean Pisani-Ferry, Simone Tagliapietra, and Georg Zachmann, "A New Governance Framework to Safeguard the European Green Deal," 18 *Bruegel Policy Brief* (2023): 4, <https://hdl.handle.net/10419/278707>

⁵¹ Pisani-Ferry, Tagliapietra, and Zachmann, "European Green Deal," 5-6.

evolution of the sustainability discourse, with an increasing emphasis on reducing the negative impact of human activities on the environment while promoting social equity and economic development. Moving forward, the integration of sustainability into policy-making, industry practices, and societal behaviors will be critical in addressing the challenges of climate change, resource depletion, and inequality, ensuring a sustainable and resilient future for generations to come.

1.2. Defining the Sustainability Term

The concept of sustainability is extremely broad in scope, which is why various approaches and definitions exist. Sustainability refers to the continuity of a state or existing condition, and it is defined as the ongoing viability of ecological systems and the potential to pass natural resources on to future generations.⁵²

The generally accepted definition is the one provided by the Brundtland Commission in 1987: "*Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*" This definition is considered the most comprehensive understanding of the concept of sustainability.⁵³

Since future generations will also need the resources we rely on today, and because these resources are neither infinite nor unlimited, their usage requires serious responsibility.⁵⁴ The fact that the future generations will also need water, energy, and arable land makes the efficient use of these resources, in other words, their sustainability, essential.⁵⁵ Therefore, when using natural resources, we must not only focus on today's needs but also on the fact that these resources are exhaustible and will be needed by those who come after us. All approaches within this responsibility are considered under the concept of sustainability.⁵⁶ In the sustainability approach, which focuses on the continuity of environmental systems and functions, the priority is given to the more sensitive and rational use of resources.⁵⁷

The concept of sustainability adopts an approach that recognizes natural resources are neither infinite nor unlimited, and that development can be achieved without harming the ecological environment. Therefore, it represents a framework that encompasses social, economic, and ecological dimensions, requiring

⁵² Tıraş, "Sürdürülebilir Kalkınma," 59.

⁵³ WCED, "Our Common Future," 16.

⁵⁴ Nazan Kuter and H. Emre Ünal, "Sürdürülebilirlik Kapsamında Ekoturizmin Çevresel, Ekonomik ve Sosyo-Kültürel Etkileri," *Orman Fakültesi Dergisi* 9, no. 2 (2009): 147, <https://dergipark.org.tr/en/download/article-file/159667>

⁵⁵ Armağan Örki and Nehir Ağırseven, "Sustainable Environment in Tourism Policies: The Case of Türkiye," *Uluslararası Türk Dünyası Turizm Araştırmaları Dergisi* 1, no.2 (2016): 97-98, <https://dergipark.org.tr/en/pub/tdtdad/issue/30336/327418>

⁵⁶ Kuter and Ünal, "Sürdürülebilirlik Kapsamında," 147.

⁵⁷ Naime Zerrin Üstünişik, "*Türkiye İmalat Sanayiinde Yeşil İmalatın Uygulanabilirliği: Makina İmalat Sanayii Örneği*," (Uzmanlık Tezi, T. C. Kalkınma Bakanlığı 2014), 1.

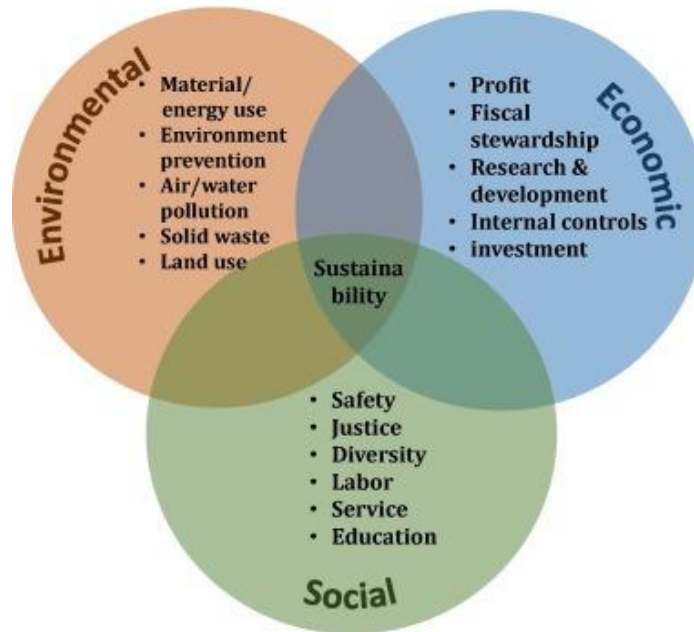
responsibility at all stages, from production to consumption, and is addressed within a multi-dimensional framework.⁵⁸

1.2.1. Dimensions of Sustainability

Sustainability, as it has developed throughout history and is understood today, is defined and discussed through three dimensions: ecological, economic, and social. Before the Brundtland Report, it was acknowledged that these three disciplines progressed separately, and no connection had been established between them in terms of sustainability.⁵⁹

In order to achieve holistic sustainability, it is crucial that these three dimensions—ecological, economic, and social—operate together simultaneously. The harmony and integration between these dimensions emerge as a common feature observed in sustainability efforts.⁶⁰

Even if only one of these dimensions is not sustainable, it hinders the true realization of sustainability in the long term. However, in practice, it is observed that the same focus is not given to the other dimensions as much as the economic one. This discrepancy is more pronounced in developing countries, where the emphasis on the economic dimension tends to overshadow the others.⁶¹



⁵⁸ Sezer Korkmaz and Ayşegül Sertoğlu, “Genç Tüketicilerin Sürdürülebilir Gıda Tüketimi Davranışının Güven ve Değerlere Dayanan Planlı Davranış Teorisi Kapsamında Tartışılması,” *H.Ü. İktisadi ve İdari Bilimler Fakültesi Dergisi* 31, no.1 (2013): 130, <https://doi.org/10.17065/huniibf.103659>

⁵⁹ Akgül, “Sürdürülebilir kalkınma,” 152.

⁶⁰ Selim Kılıç, “Yeni Toplumsal ve Ekonomik Arayışlar Sürecinde Sürdürülebilir Kalkınma,” *Gazi Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 8, no.2 (2006): 93, <https://dergipark.org.tr/tr/download/article-file/287558>

⁶¹ Fatih Ecer, “Özel Sermayeli Bankaların Kurumsal Sürdürülebilirlik Performanslarının Değerlendirilmesine Yönelik Çok Kriterli Bir Yaklaşım: Entropi-ARAS Bütünleşik Modeli,” *İİBF Dergisi* 14, no. 2 (2019): 367, <https://doi.org/10.17153/oguiibf.470336>

Figure 2: Dimensions of Sustainability

Source: Jiang et al., 2018

1.2.1.a. Economic Sustainability

The economic dimension of sustainability focuses on an organization's impact on the economic well-being of its stakeholders and its influence on local, national, and global economic systems. This impact stems from the fact that economic prosperity often relies on the excessive use of natural resources.⁶² The economic dimension of sustainability goes beyond a purely profit-driven perspective, prioritizing value-added activities. This approach not only enhances long-term profitability but also fosters potential stakeholder engagement.⁶³

For economic sustainability, businesses must manage all forms of capital—financial, tangible, and intangible—effectively and efficiently. In other words, economic sustainability requires an optimal balance between financial capital (such as debt and equity), tangible capital (such as land, buildings, machinery, equipment, vehicles, and inventory), and intangible capital (such as corporate reputation, intellectual capital, and technical knowledge). From this perspective, businesses must ensure a healthy cash flow while delivering sustainable returns to their shareholders.⁶⁴

The decreasing availability and consumption of natural resources in response to the rapidly increasing population has made it essential to ensure the equitable and effective distribution of these resources.⁶⁵ While the economic dimension is related to a business's capital, it emphasizes the importance of efficiently managing both tangible and intangible capital to ensure that businesses can generate profits and avoid financial difficulties.⁶⁶ To provide future generations with a better standard of living, it is crucial to achieve equality in goods, services, and financial resources while maintaining a balanced social and ecological system. In other words, a business is one that guarantees cash flow and provides its shareholders with returns above the average.

1.2.1.b. Social Sustainability

Social sustainability can be defined as the extent to which the values, social relationships, and social identities embraced by society can be preserved and carried

⁶² Eila Jeronen, "Economic sustainability," in *Encyclopedia of Sustainable Management*, eds. Samuel O. Idowu and Rene Schmidpeter (Cham: Springer International Publishing, 2023), 17.

⁶³ John Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (Oxford: Capstone Publishing, 1997), 74-75.

⁶⁴ Thomas Dyllick and Kai Hockerts, "Beyond the Business Case for Corporate Sustainability," *Business Strategy and Environment* 11, no. 2 (2002): 132-133.

⁶⁵ Güler Aras and Gaye Uğur Sarioğlu, *Kurumsal Raporlamada Yeni Dönem: Entegre Raporlama* (İstanbul: TÜSİAD, 2015), 24.

⁶⁶ Kayahan Tüm, "Kurumsal Sürdürülebilirlik ve Muhasebeye Yansımaları: Sürdürülebilirlik Muhasebesi," *Akademik Yaklaşımlar Dergisi* 5, no.1 (2014):63, <https://dergipark.org.tr/tr/download/article-file/39501>

into the future. At the core of social sustainability is the preservation of education, healthcare, nutrition, housing, and cultural activities, as well as the continuity of social cohesion. In addition, social sustainability encompasses ensuring that individuals can access education, healthcare, nutrition, and other essential services in an equal and sufficient manner while maintaining social balance.⁶⁷

When looking at sustainability from a social perspective, it becomes clear that businesses must be sensitive and responsible not only to today's society but also to future generations. This means using resources with consideration for the needs of future generations. Companies should ensure that their production processes use resources in a way that respects natural limits and allows for renewal. They must operate with the understanding that the social dimension of sustainability encompasses the continuity of future generations and, therefore, the future of humanity.⁶⁸

1.2.1.c. Ecological Sustainability

Environmental sustainability refers to maintaining appropriate living activities without harming nature. Engaging in environmentally conscious activities supports a healthy economy.⁶⁹

The environmental dimension of sustainability involves avoiding the overconsumption of renewable resources and, for non-renewable resources, investing in adequate substitutes and consuming them in moderation. This approach ensures the preservation of biodiversity, atmospheric stability, and other ecosystem functions that are typically not classified as economic resources.⁷⁰

The rapid increase in population, agricultural production, the Industrial Revolution, accelerated industrialization, increased energy consumption, and the use of non-renewable resources, along with modern urbanization, have led to deforestation, the loss of wetlands, depletion of non-renewable natural resources, air, water, and soil pollution, and a decline in biodiversity.⁷¹ These negative developments have underscored the importance of environmental sustainability.

Preserving ecosystem balance and biodiversity is crucial for environmental sustainability. Excessive environmental pollution not only endangers biodiversity but

⁶⁷ Tıraş, "Sürdürülebilir Kalkınma," 61.

⁶⁸ Alpagut Yavuz, "Sürdürülebilirlik Kavramı ve İşletmeler Açısından Sürdürülebilir Üretim Stratejileri," *Mustafa Kemal Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 7, no.14 (2010): 65, <https://dergipark.org.tr/tr/download/article-file/183283>

⁶⁹ Ali Kestane, "Sürdürülebilirlik Dengeli Puan Kartı (Performans Yönetim Stratejisi: Yol Haritası)," in *Muhasebe Bakış Açısıyla Sürdürülebilirlik ve Raporlama Üzerine Seçme Yazılar*, ed. Niyazi Kurnaz (Konya: Eğitim Kitabevi, 2020), 236.

⁷⁰ Jonathan M. Harris, "Basic Principles of Sustainable Development," *Global Development and Environment Institute* (2001): 26, <https://sites.tufts.edu/gdae/files/2019/10/00-04Harris-BasicPrinciplesSD.pdf>

⁷¹ Onur Yeni, "Sürdürülebilirlik ve Sürdürülebilir Kalkınma," 192-193.

also disrupts the ecosystem balance. As a result, future generations will inherit less biodiversity than what we currently possess.⁷²

In conclusion, sustainability is a multi-dimensional concept involving ecological, economic, and social aspects. It emphasizes the responsible use of resources to meet present needs without compromising future generations. Economic sustainability focuses on efficient capital management and equitable resource distribution, while social sustainability ensures access to essential services and social cohesion. Ecological sustainability prioritizes environmental preservation, including biodiversity and ecosystem balance. True sustainability can only be achieved when these dimensions are integrated and managed together, recognizing the need for responsible action in all areas to secure a sustainable future for all.

1.3. The Relation between the ESG and Sustainability

Humanity is increasingly focusing on environmental and social aspects to support our planet Earth for the next generation. With this understanding of climate change and carbon neutral industry needs, green thinking, ESG is becoming a mainstream corporate initiative to conserve and sustain our resources.⁷³

The concept of ESG refers to the integration of environmental, social and governance factors into investment processes and more widely into decision-making.⁷⁴ Each of the three factors in the ESG term consists of specific subtopics. The environmental factor consists of the quality of environmental practices, such as the introduction of environmental management systems, measures to reduce pollution or limit carbon emissions. The social factor of the ESG consists of human rights policies and the existence of certain worker safety standards. The governance factor includes issues related to executive compensation, anti- takeover defenses, and the company's board structure.⁷⁵

The term appears in the United Nation's Principles for Responsible Investment (PRI) report (consisting of the Freshfield Report and "Who Cares Wins") and is also used by large business consulting firms. The concept of ESG issues refers to material non-financial information about a company's challenges and performance in these issues.⁷⁶

⁷² Serkan Gürlük, "Sürdürülebilir Kalkınma Gelişmekte Olan Ülkelerde Uygulanabilir Mi?," *Eskişehir Osmangazi Üniversitesi İİBF Dergisi* 5, no.2 (2010): 87.

⁷³ Tracy Dathe and René Dathe and Isabel Dathe and Marc Helmold, *Corporate Social Responsibility (CSR), Sustainability and Environmental Social Governance (ESG) Approaches to Ethical Management*, (Berlin: Springer, 2022), 117.

⁷⁴ Georg Kell, "The remarkable rise of ESG," *Forbes*, Jul 11, 2018, <https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/#608db4241695>

⁷⁵ Gordon L. Clark and Michael Viehs, "The implications of corporate social responsibility for investors: An overview and evaluation of the existing CSR literature", *SSRN Electronic Journal*, 2014, 3, <https://ssrn.com/abstract=2481877>

⁷⁶ Alexander Bassen and Ana Maria Kovács, "Environmental, Social and Governance Key Performance Indicators from a Capital Market Perspective," *Wirtschafts- und Unternehmensethik* 9, no. 2 (2020): 184, <https://www.ssoar.info/ssoar/handle/document/34886>

ESG factors cover a wide range of measures and have become an important part of global investment decisions as they promote sustainable working practices. For this reason, ESG investment is attracting more and more attention and recognition by policy makers, public and especially investors. ESG investment represents an approach that goes beyond simple profit, where companies can act in a sustainable way by taking action in certain areas and at the same time adds value to the sector. It also signals that a company is sustainable and operates responsibly, thus adding value to society and all its stakeholders. ESG investment can improve sustainability, boost economic growth and strengthen risk management.⁷⁷

In summary, ESG draws a framework for companies that envisage their responsibilities in the field of sustainability. In this respect, it has a much narrower meaning than the concept of sustainability. However, the concept of ESG also continues to evolve. Today, ESG is used in many different ways, whether as a tool for evaluating investment opportunities and risk management, as a criterion of corporate social responsibility, or as an ideological preference.

1.4. The Relation between the Corporate Governance and Sustainability

The corporate scandals and economic crises experienced at the end of the 20th century made it inevitable for some fundamental changes in the management of enterprises. One of the most important elements of this change and development process is the corporate governance approach. There is no single definition of the concept of corporate governance, one of the first definitions was expressed in the Cadbury Report (1992) as "*a system in which businesses are managed and controlled*"⁷⁸.

In order to achieve success in the corporate dimension of sustainability, which has environmental, economic and social dimensions, the corporate governance in companies should include all stakeholders. In other words, profitability, new investments, growth and similar success concepts are important indicators for businesses, but it should be accepted by all stakeholders that these are not sufficient for sustainability. Especially after the global crisis and the Covid-19 pandemic, all institutions have understood that it is imperative for them to convince all their stakeholders that these traditional achievements they have achieved are no longer sustainable. This obligation directs all for-profit or non-profit institutions towards an institutionalized structure that processes all processes in an integrated way in order to capture sustainability indicators. Because it is foreseen that the corporate governance provided at all levels will positively affect the sustainability. Therefore, sustainability requires more corporate innovation. Sustainability includes studies on a large scale, including all stakeholders, on how a business can generate profit through corporate

⁷⁷ Upalat Korwatanasakul, "Environmental, Social, and Governance Investment: Concepts, Prospects, and the Policy Landscape" in *Environmental, Social, And Governance Investment*, ed. Naoko Nemoto and Peter J. Morgan (Tokyo: Asian Development Bank Institute, 2020), 1.

⁷⁸ Murat Düzer, "Kurumsal Yönetim, Kurumsal Sürdürülebilirlik ve Finansal Performans: Bist'te Bir İnceleme," *Uluslararası Yönetim İktisat ve İşletme Dergisi* 17, Özel Sayı (2021): 36, <https://doi.org/10.17130/ijmeb.834409>

social responsibility programs, create added value for society, and how the company can contribute to the protection of nature and the environment.⁷⁹

Corporate Social Responsibility (CSR), is the whole of the activities that organizations are responsible for and arising from being economic and social units.⁸⁰ These activities mean not only making efforts on the issues that the society needs, but also sharing the data that the company has in an accurate, transparent and impartial manner. This sharing contributes to the continuity of the company by influencing the decisions of those concerned with accurate and reliable information.⁸¹ CSR means that businesses with the ability to self-regulate should be transparent and ethical in the process of producing goods and services, taking into account all stakeholders.⁸²

Sustainability and CSR are concepts that complement each other. CSR plays a crucial role in achieving sustainable development and corporate sustainability. One of the reasons for this is that the activities developed within the framework of CSR contribute to the environment, society and economy.⁸³ And these concepts have the affinity of being practices based on “volunteering”. Van Marrewijk (2003) likened sustainability and CSR to two sides of a coin and discussed the concepts on the basis of incorporating social/environmental factors and communication mechanism with stakeholders into business activities.⁸⁴ In this context, CSR is included in corporate sustainability, in other words, CSR is seen as one of the basic components of corporate sustainability.

CHAPTER 2 - CORPORATE SUSTAINABILITY REPORTING AND DIRECTIVES

2.1. Defining the Corporate Sustainability Term

Corporate sustainability is considered the counterpart of the sustainability approach in the business World. In this context, it refers to businesses taking

⁷⁹ Seval Kardeş Selimoğlu and Resül Yazıcı, “Türkiye’de Kurumsal Yönetişim ve Sürdürülebilirlik,” *Muhasebe ve Finansman Dergisi Özel Sayı* (2021): 117, <https://dergipark.org.tr/tr/download/article-file/1923379>

⁸⁰ Muammer Sarıkaya and Yasemin Akarca, “Kurumsal Sosyal Sorumlulukta Ölçüm Teknikleri,” *Denetışim Dergisi* 8 (2011): 61, <https://dergipark.org.tr/tr/download/article-file/208842>

⁸¹ Azzem Özkan, Şükran Güngör Tanç and Bahşende Taşdemir, “Sürdürülebilirlik Açıklamaları Kapsamında Kurumsal Sosyal Sorumluluğun Kârlılık Üzerine Etkisi: Bist Sürdürülebilirlik Endeksinde Bir Araştırma,” *Muhasebe Bilim Dünyası Dergisi* 20, no.3 (2018): 573, <https://dergipark.org.tr/en/download/article-file/545868>

⁸² Abbas Elmualim, “CSR and Sustainability in FM: Evolving Practices and an Integrated Index,” *Procedia Engineering*, 180 (2017): 1578, <https://doi.org/10.1016/j.proeng.2017.04.320>

⁸³ Elif Engin and Burcu Akgöz, “Sürdürülebilir Kalkınma ve Kurumsal Sürdürülebilirlik Çerçevesinde Kurumsal Sosyal Sorumluluk Kavramının Değerlendirilmesi,” *Selçuk İletişim* 8, no.1 (2013): 91, <https://doi.org/10.18094/si.78508>

⁸⁴ Marcel van Marrewijk, “Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion,” *Journal of Business Ethics* 44, no. 2 (2003):98.

responsibility for the social and environmental impacts they cause while striving to achieve their economic goals and taking the necessary actions.⁸⁵

Corporate sustainability can be defined as the set of strategies and initiatives that businesses adopt to conserve resources ensuring that needs of both current and future generations are fulfilled.⁸⁶ This concept aims for companies to operate in a sustainable manner, act in harmony with the environment and society, and fulfill their social responsibilities. To achieve this goal, businesses work to make their operations environmentally sustainable by adopting practices such as waste management, energy efficiency, and environmentally friendly products to reduce their environmental impact.⁸⁷

Corporate sustainability is a concept used at the company level and is generally considered to share the same underlying principles as the broader idea of sustainability. It is seen as a new management approach that provides an alternative to the traditional profit-maximization model. For many companies, corporate sustainability has become an integral part of business strategy and a core corporate value.⁸⁸

Research indicates that corporate sustainability has long-term benefits for businesses, the environment, and society. In these studies, corporate sustainability is frequently discussed within the context of business management strategies and is associated with all dimensions of sustainability. Therefore, criteria such as resource utilization, ecological balance and diversity preservation, social equity, environmental pollution, and economic considerations are accepted as measures for corporate sustainability.⁸⁹

For corporate sustainability to be achieved, businesses must plan and operate with a focus on long-term gains and benefits, rather than short-term profits.⁹⁰ In this way, businesses can secure their long-term growth economically, while also ensuring environmental protection and social equity, thus safeguarding their corporate continuity.

⁸⁵ Neşe Yalçın and Esra Karakaş, "Kurumsal Sürdürülebilirlik Performans Analizinde CRITIC-EDAS Yaklaşımı," *Çukurova Üniversitesi Mühendislik Mimarlık Fakültesi Dergisi* 34, no.4 (2019): 148, <https://doi.org/10.21605/cukurovaummfd.704167>

⁸⁶ Laurence Clément Roca and Cory Searcy, "An analysis of indicators disclosed in corporate sustainability reports," *Journal Of Cleaner Production* 20, no. 1 (2012): 104, <https://doi.org/10.1016/j.jclepro.2011.08.002>

⁸⁷ Burak Şenocak and Yeliz Bursalı, "İşletmelerde Çevresel Sürdürülebilirlik Bilinci ve Yeşil İşletmecilik Uygulamaları ile İşletme Başarısı Arasındaki İlişki," *Süleyman Demirel Üniversitesi İktisadi Ve İdari Bilimler Fakültesi Dergisi* 23, no.1 (2018): 164, <https://dergipark.org.tr/tr/download/article-file/1003502>

⁸⁸ Benno Signitzer and Anja Prexl, "Corporate Sustainability Communications: Aspects of Theory and Professionalization," *Journal of Public Relations Research* 20, no.1 (2008): 2, <https://doi.org/10.1080/10627260701726996>

⁸⁹ Hatice Kübra Kandemir, "Sürdürülebilir Şirketler ve Hukuki Çerçevesi," *İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi* 20, no.41 (2021):857-858, <https://doi.org/10.46928/iticusbe.949544>

⁹⁰ Dyllick and Hockerts, "Beyond the Business," 132.

Corporates that fail to adapt to environmental changes and cannot use resources effectively are unlikely to survive. Sustainability activities and practices are crucial for organizations to operate sustainably within a constantly changing environment. Environmental changes may stem from sociological factors, such as increased population density or globalization, from technological advancements in information or communication systems, or from scientific breakthroughs. Regardless of the source, if the impacts and outcomes of environmental changes and developments are not anticipated and assessed in advance, organizations may struggle to maintain their existence. To adapt more effectively to their environments, organizations must be aware of environmental changes and develop proactive control measures.⁹¹

2.2. The Relation Between the Corporate Sustainability and Business Ethics & Social Responsibility

2.2.1. Corporate Sustainability and Business Ethics Relation

Corporate sustainability, like the concept of sustainability, consists of three dimensions: economic, social, and environmental. Business ethics is the most important element of the social dimension of a sustainable business. Today, businesses must prioritize business ethics and business morals to be sustainable. Ethics is the behavioral distinction between good and bad, right and wrong in a societal context. Business ethics refers to the incorporation and importance of ethical principles and values in business life. In this regard, business ethics consists of principles and standards that guide workplace behavior, ensuring actions align with established rules and norms.⁹²

The economic, social, and environmental dimensions of sustainability are also applicable to business ethics practices. Without this alignment, it is not only unsustainable to speak of a sustainable business but also of sustainable economic development. The economic dimension of sustainability in business ethics suggests that companies should benefit not only their shareholders, managers, and stakeholders but also society at large. The social dimension of sustainability in business ethics emphasizes equality and fairness, focusing on broader social benefits rather than solely individual gain. The environmental dimension encourages companies to conduct production with a mindset that protects the environment and ecosystem. Companies that structure their activities and practices according to the principles of sustainability and establish their own ethical principles tend to perform

⁹¹ Murat Görmən and Göksel Korkmaz, "Kurumsal Sürdürülebilirlik İçin Sürdürülebilir İç Denetim: Geleceğin İç Denetim Fonksiyonu," *Denetim*, 25 (2022): 97, <https://dergipark.org.tr/tr/download/article-file/2088198>

⁹² Saime Önce and Nuray Tokgöz, "İşletme Yönetiminde Yeni Kurallar: Kimya Sektöründe Sürdürülebilirlik Konuları Üzerine Bir Araştırma," *ISGUC The Journal of Industrial Relations and Human Resources* 11, no. 2 (2009): 258, <https://dergipark.org.tr/tr/download/article-file/235482>

well. Additionally, businesses that adopt and apply ethical practices can build a strong brand image, fostering customer loyalty.⁹³

The "business case" approach to sustainability, common in research and practice, falls short as it treats social and environmental issues primarily as avenues for boosting profits. However, sustainability's growing complexity shows companies that these issues are vital to their stability and must be integrated meaningfully, rather than prioritized solely for profitability. This approach is also criticized in business ethics for reducing social and environmental concerns to economic gains rather than treating them as ethical obligations.⁹⁴

In transitioning to business ethics practices, companies need to establish an organizational structure aligned with ethical business principles. In management studies, there is ongoing debate over whether a mechanical or organic organizational structure is more suitable for implementing ethical business practices. Some researchers argue that team-based organic structures, where authority is decentralized, employees are empowered, and hierarchy is minimized, are better suited for ethical practices. In contrast, other researchers advocate for mechanical organizations with centralized authority and a clear hierarchy, suggesting that such structures may be more conducive to maintaining ethical standards.⁹⁵

In transitioning to ethical business practices, aligning human resources management and practices with ethical principles is crucial for an ethical organization. Through human resources policies, ethical businesses can promote awareness of sustainability, including its social and environmental aspects, among employees and stakeholders. They can also implement reward and disciplinary systems related to ethical behaviors, reinforcing ethical standards across the organization.⁹⁶

Corporate sustainability should foster high levels of employee satisfaction, including happiness and well-being.⁹⁷ Furthermore, when true corporate sustainability leads employees to adopt a sense of purpose and put ethics into

⁹³ Derya Altunbaş, "Uluslararası Sürdürülebilir Kalkınma Ekseninde Türkiye'deki Kurumsal Değişimlere Bir Bakış," *Yönetim Bilimleri Dergisi* 1, no.1-2 (2003): 117, <https://dergipark.org.tr/tr/download/article-file/46441>

⁹⁴ Simone Carmine and Valentina De Marchi, "Reviewing paradox theory in corporate sustainability toward a systems perspective," *Journal of Business Ethics* 184, no.1 (2023): 139-140, <https://doi.org/10.1007/s10551-022-05112-2>

⁹⁵ Ali Çiftçioğlu, "Türkiye'de Yerel Yönetimler ve Çevre Sorunlarının Çözümündeki Sorumlulukları, Roller ve Önemi," *Al Farabi Uluslararası Sosyal Bilimler Dergisi* 3, no. 1 (2019): 101.

⁹⁶ Nazmiye Ülkü Arı Pekkan and Mustafa Fedai Çavuş, "İnsan Kaynakları Yönetiminde Etik", *Akademik Sosyal Araştırmalar Dergisi* 2, no.1 (2014): 542, <https://doi.org/10.16992/ASOS.115>

⁹⁷ Andrew Chamberlin and Daniel Zhao, "The Key to Happy Customers? Happy Employees," *Harvard Business Review*, August 19, 2019, <https://hbr.org/2019/08/the-key-to-happy-customers-happy-employees>

practice, human flourishing can emerge and thus employee satisfaction, happiness, and well-being can emerge as well.⁹⁸

2.2.2. Corporate Sustainability and Social Responsibility Relation

One of the practices closely associated with business ethics in companies is social responsibility. In its broadest sense, social responsibility refers to the use of corporate resources for the benefit of society. In this context, the concept of social responsibility entails that organizations operate in a manner aligned with economic and legal conditions, business ethics, internal and external environmental factors, and societal expectations. Social responsibility practices encompass voluntary initiatives aimed at enhancing public welfare, supporting environmental protection, and addressing social issues, engaging all segments of society. Accordingly, businesses are expected to fulfill their responsibilities to society by implementing social responsibility projects on issues such as employee rights, environmental pollution, minority rights, education, health, culture, and the arts.⁹⁹

In businesses, social responsibility practices are considered and evaluated alongside ethical practices. These social responsibility initiatives form the social dimension of corporate sustainability. This social dimension is assessed within the context of companies' moral obligations to society.¹⁰⁰

In the context of corporate sustainability, the relationship between social responsibility and business ethics is primarily explained through two main approaches. The first is Carroll's Corporate Social Responsibility Pyramid Approach, and the second is Milton Friedman's Stakeholder Approach.

Carroll defines CSR as “the entirety of society's economic, ethical, legal, and discretionary expectations of businesses at a given time.”¹⁰¹ CSR extends beyond the economic activities of organizations, emphasizing a voluntary commitment to contributing to a better society and a cleaner environment.¹⁰²

⁹⁸ Pablo Ruiz-Palomino and Rafael Morales-Sánchez and Ricardo Martínez-Cañás, “Corporate Sustainability, Ethics and Employee Satisfaction,” *Sustainability* 13, no. 21 (2021): 1, <https://doi.org/10.3390/su132111964>

⁹⁹ Umut Koç, “İş Etiği Programlarının Yönetimi ve İş Etiğinin Kurumsallaşması,” *Anadolu Üniversitesi Yayını* 3011 (2013): 54.

¹⁰⁰ Zeki Tüyen, “İşletmelerde Sürdürülebilirlik Kavramı ve Sürdürülebilirliği Etkileyen Etmenler,” *İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi* 19, no.37 (2020): 109, <https://dergipark.org.tr/en/download/article-file/1122482>

¹⁰¹ Archie B. Carroll, “A Three-Dimensional Conceptual Model of Corporate Performance,” *The Academy of Management Review* 4, no.4 (1979): 500, <https://doi.org/10.2307/257850>

¹⁰² Archie B. Carroll, “Corporate Social Responsibility - Evolution of a Definitional Construct,” *Business & Society* 38, no. 3 (1999): 276, <https://doi.org/10.1177/000765039903800303>



Figure 3: Carroll's pyramid of CSR

Source: Carroll, A. B. (2016). P.5

Carroll divides corporate social responsibility into four dimensions: economic, legal, ethical, and philanthropic. The social responsibility pyramid created by Carroll consists of these four dimensions. According to Carroll, economic and legal responsibilities are necessary, ethical responsibilities are expected, and philanthropic (voluntary) responsibilities are desirable.¹⁰³

The Stakeholder Management Approach emphasizes that a business's responsibilities should be defined separately for each stakeholder group and fulfilled fairly.¹⁰⁴ Societal demands play a significant and shaping role in the development of businesses' attitudes and behaviors towards CSR, and it is essential that these demands are accurately understood by businesses and reflected in their actions.¹⁰⁵ To ensure their sustainability, businesses must develop relationships and collaborations with all stakeholders across economic, social, and societal dimensions, supporting projects and initiatives that enhance societal welfare in areas such as unfair competition, workers' rights, environmental pollution, education, health, culture, and the arts. Furthermore, businesses must align their production, finance and accounting, marketing, procurement, human resources, and R&D activities with business ethics principles. They should observe ethical practices and behaviors in stakeholder relations and provide training to their employees on these matters.¹⁰⁶

¹⁰³ Mark S. Schwartz and Archie B. Carroll, "A Three-Domain Approach," *Business Ethics Quarterly* 13, no.4 (2003): 504, <https://doi.org/10.5840/beq200313435>

¹⁰⁴ Jill A. Brown, ve William R. Forster, "CSR and Stakeholder Theory: A Tale of Adam Smith," *Journal of Business Ethics* 112, no.2 (2013): 301, <https://doi.org/10.1007/s10551-012-1251-4>

¹⁰⁵ İlknur Kılınç, "Kurumsal İtibar Açısından Sosyal Sorumluluk Uygulamaları: Türkiye'deki Çevreci Sivil Toplum Örgütleri Üzerine Bir Araştırma," *İletişim Kuram ve Araştırma Dergisi* 47 (2018): 257, <https://dergipark.org.tr/tr/download/article-file/1961689>

¹⁰⁶ Umut Koç, "İş Etiği Programlarının Yönetimi," 56-62.

For sustainability to be effectively implemented by businesses, it must be internalized, monitored, managed, and measurable. The tool that will ensure this is corporate sustainability reporting.¹⁰⁷

2.3. Corporate Sustainability Reporting

The traditional financial reporting system focuses primarily on business activities and outcomes in relation to managers and shareholders. However, today, other stakeholders are also closely interested in business activities and outcomes, extending their focus beyond financial results to include the social and environmental dimensions of these activities. Financial reporting, which traditionally serves shareholders and managers, views profit or profitability as the primary measure of success. It does not adequately address the need to monitor and report on business activities that have social and environmental impacts.¹⁰⁸ Financial reports are prepared based on monetary transactions, and reducing all value movements to monetary terms fails to reflect the social and environmental impacts of business activities.¹⁰⁹

The inadequacy of financial reporting to provide stakeholders with insights into the social and environmental effects of business activities has led to the emergence of corporate sustainability reporting. Corporate sustainability reports reveal the value creation potential of a company's non-financial information. This allows all stakeholders, especially investors, to make assessments based on both financial and non-financial information. Therefore, corporate sustainability reporting offers both internal and external benefits for decision-makers. Additionally, sustainability reports demonstrate the company's sensitivity to the community in which it operates, contributing to its visibility and providing a competitive advantage.¹¹⁰

Through the new perspective brought by corporate sustainability, companies must be accountable not only to their shareholders but to all stakeholders. Stakeholders demand transparency from companies and wish to access social and environmental performance indicators in addition to financial performance. From this viewpoint, corporate sustainability has expanded the scope of transparency and accountability. Corporate sustainability reports, which provide stakeholders with an evaluation of the company's strategy, management approach, and commitments, are seen as tools for transparency and accountability.¹¹¹

¹⁰⁷ Arzu Özsözgün Çalışkan, "Sürdürülebilirlik Raporlaması," *Journal of Accounting and Taxation Studies* 5, no.1 (2012): 61, <https://dergipark.org.tr/tr/download/article-file/1526031>

¹⁰⁸ Arzu Özsözgün Çalışkan, "Sürdürülebilirlik Raporlaması," 62.

¹⁰⁹ Ahmet Onay, "Sürdürülebilir Kalkınma, Kurumsal Sürdürülebilirlik ve Sürdürülebilirlik Raporlaması," *Elektronik Mesleki Gelişim ve Araştırma Dergisi* 3, no.özel sayı (2015): 111.

¹¹⁰ Gülnur Sultankhanova and Serap Sabahat Yanık, "Finansal Bilgi Kullanıcılarının Sürdürülebilirlik Raporları ile Güvence Denetimi Konusundaki Algıları ve Farkındalıkları," *Muhasebe ve Denetim Bakış* 20, no.62 (2021): 43, <https://dergipark.org.tr/tr/download/article-file/1278240>

¹¹¹ İstanbul Menkul Kıymetler Borsası, *Sürdürülebilirlikle ilgili Özet Bilgiler*, May, 2011, 5, https://www.borsaistanbul.com/datum/surdurulebilirlik/surdurulebilirlik_ozet_bilgiler.pdf

There are various reporting systems that businesses use to guide their corporate sustainability reporting. These systems include the Global Reporting Initiative (GRI), Carbon Disclosure Project (CDP) reports prepared under the Carbon Disclosure Project framework, Communication on Progress (COP) prepared in accordance with the United Nations Global Compact (UNGC), and the Integrated Reporting (IR) developed by the International Integrated Reporting Council (IIRC).¹¹² These reporting frameworks have been designed to ensure that the sustainability reports prepared by businesses are transparent, understandable, actionable, and globally recognized.¹¹³

2.3.1. International Frameworks for Corporate Sustainability Reporting

2.3.1.a. Global Reporting Initiative

The GRI was established in 1997 by the Tellus Institute and the Coalition for Environmentally Responsible Economies, and two years later, in 1999, it officially partnered with the UNEP. GRI covers many important aspects related to the implementation and design of corporate social responsibility and has become one of the most respected reporting initiatives worldwide.¹¹⁴

With the development of corporate sustainability reporting and the contributions of participants from many countries in setting indicators, the most comprehensive activities for sustainability reporting have been provided by the GRI. The reports, updated as G1, G2, G3, and G4, have become an important resource for businesses preparing corporate sustainability reports.¹¹⁵

The GRI reporting framework establishes the reporting principles, standards, and indicators that businesses should use to measure and report their social, environmental, and economic performance. The mission of GRI is to guide and support companies in making sustainability reporting a standard practice. GRI's vision is a sustainable global economy where businesses responsibly manage and transparently report their social, economic, environmental, and governance performance and impacts.¹¹⁶

GRI achieves its goal by continuously improving the use of the sustainability reporting framework and enhancing the ability of organizations to apply it

¹¹² Esra Atabay, "Kurumsal Sürdürülebilirlik Raporları ve Güvence Denetimi: Türkiye'de GRI Rehberine Göre Raporlama Yapan Firmalar Üzerinde Bir Araştırma," *Muhasebe Bilim Dünyası Dergisi* 21, no.4 (2019): 906, <https://doi.org/10.31460/mbdd.561765>

¹¹³ Erdal Yılmaz and Ruhan Bayrak Oğuz, "Türkiye'deki Konaklama İşletmelerine Ait Sürdürülebilirlik Raporlarının GRI Raporlama Standartlarıyla Karşılaştırmalı Analizi," *Journal of Social and Humanities Sciences Research* 7, no.54 (2020): 1385, <https://doi.org/10.26450/jshsr.1889>

¹¹⁴ Math Göbbels, "Standards For Corporate Social Responsibility," in *The Challenge of Organizing and Implementing Corporate Social Responsibility*, eds. Jan Jonker and Marco de Witte Palgrave (Houndmills: Palgrave Macmillan, 2006): 181, <https://doi.org/10.1057/9780230626355>

¹¹⁵ Gönenç Dalgıç Turhan, Tutku Özen and Raif Serkan Albayrak, "Kurumsal Sürdürülebilirlik Kavramı, Stratejik Önemi ve Sürdürülebilirlik Performansı Ölçümü: Literatür Çalışması," *Ege Stratejik Araştırmalar Dergisi* 9, no.1 (2018): 28, <https://doi.org/10.18354/esam.329348>

¹¹⁶ Çağatay Akarçay, "Sürdürülebilirlik Muhasebesi Standartları Kurulu," *Öneri Dergisi* 11, no.42 (2014): 7, <https://doi.org/10.14783/od.v11i42.5000065501>.

effectively. GRI aims to gain universal recognition worldwide for reporting and addressing corporate social responsibility issues, providing stakeholders with transparent and standardized communication on these topics.¹¹⁷ GRI's strategy is to involve expert stakeholders from all over the World, ensuring broad participation, and to continuously improve its published guidelines.

GRI is the most widely recognized initiative globally for integrated sustainability reporting. As of 2015, a total of 7,547 organizations worldwide have published 24,405 sustainability reports. Approximately 70% of these reports (18,743) are GRI reports.¹¹⁸

2.3.1.b. United Nation Global Compact

Launched in 2000, the UN Global Compact is the most comprehensive platform aimed at developing and implementing policies within the framework of sustainability and corporate responsibility. This platform proposes universal principles with the goal of creating a common development culture for businesses and is considered an innovative approach to corporate responsibility.¹¹⁹

Addressing areas that are seen as problematic in the working life worldwide, the UN Global Compact encourages businesses to expand the scope of their human resources management. It is important for companies applying the UN Global Compact to adopt a rights-based and protective approach, thereby introducing advantageous labor standards for their workforce.¹²⁰ The UN Global Compact applies not only to UN bodies and civil society but also to all private sector businesses and public institutions.

Published as an innovative corporate responsibility approach, the UN Global Compact proposes universal principles to foster a shared development culture in the business world. This compact consists of 10 principles outlined by the UN, addressing values such as environmental sustainability, the protection of human rights, fair treatment of workers, and the elimination of bribery and corruption.¹²¹

Although the UN Global Compact is a voluntary initiative, companies supporting these principles are required to make a clear commitment to integrate

¹¹⁷ Tomas Monte, "Application of Global Reporting Initiative (GRI) in The Sustainability Reporting of Financial Services," (Master Thesis, University of Tampere Department Economics and Accounting, 2009), 10-11.

¹¹⁸ Metin Saban, Hilal Küçüker, and Metehan Küçüker, "Kurumsal Sürdürülebilirlik ile İlgili Raporlama Çerçevesi ve Sürdürülebilirlik Raporlamasında Muhasebenin Rolü," *İşletme Bilimi Dergisi* 5, 1 (2017): 109, <https://doi.org/10.22139/jobs.291818>

¹¹⁹ Nilhun Doğan, "Kurumsal Sosyal Sorumluluk Girişimleri," *Selçuk Üniversitesi Sosyal Bilimler Yüksek Okul Dergisi* 10, no.1-2 (2008): 523, <https://dergipark.org.tr/tr/download/article-file/116725>

¹²⁰ Mehtap Aracı Kazıcı, "Küresel ilkeler sözleşmesine üye olan işletmelerde çalışma standartları: Türkiye'deki bazı üye işletmelerde işgücüne sağlanan avantajlar açısından bir değerlendirme," *İktisadi ve İdari Bilimlerde Araştırma ve Değerlendirmeler-I Kitapçığı* in, ed. Mustafa Mete (Ankara: Gece Publishing, 2021), 368.

¹²¹ Prakash Sethi and Donald H. Schepers, "United Nations Global Compact: The Promise—Performance Gap," *Journal of Business Ethics* 122, no.2 (2014): 197, <https://doi.org/10.1007/s10551-013-1629-y>

them into their corporate policies, operations, and organizational culture. Additionally, participants are expected to report their progress annually, a process known as the Communication on Progress. The Communication on Progress is based on principles of responsibility to humanity, transparency, and continuous positive improvement. These policies help reinforce the company's commitment to the UN Global Compact and contribute to maintaining the integrity of the initiative.¹²²

2.3.1.c. Carbon Disclosure Project

CDP was established in London with the aim of facilitating publicly listed companies in reporting to investors how they utilize natural resources and capital, how their activities impact the reproduction of limited resources, and how they manage risks in this area. Founded in 2000, CDP acts as a "secondary stakeholder" by facilitating corporate investors' collaboration to increase corporate accountability regarding climate change.¹²³

CDP is a globally recognized reporting framework, focusing on key issues such as climate change, water usage, damage to forests, and environmental risks within supply chains. It remains the only international and independent organization that reports how companies worldwide manage the risks caused by climate change.¹²⁴

CDP calls on businesses, on behalf of institutional investors, to measure, manage, and share critical environmental data. Each year, the data collected from companies on these issues are evaluated using CDP's developed rating methodology. Based on this, CDP prepares thematic analysis reports, which provide insights into how companies are addressing key environmental challenges.¹²⁵ CDP's goal is to harmonize climate change data from around the world and establish an international standard for carbon reporting.¹²⁶ To set these standards, several guidelines have been developed, with the most important being the GRI Standards and the Greenhouse Gas Protocol.¹²⁷

¹²² United Nations Global Compact, *Birleşmiş Milletler Küresel İlkeler Sözleşmesi İlerleme Bildirimi (COP) Konusunda Pratik Rehber*, Feb 2008, 8, https://www.undp.org/sites/g/files/zskgke326/files/migration/tr/Practical_Guide_2008_tr.pdf

¹²³ Daniel Arenas, Josep M. Lozano and Laura Albareda, "The Role of NGOs in CSR: Mutual Perceptions Among Stakeholders," *Journal of Business Ethics* 88, no.1 (2009): 178, <https://doi.org/10.1007/s10551-009-0109-x>

¹²⁴ Türkiye İşveren Sendikaları Konfederasyonu, *Herkes İçin Kurumsal Sosyal Sorumluluk Projesi - Türkiye Sürdürülebilirlik Raporlaması Ulusal İnceleme Raporu*, Jan 2016, 22, <https://csrforall.eu/tr/icerik/reports/CSR-Ulke-Analiz-RaporuTR-190116.pdf>

¹²⁵ Borsa İstanbul, *Şirketler İçin Sürdürülebilirlik Rehberi*, Aug 6, 2020, 35, <https://www.borsaistanbul.com/tr/duyuru/3037/borsa-istanbuldan-sirketler-icin-surdurulebilirlik-rehberi>

¹²⁶ Carbon Disclosure Project, *CDP Türkiye- En İyi Uygulamalar Kitapçığı*, 2012, 2, <https://cdpTürkiye.sabanciuniv.edu/sites/cdpTürkiye.sabanciuniv.edu/files/blogs/cdp-Türkiye-best-practices-booklet-turkish.pdf>

¹²⁷ Pınar Okan Gökten, Beyhan Marşap and Soner Gökten, "Sera Gazı Emisyon Raporlaması Bir Tercih mi Yoksa Zorunluluk mu? Kuramsal Bir Değerlendirme," *Muhasebe Bilim Dünyası Dergisi* 20, Özel Sayı (2018):920, <https://dergipark.org.tr/tr/download/article-file/635189>

Each year, company responses submitted under CDP's information request are reviewed and analysed. Additionally, companies are evaluated based on the quality of their responses and their performance in activities aimed at mitigating climate change. As a result of the evaluation, a transparency score and a performance score are assigned. The transparency score assesses the quality and completeness of the company's response, while the performance score measures the company's management of risks related to climate change.¹²⁸

2.3.1.d. Integrated Reporting

The International Integrated Reporting Council (IIRC), established in 2010, has made significant contributions to the global adoption of integrated reporting. The council brings together a broad range of stakeholders, including investors, business representatives, academics, and civil society organizations, with the goal of developing and promoting integrated reporting standards.¹²⁹

In 2013, the IIRC released the first International Integrated Reporting Framework, which was completed in 2021. The aim of this framework is to establish guiding principles and content elements that define the structure of integrated reports, while also clarifying the core concepts that support these elements.¹³⁰

Integrated reporting, in its broadest sense, is a type of reporting that encompasses the link between business management and financial performance with economic, environmental, and social factors. The information provided through integrated reporting plays a crucial role in helping businesses make sustainability-related decisions, and it also aids information users in their decision-making processes.¹³¹

Integrated reporting brings together concepts like corporate governance, financial capital, intellectual capital, social capital, and natural capital, which are not included in traditional financial reports, into a single platform where they are interconnected. It evaluates the different dimensions of organizational performance and their internal and external relationships under the umbrella of organizational vision and values. An integrated report serves as a blueprint that connects a company's financial performance with other dimensions to help achieve the organization's vision. In this sense, it provides a structure that demonstrates how the organization's financial capital will be used to reach its strategic objectives.¹³²

¹²⁸ Fatma Aksoy, "İşletmelerde sürdürülebilirlik raporlama çerçeveleri," *Muhasebe Bilim Dünyası Dergisi* 21, no.2 (2019): 343, <https://doi.org/10.31460/mbdd.459841>

¹²⁹ Aras and Sarioğlu, "Entegre Raporlama," 16.

¹³⁰ International Integrated Reporting Council, *Uluslararası <Er> Çerçevesi*, January 2021, 10, <http://www.entegreraporlamatr.org/tr/images/pdf/IIRC-TR.pdf>

¹³¹ Sibel Karğın, Hakan Aracı and Hüseyin Aktat, "Entegre Raporlama: Yeni Bir Raporlama Perspektifi," *Muhasebe ve Vergi Uygulamaları Dergisi* 6, no.1 (2013): 27, <https://dergipark.org.tr/en/pub/muvu/issue/59979/866172>

¹³² Indra Abeysekera, "A Template For Integrated Reporting," *Emerald Journal of Intellectual Capital* 14, no.2 (2013): 229, <https://doi.org/10.1108/14691931311323869>

Corporate sustainability reporting has evolved as a critical tool for businesses to address not only financial performance but also their environmental and social impacts. The traditional financial reporting system, which focuses solely on monetary outcomes, is no longer sufficient to meet the demands of modern stakeholders who seek transparency in non-financial areas. Sustainability reports, guided by frameworks like GRI, UNGC, CDP, and Integrated Reporting, help businesses communicate their social, environmental, and economic performance to both internal and external stakeholders. These reporting frameworks promote accountability, transparency, and responsibility, enabling companies to make informed decisions that align with long-term sustainability goals. Ultimately, corporate sustainability reporting plays a pivotal role in fostering a responsible, transparent, and sustainable business environment that benefits both businesses and society as a whole.

2.3.1.e. International Financial Reporting Standards

Companies aiming to present the most accurate, comprehensive, and effective financial statements to the public produce financial reports based on the International Financial Reporting Standards (IFRS). Following stakeholders' increasing demand for non-financial data related to sustainability alongside financial data, the International Financial Reporting Standards Foundation established the International Sustainability Standards Board (ISSB) in November 2021 with the vision of integrating financial reporting and sustainability reporting. In response to these demands, the ISSB proposed two draft standards: General Requirements for Disclosure of Sustainability-related Financial Information (IFRS S1) and Climate-related Disclosures (IFRS S2). The process reached its conclusion when with the ISSB publishing the first two global sustainability disclosure standards, IFRS S1 and IFRS S2, during the IFRS Foundation Conference held in London on June 26–27, 2023.¹³³

The IFRS S1 standard provides comprehensive guidance for businesses to prepare and present management commentary supporting their financial statements. It emphasizes a fair and objective evaluation of a company's performance, prospects, and risks, alongside background information on the business environment and strategy. The commentary must be transparent, consistent, and include non-financial performance indicators, forward-looking insights, and visual aids.¹³⁴

IFRS S1 aims to guide entities in disclosing material sustainability-related risks and opportunities relevant to investors, lenders, and creditors, enabling them to assess the entity's enterprise value and resource allocation decisions. Sustainability-

¹³³ IFRS Foundation, *Feedback Statement - IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information IFRS S2 Climate-related Disclosures*, June, 2023, <https://www.ifrs.org/content/dam/ifrs/project/general-sustainability-related-disclosures/feedback-statement.pdf>

¹³⁴ IFRS Foundation, *Exposure Draft (Draft) IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information*, March, 2022, 6-8, <https://www.ifrs.org/content/dam/ifrs/project/general-sustainability-related-disclosures/exposure-draft-ifrs-s1-general-requirements-for-disclosure-of-sustainability-related-financial-information.pdf>

related financial information extends beyond traditional financial statements, covering governance, decision-making, future cash flows, reputation, and strategic prospects.¹³⁵

IFRS S2 standard aims to ensure companies provide essential information on their climate-related risks to support users of conventional financial statements in making informed investment decisions. It broadly defines the required disclosures as climate-related risks and opportunities that could reasonably impact an entity's future cash flows, access to financing, or cost of capital. Accompanying the standard is an industry guidance document that recommends various industry-specific quantitative metrics for companies to meet the IFRS S2 disclosure requirements.¹³⁶

The International Organization of Securities Commissions (IOSCO) announced on July 25, 2023, that it had approved the Sustainability Disclosure Standards following a comprehensive review. IOSCO (in which Türkiye is also a member), plays a significant role in shaping global financial regulations, is calling on its 130 member countries to assess how they can integrate ISSB Standards into their regulatory frameworks. This effort aims to promote consistency and comparability in sustainability-related disclosures worldwide. The endorsement and call for evaluation are expected to significantly contribute to the worldwide adoption of the Sustainability Disclosure Standards.¹³⁷

These developments in the field of sustainability are closely monitored in Türkiye as well. Notably, amendments to the Turkish Commercial Code No. 6102 and Decree Law No. 660 have authorized the Public Oversight, Accounting, and Auditing Standards Authority to *"establish and publish Türkiye Sustainability Reporting Standards aligned with international standards, issue differentiated regulations based on enterprise size and sectors when necessary, and authorize, monitor, and oversee entities that will conduct audits in these areas."* Following this amendment, the Public Oversight, Accounting, and Auditing Standards Authority established a Sustainability Standards Department, which has commenced its activities. The Authority has also completed the translation of IFRS S1 and IFRS S2, issued by the ISSB, and has opened these drafts for public consultation.¹³⁸ These regulatory changes have effectively made sustainability reporting practices a mandatory requirement for enterprises.¹³⁹

2.4. Corporate Sustainability Reporting Directive

2.4.1. The History of the Corporate Sustainability Reporting Directive

¹³⁵ IFRS Foundation, *Exposure Draft (Draft) IFRS S1 General Requirements*, 5.

¹³⁶ IFRS Foundation, *IFRS S2 Climate-Related Disclosures*, June, 2023, <https://www.ifrs.org/content/dam/ifrs/publications/pdf-standards-issb/english/2023/issued/part-a/issb-2023-a-ifrs-s2-climate-related-disclosures.pdf?bypass=on>

¹³⁷ Tunç Köse and Ömer Orbay Çetin, "Uluslararası Sürdürülebilirlik Açıklama Standartları IFRS S1 ve IFRS S2'nin Yayınlanmasının Ardından Sürece ve Standartlara İlişkin Bir Değerlendirme," *Uluslararası Yönetim Akademisi Dergisi* 6, no. 4 (2023): 1146, <https://doi.org/10.33712/mana.1374381>

¹³⁸ Köse and Çetin, "IFRS S1 ve IFRS S2'nin Yayınlanması," 1147.

¹³⁹ Karatepe Kaya, "Riskin Erken Saptanması Komitesi," 17.

The European Commission is working to improve sustainability reporting, where businesses voluntarily share data on their corporate sustainability performance. The European legislation on “disclosure of non-financial and diversity information the Non-financial Reporting Directive (NFRD)” was provided for by Directive 2014/95/EU.¹⁴⁰

Under this directive, large companies are required to report non-financial information that could impact their development, performance, and activities. The relevant directive has been integrated into the local legislation of EU member states or used within generally accepted international frameworks.¹⁴¹ This directive establishes that starting from 2017 large companies in the Member States are required to provide a series of social, environmental, and governance declarations.¹⁴²

The heterogeneous application of the NFRD across EU member states, along with allowing companies to choose their preferred reporting framework, has raised concerns regarding the comparability, reliability, and understandability of the disclosed information. Calls for changes to the directive pertain not only to the content of the reporting but also to audit or assurance obligations. Enhancing the comparability and reliability of the information implies the need for an audit obligation, which would increase the responsibilities and workload for both companies and auditors. Additionally, it can be stated that the principle of materiality has been overlooked in this directive.¹⁴³

In April 2021, the European Commission adopted the draft Corporate Sustainability Reporting Directive (CSRD), which strengthens the existing sustainability reporting requirements and expands the scope to include relevant companies.¹⁴⁴

The aim of this draft is to focus on achieving the quality not reached by the existing directive, to align financial and sustainability reporting to a coordinated level, and to ensure comparable and reliable sustainability reporting practices for all EU member states and stakeholders. With this draft directive, the European Commission has designated the "European Financial Reporting Advisory Group"

¹⁴⁰ Mehmet Güneş and Neriman Yalçın, “Finansal olmayan raporlamanın AB direktifi kapsamında incelenmesi: Bist kurumsal yönetim endeksi işletmeleri üzerine bir araştırma,” *Mali Çözüm Dergisi* 32, no.170 (2022): 114, <https://dergipark.org.tr/tr/pub/mbdd/issue/76396/1211177>

¹⁴¹ Nuran Cömert, “Doğal Sermaye Muhasebesinin Artan Önemi” in *Finansal Olmayan Bilgilerin Raporlanmasında Değişiklikler ve Güncel Konular*, ed. Nalân Akdoğan, Deniz Umut Doğan and Özge Sezgin Alp (Ankara: Gazi Kitabevi, 2022), 57.

¹⁴² Andrea Venturelli, et al. “Directive 2014/95/EU: Are Italian companies already compliant?,” *Sustainability* 9, no.8 (2017):1, <https://doi.org/10.3390/su9081385>

¹⁴³ Çağrı Aksoy Hazır, “Ufrs Sürdürülebilirlik Açıklama Standartları ile Avrupa Sürdürülebilirlik Raporlama Standartları’nın Karşılaştırması,” *Marmara Üniversitesi İktisadi ve İdari Bilimler Dergisi* 46, no.1 (2024): 89, <https://doi.org/10.14780/muiibd.1497490>

¹⁴⁴ Joanna Krasodomska, Ewelina Zarzycka, E., and Pawel Zieniuk, “Voluntary sustainability reporting assurance in the European Union before the advent of the corporate sustainability reporting directive: The country and firm-level impact of Sustainable Development Goals,” *Sustainable Development* 32, no.3 (2003):1653, <https://doi.org/10.1002/sd.2744>

(EFRAG) as the technical advisor responsible for developing the European Sustainability Reporting Standards (ESRS).¹⁴⁵

To develop the standards, EFRAG established the European Sustainability Reporting Standards Project Task Force. From June 2021 to April 2022, the ESRS drafts were prepared, and the first draft set of standards was released to the public in April 2022. In June 2022, a political agreement was reached on the CSRD by the European Commission.¹⁴⁶

EFRAG, taking into account the comments and feedback on the draft standards, reduced the set initially consisting of 13 standards to 12 standards and published the new draft standard set in November 2022.¹⁴⁷ After an agreement was reached by EU member states, the final version of the CSRD (EU/2022/2464) was published in the Official Journal of the EU in December 2022. The final version came into effect in January 2023.¹⁴⁸

2.4.2. Demands and Scope of the Corporate Sustainability Reporting Directive

Although the NFRD has increased the amount of information, on the other hand, problems related to the standardization and comparability of information have arisen the limits that the CSRD aims to overcome. Some of the major demands introduced by the CSRD:

- Broadening the scope of the obligations which will also extend to listed SMEs,
- Explanation of the principle of double materiality,
- Establishing European reporting standards developed by EFRAG,
- Implementing digital taxonomy for information digitization,
- Obligation to sworn reports.¹⁴⁹

CSRD broadens the scope to encompass all large enterprises and companies listed on regulated markets. This expansion would entail approximately 50,000

¹⁴⁵ Mustafa Uğur Akdoğan, "Sürdürülebilirlik Bilgilerinin Raporlanmasında Kullanılan Raporlama Çerçevesine Toplu Bakış ve Tek Raporlama Çerçevesine Duyulan İhtiyaç- Güncel Gelişmeler," *Muhasebe ve Denetim Bakış* 24, no.72 (2024): 235. <https://doi.org/10.55322/mdbakis.1448567>.

¹⁴⁶ Cömert, "Doğal Sermaye Muhasebesinin Artan Önemi," 57.

¹⁴⁷ Kamu Gözetim Kurumu, *Soru ve Cevaplarla Sürdürülebilirlik Raporlaması*, May 30, 2023, 6, https://www.kgk.gov.tr/Portalv2Uploads/files/Sustainability/Soru_ve_Cevaplarla_Surdurulebilirlik_Raporlamasi_30_05_2023-.pdf

¹⁴⁸ "Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, As Regards Corporate Sustainability Reporting" December 16, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464>, accessed 12 May 2024

¹⁴⁹ Salvatore Principale, *Fostering Sustainability in Corporate Governance Analysis of the EU Sustainable Corporate Governance and Due Diligence Directives*, (Rome: Springer, 2023), 27.

European companies adhering to comprehensive sustainability reporting guidelines, compared to the current 11,000.¹⁵⁰

Companies that meet two of the following three conditions will have to comply with the CSRD¹⁵¹:

- Generating €50 million or more in net turnover.
- A balance sheet total of more than €25 million.
- Employing 250 or more individuals. (Averaged over a year)

This includes:

- Major publicly traded corporations, banks, and insurance firms that were already subject to the NFRD.
- Other EU-listed companies those were previously exempt from the NFRD.
- European SMEs listed on stock exchanges (which have the option to report using simplified standards).
- Large private European enterprises.

In addition, non-European companies that have an annual turnover of above €150 million in the Europe will also have to comply.

2.4.3. Structure of the Corporate Sustainability Reporting Directive and the Content of ESRS

The first set of ESRS, consisting of 12 standards published by EFRAG, has been developed in line with the CSRD proposals and covers environmental, social, and governance issues. Additionally, EFRAG plans to publish sector-specific standards and standards for SMEs, which have not yet been released for public consultation.

¹⁵⁰ Paolo Tenuta and Domenico Rocco Cambrea, *Corporate Sustainability Measurement, Reporting and Effects on Firm Performance*, (Rome: Springer, 2022), 51.

¹⁵¹ Christof Falkenberg, Carina Schneeberger and Siegfried Pöchl, "Is Sustainability Reporting Promoting a Circular Economy? Analysis of Companies' Sustainability Reports in the Agri-Food Sector in the Scope of Corporate Sustainability Reporting Directive and EU Taxonomy Regulation," *Sustainability* 15, no.9 (2023): 4, <https://doi.org/10.3390/su15097498>

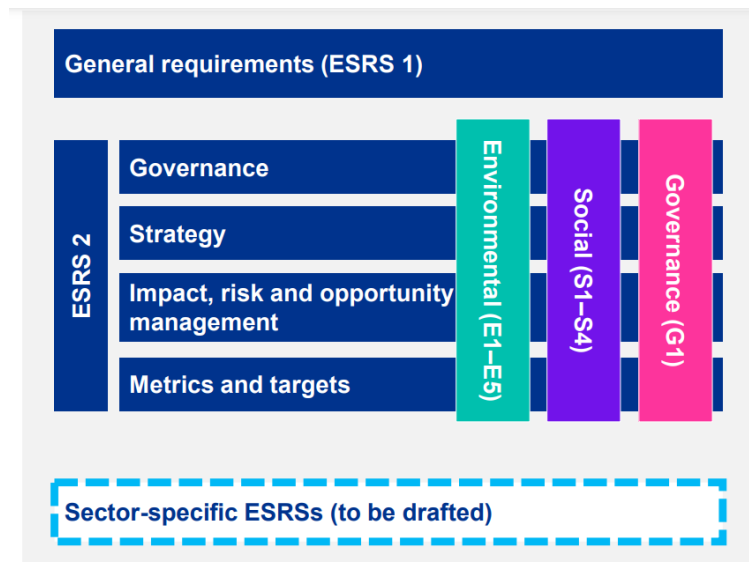


Figure 4: Structure of ESRs

Source: KPMG, 2023

2.4.3.a. ESRS 1

ESRS 1 - General Requirements, outlined in establish principles for reporting but do not specify any disclosure obligations. It requires companies to disclose information based on the concept of double materiality, which is determined through a self-assessment process. For information to be reported, it must meet the criteria of either impact materiality, financial materiality, or both of them. It emphasizes due diligence in reporting, prioritizing the identification, mitigation, prevention, and resolution of both actual and potential negative impacts on stakeholders. Additionally, it requires that information be presented with clarity within the management report and promotes comparability by integrating the use of a base year as a reference point for tracking progress over time.¹⁵²

ESRS 1 can be summarized under general headings as follows;

General Reporting Principles: Companies must disclose its significant impacts, risks, and opportunities related to environmental, social, and governance (ESG) sustainability matters in accordance with the ESRS (European Sustainability Reporting Standards). The information disclosed under these standards should enable users to understand the company's significant impacts on people and the environment, as well as the material effects of sustainability issues on the company's development, performance, and position. Sustainability information must be presented as part of the management report. When disclosing sustainability information, the fundamental qualitative characteristics of "materiality and faithful

¹⁵² "ESRS-1 Commission Delegated Regulation - ANNEX to the Commission Delegated Regulation supplementing Directive 2013/34/EU of the European Parliament and of the Council as Regards Sustainability Reporting Standards," July 31, 2023, https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FESRS%25201%2520Delegated-act-2023-5303-annex-1_en.pdf accessed 20 April 2024

representation" must be considered, along with supporting qualitative characteristics such as comparability, verifiability, and understandability.¹⁵³

Due Diligence and Value Chain: Due diligence is a structured process through which a company identifies, prevents, mitigates, and manages the actual and potential negative impacts of its activities on the environment and society.¹⁵⁴ This ongoing process adapts to changes in the company's strategy, business model, operations, business relationships, sourcing, and sales policies. Sustainability disclosures may include information on the significant impacts, risks, and opportunities related to companies directly or indirectly connected through value chain relationships.¹⁵⁵

Double Materiality: Companies must make sustainability disclosures considering the principle of double materiality. According to the standard, the company's stakeholders are divided into two categories: affected stakeholders and users of sustainability disclosures. Affected stakeholders are those whose interests are directly or indirectly influenced, positively or negatively, by the company's operations and business relationships across the value chain.¹⁵⁶

Double materiality consists of two dimensions, financial materiality and impact materiality. A definition of financial materiality in the ESRS report: *"A sustainability matter is material from a financial perspective if it triggers or could reasonably be expected to trigger material financial effects on the undertaking. This is the case when a sustainability matter generates risks or opportunities that have a material influence, or could reasonably be expected to have a material influence, on the undertaking's development, financial position, financial performance, cash flows, access to finance or cost of capital over the short-, medium- or long-term. Risks and opportunities may derive from past events or future events. The financial materiality of a sustainability matter is not constrained to matters that are within the control of the undertaking but includes information on material risks and opportunities attributable to business relationships beyond the scope of consolidation used in the preparation of financial statements."*¹⁵⁷

Financial materiality is familiar territory for companies experienced in non-financial reporting. The Task Force on Climate-related Financial Disclosures (TCFD) offers a framework for companies to report on climate-related financial risks and opportunities that are material to their business operations and financial outcomes. It underscores the importance of sharing information relevant to investors,

¹⁵³ European Commission, *Questions and Answers on the Adoption of European Sustainability Reporting Standards*, July 31, 2023, https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043

¹⁵⁴ European Bank for Reconstruction and Development, *GRI Report 2023*, (London: EBRD, 2023), 2-3, <https://www.ebrd.com/documents/environment/gri-report-2023-sustainability-disclosures.pdf>

¹⁵⁵ Mats Eklund and Jonas Askevold Vaaler, *"The Transition to CSRD and ESRS,"* (Master's thesis, University of Agder, 2023), 32.

¹⁵⁶ "ESRS-1 Commission Delegated Regulation" 9.

¹⁵⁷ European Financial Reporting Advisory Group, *ESRS 1 General Requirements*, November 2022, https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FESRS%25201%2520Delegated-act-2023-5303-annex-1_en.pdf

lenders, and insurance underwriters for informed decision-making, aligning with the principle of financial materiality.¹⁵⁸

A definition of impact materiality in the ESRS report: “A sustainability matter is material from an impact perspective when it pertains to the undertaking’s material actual or potential, positive or negative impacts on people or the environment over the short-, medium- or long-term. Impacts include those connected with the undertaking’s own operations and upstream and downstream value chain, including through its products and services, as well as through its business relationships. Business relationships include those in the undertaking’s upstream and downstream value chain and are not limited to direct contractual relationships. In this context, impacts on people or the environment include impacts in relation to environmental, social and governance matters.”¹⁵⁹

Double materiality takes into account both the inside-out (impact materiality) and outside-in (financial materiality) view. This approach to materiality takes into account the broader audience for disclosed information. The impact of a company's activities is not only relevant to investors seeking to understand the environmental and social implications of their investments, but also to civil society, consumers, and employees. The CSRD is grounded in the principle of double materiality requiring consideration of both the outside-in and inside-out perspectives. This means that sustainability information deemed material from either or both perspectives must be disclosed.¹⁶⁰ The principle of double materiality reflects the essence of the sustainability reporting framework, distinguishing it from previous non-financial reporting requirements.¹⁶¹

2.4.3.b. ESRS 2

ESRS 2 - General Disclosures requires specific disclosures for all companies falling under the CSRD scope. This standard defines key characteristics and information, such as policies, measures, and objectives that must be reported regardless of the materiality assessment results. Additionally, it provides the structure and content for the topical standards within ESRS. Disclosures are organized into four pillars: governance, strategy, management of impacts, risks, and opportunities, along with indicators and targets for specific topics.

ESRS 2 can be summarized under general headings as follows;

¹⁵⁸ Task Force on Climate-Related Financial Disclosures, *Recommendations of the Task Force on Climate-related Financial Disclosures* (Basel: TCFD, 2017), 1-2, <https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf>

¹⁵⁹ European Financial Reporting Advisory Group, *ESRS 1 General Requirements*, 22.

¹⁶⁰ Mathilde Bossut et al, “What information is relevant for sustainability reporting? The concept of materiality and the EU Corporate Sustainability Reporting Directive,” *Sustainable Finance Research Platform Policy Brief* (2021), 6, https://wpsf.de/wp-content/uploads/2021/09/WPSF_PolicyBrief_7-2021_Materiality.pdf

¹⁶¹ Josef Baumüller and Amila Omazic, “Development perspectives for the materiality principle in non-financial reporting,” *Journal of International Accounting* 16, no.1 (2021):42.

Governance: This section focuses on providing a comprehensive overview of the governance structures, processes, and controls, implemented to oversee and manage sustainability matters effectively. Companies are required to disclose detailed information about the composition, roles, and responsibilities, of their administrative, management, and supervisory bodies as well as the availability of sustainability-related expertise and skills within these entities. Furthermore, organizations must explain how sustainability performance is incorporated into incentive programs and describe the processes used to map and implement due diligence across operations and value chains. This section also emphasizes the importance of outlining the key features of risk management and internal control systems associated with sustainability reporting. These systems should ensure accuracy, reliability, and accountability in reporting sustainability-related risks and opportunities, aligning them with the broader organizational strategy and objectives. Additionally, the governance section highlights the need for transparency regarding decision-making processes and the alignment of sustainability goals with overall corporate governance practices.¹⁶²

Impact, Risk, and Opportunity Management: Disclosures on impact, risk, and opportunity management are expected to provide insights into the processes used to identify impacts, risks, and opportunities based on their materiality level, how the company conducts its materiality assessments, and presents the resulting information. These disclosures should cover the methodologies and assumptions used in materiality assessment processes, identifying and assessing both actual and potential impacts on people and the environment, and determining, evaluating, and prioritizing risks and opportunities with financial relevance.¹⁶³

Strategy: The Strategy section aims to outline the sustainability-related aspects of the company's strategies, elements influencing those strategies, business models, and value chains. Companies should explain the sustainability aspects within its strategy, its business models, value chain, and how stakeholder interests and perspectives are integrated within the framework of the company's strategy and business models.¹⁶⁴

Metrics and Targets: Companies should disclose the metrics used to monitor the effectiveness of actions taken to manage significant sustainability issues, as well as the targets set regarding these sustainability matters.¹⁶⁵

2.4.3.c. ESRS E, ESRS S and ESRS G

¹⁶² Katrin Hummel and Dominic Jobst, "An Overview of Corporate Sustainability Reporting Legislation in the European Union," *Accounting in Europe* 21, no.3 (2024): 18, <https://doi.org/10.1080/17449480.2024.2312145>

¹⁶³ Elżbieta Broniewicz, Ewa Jastrzębska, Agata Lulewicz-Sas, "Environmental disclosures according to ESRS in ESG reporting of selected banks in Poland," *Economics and Environment* 88, no.1 (2024): 11, <https://doi.org/10.34659/eis.2024.88.1.719>

¹⁶⁴ "CSRD Lookbook," PWC, Jan 2024, 10, <https://www.pwc.se/sv/esg/csrd-lookbook-1-1.pdf>

¹⁶⁵ Christian Nielsen, "ESG Reporting and Metrics: From Double Materiality to Key Performance Indicators," *Sustainability* 15, 24 (2023): 7, <https://doi.org/10.3390/su152416844>

The ESRS E – Environmental standards are divided into sub-standards: E1-Climate Change, E2-Pollution, E3-Water and Marine Resources, E4-Biodiversity and Ecosystems, and E5-Resource Use and Circular Economy.¹⁶⁶

- **E1 – Climate Change and E2 – Pollution:** Focus on a company’s significant impacts on climate and pollution, its mitigation efforts, strategies, and financial impacts aligned with the Paris Agreement.
- **E3 – Water and Marine Resources:** Cover impacts on water and marine resources, measures for water conservation, and alignment with European Green Deal goals.
- **E4 – Biodiversity and Ecosystems:** Require strategies that align with the EU Biodiversity Strategy for 2030, including impact and risk disclosures on biodiversity.
- **E5 – Resource Use and Circular Economy:** Address resource usage, circular economy initiatives, and disclose financial impacts of resource-related risks and opportunities.

The ESRS S – Social Standards consist of four sub-standards: S1 – Workforce, S2 – Workers in the Value Chain, S3 – Affected Communities, and S4 – Consumers/End-Users.¹⁶⁷

- **S1 – Workforce:** Focuses on disclosing significant impacts, risks, and opportunities related to a company’s workforce. This includes policies on workforce management, engagement processes with employees, grievance mechanisms, social protections, diversity, pay structures, health and well-being measures, and work-life balance.
- **S2 – Workers in the Value Chain:** Aims to inform users about significant impacts on and risks to workers within the value chain that a company’s operations, products, or relationships may cause or contribute to.
- **S3 – Affected Communities and S4 – Consumers/End-Users:** Require companies to disclose significant impacts, both financial and non-financial, on affected communities, consumers, and end-users, including risks arising from operations, products, services, or business relationships.

The ESRS G – Business Conduct is the sole governance standard in the ESRS set. Its purpose is to provide disclosure requirements enabling users to understand a company’s strategy, approach, processes, and performance related to business ethics. Key areas include corporate culture, supplier management, animal welfare, anti-

¹⁶⁶ European Financial Reporting Advisory Group, *ESRS E4 Biodiversity and Ecosystems*, November 2022,

https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FER%25201%2520Delegated-act-2023-5303-annex-1_en.pdf

¹⁶⁷ European Financial Reporting Advisory Group, *ESRS S1 Own Workforce*, April 2022, https://www.efrag.org/sites/default/files/sites/webpublishing/SiteAssets/ED_ESRS_S1.pdf

corruption and anti-bribery, political influence, and whistleblower protection. Companies should disclose information on managing supplier relationships and the impact on the supply chain, along with systems in place to prevent, detect, investigate, and respond to corruption and bribery. Under metrics and targets, companies should report confirmed cases of corruption and bribery, as well as details on political influence, including lobbying activities.¹⁶⁸

2.4.4. The Audit of the Corporate Sustainability Reporting Directive

The creation of a common sustainability reporting standard alone is not sufficient; it is also necessary to verify whether the reports comply with the standards. The most important tool for this verification is subjecting the prepared reports to an audit before they are made public.¹⁶⁹ One of the major shortcomings of non-financial reporting is the publication of these reports without undergoing an audit or review procedure.¹⁷⁰ Failure to audit the reports jeopardizes their reliability.

Auditing reports before sharing them with the public increases trust in the content, which is why, just like financial reporting, sustainability reporting must also undergo auditing.¹⁷¹ Although various steps have been taken to address this need, concerns about the information in the reports have not been fully alleviated.¹⁷²

In response to the need for trust in sustainability reporting, the CSRD has amended the EU's Directive 2006/43 on auditing. The scope of this Directive has been expanded to include the auditing of sustainability reporting, and no part of the sustainability report is exempt from the audit.¹⁷³ In this respect, the CSRD is ahead of similar regulatory proposals from other countries or organizations with comparable timelines.

The CSRD has established a phased auditing system for sustainability reports. In this context, the concept of auditing has been divided into reasonable assurance and limited assurance.¹⁷⁴

The main distinctions between reasonable and limited assurance engagements lie in the confidence level and the rigor of audit procedures performed by auditors. In a reasonable assurance engagement offers a higher level of confidence, where the auditor provides a positive conclusion, such as "In our opinion, the financial

¹⁶⁸ European Financial Reporting Advisory Group, *ESRS G1 Governance, Risk Management and Internal Control*, April 2022, https://www.efrag.org/sites/default/files/sites/webpublishing/SiteAssets/ED_ESRS_G1.pdf

¹⁶⁹ Reinier Kraakman et al, *The Anatomy of Corporate Law*, (Oxford: Oxford University Express, 2017), 39.

¹⁷⁰ Işık Özer, *Anonim Şirketlerde Kurumsal Sosyal Sorumluluk* (Ankara: Adalet Yayınları, 2022), 252.

¹⁷¹ Deniz Okuyucu, *Anonim Şirketin Sosyal Sorumluluğu* (İstanbul: On İki Levha Yayınları, 2023), 131.

¹⁷² Okuyucu, *Anonim Şirketin Sosyal Sorumluluğu*, 133- 134.

¹⁷³ European Commission, *CEAOB Guidelines on Limited Assurance on Sustainability Reporting*, September 30, 2024, 1, https://finance.ec.europa.eu/document/download/8ac2df18-2ae1-4bc7-9d87-a4a740e48f5e_en?filename=240930-ceaob-guidelines-limited-assurance-sustainability-reporting_en.pdf

¹⁷⁴ "Directive (EU) 2022/2464, As Regards Corporate Sustainability Reporting" Article 60

statements present fairly...” This type of engagement involves more extensive procedures, including detailed testing of transactions, gathering substantial evidence, and evaluating internal controls.

In contrast, a limited assurance engagement, the auditor provides a moderate level of confidence, typically offering a negative conclusion, such as “Nothing has come to our attention that causes us to believe...” The procedures involved in limited assurance are less comprehensive, focusing mainly on analytical reviews and inquiries, with a narrower scope and fewer detailed tests. Consequently, reasonable assurance engagements have a broader scope and entail a more thorough examination of the subject matter, providing a higher degree of confidence compared to limited assurance engagements.

The CSRD establishes various requirements for external assurance, including the necessity of professional training and education for assurance providers to ensure their independence. It also specifies the application of the European enforcement framework for published sustainability reports. Additionally, the directive includes comprehensive provisions for imposing penalties in cases of non-compliance with reporting obligations.¹⁷⁵

CHAPTER 3 - CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

3.1. Corporate Sustainability Due Diligence Directive History

3.1.1. United Nations Guiding Principles on Business and Human Rights

The first document prepared regarding the due diligence process for the interests of stakeholders is the UN's 2011 "Guiding Principles on Business and Human Rights" (UNGP), which is a non-binding framework.¹⁷⁶

The UNGP presents the framework commonly known as "*Protect, Respect, and Remedy*," which, among other things, requires businesses to have policies and processes that include a commitment to respect human rights, a human rights due diligence process to identify, prevent, mitigate, and explain how they address their human rights impacts, and processes to remedy adverse human rights impacts they have caused or contributed to, in accordance with their size and circumstances.¹⁷⁷

In the UNGP, due diligence is treated as a process related to the social dimension of sustainability. However, it does not include obligations regarding companies' environmental impacts, except for human rights related to environmental

¹⁷⁵ John Baumüller and Stefan Grbenic, “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* 18, no.4 (2021): 377, <https://doi.org/10.22190/FUEO210817026B>

¹⁷⁶ United Nations Human Rights Office, *Guiding Principles on Business and Human Rights*, April 11, 2011, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁷⁷ Mehmet Ali Tuncel, “İş Dünyası ve İnsan Hakları: Birleşmiş Milletler Rehber İlkeler Işığında Genel Bakış,” Adalet Bakanlığı İnsan Hakları Dairesi Başkanlığı, accessed 12 May 2023, 98. https://inhak.adalet.gov.tr/Resimler/Dokuman/1005202413542997_PDFsam_inhak13.pdf

protection. The guidance is limited to the company's products and activities and does not impose any obligations regarding the supply or value chain. It is considered soft law and is non-binding. Since due diligence under this guidance is not a mandatory obligation but a recommendation, compliance with the principles outlined in the framework is at the discretion of the companies.¹⁷⁸

3.1.2. OECD Due Diligence Guidance for Responsible Business Conduct

Since 2011, companies have made significant strides in implementing the UNGPs, with support from aligned international frameworks like the OECD Guidelines for Multinational Enterprises.¹⁷⁹ While leading companies have shown initial progress, expanding these practices to more companies—including those less engaged with responsible business conduct—remains essential.¹⁸⁰ In 2018, the OECD Due Diligence Guidance for Responsible Business Conduct adopted, which aims to clarify due diligence recommendations for businesses. This Guidance seeks to build a shared understanding of effective due diligence and serve as a key reference for implementing responsible practices under the OECD Guidelines, UNGPs, and International Labour Organization's (ILO) standards. The Guidance's impact will depend on how widely it is adopted by businesses. To enhance its effectiveness, efforts must be made to promote the Guidance, raise awareness, and integrate its principles into mainstream responsible business practices.¹⁸¹

The Due Diligence Guidance stands as the first government-endorsed standard for corporate due diligence in responsible business conduct across all economic sectors. It outlines specific actions companies should take to address issues covered in the OECD Guidelines, including human rights, anti-bribery and corruption, employment and labor relations, consumer interests, environmental impact, and disclosure. The Guidance presents a step-by-step approach to the due diligence process and supporting measures, centering on six core expectations¹⁸²:

- Embedding responsible business conduct into policies and management systems;
- Identifying and assessing actual and potential adverse impacts associated with the enterprise's operations, products or services;

¹⁷⁸ Lise Smit et al, "Study on due diligence requirements through the supply chain: Final Report," *European Commission* (2020): 160, accessed 12.05.2023, https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/DROI/DV/2020/06-22/Studyonduediligencerequirements_EN.pdf

¹⁷⁹ Organization for Economic Co-operation and Development, *OECD Guidelines on Multinational Enterprises 2011 Edition*, September 29, 2011, <https://doi.org/10.1787/9789264115415-en>

¹⁸⁰ United Nations General Assembly, *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*, May 2, 2018, 18, <https://digitallibrary.un.org/record/1637428?ln=en&v=pdf>

¹⁸¹ Inês Crispim, "Demystifying the Due Diligence Process under the 2023 OECD Guidelines for Multinational Enterprises on Responsible Business Conduct," (2024):2, accessed 12.07.2024, <https://thinktank.plmj.com/en/corporate-sustainability/forum/demystifying-the-due-diligence-process-under-the-2023-oecd-guidelines-for-multinational-enterprises/70/>

¹⁸² Catie Shavin, "Unlocking the potential of the new OECD due diligence guidance on responsible business conduct," *Business and Human Rights Journal* 4,1 (2019): 140-141, <https://doi.org/10.1017/bhj.2018.28>

- Ceasing, preventing and mitigating adverse impacts;
- Tracking implementation and results;
- Communicating how impacts are addressed; and
- Providing for or cooperating in remediation.

3.1.3. The Emergence of the Corporate Sustainability Due Diligence Directive

Due diligence guidelines promote sustainable supply chains, yet many regions lack mandatory rules addressing both human rights and environmental concerns. Frameworks like the UNGP and OECD Guidelines highlight companies' duty to uphold these standards, but voluntary efforts often fall short, focusing narrowly on initial supply chain links and failing to ensure accountability.¹⁸³ Scholars argue for stricter public policy to enforce corporate responsibility, emphasizing that legally binding regulations are more effective, especially with sanctions.¹⁸⁴

The idea that a duty of care should be imposed on companies has been accepted by the qualified majority of EU member states, and work has begun on preparing the Corporate Sustainability Due Diligence Directive, which specifies the human rights and environmental obligations of large companies in global value chains.¹⁸⁵

To speed up this progress, In April 2020, European Commissioner for Justice announced plans for a legislative initiative from the European Commission mandating corporate due diligence in human rights and environmental issues.¹⁸⁶ Following this, on 3 December 2020, the European Council called on the European Commission to propose an EU-wide legal framework for sustainable corporate governance, covering cross-sector due diligence and global value chains.¹⁸⁷ Subsequently, on 10 March 2021, the European Parliament adopted a report on corporate due diligence and accountability. This report was prepared by the Legal Affairs Committee, with contributions from the Human Rights Subcommittee, the

¹⁸³ Almut Schilling-Vacaflor and Andrea Lenschow, "Hardening foreign corporate accountability through mandatory due diligence in the European Union? New trends and persisting challenges," *Regulation & Governance* 17,3 (2021): 682-683, <https://doi.org/10.1111/rego.12402> ; René Wolfsteller and Yingru Li, "Business and Human Rights Regulation After the UN Guiding Principles: Accountability, Governance, Effectiveness," *Human Rights Review* 23, no.1 (2022): 2, <https://doi.org/10.1007/s12142-022-00656-2>

¹⁸⁴ Christine Moser and Sina Leipold, "Toward "hardened" accountability? Analyzing the European Union's hybrid transnational governance in timber and biofuel supply chains," *Regulation & Governance* 15, no.1 (2019): 3, <https://doi.org/10.1111/rego.12268>

¹⁸⁵ Nicolas Bueno et al, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise," *Business and Human Rights Journal* (2024): 1, <https://doi.org/10.1017/bhj.2024.10>

¹⁸⁶ Didier Reynders, "Speech by Commissioner Reynders in RBC webinar on Due Diligence," 29 April 2020, RBC Working Group of the European Parliament. <https://responsiblebusinessconduct.eu/wp/2020/04/30/speech-by-commissioner-reynders-in-rbc-webinar-on-due-diligence/>

¹⁸⁷ European Council, *Council Conclusions on Human Rights and Decent Work in Global Supply Chains*, December 1, 2020, 6, <https://www.consilium.europa.eu/media/46999/st13512-en20.pdf>

International Trade Committee, and a formal opinion from the Development Committee. An opinion from Committee on Foreign Affairs and the Human Rights Subcommittee also contributed to the process on 25 November 2020.¹⁸⁸

On 23 February 2022, the European Commission released its Corporate Sustainability Due Diligence Directive (CSDDD) proposal¹⁸⁹, along with an Impact Assessment Report and annexes providing the rationale for the proposal in the context of EU political priorities.¹⁹⁰ On December 14, 2023, the Council and the European Parliament reached a provisional agreement on the Directive aimed at improving the protection of human rights and the environment both within the EU and globally. On April 24, 2024, the European Parliament approved the final text of the Directive in a plenary session. The European Council is set to grant its final approval to the Directive on May 24, 2024. After being signed by the President of the European Parliament and the President of the Council, the Directive will be published in the Official Journal of the European Union and will enter into force on the twentieth day following its publication.¹⁹¹

3.2. Concept of Value Chain and Due Diligence

Defining key concepts frequently used in the Directive, such as due diligence and value chain, will help ensure a clearer understanding of the responsibilities of companies and countries.

3.2.1. Concept of Value Chain

The concept of value chain is different from that of the supply chain. While both concepts can be found in the UNGP and OECD guidelines related to due diligence obligations, the CSDDD opts for the term "value chain" instead of "supply chain," and the obligations are defined based on this concept.

The concept of value chain describes the full range of activities, which are required to bring a product or service from conception, through the different phases of production, distribution to consumers, and final disposal after use. As the product moves from one player in the chain to another, it is assumed to gain value.¹⁹²

¹⁸⁸ European Parliament, *Corporate Due Diligence and Corporate Accountability*, March 10, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021IP0073>

¹⁸⁹ European Commission, *Commission Staff Working Document Impact Assessment Report*, Feb 23, 2022, https://eur-lex.europa.eu/resource.html?uri=cellar:c851d397-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF

¹⁹⁰ "Proposal for a Directive of The European Parliament and of The Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937" Feb 23, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071> accessed 13 May 2024

¹⁹¹ European Council, *Council Gives Its Final Approval*, May 24, 2024, <https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/corporate-sustainability-due-diligence-council-gives-its-final-approval/>

¹⁹² Jon Hellin and Madelon Meijer "Guidelines for value chain analysis," *Food and Agriculture Organization of the United Nations* (2006):4, http://www.spiencambodia.com/filelibrary/Value_Chain_Research_Methodology.pdf

Porter introduced the value chain approach to the literature in 1985. In this framework, he emphasized the need for companies to analyze specific activities to enhance their business value. He divided these value-adding activities into two main categories:¹⁹³ primary activities and support activities. Primary activities include inbound logistics (in production), operations (production of goods/services), outbound logistics (distribution), sales and marketing, and service activities are considered the company's core primary activities.¹⁹⁴ The activities that facilitate the execution of primary activities, support them, and enhance their efficiency—such as firm infrastructure, human resources; technology development, and procurement—are considered the company's support activities.¹⁹⁵

The concept of the value chain is defined in Article 3 (g) of the draft Directive, titled "Definitions." In line with the explanation above, in the draft of the CSDDD, the value chain is defined as “*activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company.*”¹⁹⁶

3.2.2. Concept of Due Diligence

The first word of the term "Due Diligence" means reasonable or appropriate, and the second word means care or precaution. As a function or activity, Due Diligence, is considered an important element required in legal transactions to establish responsibility, rather than just a behavioral criterion. It refers to the necessary care that is sought in legal matters to ensure responsibility is properly assigned.¹⁹⁷

The concept of "due diligence" originates from the legal field, where it serves as a method to reduce commercial and financial risks. This process involves a thorough investigation, typically conducted by one company toward another, to uncover any potential misconduct or failure to meet expected standards.¹⁹⁸ The legal

¹⁹³ Serap Serin Karacaer and Yüksel Öztürk, “Turizm Değer Zinciri Analizi Üzerine Kavramsal Bir Çerçeve,” *Türk Turizm Araştırmaları Dergisi* 3,3 (2019): 250, <https://doi.org/10.26677/TR1010.2019.158>

¹⁹⁴ Utku Eren Bağcı and Nuri Yavan, “Geleneksel Perakendeci Bakkalların Rekabetçi Stratejileri: Değer Zinciri Analizi,” *Ege Coğrafya Dergisi* 31, no.1 (2022): 19, <https://doi.org/10.51800/ecd.1014325>

¹⁹⁵ İ. Hakkı Eraslan, Aslı Deniz Helvacıoğlu Kuyucu and İsmail Bakan, “Değer Zinciri (Value Chain) Yöntemi ile Türk Tekstil ve Hazır Giyim Sektörünün Değerlendirilmesi,” *Afyon Kocatepe Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi* 10, no. 2 (2008):52, <https://dergipark.org.tr/tr/download/article-file/18987>

¹⁹⁶ European Parliament, *Draft Compromise Amendments*, Jan 24, 2023, 4, https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/ENVI/AMC/2023/02-09/CSDD_CAs_final_EN.pdf

¹⁹⁷ Mustafa Arıkan, “Due Diligence Kavramı ve Şirket Birleşme ve Devralma Sözleşmelerinde Satıcının Sorumluluğu Hakkında TBK Hükümleri Çerçevesinde Değerlendirmeler,” *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 22, no.1 (2016):4, <https://dergipark.org.tr/en/download/article-file/274343>

¹⁹⁸ Stefania Camoletto et al, “Corporate Social Responsibility due diligence among European companies: The results of an interventionist research project with accountability and political

underpinnings of due diligence can be traced back to Roman law, which held individuals accountable for not following established standards of conduct.¹⁹⁹ Over time, due diligence has evolved to include a broader array of concerns, addressing environmental and social risks such as human rights abuses and modern slavery. This expansion reflects growing global awareness and pressure to address complex, modern issues that extend beyond traditional financial risks, aligning with evolving societal expectations.²⁰⁰

The concept of due diligence is broad and context-dependent. In international law, due diligence essentially establishes a standard of care used to assess fault, emphasizing a duty of conduct rather than a duty of result. This approach focuses on the actions taken by the responsible party, rather than the outcome of those actions.²⁰¹ The principle, which requires adherence to a specific standard of care to prevent harm, remains widely upheld within EU legal systems.²⁰² Accordingly, Due Diligence holds significant roots in international law, promoting the expectation that states follow certain behavioral standards without prescribing specific outcomes or deadlines.²⁰³

In Turkish legal doctrine, the term is defined both as a detailed and specific examination of the company to be transferred before a merger,²⁰⁴ and as the necessary care required in legal transactions.²⁰⁵

In a business context, Due Diligence generally refers to an investigative process undertaken by a company to identify and manage risks. This process aims to establish the facts surrounding a commercial transaction to evaluate its value, price, and associated risks.²⁰⁶ Thus, the concept of Due Diligence in business traditionally differs from its interpretation in international law.

The Due Diligence term mentioned in the CSDDD is similar to this concept. It involves identifying the increased risks to stakeholders resulting from company activities and taking appropriate measures accordingly. In this regard, Due Diligence

implications," *Corporate Social Responsibility and Environmental Management* 29, no.5 (2022): 1124, <https://doi.org/10.1002/csr.2258>

¹⁹⁹ John Jefferson Bray, "Possible guidance from Roman law," *Adel Law Reviews* 3, no.2 (1968):157, http://www.austlii.edu.au/au/journals/AdelLawRw/19_68/1.html

²⁰⁰ Camoletto et al, "Corporate Social Responsibility," 1124.

²⁰¹ International Law Association Study Group, *Due Diligence in International Law First Report*, March 7, 2016, 2, https://olympereseauinternational.wordpress.com/wp-content/uploads/2015/07/due_diligence_-_first_report_2014.pdf

²⁰² Cees Van Dam, "Tort Law And Human Rights: Brothers In Arms On The Role Of Tort Law In The Area Of Business And Human Rights," *Journal of European Tort Law* 2, no.3 (2011): 237, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/jetl2&div=20&id=&page>

²⁰³ International Law Association Study Group, *Due Diligence*, 46.

²⁰⁴ Ferna İpekeli Kayalı, *Türk Ticaret Kanunu'na Göre Birleşmeler* (İstanbul: Vedat Kitapçılık, 2014), 136.

²⁰⁵ Hasan Pulaşlı, "Şirket Satın Alma ve Birleşmelerinde İşletme Değerlemesi ve Due Diligence," *Banka Ticaret ve Hukuk Dergisi* 24, no.2 (2007): 211.

²⁰⁶ Olga Martin-Ortega, "Human Rights Due Diligence for Corporations: From Voluntary Standards To Hard Law At Last?," *Netherlands Quarterly of Human Rights* 32, no.1 (2014) :51, <https://doi.org/10.1177/016934411403200104>

refers to the care that should be taken in the company's management to address risks that affect the rights and interests of stakeholders impacted by the company's activities. The aim of this obligation is to identify the risks caused by the company with due care and propose solutions to mitigate these risks.

3.3. The Purpose of Corporate Sustainability Due Diligence Directive

While some companies voluntarily work to identify risks within their value chains, challenges such as the complexity of these chains, market pressures, lack of information, and unclear legal guidelines on associated costs often prevent widespread corporate Due Diligence. Many large companies actively implement Due Diligence processes to maintain a competitive advantage and protect against reputational damage with consumers and investors. However, these efforts are largely voluntary and lack clear legal guidelines for addressing harm, leaving both companies and affected individuals without specific recourse.²⁰⁷

In practice, some EU companies have been linked to adverse human rights and environmental impacts in their value chains. Notable concerns include forced labor, child labor, poor health and safety conditions, worker exploitation, as well as environmental impacts such as greenhouse gas emissions, pollution, biodiversity loss, and ecosystem degradation.²⁰⁸

In recent years, several EU member states have implemented corporate due diligence laws to encourage companies to assess their value chains and uphold human rights, children's rights, and environmental protections. However, these regulations also risk creating legal ambiguity and uneven playing fields for companies within the EU single market. Therefore, a unified EU directive on corporate due diligence aims to bolster respect for human rights and environmental protections, ensure equal operational conditions for companies both within the EU and from third countries meeting similar revenue thresholds, and prevent fragmentation that could arise from individual state actions.²⁰⁹

3.4. The Scope and Obligations of the Corporate Sustainability Due Diligence Directive

3.4.1. Scope and Timeline of the Directive

Not all companies subject to European Union legislation, but companies that meet certain criteria such as size criteria and field of activity are within the scope of the draft CSDDD.

EU-based companies that meet the following criteria:

²⁰⁷ "Proposal for a CSDDD (EU) 2019/1937" 2.

²⁰⁸ "Proposal for a CSDDD (EU) 2019/1937" 2-3.

²⁰⁹ Didem Yardımcıoğlu, "Çocuk İşçiliğini Önlemeye Yönelik Yeni Bir Adım: Avrupa Parlamentosu ve Konseyi'nin Kurumsal Sürdürülebilirlik Durum Tespitine Dair Direktif Önerisi," *Dicle Üniversitesi Hukuk Fakültesi Dergisi* 28, 48 (2023): 249, <https://dergipark.org.tr/tr/pub/duhfd/issue/79713/1353414>

- More than 500 employees average, and have a net turnover exceeding €150 million in the previous financial year.
- More than 250 employees average, and have a net turnover exceeding €40 million in the previous financial year, provided that at least 50% of this turnover was generated in a high-impact sector. High-risk sectors include textiles, garment, agriculture, mineral extraction, fishing, forestry, or metal manufacturing.

Non-European companies that meet the following criteria:

- Have a net turnover exceeding €150 million generated within the EU in the previous financial year.
- Have a net turnover exceeding €40 million but not exceeding €150 million generated within the EU in the previous financial year, provided that at least 50% of its net worldwide turnover was generated in one high-risk sector.

In December 2023, the Council introduced further modifications, initially setting the threshold for inclusion at companies with a global turnover above €300 million or those with significant EU turnover. This preliminary scope was further refined to include EU companies with over 500 employees and a global turnover above €150 million, and companies in certain high-impact sectors with over 250 employees and €40 million in turnover. However, political divisions, especially with Germany's abstention, hindered the directive's progress, leading other member states, like Sweden, to follow suit.²¹⁰

By March 2024, under Belgium's EU presidency, further adjustments were made to the directive, narrowing its scope.²¹¹ The revised proposal has significantly reduced the number of companies legally obligated to comply. The threshold has been raised from companies with over 500 employees to those with over 1,000, while the turnover requirement has increased from €150 million to €300 million, and later to €450 million. As a result, only the largest companies are now required to address human rights and environmental risks within their value chains. Initially, the proposal applied to approximately 1% of EU companies, but it now covers just 0.05%. The European Parliament approved this final version in April 2024, officially enacting it but leaving many stakeholders disappointed due to its limited applicability to large corporations only.²¹² New scope of the text approved by the Council is as follows:

²¹⁰ Nele Meyer, "The CSDDD is at a make-or-break moment. European Coalition for Corporate Justice," *European Coalition for Corporate Justice*, Feb 7, 2024, <https://corporatejustice.org/news/the-csddd-is-at-a-make-or-break-moment-fromfake-news-to-businesses-support/>

²¹¹ International Federation for Human Rights, *EU Due Diligence Directive: Member States Reach Political Agreement*, Mar 15, 2024, <https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/eudue-diligence-directive-member-states-reach-political-agreement>

²¹² Sabela Gonzalez Garcia, "Reaction CSDDD Endorsement Brings Us 0.05% Closer To Corporate Justice," *European Coalition for Corporate Justice*, April 24, 2024,

EU Companies must meet at least one of the following criteria for two consecutive financial years²¹³:

- Employ more than 1,000 people on average and have a global net turnover exceeding EUR 450 million in the last financial year.
- Serve as the ultimate parent of a group that meets the above thresholds on a consolidated basis.
- Hold franchising or licensing agreements in the EU generating royalties of over EUR 22.5 million, with a global net turnover exceeding EUR 80 million in the last financial year.

Non-EU Companies must meet one of the following criteria in the EU in the two preceding financial years:

- Generate a net turnover exceeding EUR 450 million in the EU in the prior financial year (with no employee threshold).
- Act as the ultimate parent of a group meeting the above turnover threshold on a consolidated basis.
- Operate through franchising or licensing agreements in the EU, generating royalties above EUR 22.5 million, with an EU net turnover of more than EUR 80 million in the preceding financial year.

In all cases, companies must meet the respective turnover, employee, and/or franchising/licensing thresholds consistently for two consecutive years to qualify under these requirements.

The approved CSDDD introduces a phased compliance schedule, allowing organizations time to meet the law's requirements based on their size and revenue. The largest companies will be the first to comply, with deadlines beginning in 2027 and extending over the next two years for other groups.²¹⁴

- By 2027, EU companies with over 5,000 employees and €1.5 billion in global revenue must comply.
- By 2028, EU companies with over 3,000 employees and €900 million in global revenue are required to comply.
- By 2029, EU companies with more than 1,000 employees and €450 million in global revenue must meet compliance requirements.

<https://corporatejustice.org/news/reaction-csdddendorsement-brings-us-0-05-closer-to-corporate-justice/>

²¹³ European Parliament, *Corporate Sustainability Due Diligence - How To Integrate Human Rights and Environmental Concerns in Value Chains*, Oct 2023, 4-5, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI\(2022\)729424_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI(2022)729424_EN.pdf)

²¹⁴ "Directive (EU) 2024/1760 of The European Parliament and of The Council On Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859," June 13, 2024, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401760

- Non-EU companies with more than €450 million in EU revenue are also included in these phased deadlines.

3.4.2. Obligations in the Directive

As mentioned before, the CSDDD mandates that large corporations take measures to mitigate both potential and actual negative impacts on the environment and human rights across their value chains. This directive reflects the EU's growing focus on establishing mandatory sustainability obligations, moving away from the previously standard voluntary requirements. The transition from a voluntary framework to a mandatory one is primarily driven by the recognition that prior legal instruments from the Commission have not succeeded in achieving significant improvements on a large scale.²¹⁵

Article 2 of the CSDDD outlines that if the primary role of the ultimate parent company is merely to hold shares in operational subsidiaries and it does not engage in decision-making for the group, it may be eligible for an exemption from certain obligations. However, one of its EU-based subsidiaries must be appointed to fulfill these obligations on the parent company's behalf, equipped with the necessary authority and resources. To obtain this exemption, the ultimate parent company must apply to the relevant authority (either the member state where it is incorporated or, if not incorporated, the one where it has the highest net turnover). If the exemption is approved, the ultimate parent company will still be jointly liable with the designated subsidiary for any non-compliance.²¹⁶

One of the most important obligations of Member States is the obligation to establish an independent and impartial supervisory authority to supervise the activities of companies within the scope of the CSDDD. Supervisory authorities have the power to conduct inspections and investigations *ex officio* or upon complaint, and to impose material sanctions such as penalties (which should be “effective, proportionate and dissuasive” and should be commensurate with the company's worldwide net turnover) and non-material sanctions such as precautionary measures and bans. The supervisory authority of companies outside the borders of the European Union is in the Member State in which the company has an authorized representative or, if it does not have a representative, in which it obtains the majority of its turnover; in a group of companies, it is the supervisory authority where the dominant company is located.²¹⁷

The CSDDD's annex omits direct mention of the Paris Agreement, which aims to combat climate change. However, Article 22 of the CSDDD requires companies to develop a plan that, through best efforts, aligns their business model and strategy with a sustainable economy transition and with limiting global warming to 1.5°C. This results in a less stringent climate change obligation compared to other

²¹⁵ “Proposal for a CSDDD (EU) 2019/1937” 2.

²¹⁶ “Directive (EU) 2024/1760 of CSDDD” 2.

²¹⁷ Harm-Jan de Kluiver, “Towards a Framework for Effective Regulatory Supervision of Sustainability Governance in Accordance with the EU CSDDD Directive. A Comparative Study,” *European Company and Financial Law Review* 20, no.1 (2023):218-219. <https://doi.org/10.1515/ecfr-2023-0010>

environmental and human rights responsibilities, a notable weakening from the initial proposal. The 2023 IPCC report emphasizes that limiting warming to 1.5°C or 2°C necessitates immediate, significant emission reductions across all sectors this decade and achieving net-zero CO₂ emissions by the early 2050s or 2070s, respectively.²¹⁸ The report highlights that climate change has led to widespread impacts, disproportionately affecting vulnerable communities with minimal historical contributions to the issue. Based on scientific findings, the EU legislator might logically have imposed stricter climate obligations to support the Paris Agreement's goals and align with the CSDDD's aim to protect global vulnerable populations. However, the political and social will to enact stricter mandates is lacking.²¹⁹

Moreover, the provisions of articles 25 and 26, which are an extremely important innovation regarding the liability of managers, have been removed by the agreement of the Council and the Parliament. These provisions stipulated that the obligation of company directors to act in accordance with the company's interests while performing their duties should be expanded to include sustainability issues and that also managers responsible for duty of care policies were obliged to report to the board of directors on this matter.²²⁰ The removal of these provisions, which aim to expand the duty of care of the board of directors and the obligation of superior oversight in case of delegation of authority to include sustainability issues, seems to have eliminated, for now, the possibility of bringing board members and managers to responsibility on sustainability issues based on CSDDD. However, whether this liability is possible within the framework of different legal regulations or general company law principles is open to debate.²²¹

Another important obligation of Member States is civil liability. We will examine this issue in detail in the following section.

3.4.3. Main Structure of the Civil Liability Provision

Corporate civil liability refers to the responsibility of companies for harm caused by their own actions or those of their subsidiaries.²²² Functionally, this liability aims to counter multinational corporations' strategic use of limited liability

²¹⁸ International Panel on Climate Change, *Climate Change 2023: Synthesis Report*, (Geneva: IPCC, 2023), 20, <https://doi.org/10.59327/IPCC/AR6-9789291691647.001>

²¹⁹ Marc Veenbrink, "Synergies Between the CSDDD and EU Competition Law: A Toxic Relationship?," *Market and Competition Law Review* 8, no.2 (2024):53-54, <https://doi.org/10.34632/mclawreview.2024.17488>

²²⁰ Radu Mares, "Directors' Duties During the Green Transition under EU Law: Reform And Ramifications from Corporate Sustainability Due Diligence," *Nordic Journal of European Law* 6, no.6 (2023):77, <https://doi.org/10.36969/njel.v6i3.25717>

²²¹ İclal Nihal Baraç Evcı, "Avrupa Birliği Kurumsal Sürdürülebilirlik Özen Yükümlülüğü Yönerge Taslağı'nın Çevrenin Korunması Bakımından Değerlendirilmesi," *Koç Üniversitesi Nesamer Electric Journal*, Feb 21, 2024, <https://nasamer.ku.edu.tr/avrupa-birligi-kurumsal-surdurulebilirlik-ozen-yukumlulugu-yonerge-taslaginin-cevrenin-korunmasi-bakimindan-degerlendirilmesi/>

²²² Nicolas Bueno and Claire Bright, "Implementing Human Rights Due Diligence Through Corporate Civil Liability," *International & Comparative Law Quarterly* 69, no. 4 (2020): 799, <http://dx.doi.org/10.2139/ssrn.3689241>

to compensate for harm resulting from human and environmental degradation that is not adequately deterred.²²³

The civil liability provisions outlined in the CSDDD indicate that companies can be held accountable for intentional or negligent failures to meet obligations to prevent or cease adverse impacts, resulting in harm to individuals or legal entities. Liability is not restricted even if contractual assurances were sought from business partners. However, companies cannot be held liable if the damage is exclusively caused by their business partners within the chain of activities. If a company is found liable for such failures, affected individuals or legal entities are entitled to full compensation for the damages incurred, as per national law.²²⁴

From a legal standpoint, the CSDDD has the potential to enhance the deterrence of social harms associated with corporate limited liability. Companies often mitigate liability risks by establishing subsidiaries or outsourcing activities. This can lead to the overproduction of social harms, such as environmental damage and human rights violations, as firms face reduced accountability for harms caused indirectly through various institutional mechanisms. By imposing Due Diligence obligations on relationships with subsidiaries and business partners, as well as liability for non-compliance, the CSDDD effectively extends legal accountability to a company's group activities and its entire value chain. The effectiveness of this approach in addressing deterrence challenges posed by corporate limited liability largely depends on the breadth and enforcement of the Due Diligence requirements.²²⁵

3.4.5. Parent Company Liability in the Directive

The first issue within the scope of the Due Diligence obligation is the relevant environment of the company groups. A parent company may avoid liability for environmental or human rights violations by operating through controlled companies that are not subsidiaries of the CSDDD.²²⁶

To understand the liability of the parent company, it's crucial to understand the rule of limited liability, which is a fundamental principle in corporate law as it encourages investments. The liability of shareholders in a company is limited to the capital of the company, that is, the capital they contribute or are required to contribute. The concept applies to companies that own all the shares of another company.²²⁷ There is an exception for limited liability, which called piercing the corporate veil. Shareholders can be held liable either jointly or separately for

²²³ Alessio M. Paccès, "Civil Liability in the EU Corporate Sustainability Due Diligence Directive Proposal," Mar 17, 2023, 6, <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/09/civil-liability-eu-corporate-sustainability-due-diligence-directive-proposal>

²²⁴ "Proposal for a CSDDD (EU) 2019/1937"

²²⁵ Paccès, "Civil Liability," 7.

²²⁶ Paccès, "Civil Liability," 12.

²²⁷ Penelope A. Bergkamp, "Parent Company Liability After *Okpabi v. Shell*," *European Company Law* 15, no.4 (2018):112, <https://doi.org/10.54648/eucl2018018>

participating in misconduct, fraud, or other wrongful actions leading to harm caused by their corporation.²²⁸

Apart from the concept of piercing the corporate veil and holding parent and lead companies accountable for their duty arising from control and supervision, there are other approaches to establish liability for group companies. These include, for example, enterprise liability, which encompasses the entire group, or adjusted vicarious liability for "network companies" that considers degrees of integration and other connections instead of rigidly defining what constitutes a group company.²²⁹

To understand the liability of multinational companies, it is important to look at recent developments in parent company liability, where significant changes have occurred. The cases highlight the implications for environmental cases, international human rights, and climate change cases, giving examples from the fields of common law and civil law.²³⁰

3.4.6. Cases Regarding Parent Company Liability

The decision in *Chandler v Cape Plc* has broadened the situations under which a parent company can be held liable for the actions of its subsidiaries, establishing a duty of care from the parent company to its subsidiary's employees.

In *Chandler v Cape Plc*, the court highlighted that, under certain circumstances, a parent company may be deemed to have assumed a duty of care regarding the health and safety of its subsidiary's employees. To establish this, the plaintiff must first demonstrate that the parent company and the subsidiary are similar in the relevant context. Secondly, it must be shown that the parent company possesses superior knowledge of the health and safety standards in the relevant industry. Thirdly, it must be proven that the parent company was aware, or should have been aware, of the unsafe conditions in the subsidiary's work environment. Lastly, it must be established that the subsidiary's employees reasonably expected the parent company to apply its superior knowledge to protect their safety.²³¹

This assumption of responsibility is directly related to the parent company's active role in the subsidiary's work environment and the degree of trust the victim has in this behavior.²³² The satisfaction of these indicators proved crucial in the *Lungowe v Vedanta* case, where the victims aimed to broaden the proximity

²²⁸ Bergkamp, "Parent Company Liability After *Okpabi v. Shell*," 113.

²²⁹ Martin Petrin and Barnali Choudhury, "Rethinking Group Company Liability," *Oxford Law Blogs*, January 24, 2019, <https://blogs.law.ox.ac.uk/business-law-blog/blog/2019/01/rethinking-group-company-liability>

²³⁰ Daniel Leader "The Developing Legal Landscape on Parent Company Liability - Corporate Impunity Drawing to a Close?" *UCL -Climate Change and the Rule of Law Blog*, March 29, 2022, <https://www.ucl.ac.uk/law-environment/blog-climate-change-and-rule-law/developing-legal-landscape-parent-company-liability-corporate>

²³¹ "England and Wales Court of Appeal (Civil Division) Decisions", BAILII Databases, 2012, <https://www.bailii.org/ew/cases/EWCA/Civ/2012/525.html>

²³² Youseph Farah, Valentine Kunuji and Avidan Kent, "Civil Liability Under Sustainability Due Diligence Legislation: A Quiet Revolution?," *King's Law Journal* 34, no.3 (2023): 512, <https://doi.org/10.1080/09615768.2023.2283234>

relationship from what is owed by the parent company to its subsidiary's employees, to one that acknowledges proximity concerning victims residing near the subsidiary's operations, even if the harm occurred in a different jurisdiction.²³³

In the case, the harmful wastes emitted by the Nchanga copper mine in the Chingola region of Zambia pollute the water resources used by the poor people living in the region for their basic needs such as irrigation and drinking water supply.²³⁴ The owner of the Nchanga copper mine is a company named Konkola Copper Mines Plc (KCM), registered in Zambia, and this company is a subsidiary of the UK-based company called Vedanta Resources Plc (Vedanta).²³⁵ Vedanta owns 80% of KCM's shares, while most of the remaining 20% of KCM's shares are owned by another company owned by the Zambian government.

Zambian citizens filed a lawsuit seeking tort-based compensation against both KCM, the Zambia-based subsidiary that operates the mine, and Vedanta, the parent company that controls KCM's mining activities, based on the environmental damage they claim was caused by the copper mine in question. The case confirmed that tort principles apply to parent company duty of care.²³⁶

In *Okbapi v Shell*, the plaintiffs, who are Nigerian citizens, filed a lawsuit in the English courts against the UK-based Royal Dutch Shell (RDS) Company and its subsidiary Shell Petroleum Development Company of Nigeria Ltd (SPDC), which is registered and operating in Nigeria. The plaintiffs requested both injunctive relief and compensation for the damages arising from the economic damage and environmental damage caused by the oil leaks from pipelines and related infrastructure operated by SPDC, based on the companies' tort of negligence. The plaintiffs claimed that parent company RDS was responsible for violating its duty of care on the activities of its subsidiary SPDC, and that the subsidiary company SPDC, as the executor and licensee of the pipeline, was responsible for the damage in accordance with Nigerian laws.²³⁷

Before the appeal, the English courts made the claimants to show control, which proven hard without access to corporate documents internally, RDS argued that they had minimal involvement in the subsidiary's actions while refusing to disclose relevant documentation. Fortunately, the Court of Appeal overturned this decision, emphasizing the significance of internal documents and rejecting the

²³³ The Supreme Court of the United Kingdom, *Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)*, April 10, 2019, https://supremecourt.uk/uploads/uksc_2017_0185_judgment_ee7cbbdb9f.pdf

²³⁴ The Supreme Court of the United Kingdom, *Vedanta v Lungowe*, 2.

²³⁵ The Supreme Court of the United Kingdom, *Vedanta v Lungowe*, 2-3.

²³⁶ Sarah Joseph and Joanna Kyriakakis, "From Soft Law to Hard Law in Business and Human Rights and the Challenge of Corporate Power," *Leiden Journal of International Law* 36, 2 (2023):350, <https://doi.org/10.1017/S0922156522000826>

²³⁷ The Supreme Court of the United Kingdom, *Okpabi and others (Appellants) v Royal Dutch Shell Plc and another (Respondents)*, Feb 12, 2021, https://supremecourt.uk/uploads/uksc_2018_0068_judgment_fd7f555f07.pdf

narrow liability criteria, which now includes not only control but also supervision and other forms of intervention.²³⁸

While the British Court of Appeal ruled that there was no real legal issue between the Nigerian citizen plaintiffs and the UK-based parent company RDS, examined the duty of care in terms of whether RDS could be held responsible for the damage caused by the activities of its subsidiary in Nigeria. British Court of Appeal made a rather narrow and restrictive interpretation compared to the *Lungowe v Vedanta* case.²³⁹

In the decision, the Court of Appeals stated that RDS's company policies on mandatory health and occupational safety; RDS's supervision and control of the implementation of the standards envisaged in these policies and the system it envisages regarding engineering operations; although it took into consideration the elements of RDS's financial control over SPDC's activities and the central execution of security-related matters, it decided that these elements would not give rise to RDS's duty of care. Because the elements in question have been interpreted as standard policies established for all subsidiaries in the Shell group of companies; It was stated that the documents cited by the plaintiffs regarding the responsibility of RDS were short statements quoted from documents containing the central policies of the Shell Group Company, and in this respect, it was concluded that sufficient evidence regarding the duty of care of the dominant company could not be presented.²⁴⁰ The Supreme Court also considered that RDS does not have a direct share in the SPDC company, does not have any transactions or activities in Nigeria, nor does it operate in Nigeria as a party to a joint venture agreement.²⁴¹

As a result, when the decision of the Court of Appeal is examined, it is concluded that in order for the parent company to have a duty of care over the activities of the subsidiary company, the parent company must have active and effective control over the activities and decisions of the subsidiary company.²⁴²

This decision of the Court of Appeal has been criticized in doctrine.²⁴³ It has been stated that such a restrictive interpretation of the parent company's duty of care towards the subsidiary company, while still at the stage of establishing authority, and leaving the plaintiff under the burden of proving the active control of the parent company, blurs the difference between substantive examination and procedural rules.

²³⁸Leader "Parent Company Liability"

²³⁹Ekaterina Aristova, "Tort Litigation against Transnational Corporations: The Challenge of Jurisdiction in English Court," *Utrecht Law Review* 14, no.2 (2018):6, <https://doi.org/10.18352/ulr.444>

²⁴⁰ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 3.

²⁴¹ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 39.

²⁴² Jane Rooney, "Extraterritorial Corporate Liability for Environmental Harm: Okpabi v Royal Dutch Shell" *Northern Ireland Legal Quarterly* 70, no.1 (2019):157 <https://durham-repository.worktribe.com/output/1289837>

²⁴³ Aristova, "Tort Litigation against Transnational Corporations: The Challenge of Jurisdiction in English Court," 17.; Dalia Palombo, "The Duty of Care of the Parent Company: A Comparison between French Law, UK Precedents and the Swiss Proposals," *Business and Human Rights Journal* 4, no.2 (2019):286, <https://doi.org/10.1017/bhj.2019.15>

Because at this stage, the means of proof that plaintiffs can use to prove the effective control of the parent company over the subsidiary company are much more limited.²⁴⁴

The Supreme Court erred in the Court of Appeal's decision that there was no real dispute between the plaintiffs and the parent company.²⁴⁵ The Supreme Court took into consideration the Court of Appeal's assessment of the burden of proof on the plaintiff in terms of showing that there was a real dispute between the plaintiffs and the parent company, at a stage when an evaluation on the merits had not yet been made. Accordingly, The Supreme Court pointed out that the Court of Appeal virtually conducted a "mini-trial" on the merits.²⁴⁶ In this context, the Supreme Court pointed out that the disclosure phase had not yet been initiated in the trial and emphasized that the plaintiff did not have access to documents regarding the activities and management of Shell group companies, which are important regarding the parent company's duty of care, before the disclosure phase.²⁴⁷ On the other hand, the Supreme Court also found the criteria sought by the Court of Appeal to be incorrect in terms of arising the parent company's duty of care.²⁴⁸ In this context, the Court of Appeal concluded that the policies of group companies alone would not create a duty of care²⁴⁹; parent company's interpretation that it should have active and effective control over the activities and decisions of the subsidiary company²⁵⁰ was in conflict with the reasoning followed in *Vedanta v Lungowe*.

3.4.7. Comparing the European Commission, Council, and Parliament Positions on Civil Liability

The CSDDD has undergone substantial debate and modification within the European Union legislative process, particularly regarding the scope and conditions of liability. One critical aspect pertains to the treatment of business partners, which can trigger due diligence obligations and potentially entail value chain liability. The inclusion of indirect partners presents challenges due to limited monitoring capabilities and the potential for strategic outsourcing of hazardous activities.²⁵¹

The European Commission initially included indirect partners in the CSDDD scope, but limited liability exclusion through contractual cascading. However, the Council's political compromise scrapped this approach and narrowed liability in significant ways, excluding downstream indirect partners and imposing strict conditions for liability imposition. Despite these limitations, the Council left the

²⁴⁴ Meltem Ece Oba, "Çok Uluslu Şirketlerin Sınır Ötesi Faaliyetleri ve Haksız Fiil Sorumluluğu: *Vedanta v Lungowe* ve *Okpabi v Shell* Kararları Çerçevesinde İngiliz Mahkemelerinin Milletlerarası Yetkisi," *Public and Private International Law Bulletin* 41, no.1 (2021): 183- 184, <https://doi.org/10.26650/ppil.2021.41.1.821956>

²⁴⁵ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 25.

²⁴⁶ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 25-26.

²⁴⁷ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 35.

²⁴⁸ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 36.

²⁴⁹ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 36.

²⁵⁰ The Supreme Court of the United Kingdom, *Okpabi v Royal Dutch Shell*, 37-38.

²⁵¹ Paccès, "Civil Liability," 7.

burden of proof to member states, potentially hindering effective liability enforcement.²⁵²

In contrast, the European Parliament's version of the CSDDD significantly differs, expanding the scope of due diligence to encompass the entire value chain, including indirect partners. Moreover, it adopts a risk-based approach, expecting companies to prevent or mitigate likely and severe adverse impacts on human rights and the environment. This approach, while reflecting input from the Council, may still enable companies to escape liability due to vague criteria until courts establish proper standards.²⁵³

Furthermore, the Parliament's version strengthens liability conditions by disallowing the defense of exclusive causation by business partners and addressing the burden of proof. It encourages member states to reverse the burden of proof and enables courts to order the disclosure of additional evidence, aiming to enhance accountability and facilitate victims' access to justice.²⁵⁴

In summary, the Parliament's version of the CSDDD aims to hold companies accountable for their actions and provide mechanisms for victims to seek redress. However, challenges remain in defining liability criteria, ensuring effective enforcement, and achieving international coordination in addressing multinational corporations' environmental and human rights violations.

3.5. Enforcement in the Directive

Enforcement of the CSDDD will be carried out by national authorities, which are required to have sufficient resources and investigative powers, as well as the authority to impose penalties for non-compliance. To support effective public enforcement, the CSDDD includes a provision allowing individuals and entities to report substantiated concerns regarding CSDDD violations to national authorities through accessible channels. These authorities must investigate such concerns within a “reasonable time frame,” and inform the reporting parties of their findings. Additionally, individuals with a “legitimate interest” as defined by national law are entitled to more detailed information, including references to judicial review options.²⁵⁵

The CSDDD includes provisions for both public and private enforcement, with civil liability introduced for breaches of its obligations. However, this civil liability does not extend to the “best efforts” obligation regarding climate change mitigation under Article 29, reflecting the political sensitivity of this issue. This

²⁵² Malin Maud Hasselblatt, “Unravelling Corporate Civil Liability in the Proposal for a Corporate Sustainability Due Diligence Directive through Value Chain Governance and the Concept of Sustainability Due Diligence,” (Master Thesis, Lund University, 2023), 43-44.

²⁵³ Loes Lennarts, “Civil liability of companies for failure to conduct corporate sustainability due diligence throughout their value chains - Is Art. 22 CSDDD fit for purpose?,” *Ondernemingsrecht* 2023, no.5 (2023):260, <https://research.rug.nl/en/publications/civil-liability-of-companies-for-failure-to-conduct-corporate-sus>

²⁵⁴ Paccès, “Civil Liability,” 13.

²⁵⁵ “Proposal for a CSDDD (EU) 2019/1937” Article 24,25,26,27.

approach is consistent with similar legislation in Norway and Germany, which also exclude civil liability for climate-related obligations. The CSDDD distinguishes between the duty to take climate action and liability for climate-related damages but leaves space for liability claims based on national laws.²⁵⁶

Article 29(6) clarifies that the CSDDD's civil liability provisions do not limit additional liability under EU or national laws, especially where stricter liability rules are in place. Although the language is somewhat ambiguous, this article may be interpreted in two ways: first, as allowing Member States to introduce civil liability for obligations beyond the CSDDD's scope, or second, as permitting liability for obligations already covered, including Article 22's climate-related duty.²⁵⁷

The Council appears to have weakened the concept of civil liability from the Commission's original proposal. The Commission's version initially held companies civilly liable if they failed to take necessary actions to prevent or halt negative impacts on human rights and the environment, with an exemption for liability regarding indirect business partners if the company took reasonable steps to prevent or mitigate harm. However, in the final version, it was decided that companies cannot be held liable in civil court if damages were solely caused by their business partners in the activity chain. The degree to which this change weakens civil liability remains debatable and may hinge on how causation is interpreted. Some argue that this clause is unnecessary, as the causation test for damages would naturally require a judge to establish whether a company's lack of action caused the damage. In such cases, it is logically inconsistent to claim the partner's conduct "alone" caused the harm if the company's inaction was also a contributing factor.²⁵⁸

3.6. Burden of Proof

Article 22 of the CSDDD does not include a provision that would ease the claimant's burden of proof, nor does it specify who is responsible for demonstrating that the company's actions were reasonably adequate given the circumstances of the case.

The CSDDD leaves the question of burden of proof to national law. As emphasized by the EU Fundamental Rights Agency²⁵⁹, the burden of proof in Member States' regulations poses a significant obstacle in such instances. Moreover, disclosure requirements are either absent or restricted in most European legal frameworks. The directive should specify that the onus is on the defendant company

²⁵⁶ Veenbrink, "Synergies Between the CSDDD and EU Competition Law: A Toxic Relationship?," 55.

²⁵⁷ The Danish Institute for Human Rights, *The Eu Corporate Sustainability Due Diligence Directive: Maximising Impact Through Transposition And Implementation*, 2023, 15-16 https://www.humanrights.dk/files/media/document/DIHR_The%20EU%20Corporate%20Sustainability%20Due%20Diligence%20Directive_0.pdf

²⁵⁸ Nicholas Bueno and Fransizka Oehm, "Conditions of corporate civil liability in the Corporate Sustainability Due Diligence Directive: Restrictive, but clear?," *VerfassungsBlog*, May 28, 2024, <https://verfassungsblog.de/conditions-of-corporate-civil-liability-in-the-corporate-sustainability-duediligence-directive/>

²⁵⁹ European Union Agency for Fundamental Rights, *Business and Human Rights – Access To Remedy*, October 2020, <https://fra.europa.eu/en/publication/2020/business-human-rights-remedies>

to establish its link to the violation and the resulting harm, and to demonstrate that it implemented all necessary measures.²⁶⁰

When damage is caused by a business partner in the value chain, proving a violation of due diligence obligations becomes challenging if there's no established relationship with the partner involved. This raises questions about the effectiveness of due diligence duties, especially when risks arise from lower-tier partners.²⁶¹

Proving that a company failed to take appropriate measures presents another challenge for claimants. The CSDDD outlines "obligations of means," meaning companies are expected to implement measures reasonably appropriate for their specific circumstances. However, obtaining evidence to support this can be difficult for claimants, particularly when it comes to demonstrating the company's influence over its value chain partners and its ability to implement necessary measures.²⁶²

If a company invokes the defense outlined in Article 22(2) of the CSDDD, the burden of proving the inadequacy of contractual assurances and compliance verification may fall on the claimant, depending on national law. This burden could be overwhelming for the claimant, prompting Member States to consider easing it in their implementation of Article 22. However, inconsistencies in national laws may arise, leading to regulatory arbitrage as companies relocate to states with less stringent burden of proof requirements.²⁶³ This failure to address the burden of proof is seen as a critical flaw in the Commission Proposal.²⁶⁴

The European legislature should carefully consider the potential consequences of shifting the burden of proof from claimants to defendant companies, as it could impose a significant burden on the latter.²⁶⁵ Two critical factors warrant attention in this regard. Firstly, the Annex to the CSDDD encompasses a wide range of adverse human rights and environmental impacts, including both clearly defined standards and those intended for state implementation, leading to uncertainty for private actors.²⁶⁶ Secondly, existing practices for implementing CSDDD through contractual arrangements and compliance verification have been criticized for their lack of effectiveness, creating uncertainty about what constitutes appropriate

²⁶⁰ European Coalition for Corporate Justice, *European Commission's Proposal For A Directive on Corporate Sustainability Due Diligence a Comprehensive Analysis*, April 2022, 20, <https://corporatejustice.org/wp-content/uploads/2022/04/ECCJ-analysis-CSDDD-proposal-2022.pdf>

²⁶¹ Claire Methven O'Brien and Olga Martin-Ortega, "Commission Proposal on Corporate Sustainability Due Diligence: Analysis From a Human Rights Perspective" *Publications Office European Union*, May 2022, 9, <https://doi.org/10.13140/RG.2.2.18885.93923>

²⁶² Lennarts, "Civil liability of companies" 261.

²⁶³ Lennarts, "Civil Liability of Companies" 261-262.

²⁶⁴ Alessio Paces, "Supply Chain Liability in the Corporate Sustainability Due Diligence Directive Proposal" *ECGI Blog*, Apr 12, 2022, <https://www.ecgi.global/publications/blog/supply-chain-liability-in-the-corporate-sustainability-due-diligence-directive>

²⁶⁵ Lennarts, "Civil Liability of Companies" 261.

²⁶⁶ Jonas Hein, "The Vocal, yet Elusive Elephant in the Room of Supply Chain Regulation," *Völkerrechtsblog*, Dec 20, 2022, 3, <https://doi.org/10.17176/20221220-121448-0>

measures for fulfilling CSDDD obligations across value chains.²⁶⁷ Given these complexities, it is essential to clarify the scope of mandatory due diligence risks and establish best practices for ensuring compliance by business partners before considering a shift in the burden of proof to companies.²⁶⁸

CHAPTER 4 - THE TURKISH LEGAL FRAMEWORK FOR SUSTAINABILITY

4.1. The Journey of Sustainability in Türkiye

In the process of integration with the EU, Türkiye has undertaken the responsibility of aligning its legislation with EU environmental policies. Within this framework, greater importance has been placed on international environmental commitments in Türkiye. Furthermore, considering the theoretical and practical changes in global approaches and sensitivity towards sustainability and their reflections on Turkish policies, it can be said that sustainability activities have increased in recent years. The global quest for sustainability has influenced Türkiye's development plans and legal regulations. This section examines the development of sustainability in Türkiye and its place in Turkish legislation.

4.1.1. Reflections of Sustainability in Development Plans

Yılmaz, defines Development Plans as the fundamental policy documents that outline measures for industrialization, economic, and social development, forming the primary framework for guiding Türkiye's economy. Although the development of sustainability policies in Türkiye, as a concept, emerged in the late 1980s, it can be examined in different phases since the start of the planned period within the framework of economy-environment-society interactions in the Development Plans.²⁶⁹ All Development Plans are prepared by the State Planning Organization (DPT).

In the First and Second Five-Year Development Plans, strategies emphasizing social justice and equality of opportunity to ensure balanced regional development, rather than merely increasing physical welfare measured by societal consumption levels, were highlighted. These strategies were considered critical for rapidly advancing Türkiye's economy and enhancing the welfare of future generations.²⁷⁰

The first Five-Year Development Plan to address environmental issues comprehensively was the Third Five-Year Development Plan, covering 1973-

²⁶⁷ Silvia Borelli, "Subcontracting; Exploitation by Design," *The Left in the European Parliament*, Dec7, 2022, 25, <https://media.business-humanrights.org/media/documents/Subcontractingexploitation-by-design-EN.pdf>.

²⁶⁸ Karl Hofstetter, "From 'Corporate Social Responsibility' to 'Corporate Social Liability'?", *SSRN Electronic Journal*, Nov 9, 2022, 14-15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4262345

²⁶⁹ Rıza Fikret Yılmaz, *Sürdürülebilir kalkınmanın ölçülmesi ve Türkiye için yöntem geliştirilmesi* (Ankara: Devlet Planlama Teşkilatı Yayınları, 2011), 27.

²⁷⁰ Alper Güçlü, *"Sürdürülebilir Kalkınma ve Türkiye'nin Çevre Politikaları,"* (Master Thesis, Gazi Üniversitesi, 2007), 189.

1977.²⁷¹ The environment was addressed as a separate section for the first time, stating that environmental policies that could harm development would not be implemented.

The Fourth Five-Year Development Plan, covering 1979-1983, outlined several principles regarding the environment: it should be considered a key element in industrialization, agricultural modernization, and urbanization; priority should be given to preventing environmental problems before they arise; projects targeting areas with high pollution levels should be prioritized; and decisions in this process should involve local administrations and emphasize civil society organizations. Preventive policies were emphasized in this plan. During the same period, the Prime Ministry Environmental Undersecretariat was established in 1978, and the Environmental Law (Law No. 2872) was enacted. Additionally, in 1984, the Environmental Undersecretariat was transformed into the General Directorate of Environment.²⁷²

In the Fifth Five-Year Development Plan, covering 1985-1989, assessments were made to develop new policies for the active utilization and transfer of natural resources to future generations.²⁷³ In this plan, environmental concepts and pollution prevention were addressed in more detail, and environmental practices were shaped by related regulations.²⁷⁴

In the Sixth Five-Year Development Plan, covering 1990-1994, environmental issues were considered within other sectoral policies, adopting a more sustainable development-oriented approach. Environmental matters were included under a subheading called "environment and settlement." One of the notable features of this plan was the introduction of incentives for investors focusing on preventing environmental pollution.²⁷⁵

Finally, the concept of sustainability was included in the 7th Five-Year Development Plan.²⁷⁶ During this plan period, the National Environmental Strategy and Action Plan (UÇEP), centered on the concept of sustainable development, was prepared. UÇEP is a document that defines international responsibilities regarding environmental issues. It was prepared with the participation of numerous

²⁷¹ Niyazi Kaya, Mehmet Tamer Çobanoğlu and Eyüp Artvinli, "Sürdürülebilir kalkınma için Türkiye'de ve Dünya'da çevre eğitimi çalışmaları," 6. *Ulusal Coğrafya Sempozyumu* 3, no. 5 (2010): 410, https://tucaum.ankara.edu.tr/wp-content/uploads/sites/280/2015/08/semp6_44.pdf

²⁷² Abdulmenaf Turan and Mahmut Güler, "Türkiye'de Sürdürülebilir Çevre Politikaları: İklim Değişikliği Örneği Sustainable Environmental Policy in Türkiye: Climate Change Case," *International Conference on Eurasian Economies* (2013): 958, <https://www.avekon.org/papers/603.pdf>

²⁷³ Ayşen Altun Ada, "Kümeleme Analizi ile Ab Ülkeleri ve Türkiye'nin Sürdürülebilir Kalkınma Açısından Değerlendirilmesi," *Dumlupınar Üniversitesi Sosyal Bilimler Dergisi* 29 (2015): 320, https://dergipark.org.tr/tr/pub/dpusbe/issue/4771/65672#article_cite

²⁷⁴ Esengül Salihoğlu, "Sürdürülebilir Kalkınma," in *Farklı Disiplinlerde Sürdürülebilirlik*, ed. Şükran Karaca (Ankara: Nobel Akademik Yayıncılık, 2020), 8.

²⁷⁵ Yıkılmaz, *Sürdürülebilir kalkınmanın ölçülmesi ve Türkiye için yöntem geliştirilmesi*, 29.

²⁷⁶ State Planning Organization, *Seventh Five Year Development Plan*, 1995, 206, https://www.sbb.gov.tr/wp-content/uploads/2022/07/Seventh_Five_Year_Development_Plan_1996-2000.pdf

representatives from all relevant institutions and organizations, as well as civil society organizations, private sector representatives, and scientific institutions. UÇEP aims to achieve sustainable economic, social, and cultural development. It is stated that UÇEP serves as a document that determines the priorities to operationalize policies on sustainable development and enables Türkiye to fulfill its global and regional responsibilities regarding sustainable development. However, the lack of legal status for UÇEP is interpreted as an indication that the principle of sustainable development is not among the priority objectives of Türkiye's official policies.²⁷⁷

In the Ninth Five-Year Development Plan, covering 2007-2013, a contradictory and indecisive attitude was adopted toward sustainable development, with the term appearing only once throughout the Plan. However, the concept of sustainability is frequently used in the sense of "continuity or uninterruptedness." Unlike previous plans, it was prepared to cover a seven-year period. The Plan took into account that Türkiye's development strategy and policies align with the legal, institutional, and financial frameworks accepted by the European Union.²⁷⁸ During this period, before the general elections on June 12, 2011, the government used its legislative decree authority obtained from Parliament to change the ministerial system. Before the elections, a legislative decree was issued to establish the Ministry of Environment, Forests, and Urbanization to oversee urban and environmental policies. However, following the elections, a new decree established two separate ministries in this area: the Ministry of Environment and Urbanization and the Ministry of Forestry and Water Affairs.²⁷⁹

In the Tenth Five-Year Development Plan, covering 2014-2018, prepared by the State Planning Organization (DPT), the concept of sustainability was emphasized with the following statement:²⁸⁰

"The goal of development is to enhance human welfare, improve living standards, establish a fair, secure, and peaceful living environment by strengthening fundamental rights and freedoms, and make this permanent. Within this framework, the Tenth Development Plan has been prepared with an approach centered on the sustainability of development".

The SDGs were extensively addressed for the first time in the Eleventh Five-Year Development Plan. In the section dedicated to the SDGs, emphasis was placed on aligning the goals with political and strategic plans and determining targets

²⁷⁷ Emine Öner Kaya, "Sürdürülebilir kalkınma sürecinde bankaların rolü ve Türkiye'de sürdürülebilir bankacılık uygulamaları," *İşletme Araştırmaları Dergisi* 2, no.3 (2010): 85, <https://isarder.org/index.php/isarder/article/view/27/25>

²⁷⁸ Betül Yaylalı, "Sürdürülebilir Kalkınma Sürecinde İklim Değişikliği Diğer Çevre Sorunlarıyla Etkileşimi ve Türkiye Analizi," (Master Thesis, Ankara Üniversitesi, 2009), 189.

²⁷⁹ Menaf Turan, "Yerel Yönetimlerin İmar ve Planlama Yetkileri," in *Beşinci Ulusal Yerel Yönetimler Sempozyumu*, ed. Ayşegül Mengi (Ankara: Türkiye Belediyeler Birliği, 2011), 503. https://www.tbb.gov.tr/on-line/yayinlar/yerel_yonetimler_sempozyumu/index.html#p=517

²⁸⁰ State Planning Organization, *Seventh Five Year Development Plan*, 2013, 2, https://www.sbb.gov.tr/wp-content/uploads/2022/07/The_Tenth_Development_Plan_2014-2018.pdf

accordingly.²⁸¹ In addition to this, the Turkish Government aims to implement awareness-raising initiatives and incentive measures to promote women's participation in higher management and decision-making roles within the private sector as part of its targets in the Eleventh Five-Year Development Plan.²⁸²

Türkiye's Development Plans have shown significant progress in integrating sustainability into economic, environmental, and social policies. While early plans focused on social justice and balanced development, later plans progressively addressed environmental issues, culminating in the inclusion of sustainability as a key concept in the Seventh Plan. The Eleventh Plan notably aligns with the SDGs, emphasizing their integration into national policies and promoting gender equality in leadership roles within the private sector. These efforts reflect Türkiye's evolving commitment to sustainability.

4.1.2. Regulations Regarding Sustainability in Türkiye

With the 1982 Constitution, the concept of "environmental protection" was introduced into constitutional law. Article 56 of the 1982 Constitution states: *"Everyone has the right to live in a healthy and balanced environment. It is the duty of the state and citizens to improve the environment, protect environmental health, and prevent environmental pollution."* This provision, which indirectly addresses the environment, reflects a shift in the perspective toward environmental issues. However, the regulation of the environment in the 1982 Constitution is not limited to this provision; there are many regulations related to the environment within the Constitution. Despite this, the emphasis is placed only on environmental health and balance, without explicitly addressing the concept of sustainability.²⁸³

Article 56 of the 1982 Constitution does not explicitly refer to environmental rights. However, it incorporates the environment as a "derivative" regulation by linking it with other fundamental rights, particularly the right to life.²⁸⁴ The primary law directly related to the environment in Türkiye is Law No. 2872 on the Environment, which came into force on August 11, 1983. In 2006, this law was amended, and its purpose was redefined in alignment with sustainable development. According to Article 1 of the Law Amending the Environment Law No. 5491, *"the purpose of the law is to ensure the protection of the environment, which is the common asset of all living beings, in accordance with the principles of sustainable environment and sustainable development."* In addition to the Environment Law, various other laws contain environmental regulations. However, a notable feature of all environmental regulations in force in Türkiye is that they predominantly focus on

²⁸¹ Ender Emre Kanaat, "Yenilik Perspektifinden Yerel Yönetimlerde Sürdürülebilir Kalkınma Amaçları Çalışmalarının Değerlendirilmesi," *Uluslararası Kültürel ve Sosyal Araştırmalar Dergisi* 8, no.2 (2022): 195, <https://doi.org/10.46442/intjcss.1176109>

²⁸² İrem Töre, "Gender Diversity on Boards of Directors in Joint-Stock Corporations in Türkiye: Combining Hard and Soft Law," *Hacettepe Hukuk Fakültesi Dergisi* 12, no. 2 (2022): 1769, <https://doi.org/10.32957/hacettepehdf.1165177>.

²⁸³ Gülün Egeli, *Avrupa Birliği ve Türkiye'de çevre politikaları* (Türkiye Çevre Vakfı Yayınları, 1996), 70.

²⁸⁴ İ. Güneş Gürseler, "İnsan Hakları, Çevre, Anayasa," *TBB Dergisi* 75 (2008): 200, <https://tbbdergisi.barobirlik.org.tr/m2008-75-408>

penal sanctions for non-compliance with the laws, rather than emphasizing economic tools, such as incentives, to ensure environmental sustainability.²⁸⁵

The amendments made to the Turkish Commercial Code and the Capital Markets Law will be examined in detail in the next section.

Beyond development plans and legal regulations, Türkiye has also signed many international and regional legal agreements. Some of the international conventions include:²⁸⁶

- The Convention Concerning the Protection of the World Cultural and Natural Heritage,
- The Montreal Protocol on Substances that Deplete the Ozone Layer,
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),
- The United Nations Convention to Combat Desertification.

Some regional legal agreements include:

- The Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution,
- The Bern Convention on the Conservation of European Wildlife and Natural Habitats.

4.1.3. Türkiye's Process of Acceding to International Agreements Related to Sustainability

Türkiye has undertaken efforts to develop sustainability policies, particularly within the scope of its harmonization process with the European Union. It is observed that in the five-year development plans created during this period, policies were organized within the framework of sustainability. Türkiye signed the United Nations Convention on Biological Diversity in 1996 and the UN Framework Convention on Climate Change (UNFCCC) in 2004. Furthermore, the National Sustainable Development Commission was established in 2004.²⁸⁷

The National Report presented by Türkiye at the Johannesburg Summit in 2002 makes an assessment of our country's efforts towards sustainability in the decade from the 1992 Rio Conference to 2002. This report has been prepared within the framework of a participatory process involving relevant ministries and public institutions, non-governmental organizations and various sectors. It evaluates Türkiye's social, economic and environmental situation as of 2002 within the

²⁸⁵ Öner Kaya, "Türkiye'de Sürdürülebilir Bankacılık Uygulamaları," 85.

²⁸⁶ Güzin Arat and Murat Türkeş, *Uluslararası Sözleşmeler Ön Rapor*, (Ankara: TÜBİTAK, 2022), 18-20, https://tubitak.gov.tr/sites/default/files/2023-10/EK-8_1.pdf

²⁸⁷ Çiftçiöğlu, "Türkiye'de Yerel Yönetimler ve Çevre Sorunları," 121.

framework of climate change, protection of biological diversity, governance, poverty alleviation, industry/sectors and information/communication.²⁸⁸

4.1.3.a Türkiye's Engagement with the Kyoto Protocol

Türkiye objected to being classified among the group of developed countries as stipulated in the UNFCCC and the Kyoto Protocol held in Rio. The primary objection was Türkiye's demand to be removed from the developed countries group in Kyoto. However, this objection was not accepted by the United States and the European Union. Countries such as Canada, Australia, and some OECD member states expressed understanding of Türkiye's request to withdraw from the annexes of the convention but emphasized that Türkiye should take voluntary commitments.²⁸⁹ Türkiye was listed in both Annex I, which includes OECD and former Eastern Bloc countries, and Annex II, which comprises only OECD and EU countries. Consequently, it was required to undertake emission reductions similar to countries such as the United States, Japan, and EU nations. Moreover, as Türkiye appeared in both lists, it could not benefit from the privileges granted to former Eastern Bloc countries transitioning to a market economy. Additionally, it was obliged to contribute financially and technologically to assist developing countries in meeting their commitments under the Convention.²⁹⁰ Türkiye reiterated its demands during the 1998 Conference of the Parties and subsidiary body meetings, but these were opposed by the United States, the EU, and other developed countries. Türkiye's request also went unanswered at the 2000 Hague and 2001 Bonn Conferences.²⁹¹

As part of its EU candidacy process, Türkiye was required to prepare a National Program to align with the Copenhagen criteria. Subsequently, after approving the Accession Partnership Document and Environmental Regulation in early 2001, Türkiye submitted its National Program to the Commission on March 26, 2001. The introduction of the National Program emphasized ongoing efforts to participate in the UNFCCC process and stated plans to compile greenhouse gas emission inventories.²⁹²

Ahead of the World Summit on Sustainable Development in Johannesburg in 2002, the EU urged its member states to complete the ratification process for the Kyoto Protocol. Following the agreements in Bonn (July 2001) and Marrakesh (November 2001), which clarified the implementation rules of the Kyoto Protocol mechanisms; EU member states began their ratification processes. The EU announced in May 2002 that it had ratified the Kyoto Protocol after all 15 member

²⁸⁸ Ozmehmet, "Dünyada ve Türkiye Sürdürülebilir Kalkınma Yaklaşımları," 19.

²⁸⁹ M. Tamer Özmen, "Sera Gazı-Küresel Isınma ve Kyoto Protokolü," *İMO Dergisi* 453, no. 1 (2009): 46.

²⁹⁰ Bülent Duru, "Viyana'dan Kyoto'ya İklim Değişikliği Serüveni," *Mülkiye Dergisi* 25, no. 230 (2001): 310-311, <https://doi.org/10.1501/0001588>

²⁹¹ Özer, *Anonim Şirketlerde Kurumsal Sosyal Sorumluluk*, 84.

²⁹² Abdullah Dinçkol, "Kopenhag Kriterlerinin Türk Pozitif Hukuku'na Etkileri," *İstanbul Ticaret Üniversitesi Sosyal Bilimler Dergisi* 10, no.5 (2006): 41, <https://arastirmax.com/en/system/files/dergiler/1402/makaleler/5/10/arastirmax-kopenhag-kriterlerinin-turk-pozitif-hukukuna-etkileri.pdf>

states completed their procedures. Within this framework, Türkiye ratified the UNFCCC with Law No. 4990 passed by the Turkish Grand National Assembly on September 16, 2003, officially becoming a party to the convention on May 24, 2004. To enhance national efforts, coordination, strategy formulation, and decision-making based on consensus, Türkiye restructured the Climate Change Coordination Board (CCCB) in 2004 under a new Prime Ministerial Circular, building on the 2001 Circular. The restructured board established eight working groups to address the content of the National Communication that Türkiye was obligated to submit to the UNFCCC Secretariat. Türkiye's unique circumstances led to a critical decision at the 7th Conference of the Parties in Marrakesh (2001), where it was decided to remove Türkiye's name from Annex II and place it in Annex I under distinct conditions. This decision, summarized in Decision 26/CP.7, marked a significant development in Türkiye's accession process to the Convention.²⁹³

On February 5, 2009, the Turkish Grand National Assembly adopted Law No. 5386, approving Türkiye's accession to the Kyoto Protocol. Following the Cabinet Decision dated May 13, 2009 Türkiye submitted the instrument of accession to the United Nations and officially became a party to the Kyoto Protocol on August 26, 2009. Notably, as Türkiye was not an UNFCCC party when the Protocol was adopted, it was not included in Annex B, which defines quantified emission limitation or reduction commitments for Annex I parties. Therefore, Türkiye had no quantified emission limitation or reduction obligations during the first commitment period (2008–2012).²⁹⁴

At COP 17 and CMP 7, held in Durban, an agreement was reached on a roadmap for a post-2012 climate regime. Türkiye welcomed this development. Moreover, it was decided to continue discussions on providing support to Türkiye in areas such as emission reduction, climate adaptation, technology development and transfer, capacity building, and financing, as recognized in the Marrakesh (2001) and Cancun (2010) decisions. Türkiye has consistently advocated for an international agreement on climate change that is fair, comprehensive, rule-based, and legally binding, grounded in the principles of "common but differentiated responsibilities" and "evaluation based on each country's own capacities and capabilities".²⁹⁵

At the Durban Conference of the Parties, it was also recalled that Türkiye's unique position, distinct from other countries listed in Annex I of the Convention, had been recognized in Decisions 26/CP.7 and 1/CP.16. It was decided that "the Conference of the Parties agrees to continue discussions on modalities for providing support to Parties with special circumstances, to assist in the implementation of the

²⁹³ Mahmut Güler and Baran Dural, "Climate Change Protection and Its Effect," *Journal of Environmental Protection and Ecology* 8, no. 2 (2007): 412.

²⁹⁴ Turan and Güler, "Türkiye'de Sürdürülebilir Çevre Politikaları," 959.

²⁹⁵ Republic of Türkiye Ministry of Foreign Affairs, *United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol*, accessed 21 June 2024, <https://www.mfa.gov.tr/united-nations-framework-convention-on-climate-change-unfccc-and-the-kyoto-protocol.en.mfa>

Convention in areas such as mitigation, adaptation, technology development and transfer, capacity building, and financing.”²⁹⁶

While the Kyoto Protocol has been accepted as a “green start” in reducing greenhouse gas emissions, the Paris Climate Agreement has become a 'new hope' for the future of Türkiye.²⁹⁷

4.1.3.b. Türkiye's Engagement with the Paris Agreement

The validity of the Kyoto Protocol was extended until 2020 with the consensus reached in Doha in 2012, two years before the Paris Agreement was opened for signature. In 2013, COP19 was held in Warsaw, where green climate funds were established to support adaptation and financing efforts for less-developed countries. Before the Paris negotiations, which were long planned for sustainable collective consensus, the last significant meeting was held in Lima, Peru, as part of the COP20 negotiations. The Paris negotiations were also conducted under the framework of COP21. These initiatives helped shape the foundation for the discussions. The agreement to be signed in Paris was intended to compile and update the consensus and negotiations conducted up to the end of 2015, including the Kyoto Protocol, provided a consensus was reached.²⁹⁸

Before the Paris Summit, global public opinion was not overly optimistic about achieving a general consensus, considering past hesitations. This was mainly because the United States, responsible for approximately ¼ of the world's greenhouse gas emissions, had not been a party to any agreement requiring emission reductions until the Paris consensus.²⁹⁹

Although the agreement opened for signature was not as binding as desired, contrary to expectations before the negotiations, almost all participating states, including the U.S., adopted the most broadly supported common stance in history against global warming and climate change at the Paris Summit. Following two weeks of preliminary negotiations, the Paris Agreement, linked to the UNFCCC, was signed on December 12, 2015, with 195+2 UN member states participating as signatories. The +2 signatories, the Vatican and Palestine, participated as observers. The preamble of the Agreement highlighted that global warming and climate change are common challenges for humanity, calling on parties yet to sign to promptly ratify

²⁹⁶ T.C. Çevre ve Şehircilik Bakanlığı, *Birleşmiş Milletler İklim Değişikliği Çerçeve Sözleşmesi*, accessed 23 June 2024, <https://iklim.gov.tr/bm-iklim-degisikligi-cerceve-sozlesmesi-i-33>

²⁹⁷ Aynur Demir, “Paris Anlaşması ve 26. Taraflar Konferansı (COP 26)’nda Türkiye Değerlendirmesi: Yükümlülükler ve Sorumluluklar,” *Biological Diversity and Conservation* 15, no. 2 (2022): 163, <https://doi.org/10.46309/biodicon.2022.1088410>

²⁹⁸ İlke Kivılcım, “2020’ye Doğru Kyoto-Tipi İklim Değişikliği Müzakereleri, AB’nin Yeterliliği ve Türkiye’nin Konumu,” *İktisadi Kalkınma Vakfı* no. 268 (2013): 36-37. <https://www.ikv.org.tr/images/files/Kyoto.pdf>

²⁹⁹ Antony Best et al, *International History of the Twentieth Century and Beyond*, 2nd ed. (New York: Routledge Publication, 2008), 533.

the Kyoto Protocol, its amendments through the Doha document, and the Cancun Agreements.³⁰⁰

The negotiations nearly stalled due to the U.S. legal team objecting to the term “shall,” which would legally obligate developed countries to reduce emissions.³⁰¹

The Paris Agreement’s depositary is the UN Secretary-General. The Agreement was opened for signature by the UN in New York from April 22, 2016, to April 21, 2017. On March 17, the then-UN Secretary-General, as the depositary, sent the copies to be signed to all UN member states and organizations party to the Agreement. By submitting their nationally determined contributions (NDCs) in Paris, states entered into voluntary commitments. Even if these commitments are fully realized, limiting the temperature increase to the 1.5 – 2°C range may not be possible, as calculations predict a 3°C rise. Nevertheless, this collective consensus, which achieved such broad participation for the first time, represents an important step forward. Until the Agreement comes into force, the COP will oversee its implementation. The COP has established a roadmap, including a review in 2018 to assess collective progress and discuss future plans. A similar mechanism was established post-Kyoto but failed to achieve the desired outcomes.³⁰²

The Agreement officially entered into force on November 4, 2016, after being ratified by at least 55 parties responsible for 55% of global greenhouse gas emissions as of October 5, 2016. Türkiye signed the Paris Agreement on April 22, 2016, actively participating in its preparation and negotiations. However, the ratification process in the Turkish Grand National Assembly (TBMM) had not been completed. While Türkiye's ratification process was ongoing, the U.S. withdrawal from the Agreement in early June 2017 led Türkiye to suspend its process. By the end of 2017, the Paris Agreement had not yet been ratified by Türkiye. As the Agreement was not legally ratified in Türkiye, the reduction commitments and obligations it entailed were not implemented in connection with it.³⁰³

The Paris Agreement, unlike the UNFCCC, removed the classifications of Annex I, Annex II, and Non-Annex I countries, introducing instead a distinction between “developed” and “developing” countries. However, no list was created to specify which countries belong to these categories. It is worth recalling that Türkiye had not become a party to the UNFCCC until 2003 due to being listed in both Annex I and Annex II. A similar issue applies to the Paris Agreement. Türkiye, categorized

³⁰⁰ UN Climate Change Secretariat, *The Paris Agreement: Next steps*, Feb 29, 2016, 2-3, https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_next_steps_pos_t_adoption.pdf

³⁰¹ John Vidal, “How a 'Typo' Nearly Derailed The Paris Climate Deal,” *The Guardian*, Dec 16, 2015, <https://www.theguardian.com/environment/blog/2015/dec/16/how-a-typo-nearly-derailed-the-paris-climate-deal>

³⁰² İsmail Köse, “İklim Değişikliği Müzakereleri: Türkiye’nin Paris Anlaşması’nı İmza Süreci,” *Ege Stratejik Araştırmalar Dergisi* 9, no. 1 (2018): 70, <http://dx.doi.org/10.18354/esam.329348>

³⁰³ T.C. Dışişleri Bakanlığı, *Paris Anlaşması*, accessed 12 Jul 2024, <https://www.mfa.gov.tr/paris-anlasmasi.tr.mfa>

as an Annex I country, is regarded as a developed country under this classification. This prevents Türkiye from benefiting from technical and capacity-building support for developing countries and the \$100 billion aid fund to be provided annually from 2020 onwards. Considering Türkiye's unique circumstances, it is essential to classify it among developing countries. This would relieve Türkiye of the absolute obligation imposed on developed countries to reduce greenhouse gas emissions. The reservations explained above significantly contributed to the delay of over a year in Türkiye's ratification process. The U.S. withdrawal decision provided Türkiye with the time and opportunity to negotiate changes to its classification.³⁰⁴

Türkiye ratified the Paris Agreement with a Presidential Decision on October 7, 2021, completing the domestic legal process. The ratification document, along with Türkiye's national declaration, was submitted to the UN Secretariat on October 11, 2021. Through this declaration, Türkiye committed to reducing its greenhouse gas emissions to 929 million tons of CO₂ equivalent by 2030, a 21% reduction from the projected 1.175 billion tons under the business-as-usual scenario.³⁰⁵ However, this commitment has faced criticism.

One critique notes that between 1990 and 2013, Türkiye's greenhouse gas emissions increased by an average of 3.9% annually. Türkiye projected an annual increase of 5.7% until 2030, setting a high baseline and effectively committing to an annual increase of 4.2%, which represents faster growth in emissions rather than a reduction in fossil fuel consumption and CO₂ emissions.³⁰⁶

Gündoğan & Mazlum Cerit (2015) also expressed that the target falls short of expectations, highlighting that Türkiye is among the countries that did not specify how or by which measures they would achieve their targets in their contributions.³⁰⁷

Sayman (2015) argued that Türkiye's declared contribution would result in it becoming the 11th largest emitter globally by 2030, with 10.5 tons of CO₂e emissions per capita for a population of 88.5 million. This indicates that the calculation was overestimated; suggesting Türkiye did not set an ambitious target. However, he also emphasized that the lack of ambition in Türkiye's contribution does not negate the historical responsibility of developed countries to provide financial resources for reducing greenhouse gas emissions.³⁰⁸

³⁰⁴ Ece G. Çakmak, Tuğba Doğan and Bilgin Hilmioğlu, "İklim Değişikliği Sürecinde Paris Anlaşması'nın Rolü ve Türkiye'nin Konumu," *Akdeniz Üniversitesi Hava Kirlenmesi Araştırmaları ve Denetimi Türk Milli Komitesi, VII. Ulusal Hava Kirliliği ve Kontrolü Sempozyumu* 1, no.3 (2017): 906.

³⁰⁵ T.C. Çevre ve Şehircilik Bakanlığı, *Türkiye Cumhuriyeti Niyet Edilen Ulusal Olarak Belirlenmiş Katkı*, accessed 12 Jul 2024, https://www.csb.gov.tr/db/iklim/editordosya/The_INDC_of_TÜRKİYE_v_15_19_30-TR.pdf

³⁰⁶ Cüneyt Kazokoğlu, "10 grafikte BM İklim Değişikliği Konferansı ve Türkiye," *BBC News*, Oct 30, 2015, http://www.bbc.com/turkce/ekonomi/2015/11/151130_cop21_turkiye_cuneyt_kazokoglu

³⁰⁷ Arif Cem Gündoğan and Semra Cerit Mazlum, "Paris Anlaşmasına Doğru İklim Değişikliği Müzakereleri ve Türkiye," *Henrich Böll Stiftung*, Nov 6, 2015, <https://tr.boell.org/tr/2015/11/06/paris-anlasmasina-dogru-iklim-degisikligi-muzakereleri-ve-turkiye>

³⁰⁸ Rifat Ünal Sayman, "İklim Değişikliği ile Mücadelede Çarpan Etkisi: Paris Anlaşması," *Bölgesel Çevre Merkezi*, 2016, http://www.rec.org.tr/dyn_files/42/6600-Paris-Anlasmasi-COP21-Degerlendirme-RECTurkiye.pdf

4.1.3.c. Concrete Policy Actions Undertaken by Türkiye in the Post-Paris Agreement Era

Following the ratification of the Paris Agreement, the name of the Ministry of Environment and Urbanization, established in 2011, was amended to include the term “Climate Change” through Presidential Decree No. 85 on October 29, 2021. This decree introduced four significant changes to the Ministry’s structure to strengthen its capacity in combating climate change. Firstly, the “General Directorate for Combating Desertification and Erosion” was incorporated into the Ministry’s organization. Secondly, the “General Directorate of Meteorology” was brought under the Ministry’s jurisdiction. Thirdly, the “Climate Change Directorate” was established within the Ministry. Lastly, the “Climate Change Adaptation and Coordination Board” was formed to develop plans, policies, and strategies addressing climate change.³⁰⁹

The Climate Change Directorate, the Climate Change Adaptation and Coordination Board, and the Türkiye Environment Agency (established under private law) have become key entities in coordinating Türkiye’s international environmental and climate policy processes. As part of this framework, the coordination of the United Nations Convention to Combat Desertification (UNCCD), accepted alongside the UNFCCC, was also assigned to the Ministry, aiming to ensure effective management of both climate change and desertification issues.³¹⁰

4.1.3.c.1. Climate Change Directorate

Türkiye’s decision to become a party to the Paris Agreement marked the beginning of a comprehensive green transformation process, bringing significant change across all sectors. To manage this transition collaboratively with all relevant institutions, the Climate Change Directorate was established on October 29, 2021, as an affiliated body of the Ministry of Environment, Urbanization, and Climate Change. The Directorate is responsible for developing national and international policies, strategies, and actions related to climate change mitigation and adaptation, managing negotiation processes, and ensuring coordination among institutions and organizations.³¹¹

On June 21, 2022, regulations defining the organizational structure of the Directorate, including its deputy directors and departmental responsibilities, were published. This bureaucratic structuring underscores Türkiye’s commitment to climate diplomacy and combating climate change. The establishment of the Directorate reflects Türkiye’s recognition of its international responsibilities and

³⁰⁹ Şerif Öner, “İklim Değişikliği Sorununun Uluslararası Gelişmeler Eşliğinde Türkiye’nin Politika ve Kurumlarına Yansıması,” *Ombudsman Akademik* 9, no.18 (2023): 32-33, <https://dergipark.org.tr/tr/download/article-file/2916820>

³¹⁰ Birpınar, “İklim Değişikliği Gelişimi ve Türkiye,” 29.

³¹¹ T.C. Çevre, Şehircilik ve İklim Değişikliği Bakanlığı, *İklim Değişikliği Azaltım Stratejisi ve Eylem Planı*, March 21, 2024, 3, [https://iklim.gov.tr/db/turkce/icerikler/files/%C4%B0klim%20De%C4%9Fi%C5%9Fikli%C4%9Fi%20Azalt%C4%B1m%20Stratejisi%20ve%20Eylem%20Plan%C4%B1%20\(2024-2030\).pdf](https://iklim.gov.tr/db/turkce/icerikler/files/%C4%B0klim%20De%C4%9Fi%C5%9Fikli%C4%9Fi%20Azalt%C4%B1m%20Stratejisi%20ve%20Eylem%20Plan%C4%B1%20(2024-2030).pdf)

commitments regarding climate change, as seen in similar institutional arrangements.³¹²

The founding decree of the Directorate provides definitions of key concepts such as climate change, greenhouse gases, emissions, and adaptation within the framework of global climate change arguments. Moreover, it incorporates a forward-looking perspective by introducing the concept of “green development,” defined as development and progress focused on environmental and climate sustainability, aligning with sustainable development principles and aiming for low carbon emissions through efficient use of natural resources. The Directorate’s conceptual framework also integrates approaches and alignment efforts that consider scientific foundations and future-oriented policies, highlighting Türkiye’s awareness of its international obligations. Additionally, the founding decree and regulations reference the European Green Deal, reflecting Türkiye’s alignment with the European Union’s environmental perspective. Key concepts such as mitigation, economic instruments, emissions trading systems (ETS), climate finance, greenhouse gases, emissions, nationally determined contributions (NDCs), adaptation, and green development are addressed, with specific references to Türkiye’s commitments under the Paris Agreement.³¹³

4.1.3.c.2. Climate Change Adaptation and Coordination Board

The Climate Change Adaptation and Coordination Board (CCACB) is an integral element of Türkiye’s efforts to address environmental challenges. While the institutional framework is not entirely new, it builds on prior initiatives. The Climate Change Coordination Board (CCCB), established in 2001, was one of the tangible outcomes of the Eighth Development Plan, which emphasized Türkiye’s preparation for participation in the UNFCCC process. In 2013, the CCCB was restructured as the Climate Change and Air Management Coordination Board (CCAMCB).³¹⁴

Under Presidential Decree No. 85, the CCAMCB was further reorganized into the CCACB. Tasked with developing, monitoring, and evaluating plans, policies, strategies, and actions related to climate change, the CCACB operates under a multi-stakeholder approach. Its 20-member structure includes representatives from ministries, public institutions, private sector representatives (such as TOBB and TÜSİAD), and the President of the Union of Municipalities of Türkiye. The secretariat of the CCACB is managed by the Climate Change Directorate, with the Board mandated to convene biannually.³¹⁵

4.1.3.c.3. Türkiye Environment Agency

³¹²T.C. Çevre, Şehircilik ve İklim Değişikliği Bakanlığı, *İklim Değişikliği Başkanlığı*, accessed 6 Nov 2024, <https://iklim.gov.tr/hakkimizda-i-4>

³¹³ Öner, ““İklim Değişikliği Sorununun Yansıması,” 34-35.

³¹⁴ T.C. Çevre, Şehircilik ve İklim Değişikliği Bakanlığı, *İklim Değişikliği Koordinasyon Kurulu*, accessed 6 Nov 2024, <https://iklim.gov.tr/idukk-i-13>

³¹⁵ “Bazı Cumhurbaşkanlığı Kararnamelerinde Değişiklik Yapılması Hakkında Cumhurbaşkanlığı Kararnamesi No.85,” Oct 29, 2021, 11, <https://www.resmigazete.gov.tr/eskiler/2021/10/20211029-35.pdf>

The Türkiye Environment Agency, a legal entity subject to private law (except for matters specified in the law), was established in 2020 under Law No. 7261, published in the Official Gazette No. 31350. The Agency's purpose, as defined in the law, includes preventing environmental pollution, contributing to the protection, improvement, and development of green spaces, enhancing resource efficiency in line with the circular economy and zero-waste approaches, and managing, operating, monitoring, and supervising a national deposit return system. The Agency's organizational structure was formalized in 2021 through the Regulation on the Organization and Working Procedures and Principles of the Türkiye Environment Agency.³¹⁶

The Agency's mission is defined as “*carrying out activities to protect and improve the environment and green areas, and to support the national economy by increasing resource efficiency in line with the zero-waste approach, with low carbon intensity.*” The phrase “*with low carbon intensity*” highlights Türkiye's commitment to combating climate change. The Agency's vision emphasizes contributing to the development of green spaces, climate change mitigation efforts, and the transition to a circular economy in alignment with national environmental strategies and policies.³¹⁷ Within this context, reiterating Türkiye's dedication to environmental protection and climate change policies and explicitly including the concept of "climate change" in the vision statement is critical to demonstrating this commitment.

4.1.3.c.4. Nationally Determined Contribution and Plans

Türkiye has committed to reducing its greenhouse gas emissions by 41% by 2030 compared to its original target, reflecting a stronger focus on emission reductions in its Updated First Nationally Determined Contribution (UFNDC). The UFNDC outlines Turkey's plan to reach peak emissions by 2038 at the latest and achieve net-zero emissions by 2053. Importantly, the NDC also addresses climate change adaptation for the first time, incorporating sectoral assessments in areas such as agriculture, urban and rural development, forestry, disaster risk management, water resources, and public health.³¹⁸

The Directorate of Climate Change prepared the Climate Change Adaptation Strategy and Action Plan alongside the Climate Change Mitigation Strategy and Action Plan for the 2024-2030 period. The development process spanned approximately two years and included the active involvement of thousands of participants. Representatives and experts from public institutions, the private sector,

³¹⁶ Ahmet Yazar, Duygu Yıldız Karakoç, and Funda Kemahlı Garipoğlu. "Devlet ve Çevresel Politikalar Bağlamında Türkiye Çevre Ajansı'na Yönelik Eleştirilerin Analizi," *Pamukkale Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 57 (2023): 47, <https://doi.org/10.30794/pausbed.1246982>

³¹⁷ Türkiye Çevre Ajansı, *Misyonumuz & Vizyonumuz*, accessed 6 Nov 2024, <https://tuca.csb.gov.tr/misyonumuz-vizyonumuz-i-111740>

³¹⁸ Ministry of Environment, Urbanization and Climate Change, *Republic of Türkiye Updated First Nationally Determined Contribution*, April 13, 2023, https://unfccc.int/sites/default/files/NDC/2023-04/T%C3%9CRK%C4%B0YE_UPDATED%201st%20NDC_EN.pdf

and civil society organizations contributed through hundreds of meetings to finalize the plans.³¹⁹

As part of the 2024-2030 Climate Change Adaptation Strategy and Action Plan, sector-specific vulnerability and risk assessments were conducted at the national level based on climate change projections. The plan outlines 40 strategies and 129 actions across a range of sectors, including agriculture and food security, biodiversity and ecosystem services, water resource management, tourism and cultural heritage, industry, urban development, social progress, public health, transportation and communication, energy, disaster risk reduction, and cross-cutting horizontal issues.³²⁰

2024-2030 Climate Change Mitigation Strategy and Action Plan included a comprehensive needs analysis of climate change policies, strategies, plans, and measures aimed at reducing greenhouse gas emissions. This analysis led to the development of 49 strategies and 260 actions, addressing key areas such as industry, energy, buildings, transportation, agriculture, waste management, land use, land-use change and forestry, along with just transition and carbon pricing initiatives.³²¹

4.1.3.c.5. Renewable Energy

Due to its geographical location, Türkiye has significant potential for renewable energy resources. Following the Paris Agreement, Türkiye shifted its focus toward renewable energy, driven by its obligations under the agreement and efforts to reduce energy dependence. Investments in domestic and renewable resources have increased, with particular emphasis on solar energy, given its high potential. The development of solar energy infrastructure, supported by advancing technology and reduced installation costs, highlights its growing role in Türkiye's long-term energy strategy. Various government initiatives encourage the participation of businesses of all sizes in renewable energy projects, aiming to promote sustainable energy use and economic growth.³²²

Strategic plans by ministries, such as the Ministry of Environment, Urbanization, and Climate Change and the Ministry of Energy and Natural Resources, emphasize renewable energy's role in Türkiye's future. Regulations like the "Energy Efficiency Law" and the "Energy Performance Regulation for Buildings" aim to enhance energy efficiency and renewable energy integration in

³¹⁹ Ministry of Environment, Urbanization and Climate Change, *The 2024-2030 Climate Change Mitigation and Adaptation Strategy and Action Plans are published*, accessed 9 Nov 2024, <https://iklim.gov.tr/en/the-2024-2030-climate-change-mitigation-and-adaptation-strategy-and-action-plans-are-published-news-4245>

³²⁰ Ministry of Environment, Urbanization and Climate Change, *Climate Change Adaptation Strategy and Action Plan*, March 21, 2024, <https://iklim.gov.tr/db/english/icerikler/files/Uyum.pdf>

³²¹ Ministry of Environment, Urbanization and Climate Change, *Climate Change Mitigation Strategy and Action Plan*, Jan 1, 2024, <https://iklim.gov.tr/db/english/icerikler/files/climate%20change%20mitigation%20strategy%20and%20action%20plan%20 EN.pdf>

³²² Yunus Deniz, "Türkiye'nin Paris Anlaşması Sonrası Enerji Politikasında Güneş Enerjisinin Rolü ve Önemi," (Master Thesis, Dokuz Eylül University, 2020), 74 - 75.

construction. Initiatives such as issuing Energy Identity Certificates for buildings and developing green city projects aim to reduce energy consumption and environmental impact. The strategic plan for 2019-2023 outlines goals to increase renewable energy's share in total energy production and improve energy efficiency across various sectors.³²³

In conclusion, following the ratification of the Paris Agreement, Türkiye has taken significant strides in redefining its institutional and policy framework to address climate change and align with global commitments. The establishment of the Climate Change Directorate, the incorporation of climate-focused strategies, and the integration of the European Green Deal principles underscore Türkiye's commitment to a green transformation across all sectors. These efforts are complemented by ambitious targets, including reducing greenhouse gas emissions by 41% by 2030 and achieving net-zero emissions by 2053. The development of the Climate Change Mitigation and Adaptation Strategies for 2024-2030, with extensive stakeholder engagement, highlights Türkiye's determination to address its unique challenges while contributing to global climate goals. This period marks a turning point for Türkiye, positioning it as an active participant in international climate action and emphasizing its resolve to achieve sustainable and inclusive development in the post-Paris Agreement era.

4.1.3.d. Türkiye's Engagement with the European Green Deal

The European Green Deal's transition framework significantly impacts not only EU member states but also non-member countries, particularly those with strong trade relations with the EU. The European Climate Law underscores the global dimension of the EU's climate policy, emphasizing the necessity for neighboring and third countries to adopt requisite measures for alignment with the Green Deal. As the world's largest single market, the EU is poised to influence global emission trends indirectly and establish new ecological standards. The EU also expects candidate countries to comply with its climate policies, reflecting its commitment to integrating sustainability into broader trade and diplomatic relations. Türkiye, as a key trading partner with nearly half of its trade volume linked to the EU and a customs union partner, is among the countries most affected. The Green Deal has accelerated Türkiye's ratification of the Paris Agreement and efforts to establish carbon markets. However, achieving the necessary green transformation requires Türkiye to reduce greenhouse gas emissions, increase reliance on renewable energy, and implement green transition policies across all sectors. To this end, the Ministry of Trade has introduced a Green Deal Action Plan, aiming to develop a short-term and medium-term legal framework to guide Türkiye's sustainability policies.³²⁴

³²³ T.C. Çevre ve Şehircilik Bakanlığı, *Stratejik Plan 2019-2023*, Aug 2018, https://webdosya.csb.gov.tr/db/strateji/icerikler/csb_2019-2023-stratej-kplan-11-20191108155418.pdf

³²⁴ Kamile Türkoğlu Üstün, "Yeni Bir Dönemin Başlangıcı: Avrupa Yeşil Mutabakatı ve Türk Çevre Hukuku ve Politikalarına Etkileri," *Memleket Siyaset Yönetim* 16, no. 36 (2021): 349-350, <https://dergipark.org.tr/en/download/article-file/2214677>

On July 16, 2021, a Presidential Circular established the European Green Deal Working Group, coordinated by the Ministry of Trade with the participation of relevant ministries. In line with this initiative, the Ministry of Trade developed and published an Action Plan, serving as a roadmap to support green transformation across all relevant policy areas.³²⁵ This Action Plan aims to facilitate Türkiye's alignment with the changes and transformations initiated by the European Green Deal, enabling a more efficient use of resources and easing the transition to a sustainable economy.³²⁶

In this context, the need for revising the Customs Union, which plays a critical role in Türkiye's trade relations with the EU, is emphasized. Given that the EU is Türkiye's largest trading partner, while Türkiye ranks as the EU's sixth largest trading partner, such a transformation is deemed essential. Under the leadership of the Ministry of Trade, the Action Plan consists of nine main themes, 32 targets, and 81 actions. The nine main themes outlined in the Action Plan are as follows³²⁷:

- Border carbon adjustments,
- Green and circular economy,
- Green finance,
- Clean, affordable, and secure energy supply,
- Sustainable agriculture,
- Sustainable and smart transportation,
- Climate change mitigation,
- Diplomacy,
- Awareness and dissemination activities related to the European Green Deal.

The economic transformation envisioned under the European Green Deal places a significant burden on governments; however, achieving the desired outcomes requires active participation from producers, consumers, and civil society organizations. While implementing policies aligned with the transformation, leveraging "nudge" strategies to engage stakeholders and integrating digitalization and automation will enhance success rates. This transformation is not solely about complying with EU standards but also about strengthening global competitiveness. The Green Deal's focus on combating climate change, optimizing resource use, and fostering a circular economy holds particular promise for Türkiye. Transforming key sectors like textiles and construction could boost productivity, expand production, increase employment, and drive economic growth. Projects adhering to energy efficiency and sustainability criteria are likely to accelerate EU-Türkiye trade relations. To maintain its vital trade relationship with the EU, Türkiye must align its

³²⁵ Türkiye Cumhuriyeti Ticaret Bakanlığı, *Yeşil Mutabakat Eylem Planı Yayınımlandı*, accessed 3 Dec 2024, <https://ticaret.gov.tr/haberler/yesil-mutabakat-eylem-plani-yayimlandi#:~:text=Ye%C5%9Fil%20yat%C4%B1r%C4%B1mlar%C4%B1n%20%C3%BClkemize%20%C3%A7ekilmesi%20ve,tarihli%20Resmi%20Gazete'de%20yay%C4%B1mland%C4%B1>.

³²⁶ Yılmaz, "Enerji Yönetimi ve Türkiye," 21.

³²⁷ T.C. Ticaret Bakanlığı, *Yeşil Mutabakat Eylem Planı 2021*, Mar 12, 2021, 10, <https://ticaret.gov.tr/data/60f1200013b876eb28421b23/MUTABAKAT%20YE%C5%9E%C4%B0L.pdf>

policies and practices with the EU Circular Economy Action Plan and implement parallel regulations to avoid negative economic impacts.³²⁸

4.2. Turkish Commercial Code and Sustainability

In Turkish legal system, Turkish Commercial Code (TCC) is the main law regulating commercial activities between real and legal persons. Therefore, all companies within the field of private law are obliged to comply with this law.

The liability of directors, which is a subject within the scope of corporate social responsibility of companies, is regulated in Article 553 of the TCC No. 6012, and the liability of founders, board members, directors and liquidators. The subject of this liability regulated by the law is the persons listed in the article causing damage to the joint stock company.³²⁹

When evaluating the legal nature of the liability of board members and executives, it's generally accepted in doctrine that the relationship between board members and the company is based on agency agreement; however, it's also noted that if the elements of this relationship are realized, it could be in the nature of a service agreement.³³⁰ In addition, if the unlawful actions of the board members are in the nature of a tort other than contractual unlawfulness, this will result in tort liability and can be stated that if the same act carries the elements of both breach of contract and is considered a tort, the two types of liability will compete in accordance with article 60 of the Turkish Code of Obligations.³³¹

In determining the fault, which plays an important role in establishing liability Article 369 of the TCC should be taken into consideration. Article 369 of the TCC regulates the duty of care for board members. “*Members of the board of directors and third parties in charge of management are under the obligation to fulfill their duties with the care of a prudent manager and to protect the interests of the company by following the rules of honesty.*” In this context, board members are not only responsible for any fault, but also are required to fulfill their duties with the care of a prudent manager.

The TCC mostly made provisions regarding the internal functioning of the company and did not include special regulations other than some rules regarding corporate governance, which has an important place in sustainability. Even regarding corporate governance, the mandatory rules that all companies had to comply with were quite limited. For example, in the TCC, the rules regarding the formation of

³²⁸ Kübra Ecer, Oğuz Güner and Murat Çetin, “Avrupa Yeşil Mutabakatı ve Türkiye Ekonomisinin Uyum Politikaları,” *İşletme ve İktisat Çalışmaları Dergisi* 9, no.2 (2021): 136-137, <https://dergipark.org.tr/en/download/article-file/1923045>

³²⁹ Ünal Tekinalp, *Sermaye Ortaklıklarının Yeni Hukuku: Anonim ve Limited Ortaklıklar, Tek Kişi Ortaklığı, Ortaklıklar Topluluğu, Birleşme, Bölünme ve Tür Değişirme* (İstanbul: Vedat Kitapçılık, 2015) 430.

³³⁰ Ali Eskiocak, “Yönetim Kurulu Üyelerinin Şahsî Sorumluluğuna İlişkin Davalarda Maddî Hukukun Usûl Hukukuyla Etkileşimi,” (PhD Thesis, Galatasaray University, 2022), 41.

³³¹ Eskiocak, “Yönetim Kurulu Üyelerinin Şahsî Sorumluluğuna İlişkin Davalarda Maddî Hukukun Usûl Hukukuyla Etkileşimi,” 42.

company management were regulated flexibly to cover all companies, regardless of size and shareholding structures.³³²

However, apart from the above, the TCC counted the preparation of the annual activity report and its submission to the general assembly among the non-transferable duties of the Board of Directors (BoD)³³³. Accordingly, the board of directors may include information about the company's activities on environmental and social issues, as well as financial information, in its annual reports. Among the non-assignable and inalienable duties and powers of the board of directors; “*High-level supervision of whether the persons in charge of management act in accordance with the law, articles of association, internal regulations and written instructions of the BoD*” (TCC, Article 375/1-e). This article is expressed as the compliance responsibility of the board of directors.³³⁴

We will examine these provisions in the TCC under the headings below detailly.

4.2.1. Key Provisions in The Turkish Commercial Code Related to Sustainability

4.2.1.a. The Concept of Duty of Care in TCC

Care is the attention or special level of diligence required or desired in the performance of a task or duty.³³⁵

In corporate law, the duty of care ensures the identification of the board of directors' responsibilities that are not explicitly defined by law.³³⁶ In other words, in a joint-stock company, the board of directors, which is authorized to make decisions on all kinds of business and transactions to achieve the company's business objectives, has a duty of care. This duty helps to concretize the tasks explicitly stated in the law.³³⁷ Additionally, the concept allows for the determination of whether board members are at fault in business and transactions that are subject to liability lawsuits filed against them.³³⁸ The duty of care, in addition to being a standard for determining fault, is an independent and concrete obligation imposed on board members alongside the various duties prescribed by law. If a board member has

³³² Melsa Ararat and Muzaffer Eroğlu, “Hukuk ve Piyasalar Açısından Sürdürülebilirlik” *Sabancı Üniversitesi Kurumsal Yönetim Forumu* no:1 (2020): 5, http://dx.doi.org/10.5900/SU_SOM_WP.2020.39630

³³³ Kandemir, “Sürdürülebilir Şirketler ve Hukuki Çerçevesi,” 862.

³³⁴ Hasan Pulaşlı, “Kurumsal Sosyal Sorumluluk Bağlamında Uluslararası İnsan Hakları ve Çevre Standartlarının Çok Uluslu Şirketlerin Merkez Yönetim Organının Hukuki Sorumluluğuna Etkisi” *Banka ve Ticaret Hukuku Dergisi* 36, no. 4, (2020): 22.

³³⁵ Hasan Pulaşlı, *Şirkeler Hukuku Şerhi C.II* (Ankara: Adalet Yayınevi, 2022), 1446.

³³⁶ Sevgi Yaşar Bozkurt, “Anonim Şirketlerde İşadami Kararı İlkesinin Uygulanması,” (PhD Thesis, İstanbul Üniversitesi, 2005) s. 139.

³³⁷ İsmail Kırca, Feyzan Hayal Şehirli Çelik, and Çağlar Manavgat, *Anonim Şirketler Hukuku C: I* (Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayınları, 2013), 656.

³³⁸ Yaşar Bozkurt, “Anonim Şirketlerde İşadami Kararı İlkesinin Uygulanması,” 140.

exercised the expected level of care while performing their duties, they have not only proven their lack of fault but also fulfilled their statutory duty of care.³³⁹

Companies, as legal entities, are managed through the actions and transactions of their individual managers. The activities of managers acting on behalf of the company are binding for the company. If these actions or transactions are of a nature that involves abuse or misconduct, they can also result in liability for the company they represent.³⁴⁰ Article 553 of the TCC stipulates that managers will be held liable if they breach their obligations arising from the law or the articles of association through their own fault.

“If the founders, members of the board of directors, managers and liquidators violate their obligations arising from the law and the articles of association, they are liable for the damage they cause to both company, the shareholders and the creditors of the company.”

The duty of care serves as a standard for determining fault within the liability regime outlined in Article 553 of the TCC. Additionally, it aids in the concretization of the duties and authorities of board members and managers.³⁴¹ Thus, the extent to which an action or omission aligns with the behaviour of a diligent manager, whether the necessary degree of care has been exercised, and whether there is fault, will be assessed to determine the liability of the board or other managers. This does not mean that the expected framework and intensity of care will not vary according to the company, its field of activity, and business objectives. On the contrary, due to factors such as economic elements affecting the company, changes in management, and collaborations, any breach of the duty of care should be evaluated based on the specific circumstances of each case.³⁴²

Article 369/1 of the TCC imposes a duty on the "board of directors" and "persons tasked with management" to "perform their duties with the care of a prudent manager and to safeguard the interests of the company in accordance with the principle of good faith." The rationale for this article specifies that "for board members to fulfill their duties with care, they must be competent and possess the necessary skills and education to monitor and evaluate relevant information and events."³⁴³

The duty of care of board members serves both as a standard to determine whether there is fault in their transactions and actions, and as an independent

³³⁹ Reha Poroy, Ünal Tekinalp, and Ersin Çamoğlu, *Ortaklıklar Hukuku I* (İstanbul: Vedat Kitapçılık, 2021), 579.

³⁴⁰ Meltem Karatepe Kaya and Ekrem Solak, "İhbarcılık Kavramının Karşılaştırmalı Hukuk Işığında Türk Şirketler Hukuku Kapsamında Değerlendirilmesi," *İstanbul Hukuk Mecmuası* 81, no. 3 (2024): 709, <https://doi.org/10.26650/mecmua.2023.81.3.0001>

³⁴¹ Çamoğlu, Poroy and Tekinalp, *Ortaklıklar Hukuku I*, 579; Kırca, Şehirali Çelik ve Manavgat, *Anonim Şirketler Hukuku I*, 656-657.

³⁴² Sibel Hacımahmutoğlu, "Anonim Ortaklığın Yönetim Kurulu Üyelerinin Özen Yükümlülüğü: Fonksiyonel Bir Yaklaşım," *BATİDER* 31, no. 3 (2015): 29-30.

³⁴³ TCC Rationale of The Article 369, <https://www.muglabarosu.org.tr/Upload/files/pdf/TTK%20Madde%20Gerek%C3%A7leri.pdf>

obligation alongside the duties prescribed by law.³⁴⁴ In other words, the duty of care not only denotes the diligence and care board members should exercise when fulfilling the duties assigned to them by law or the articles of association, but also signifies a concrete obligation arising from the law itself.³⁴⁵ Board members who demonstrate the expected level of care when fulfilling their duties are considered to have fulfilled not only their duty to prove their lack of fault but also the duty of care imposed by law.³⁴⁶

The TCC Article 369, titled "Duty of Care and Loyalty," introduces the standard of "the care of a prudent manager" for members of the board of directors of a joint-stock company.³⁴⁷ In Article 553/3 of the TCC, it's stipulated that "No one shall be held liable for breaches beyond their control as per law or the articles of association; this exemption from liability cannot be invalidated by citing the burden of supervision and care." This provision sets the limit for the duty of care and loyalty as outlined in Article 369 of the TCC. With these provisions in the TCC, the duty of care for board members has been regulated in accordance with universal principles of liability law, aiming to prevent an expansive interpretation of the duty of care that exceeds the boundaries set by liability law in both application and doctrine.³⁴⁸

According to the rationale provided in Article 369 of the TCC regarding the duty of care for board members, it's emphasized that the obligation to act like a prudent manager should be understood as making decisions akin to those of a businessperson in a specific situation.³⁴⁹ The rule introduced by Article 369 of the TCC, requiring decisions to be made like a prudent manager, means that managers should not exceed the limits of authority and duties assigned to them by law and the company's articles of association. It also entails making decisions in accordance with the principles of honesty and choosing options that are beneficial to the company while fulfilling their obligations.³⁵⁰

The doctrine of care that board members must exhibit in fulfilling their duties is also explained by the business judgment rule.³⁵¹

4.2.1.b. Business Judgment Rule

The business judgment rule, developed in American common law, is a general principle that prevents courts from reviewing the merits of board decisions. It limits the liability of board members and officers in cases alleging breaches of their

³⁴⁴ Çamoğlu, Poroy and Tekinalp, *Ortaklıklar Hukuku I*, 378.

³⁴⁵ Çamoğlu, Poroy and Tekinalp, *Ortaklıklar Hukuku I*, 378.

³⁴⁶ Çamoğlu, Poroy and Tekinalp, *Ortaklıklar Hukuku I*, 379.

³⁴⁷ Cafer Eminoğlu, *Türk Ticaret Kanunu'nda Kurumsal Yönetim (Corporate Governance)*, (İstanbul: On İki Levha Yayıncılık, 2014): 80.

³⁴⁸ Çamoğlu, Poroy and Tekinalp, *Ortaklıklar Hukuku I*, 378.

³⁴⁹ TCC Rationale of The Article 369.

³⁵⁰ Eminoğlu, *Türk Ticaret Kanunu'nda Kurumsal Yönetim (Corporate Governance)*, 226.

³⁵¹ Hasan Pulaşlı, *Şirketler Hukuku Genel Esaslar* (İstanbul: Adalet Yayınları, 2024) 483.

duty of care by ensuring that their decisions are not second-guessed as long as they are made in good faith, with due care, and within their authority.³⁵²

The principle is based on the understanding that decisions made within the scope of company management are inherently risky and that the outcomes of these decisions cannot be fully determined at the time they are made.³⁵³ Indeed, the growth of a company requires its managers to take business risks within the scope of their discretionary authority as necessitated by the demands of the business world.³⁵⁴ Within the framework of the business judgment rule, the emergence of risk does not result in the relevant member being held liable.³⁵⁵

The business judgment rule acts as the standard framework for evaluating corporate decisions, operating under the assumption that the board is unbiased, well-informed, and acting in the company's best interests. Unless proven otherwise, this rule shields the board's decision-making authority, providing a broad foundation for corporate governance.³⁵⁶

As the uncertain and risky conditions present at the time of the decision become clearer over time, the court responsible for the liability case will be able to review the entire situation when examining the case file.³⁵⁷ The concept referred to as "hindsight bias" highlights the difficulty for a court evaluating a decision to cognitively set aside the outcomes and focus solely on the moment the decision was made, especially when a risky decision results in a loss. To avoid hindsight bias, courts should refrain from subjecting business judgments made by board members to judicial review.³⁵⁸

The business judgment rule is not explicitly regulated in Turkish law. However, in the rationale of Article 369 of the TCC, which governs the duty of care for managers, the principle is mentioned. It states that *"the standard of a prudent manager allows a board member to make a business judgment (business judgment rule) in accordance with corporate governance principles, and in cases where risk arises from this, the member should not be held liable. According to the generally accepted rule, if appropriate investigations are conducted, information is gathered from relevant parties, and a decision is made by the board, then even if developments take a completely opposite direction and the company suffers a loss, it cannot be*

³⁵² Yaşar Bozkurt, "Anonim Şirketlerde İşadamı Kararı İlkesinin Uygulanması," 6.

³⁵³ Hacımahmutoğlu, "Anonim Ortaklığın Yönetim Kurulu Üyelerinin Özen Yükümlülüğü: Fonksiyonel Bir Yaklaşım," 113.

³⁵⁴ Yaşar Bozkurt, "Anonim Şirketlerde İşadamı Kararı İlkesinin Uygulanması," 8-9.

³⁵⁵ Necla Akdağ Güney, *Anonim Şirket Yönetim Kurulu Üyelerinin Hukuki Sorumluluğu* (İstanbul: Vedat Yayıncılık, 2010), 84; Necla Akdağ Güney, *Anonim Şirket Yönetim Kurulu* (İstanbul: Vedat Yayıncılık, 2016), 189.

³⁵⁶ Ekrem Solak, *Shareholder Activism And The Law: The Future Of Us Corporate Governance* (Oxon: Routledge, 2020), 92.

³⁵⁷ Sıtkı Anlam Altay, *Anonim Ortaklıkta Yönetim Yetkilerinin Devrinin Sorumluluğa Etkisi* (İstanbul: Vedat Kitapçılık, 2011), 376.

³⁵⁸ Hasan Pulaşlı, *Yönetim Kurulunun İşadamı Kararının Yargı Denetimine Tabi Tutulmaması Gerekliğine İlişkin Paradigma: "Geriye Bakış Hatası" (Rückschaufehler – Hindsight Bias)*, (Ankara: Seçkin Yayınları, 2019), 26.

deemed a lack of care."³⁵⁹ Accordingly, the business judgment rule is essentially connected to the standard of a prudent manager. As explained above, the standard for the duty of care in Turkish law is that of a "prudent manager." Therefore, it can be said that the business judgment rule narrows the application scope of the prudent manager standard.³⁶⁰ In other words, when a risk arises from a decision made using commercial discretion, it would be erroneous to conclude that the manager did not act as a prudent manager if a loss occurs. Thus, in such cases, the manager cannot be held liable for violating the duty of care.

Çamoğlu, the principle of making decisions like a businessperson should be understood from the obligation to act like a prudent manager, as stated in the rationale. According to the author, the business judgment rule means that managers, while performing their management functions, must act within the limits of the duties and authority granted to them, and fulfill their obligations in good faith in a manner they believe to be in the best interest of the company. In this context, if managers act within these boundaries, they will be deemed to have properly fulfilled their duty of care and will not be held liable.³⁶¹ *Tekinalp* argues that since the business judgment rule is only mentioned in the rationale without being concretely regulated through any positive legal provisions, it should not be applied in determining the duty of care.³⁶²

The assumption that every decision of the board of directors is of the nature of the business judgment rule has not been accepted; rather, the application of this principle has been made conditional.³⁶³ A board member seeking to benefit from the business judgment rule must prove that the decision that led to harm meets the criteria of a business judgment.³⁶⁴ For a decision taken by a board member to qualify as a business judgment, it must be a commercial decision³⁶⁵ that aligns with the purposes and interests of the company. Additionally, for a decision by a board member to qualify under the business judgment rule, the member must be impartial and independent, and the decision should be based on sufficient information about the matter at hand.³⁶⁶ The existence of the mentioned criteria in a specific case will be evaluated by the court responsible for reviewing the liability case. If the court concludes that these criteria are present, it may apply the business judgment rule.³⁶⁷

³⁵⁹ TCC Rationale of The Article 369.

³⁶⁰ Kürşat Göktürk, "Amerikan, Alman, İsviçre Ve Türk Hukukunda İşadami Kararı İlkesi" *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 2, no. 2 (2011): 235, <https://dergipark.org.tr/tr/download/article-file/208257>

³⁶¹ Çamoğlu, Poroy and Tekinalp, *Ortaklıklar Hukuku I*, 582.

³⁶² Tekinalp, *Sermaye Ortaklıklarının Yeni Hukuku*, 439.

³⁶³ Hamdi Pinar, "Yönetim Kurulu Üyelerinin Şirketler Hukuku Açısından Rekabet İhlallerinden Doğan Hukuki Sorumluluğu," *BATIDER* 25, no. 4 (2009): 397.

³⁶⁴ Pinar, "Yönetim Kurulu Üyelerinin Hukuki Sorumluluğu," 397.

³⁶⁵ Anlam Altay, *Anonim Ortaklıkta Yönetim Yetkilerinin Devrinin Sorumluluğa Etkisi*, 391.

³⁶⁶ Abuzer Kendigelen, *Hukuki Mütalaalar Cilt II* (Ankara: Oniki Levha Yayıncılık, 2018) 250; Akdağ Güney, *Hukuki Sorumluluğu*, 82; Akdağ Güney, *Yönetim Kurulu*, 190; Yaşar Bozkurt, "İşadami Kararı," 123; Ali Murat Sevi, *Anonim Ortaklıkta Yönetim Kurulu Üyeleri Ve Yöneticilerin Özen Yükümlülüğü* (İstanbul: Seçkin Yayınları, 2021), 301.

³⁶⁷ Hacımahmutoğlu, "Ticari Muhakeme" 114-115.

Article 553/1 of the TCC stipulates that founders, board members, managers, and liquidators are liable to compensate the company, shareholders, and creditors for damages caused by their negligent violation of legal or articles of association obligations. Therefore, the application of the business judgment rule is not applicable in cases where there is a negligent violation of obligations arising from the law or articles of association.³⁶⁸

4.2.1.c. Early Detection of Risk and Risk Management Committee

Many businesses in industrially developing countries such as Türkiye are at serious risk due to reasons such as interest rate fluctuations, financing of investments only with loans, and speculation in foreign exchange prices. Such situations, which are very rare in industrialized and stable countries, may bring the risk of bankruptcy for Turkish businesses. These situations, which are relatively uncommon in industrialized and stable countries, can pose a risk of bankruptcy for Turkish businesses.³⁶⁹ In this sense, identifying and managing risks become significantly important for ensuring the continuity of businesses. Therefore, joint-stock companies have the opportunity to add an early risk detection committee to their oversight systems in order to detect future risks.³⁷⁰

The concept and management of risk are relatively new topics introduced into Turkish legislation through the TCC. In today's market conditions, the early detection of risks that threaten the continuity of companies has become an inevitable necessity to minimize these threats to the lowest possible level.³⁷¹ In accordance with Article 378/1 of the TCC, it's mandatory to establish an Early Detection of Risk and Risk Management Committee in publicly traded companies. In other joint stock companies, this committee can be established if the auditor deems it necessary, by notifying the board of directors in writing.³⁷² However, the scope and applicability of this regulation may contain uncertainties for other types of joint stock companies.³⁷³

The provision regarding the early detection and management of risk, which is regulated by Article 378 of the TCC No. 6102 and is among the duties and powers of the board of directors, is as follows:

³⁶⁸ Yaşar Bozkurt, "Anonim Şirketlerde İşadamı Kararı İlkesinin Uygulanması," 123.

³⁶⁹ A. Bumin Doğrusöz, Öznur Onat, and Funda Töralp Tunçel, *Gerekçe, Karşılaştırmalı Maddeler, Komisyon Raporları, Önergeler ve Karşılaştırmalı Tabloları ile Türk Ticaret Kanunu (Ticari İşletme, Ticaret Şirketleri Kıymetli Evrak Hükümleri)* (Ankara: TOBB Yayınları, 2011), 138.

³⁷⁰ Tuğçe Nimet Yaşar, *Anonim Şirketler Hukukunda "Uyum" (Compliance)* (Ankara: On İki Levha Yayıncılık, 2020), 27.

³⁷¹ İrem Töre, "Kurumsal Yönetim Açısından Riskin Erken Saptanması Ve Yönetimi Komitesi, Eksiklikleri Ve Çözüm Önerileri," *Optimum Ekonomi Ve Yönetim Bilimleri Dergisi* 8, no. 1 (2021): 150, <https://doi.org/10.17541/optimum.802836>.

³⁷² Tuğçe Nimet Yaşar, "Anonim Şirketlerde Riskin Erken Saptanması ve Yönetimi," *Ticaret ve Fikri Mülkiyet Hukuku Dergisi* 2, no. 2 (2016): 69-70, <https://dergipark.org.tr/tr/pub/tfm/issue/27074/290302>

³⁷³ Meltem Karatepe Kaya, "Riskin Erken Saptanması Komitesinin İşleyişine İlişkin Güncel Hukuki Sorunlar ve Öneriler," *Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi* (2024) 5, <https://doi.org/10.52273/sduhfd..1561022>

“In companies whose shares are traded on the stock exchange, the board of directors is obliged to establish an expert committee, run and develop the system in order to detect the causes that endanger the existence, development and continuation of the company, to implement the necessary measures and remedies, and to manage the risk. In other companies, this committee is established immediately if the auditor deems it necessary and notifies the board of directors in writing, and submits its first report at the end of one month following its establishment.”

In the Corporate Governance Communiqué (II-17.1) of the Capital Markets Board (CMB) and the “Capital Markets Board Corporate Governance Principles” in Annex-1, it’s stated in 4.5.1 that the “Risk Early Detection Committee” should be established for public companies, excluding banks. Again, in Article 4.5.12, the “Risk Early Detection Committee” is defined as *“responsible for the early detection of risks that may endanger the existence, development and continuity of the company, taking the necessary precautions regarding the identified risks and carrying out studies for the management of the risk, and reviews the risk management systems at least once a year.”*

Both regulations include parallel expressions; however, it’s essential to determine the steps the committee should take to identify risks that threaten the company's existence, growth, and continuity. The committee must first identify potential risks based on the type of industry in which the company operates and assess their possible impacts on the company. Establishing early warning systems, supported by regular monitoring and reporting processes, can facilitate timely and efficient risk detection. Prioritizing more severe risks, preparing preventive action plans, and defining the timing and methods of their implementation are crucial for minimizing damage if such risks materialize. While it may not always be possible to detect risks beforehand, the committee’s ability to act quickly and flexibly in unforeseen circumstances enhances the company’s resilience in an era of rapidly changing risks. Sharing identified risks with other stakeholders, seeking external support if necessary, and organizing training sessions to raise awareness are also among the committee's responsibilities. By taking these steps, the early risk detection committee fulfills its duties and contributes to the company’s sustainability, resilience, and competitiveness.³⁷⁴

The concept of "early detection" is a relative concept and will vary depending on the specific types of risks and the structure of the company. According to the justification of TCC, early detection of risks necessitates the establishment of a system that keeps the board of directors and the general assembly constantly vigilant, enabling the immediate implementation of effective measures by the bodies when necessary.³⁷⁵

The committee may consist of non-executive members of the board of directors or entirely of third-party experts in the field. It will identify factors

³⁷⁴ Karatepe Kaya, “Riskin Erken Saptanması Komitesi,” 7.

³⁷⁵ Tekin Memiş and Savaş Bozbel, *Karşılaştırmalı, Gerekçeli, İçtihatlı ve Kavram İndeksli 6102 Sayılı Türk Ticaret Kanunu C.I* (Ankara: Türkiye Adalet Akademisi Yayınları, 2013), 553.

endangering the company's existence or development and report preventive measures to the board of directors. Additionally, the committee must submit its initial report by the end of the first month following its establishment, and subsequent reports every two months thereafter, to the board of directors.³⁷⁶ The board of directors ensures that the committee has access to all necessary resources and support to fulfill its duties. Committees may invite and consult with individuals they deem necessary for their meetings and may also seek independent expert opinions on matters related to their activities.³⁷⁷

Although the task of establishing this committee is listed in Article 378 of the TCC, it falls within the scope of determining the management organization of the company within the scope of Article 375/1-b of the TCC. Therefore, it is necessary to accept this duty as one of the non-transferable and indispensable duties of the board of directors.³⁷⁸ Moreover, in limited companies, this duty is considered among the non-transferable powers of the managers.

The report prepared by the committee, although not binding for the board of directors, carries legal implications. In fact, in the justification of Article 378, it's clearly stated that the responsibility system of the Early Detection of Risk and Risk Management Committee is at the center, highlighting its significance. In other words, the extent to which board members and executive officers consider these risk reports when making and implementing decisions is crucial in determining the degree of care they exercise in their decisions and actions. Thus, the early detection of risk through these reports becomes a process that affects the liability specific to the board members and executive officers.³⁷⁹

The purpose of the Early Detection of Risk and Risk Management Committee is to identify potential risks that could jeopardize the company financially at an early stage, thereby informing the board of directors promptly to take necessary precautions. The committee's objective is not auditing; it operates solely as a part of the internal control mechanism.³⁸⁰ Especially when the provisions of TCC article 378, article 398/4 and article 402/6 are evaluated together, it's evident that the legislator attaches particular importance to the early detection of risks that could impact the company's existence.³⁸¹ Therefore, the role of the independent auditor is significant in determining whether the committee has been established and whether its functions are being fulfilled adequately.

When the purpose of the early detection of risk committee is examined, it's relationship with sustainability can be easily seen. The economic dimension of sustainability is related to issues such as economic growth, efficiency and

³⁷⁶ Pulaşlı, *Şirkeler Hukuku Şerhi C.I.*, 958.

³⁷⁷ Âdem Şahin, "Riskin Erken Teşhis Komitesi (TTK m.378 ve 625/1-e'nin Değerlendirilmesi)," *İnönü Üniversitesi Hukuk Fakültesi Dergisi* 7, no. 2 (2016): 305, <https://doi.org/10.21492/inuhfd.291305>

³⁷⁸ H. Erdal Demir, *Sermaye Piyasası Kurulu'nun Anonim Şirketlerdeki Yönetim Kuruluna İlişkin Kurumsal Yönetim İlkeleri* (Ankara: Oniki Levha Yayınları, 2013), 135.

³⁷⁹ Anlam Altay, *Anonim Ortaklıkta Yönetim Yetkilerinin Devrinin Sorumluluğa Etkisi*, 72.

³⁸⁰ Anlam Altay, *Anonim Ortaklıkta Yönetim Yetkilerinin Devrinin Sorumluluğa Etkisi*, 80.

³⁸¹ Pulaşlı, *Şirkeler Hukuku Şerhi C.II*, 47.

investment. The committee will identify early the risks that will affect the company financially and ensure that the company achieves economic growth without being affected by these risks, maintains its efficiency and makes the right investments. Therefore, this committee plays a critical role, especially for economic sustainability. Determining what environmental risks are and establishing precautionary mechanisms against them will support the company's sustainability policies. Because companies with environmental awareness attract the attention of their stakeholders and gain a positive reputation in the public. This positive reputation directly affects the brand value and competitiveness of the company and even supports the formation of sustainability indexes in capital markets.³⁸²

4.2.1.d. The Public Oversight, Accounting and Auditing Standards Authority

After the establishment of public oversight authorities worldwide, the Public Oversight Accounting and Auditing Standards Authority (POA) was founded in 2011, in alignment with Türkiye's accession process to the EU and the consolidation of various authorities in independent auditing. Serving as the oversight body for independent auditing, POA initiated inspection activities in 2014, with annual inspection reports made public since 2016. These reports indicate that compliance with independent auditing standards and the quality of audits in Türkiye have been improving annually. Along this journey of independent auditing, the effectiveness of POA in oversight, its disciplined approach, the adherence of independent auditors to regulations, and the positive impacts of mandatory education programs have all been noteworthy.³⁸³

The legislator brought an additional regulation to Article 88 of the TCC on 02.06.2022 and authorized POA the power to determine and publish “Turkish Sustainability Reporting Standards” (TSRS). This is the first regulation in the field of sustainability in the TCC.³⁸⁴

The added 6th clause is as follows; *“The Public Oversight, Accounting and Auditing Standards Authority is authorized to determine and publish the Turkish Sustainability Reporting Standards in accordance with international standards to ensure the international validity of reporting practices for the enterprises and organizations it specifies. Institutions and boards established by law to regulate and oversee specific areas may make detailed regulations regarding the standards that*

³⁸² Şerife Önder and Ahmet Ağca "İşletmelerin Risk Gruplarına Göre Çevresel Sürdürülebilirlik Uygulamaları: BIST 100 Endeksinde Bir Uygulama," *İnsan ve Toplum Bilimleri Araştırmaları Dergisi* 7, no. 1 (2018): 78, <https://dergipark.org.tr/tr/download/article-file/439676>

³⁸³ Ayten Özbıngöl and Nalân Akdoğan, “Kamu Gözetimi Muhasebe ve Denetim Standartları Kurumu’nun Yıllık İnceleme Raporlarına Göre 2014-2019 Döneminde Türkiye’de Bağımsız Denetimin Gözetiminin Değerlendirilmesi,” *Muhasebe ve Vergi Uygulamaları Dergisi* 14, no. 2 (2021): 452, <https://doi.org/10.29067/muvu.846324>

³⁸⁴ İrem Töre, “Corporate Governance for Sustainability: The Necessary Reform of Turkish Commercial Law,” *Yeditepe Üniversitesi Hukuk Fakültesi Dergisi* 19, no.2 (2022): 1004, <https://dergipark.org.tr/tr/download/article-file/2656111>

will be applicable to their own areas, provided that they comply with the Turkish Sustainability Reporting Standards.”

With the addition of this provision to the TCC, the POA has been granted the authority to determine the TSRS and the businesses and organizations that will be included under these reporting standards. Consequently, the POA will establish sustainability reporting standards for the companies and enterprises it designates, aligning them with European Union regulations. According to the rationale of the provision, the aim is to create these standards in Türkiye following the establishment of the International Sustainability Standards Board by the International Financial Reporting Standards Foundation during the 2021 United Nations Climate Change Conference (COP26).³⁸⁵ This development intends to define global sustainability standards through the Sustainability Disclosure Standards framework, thereby implementing corresponding standards in Türkiye.

POA published two texts titled “General Requirements for Disclosure of Sustainability-related Financial Information” and “Climate-related Disclosures”. The common purpose of both drafts is to require companies to disclose their information regarding risks and opportunities regarding sustainability.³⁸⁶

- Scope of TSRS

The TSRS, which came into effect on January 1, 2024, have made sustainability reporting mandatory for companies within its scope. These standards are designed to encourage businesses to report their ESG performance with greater transparency and accountability. As a result, investors, consumers, and business partners will have access to comprehensive information about a company’s sustainability performance, allowing them to incorporate this data into their decision-making processes.

According to the Decision, the following financial institutions and capital markets institutions will be obliged to report on sustainability:

1. The entities listed below that exceed at least two of the following criteria in two consecutive reporting periods are obliged to report under TSRS.

- Total assets of bigger than 500 Million TRY,
- Annual net sales revenue of higher than 1 Billion TRY,
- Number of employees at least 250 people.

a. The following entities among the companies subject to the regulation and supervision of the CMB Pursuant to Law dated 06.12.2012 numbered 6362:

³⁸⁵TCC Rationale of The Article 88,

<https://www.muglabarosu.org.tr/Upload/files/pdf/TTK%20Madde%20Gerek%C3%A7leri.pdf>

³⁸⁶Kamu Gözetimi Kurumu, *Türkiye Sürdürülebilirlik Raporlama Standartları (TSRS) ve TSRS’lerin Uygulama Kapsamı Resmî Gazetede Yayımlanmıştır*, accessed 7 Dec 2024, https://www.kgk.gov.tr/Portalv2Uploads/files/Duyurular/v2/Surdurulebilirlik/Duyuru/Turkiye_Surdu rulebilirlik_Raporlama_Standartlari_ve_TSRSlerin_Uygulama_Kapsami_Resmi_Gazetede_Yayimlanmi stir.pdf

- Investment institutions,
- Collective investment institutions,
- Portfolio management companies,
- Mortgage finance companies,
- Central clearing organizations,
- Central securities depositories,
- Data storage organizations,
- Joint stock companies whose capital market instruments are traded on a stock exchange or other organized markets, or which have a prospectus (=“izahname”) or issue certificate (=“ihraç belgesi”) with a validity period approved by the CMB for their trading,
- Joint stock companies issuing capital market instruments other than shares without being publicly offered, although not traded on a stock exchange or other organized markets (until the end of the accounting period in which the capital market instruments issued by them are redeemed) or joint stock companies holding an issue certificate with a validity period approved by the CMB for this purpose,

b. The following entities among the companies subject to the regulation and supervision of the Banking Regulation and Supervision Agency pursuant to the Banking Law dated 19.10.2005 and numbered 5411:

- Rating agencies,
- Financial holding companies,
- Financial leasing companies,
- Factoring companies,
- Financing companies,
- Asset management companies,
- Companies holding qualified shares in financial holding companies and banks as defined in Banking Law,
- Savings finance companies.

c. Insurance, reinsurance and pension companies operating under the Insurance Law No. 5684 dated 03.06.2007 and the Individual Pension Savings and Investment System Law dated 28.03.2001 numbered 4632.

d. Authorized institutions, precious metals brokerage houses, companies engaged in the production or trade of precious metals that are permitted to operate in the Markets of Istanbul Stock Exchange

2. The banks subject to the regulation and supervision of the Banking Regulation and Supervision Agency pursuant to the Banking Law, except those under the Savings Deposit Insurance Fund, are within the scope of mandatory reporting without being subject to any threshold.

3. The entities outside the scope will also be able to report in accordance with the Turkish Sustainability Reporting Standards on a voluntary basis.³⁸⁷

4.3. Capital Market Law and Sustainability

The Capital Market Law No. 6362 is designed to establish the rules governing capital markets and the operations of institutions within these markets. It aims to ensure that companies using market funds do so in accordance with established regulations, maximizing their benefits. Additionally, the law seeks to protect the rights and interests of investors in the capital markets, ensuring that the markets operate fairly and efficiently.³⁸⁸

Capital market legislation contains intense regulations on corporate governance, and these are generally in the form of mandatory provisions. The Corporate Governance Communiqué and Corporate Governance Principles issued pursuant to the corporate governance legislation include rules that are both mandatory and voluntary (subject to the "comply or explain" approach).³⁸⁹

4.3.1. Corporate Governance Principles in Public Joint-Stock Companies

According to Article 16, paragraph 1 of the Capital Markets Law No. 6362, the status of a company being a public joint-stock company is as follows:

“Except for companies whose shares are traded on the stock exchange and those that raise funds from the public through crowdfunding, joint-stock companies with more than 500 shareholders are considered as having publicly offered their shares. These companies are also subject to the provisions applicable to publicly held companies.”

As stated in Article 1 of Law No. 6362, publicly held joint-stock companies are subject to more detailed and different legal obligations compared to other joint-stock companies and commercial companies. This is done to protect the interests of investors and ensure the functioning of capital markets in a transparent, reliable, and stable manner. In accordance with the principle of public disclosure in the capital markets, shareholders and creditors of the company must be informed about the company’s activities at certain intervals so that their rights are effectively exercised, and investors are fully and accurately informed.³⁹⁰

³⁸⁷ “Türkiye Sürdürülebilirlik Raporlama Standartları (Tsrs) Uygulama Kapsamına İlişkin Kurul Kararı” Dec 29, 2023, <https://www.kgk.gov.tr/Portalv2Uploads/files/Duyurular/v2/Kurul%20Kararlar%C4%B1/TMS%20Kurul%20Kararlar%C4%B1/T%C3%BCrkiye%20S%C3%BCrd%C3%BCr%C3%BClebilirlik%20Raporlama%20Standartlar%C4%B1n%C4%B1n%20Uygulama%20Kapsam%C4%B1na%20ili%C5%9Fkin%20Kurul%20Karar%C4%B1.pdf>

³⁸⁸ Sermaye Piyasası Kurulu, Görev ve Sorumluluklar, accessed 8 Dec 2024, <https://spk.gov.tr/hakimizda/gorev-yetki-ve-sorumluluklar>

³⁸⁹ Ararat and Eroğlu, “Hukuk ve Piyasalar Açısından Sürdürülebilirlik” 6.

³⁹⁰ Veliye Yanlı, *Sermaye Piyasası Hukuku Çerçevesinde Halka Açık Anonim Şirketler ve Kamunun Aydınlatılması* (Beta Yayınları, İstanbul, 2005) 96-97.

Corporate governance, as defined by Solak, “is a system by which companies are directed and controlled. It contains a combination of legal rules and principles which have been developed over time and are based on the distinctive features of each nation’s legal and financial tradition. If one needed to categorize corporate governance systems, it could be done under two major types: the ‘outsider’ (Anglo-American) and the ‘insider’ (continental European) models.”³⁹¹ Generally, corporate governance includes principles that ensure both the transparent and reliable dissemination of financial information to the public and interest groups, thereby ensuring the financial audit of companies, and ensuring the legal compliance and risk management of companies, thus balancing the power dynamics of stakeholder groups.³⁹²

Since the 1990s, corporate governance principles have been addressed globally and incorporated into regulations, and in our legislation, Article 17 of the Capital Markets Law No. 6362 includes provisions for public joint-stock companies regarding corporate governance principles. This legal provision empowers the CMB to determine the content of corporate governance principles, to assess companies for their compliance, to identify which publicly held joint-stock companies must comply with these principles, and to take necessary measures and actions for those that do not comply. In parallel with this regulation, Article 1529³⁹³ of the Turkish Commercial Code No. 6102 also grants the CMB the authority to regulate corporate governance principles in publicly held joint-stock companies.

Based on the authority granted by Article 17 of the Capital Markets Law No. 6362, the CMB has published the "Corporate Governance Communiqué (II-17.1)". According to Article 1 of the communiqué, companies that are subject to the corporate governance principles are outlined, and those that are exempted from these provisions are specified as follows:³⁹⁴

“a) Public companies whose shares are not traded on the stock exchange.

b) Companies whose shares are traded in markets, exchanges, or platforms other than the National Market, Second National Market, or the Corporate Products Market.

c) Companies that have applied to the Board for the first-time public offering of their shares and/or for trading on the stock exchange, and whose shares will be traded in markets, exchanges, or platforms other than the National Market, Second National Market, or Corporate Products Market.

³⁹¹ Solak, *Shareholder Activism And The Law: The Future Of Us Corporate Governance*, 1.

³⁹² Hasan Pulaşlı, *Corporate Governance – Anonim Şirket Yönetiminde Yeni Model* (Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayınları, 2003), 5.

³⁹³ TCC Article 1529: “The corporate governance principles in publicly held joint-stock companies, the principles of the board of directors’ statement regarding these principles, and the rules and outcomes of the companies’ ratings in this regard are determined by the Capital Markets Board.”

³⁹⁴ “Kurumsal Yönetim Tebliği (II-17.1) No.28871” Jan 3, 2014, <https://www.resmigazete.gov.tr/eskiler/2014/01/20140103-3.htm>

d) Companies considered as foreign entities based on the Decree No. 89/14391, dated 7/8/1989, enacted under the Law on the Protection of the Value of Turkish Currency”.

As can be understood from the article, among publicly held joint-stock companies, those that are not subject to corporate governance principles are mainly those whose shares are not traded on the stock exchange and are therefore not directly relevant to the public. In this regard, it is understood that corporate governance principles are widely applied by the CMB to publicly held joint-stock companies in order to ensure transparency and reliability for investors.³⁹⁵

In Article 5 of the Corporate Governance Communiqué (II-17.1), the CMB categorized companies subject to corporate governance principles into three groups, based on their systemic importance, average market value, and the market value of the freely circulating shares. The second and third groups, with lower average market values, are exempted from certain obligations:

“a) First group: Companies with an average market value exceeding 3 billion TRY and an average market value of freely circulating shares exceeding 750 million TRY.

b) Second group: Companies, other than those in the first group, with an average market value exceeding 1 billion TRY and an average market value of freely circulating shares exceeding 250 million TRY.

c) Third group: Companies other than those in the first and second groups whose shares are traded on the National Market, Second National Market, or Corporate Products Market.”

The corporate governance principles are outlined in Appendix-1 of the Corporate Governance Communiqué (II-17.1). In the Corporate Governance Principles published additionally by the CMB, principles regarding shareholders' rights, such as the facilitation of the exercise of ownership rights, the right to obtain information and examine company records, the procedures for the general assembly, the use of voting rights, minority rights, the right to dividends, and the transfer of shares, are provided. Furthermore, the communiqué outlines principles for public disclosure and transparency, including the form and content of the corporate website and annual report. Regarding stakeholders, the principles include policies on stakeholders, encouraging their participation in corporate governance, human resources policies, relationships with customers and suppliers, ethics rules, and social responsibility. Regarding the board of directors, the communiqué includes detailed provisions on the board's function, operating principles, structure, meetings,

³⁹⁵ Pınar Yağcı, “Sürdürülebilirlik Perspektifinde Şirketlerin Sosyal Sorumluluğu ve Fransız Danıştay'ının Yetkisi,” (PhD Thesis, Dokuz Eylül Üniversitesi, 2023), 174.

committees, and the financial rights of board members and managers with administrative responsibilities.³⁹⁶

Companies subject to the Corporate Governance Communiqué (II-17.1), meaning public joint-stock companies whose shares are traded on the Borsa Istanbul, are not required to comply with all 97 principles of corporate governance published by the CMB. According to Article 5 of the communiqué, these companies are only obliged to comply with 24 principles. For other principles, the "comply or explain" rule is applied, and companies are required to report their compliance status with these principles in the "Compliance Report Format," with voluntary compliance based on the company's discretion. For existing corporate governance practices, companies must provide disclosures through the Corporate Governance Information Form, thereby completing their corporate governance reporting. The CMB, in its Corporate Governance Reporting Guide, states that the board of directors is responsible for corporate governance reporting and ensuring that corporate governance practices are implemented within the company. Corporate governance reports must be published annually on the Public Disclosure Platform (KAP) along with the annual activity reports.³⁹⁷

The CMB, in its Corporate Governance Reporting Guide, has detailed how reporting should be carried out under the "Comply or Explain" principle. According to this, if companies do not comply with the principles that are based on voluntary compliance, their mandatory disclosures must meet the following criteria,³⁹⁸

- i. Clearly indicating the principle to which the explanation relates;*
- ii. Providing a brief background on the company's specific situation and the reasons behind its decision to deviate from the principle;*
- iii. Offering a reasonable and understandable justification for the company's choice;*
- iv. Identifying alternative actions that would reduce the risk and achieve the same objective by a different method;*
- v. Indicating whether the non-compliance is limited in time and whether the company intends to comply with the principle in the future."*

In case the companies subject to the corporate governance principles fail to fulfill their disclosure obligations, certain measures are provided under the second paragraph of Article 17 of the Capital Markets Law No. 6362. According to this

³⁹⁶ "Kurumsal Yönetim İlkelerinin Belirlenmesine Ve Uygulanmasına İlişkin Tebliğ No.56" Dec 30, 2011, <https://spk.gov.tr/data/61e87f0b1b41c611a4c53a90/2fb4947cb75a159d431a0ed205cdabc7c.pdf>

³⁹⁷ Sermaye Piyasası Kurulu and European Bank for Reconstruction and Development, *Kurumsal Yönetim Raporlama Rehberi*, Mar 2019, 5-6, <https://spk.gov.tr/data/61e87fe81b41c611a4c53a9f/1297.pdf>

³⁹⁸ Sermaye Piyasası Kurulu ve European Bank for Reconstruction and Development, *Kurumsal Yönetim Raporlama Rehberi*, 8.

article, if the compliance obligation is not fulfilled, the CMB is authorized to “take decisions to ensure compliance, carry out the necessary actions ex officio, request precautionary measures to determine or cancel unlawful actions contrary to compliance obligations without any guarantee, file a lawsuit, and request a ruling in the ongoing case that would ensure the fulfillment of the compliance obligation.” In Article 7 of the Corporate Governance Communiqué (II-17.1), the CMB is granted additional powers regarding the measures to be taken if the compliance obligation is not fulfilled. According to this provision, if the Board files a lawsuit, “a compliance proposal, including the actions required to comply with the corporate governance principles, will be attached to the request submitted to the court.” Furthermore, in paragraph 3 of Article 7 of the Communiqué, it is stipulated that in companies with sufficient numbers of board members to apply mandatory principles, if the board of directors or the general assembly fails to carry out the necessary actions, the Board will give the company a 30-day period. If the relevant actions are not taken within this period, the Board will appoint the necessary number of independent members to the board ex officio, and this newly formed board of directors will ensure compliance with the mandatory corporate governance principles in the articles of association and register and announce it.³⁹⁹

4.3.2. The Capital Markets Board's Sustainability Principles Compliance Framework

In 2020, an amendment was added to Article 1, titled "Purpose and Scope," of the Corporate Governance Communiqué (II-17.1) that incorporated sustainability into corporate governance principles. The added paragraph is as follows: “(5) *(Added: Official Gazette-2/10/2020-31262) Companies, other than those specified in the second paragraph, are subject to sustainability principles. In their compliance reports on corporate governance principles, these companies shall include disclosures related to the sustainability principles compliance framework*” Thus, for publicly held joint-stock companies within the scope of the communiqué, the obligation was introduced to include disclosures related to the sustainability principles compliance framework, in addition to the Corporate Governance Principles published as an annex to the communiqué, in their annual corporate governance compliance reporting. Under this provision, the CMB prepared the "Sustainability Principles Compliance Framework" and published it on its official website on October 2, 2020.⁴⁰⁰

The CMB stated that the "Sustainability Principles Compliance Framework" consists of the key principles that publicly held joint-stock companies are expected to disclose while carrying out their Environmental, Social, and Governance (ESG) activities. The Board clarified that these principles are subject to the "comply or explain" rule, meaning their application is not mandatory, and companies are allowed to voluntarily comply with them. However, it is mandatory for publicly traded

³⁹⁹ Yağcı, “Sürdürülebilirlik Perspektifinde Şirketlerin Sosyal Sorumluluğu ve Fransız Danıştay’ının Yetkisi,” 177.

⁴⁰⁰ “Kurumsal Yönetim Tebliği (II-17.1)’Nde Değişiklik Yapılmasına Dair Tebliğ (II-17.1.a),” Oct 2, 2020, <https://www.resmigazete.gov.tr/eskiler/2020/10/20201002-4.htm>

companies to report whether or not they have implemented these principles.⁴⁰¹ In this regard, for the principles included in the "Sustainability Principles Compliance Framework", if companies do not comply, their mandatory disclosures must meet the criteria mentioned above, and companies that fail to make such disclosures will be subject to the measures specified in Law No. 6362 by the CMB.

The sustainability principles determined by the CMB are based on four main areas:

- A. General Principles,
 - A1. Strategy, Policy, and Targets,
 - A2. Implementation/Monitoring,
 - A3. Reporting,
 - A4. Verification,
- B. Environmental Principles,
- C. Social Principles,
 - C1. Human Rights and Employee Rights,
 - C2. Stakeholders, International Standards, and Initiatives,
- D. Corporate Governance Principles.

The General Principles include activities related to the internalization of ESG activities by the companies and reporting the current status and implementation results of these activities. It aims to ensure that the public is correctly informed by indicating how performance results, verified by independent sustainability providers, are linked to specific sustainable development goals and how they will be presented to the public.⁴⁰²

The Environmental Principles section focus on promoting transparency, accountability, and sustainability in managing a company's environmental impacts. Aim to establish and implement robust policies, action plans, and management systems, such as ISO 14001, to address environmental challenges effectively. These principles emphasize compliance with environmental laws and regulations while encouraging the integration of environmental considerations into business strategies and decision-making processes. Key objectives include setting measurable short- and long-term goals to reduce emissions, improve energy efficiency, conserve water resources, manage waste effectively, and promote biodiversity. Companies are encouraged to report environmental performance metrics, such as greenhouse gas emissions, energy consumption, and water usage, using standardized methodologies for comparability over time and alignment with global benchmarks. The principles also advocate for innovation to minimize the environmental impact of products and services, the adoption of renewable energy, and participation in carbon pricing mechanisms. Additionally, they support collaboration with stakeholders, including suppliers, customers, and industry groups, and alignment with international frameworks such as the UN Sustainable Development Goals (SDGs) and science-

⁴⁰¹ Sermaye Piyasası Kurulu, *Sürdürülebilirlik İlkeleri Uyum Çerçevesi*, Oct 2, 2020, 1, <https://spk.gov.tr/data/61e225c71b41c61238836071/3587351d4b39cfd597e43c914602e556.pdf>

⁴⁰² Sermaye Piyasası Kurulu, *Sürdürülebilirlik İlkeleri Uyum Çerçevesi*, 1-2.

based targets. Overall, the goal is to drive sustainable practices across operations and the value chain while contributing to global efforts to address climate change and environmental sustainability.⁴⁰³

The Social Principles section emphasizes respect for human and employee rights, aligning with international frameworks like the Universal Declaration of Human Rights and ILO Conventions, as well as national regulations. These principles advocate for non-discrimination, diversity, and inclusivity, ensuring fair labor standards, preventing forced and child labor, and addressing human rights violations. Organizations are encouraged to invest in employees through training, professional development, fair compensation, and work-life balance, while implementing mechanisms for grievance resolution and employee satisfaction. Workplace health, safety, ethical conduct, data protection, and transparency are also key priorities. Beyond internal operations, the principles require businesses to integrate social responsibility across their value chains, maintain open communication with stakeholders, and address customer concerns effectively. Companies are encouraged to adopt international sustainability frameworks, participate in global initiatives such as the UN Global Compact, and pursue recognition in indices like the Dow Jones Sustainability Index. These efforts aim to ensure social equity, stakeholder collaboration, and alignment with global ethical and sustainability goals.⁴⁰⁴

Finally, the Corporate Governance Principles section covers compliance with the Corporate Governance Principles Communiqué, and explanations related to social responsibility and sustainability regarding international initiatives and standards. Companies may publish their reports as part of their annual activity reports, sustainability reports, or integrated reports, or they may be issued as separate reports. If the compliance report is not included within the activity reports, it must be published simultaneously with the activity reports, and there should be references to the report within the activity reports. However, there is no specific format for how this report should be prepared or detailed information about the scope of the information that should be included in the report.⁴⁰⁵

In the context of monitoring companies' activities in the field of sustainability, the Borsa İstanbul Sustainability (BIST) Index is also has significant importance. We will examine this index detailly in the next chapter.

4.3.3. Borsa İstanbul Sustainability Index

The BIST Sustainability Index was established to raise awareness of sustainability in Türkiye and to create an index comprising companies listed on Borsa İstanbul with superior corporate sustainability performance.⁴⁰⁶ Companies

⁴⁰³ Sermaye Piyasası Kurulu, *Sürdürülebilirlik İlkeleri Uyum Çerçevesi*, 2-3-4.

⁴⁰⁴ Sermaye Piyasası Kurulu, *Sürdürülebilirlik İlkeleri Uyum Çerçevesi*, 4-5.

⁴⁰⁵ Sermaye Piyasası Kurulu, *Sürdürülebilirlik İlkeleri Uyum Çerçevesi*, 5.

⁴⁰⁶ Arzu Özsoğün Çalışkan and Hüseyin Güler, "Şeffaflık ve Kamuyu Aydınlatma Ekseninde İnternette Finansal Raporlama," *Mali Çözüm* 23, no.134 (2013):58.

listed on this index benefit from easier access to global markets, increased appeal to foreign investors, and more affordable and accessible capital resources.⁴⁰⁷

The index serves as a performance evaluation tool, enabling businesses to measure and compare their corporate sustainability performance both locally and globally. Through the index, companies can enhance corporate transparency, accountability, and risk management skills related to sustainability issues.⁴⁰⁸ It also supports the development of sustainable reporting and accounting practices,⁴⁰⁹ helping to increase the visibility of corporate sustainability efforts, share best practices, and promote sustainable investments in Türkiye.⁴¹⁰

Corporate sustainability efforts at BIST began with the idea of creating the BIST Sustainability Index, which would list the shares of companies with high levels of corporate sustainability performance. In 2013, a collaboration agreement was signed between Borsa İstanbul and Ethical Investment Research Services Limited (EIRIS).⁴¹¹

EIRIS has categorized the index selection criteria into three main areas: Environment, Corporate Governance, and Social Standards. Environmental standards include compliance with systems like International Chamber of Commerce (ICC) or Coalition of Environmentally Responsible Economies (CERES) environmental management standards, ISO14001 certification, or Eco-Management and Audit Scheme (EMAS) registration. For social criteria, adherence to principles such as the OECD Guidelines for Multinational Enterprises, signing the UN Global Compact, obtaining the SA8000 certification, or explicitly supporting two ILO labor standards or a corporate statement on fundamental human rights is required.

Starting from November 4, 2014, the BIST Sustainability Index has been calculated under the stock code XUSRD. Initially, the index was calculated by evaluating the companies listed in the BIST 30. However, as of 2021, companies listed on the Yıldız Market or those that voluntarily participate in the BIST Sustainability Index have been included in the evaluation. From the 2021 evaluation year onwards, Refinitiv Information Limited (Refinitiv) has taken over the sustainability evaluation process from BIST under a new agreement with BIST.⁴¹²

⁴⁰⁷ Merve Acar and Hüseyin Temiz, "Sürdürülebilirlik Endeksinde İşlem Gören Firmaların Finansal Performansı: Olay Çalışması Örneği," *Hitit Üniversitesi Sosyal Bilimler Enstitüsü Dergisi* 11, no.3 (2018): 1974, <https://doi.org/10.17218/hititsosbil.441200>

⁴⁰⁸ Borsa İstanbul, *BIST Sürdürülebilirlik Endeksi Temel Kuralları*, Dec 31, 2014, <https://www.borsaistanbul.com/files/bist-surdurulebilirlik-endeksi-temel-kurallari-31122014.pdf>

⁴⁰⁹ Zehra Özdemir and Fatma Pamukçu, "Kurumsal Sürdürülebilir Raporlama Sisteminin Borsa İstanbul Sürdürülebilirlik Endeksi Kapsamındaki İşletmelerde Analizi," *Mali Çözüm* 26, no. 134 (2016):15.

⁴¹⁰ Aras and Sarioğlu, "Entegre Raporlama," 92.

⁴¹¹ Hakan Aracı and Filiz Yüksel, "Şeffaflık ve Hesap Verilebilirliğin Sağlanmasında Sürdürülebilirlik Raporları: BIST Sürdürülebilirlik Endeksindeki Şirketlerin Sürdürülebilirlik Raporlarının İncelenmesi," *Muhasebe Bilim Dünyası Dergisi* 18, no.1 (2016): 113.

⁴¹² Borsa İstanbul, *A New Era Begins in the BIST Sustainability Index*, accessed 10 Dec 2024, <https://www.borsaistanbul.com/en/duyuru/3792/a-new-era-begins-in-the-bist-sustainability-index>

As of October 1, 2021, the BIST Sustainability Index has started using over 450 data points categorized under 10 categories and 25 themes related to environmental, social, and corporate governance. According to Refinitiv's evaluation criteria, companies must meet the following three conditions to be listed on the BIST Sustainability Index:⁴¹³

- Combined ESG Score should be 50 or more.
- Each Pillar score (Environment, Social, Governance) 40 or more.
- At least 8 category scores should be 26 or more.

The primary goal of the BIST Sustainability Index is to create an index of companies listed on BIST that exhibit high sustainability trends. In this context, the number of companies evaluated each year has increased. While companies in the BIST 30 index were evaluated in 2014, companies in the BIST 50 index were subject to evaluation in 2015. Starting from 2016, it was decided to include voluntary companies from the BIST 100 index in the evaluation. The list of companies to be evaluated is updated and announced to the public every December.⁴¹⁴

The sectoral distribution of companies included in the BIST Sustainability Index is illustrated in Chart 1: BIST Sustainability Index (XURD) Sectoral Breakdown.

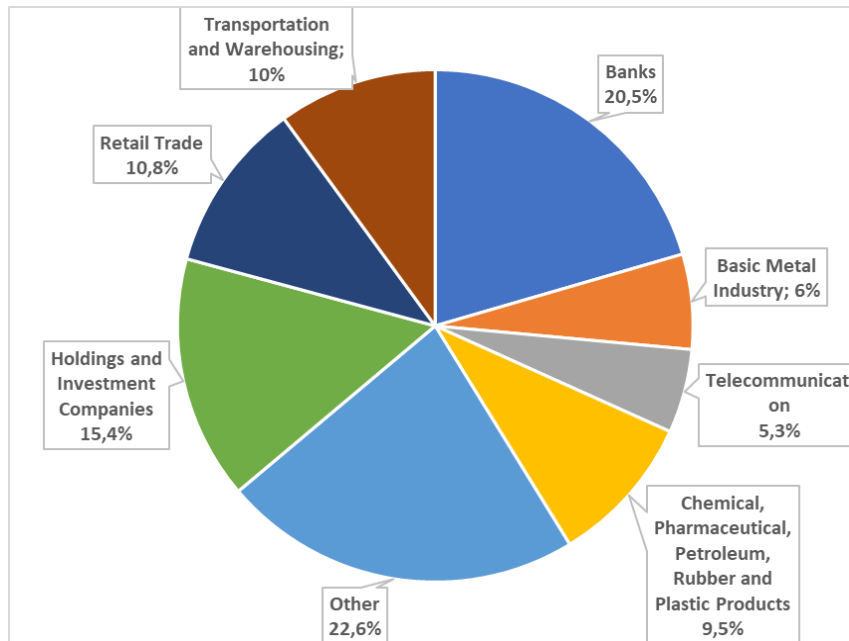


Chart 1: BIST Sustainability Index (XURD) Sectoral Breakdown

Source: Borsa İstanbul, 2024

On November 21, 2022, the BIST Sustainability 25 Index was introduced, targeting high-performing companies in sustainability that are also large and liquid.

⁴¹³ Borsa İstanbul, *A New Era Begins in the BIST Sustainability Index*.

⁴¹⁴ Ayşegül Berrak Köten, "Statistical Evaluation of Exchange Performance of Banks Traded in The Sustainability Index," *Research Studies Anatolia Journal* 5, no. 1, (2022): 153, <https://doi.org/10.33723/rs.1051449>

According to Refinitiv's evaluation criteria, companies must meet the following three conditions to be listed on the BIST Sustainability 25 Index:⁴¹⁵

- Combined ESG Score should be 70 or more.
- Each Pillar score (Environment, Social, Governance) 60 or more.
- At least 8 category scores should be 50 or more.

The sectoral distribution of companies included in the BIST Sustainability 25 Index is illustrated in Chart 2: BIST Sustainability-25 Index Sectoral Breakdown.

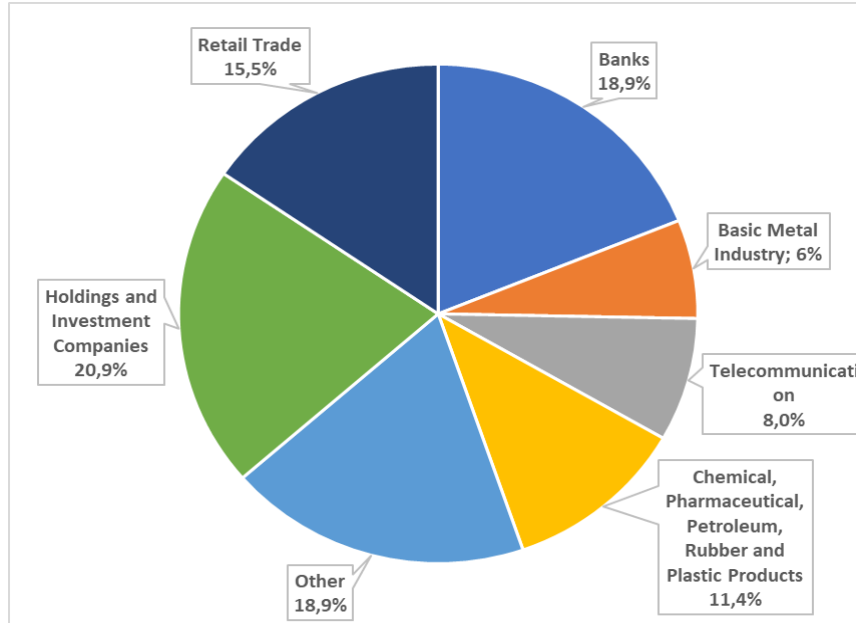


Chart 2: BIST Sustainability-25 Index Sectoral Breakdown

Source: Borsa İstanbul, 2024

The launch of the BIST Sustainability-25 Index provides investors with a new tool to identify companies adhering to sustainability and corporate social responsibility principles. This development creates opportunities for the emergence of various financial products, such as funds and structured products, promoting responsible investments. Presently, most responsible investments are developed by institutional investors. The index facilitates the establishment of funds in this domain and ensures easier access for listed companies to these funds.⁴¹⁶

In conclusion, the BIST Sustainability Index and the recently launched BIST Sustainability-25 Index represent significant milestones in promoting corporate sustainability and responsible investment practices in Türkiye. These indices not only enhance the visibility of companies with strong ESG performance but also provide investors with effective tools to identify and invest in such companies. By fostering

⁴¹⁵ Borsa İstanbul, *Sürdürülebilirlik Endeksi*, accessed 10 Dec 2024, <https://borsaistanbul.com/tr/sayfa/165/bist-surdurulebilirlik-endeksi>

⁴¹⁶ Borsa İstanbul, *Sürdürülebilirlik Endeksi*.

greater transparency, accountability, and adherence to sustainability principles, these indices contribute to the growth of sustainable finance and investment ecosystems. As they continue to evolve, these platforms are expected to play a pivotal role in encouraging broader adoption of sustainability practices and aligning Türkiye's financial markets with global ESG standards.

CONCLUSION

This thesis has explored the interplay between sustainability, law, and governance, with a particular focus on Türkiye's regulatory and institutional frameworks. In a world increasingly driven by the imperatives of ESG standards, Türkiye's journey toward integrating these principles into its legal and economic structures reflects both commendable progress and pressing challenges. The study's findings reveal the necessity of a comprehensive and collaborative approach to embedding sustainability within the nation's legal system, corporate practices, and international commitments.

The adoption of the Paris Agreement and alignment with the European Green Deal signify Türkiye's commitment to addressing global environmental challenges and meeting international sustainability benchmarks. These commitments underscore the growing recognition of the interdependence between environmental protection, economic development, and social well-being. The TCC and the CML are notable examples of Türkiye's efforts to integrate sustainability into corporate governance. These frameworks aim to promote corporate transparency, accountability, and ESG compliance. However, the effectiveness of these legal instruments depends significantly on their enforcement and the capacity of institutions to monitor and regulate compliance.

Institutional reforms, such as the establishment of the Climate Change Directorate and the publication of the Green Deal Action Plan, are promising steps in Türkiye's sustainability journey. These initiatives reflect an awareness of the importance of aligning national policies with global environmental goals. Yet, achieving meaningful change requires broader systemic transformations. This includes the harmonization of domestic laws with international standards, the standardization of ESG reporting, and the creation of mechanisms to ensure the accountability of all actors, from businesses to public institutions.

Türkiye's strategic location and economic ties, particularly with the European Union, amplify the importance of aligning with global sustainability frameworks. The European Green Deal, which emphasizes green and circular economies, green financing, and low-carbon development, serves as both an opportunity and a challenge for Türkiye. As one of the EU's largest trading partners, Türkiye must adapt its industries, particularly in high-emission sectors such as energy, transportation, and agriculture, to meet EU sustainability criteria. Failure to do so could jeopardize its trade relationships and economic stability. Conversely, compliance offers significant economic benefits, including access to green financing and increased competitiveness in global markets.

The study also highlights the centrality of a just transition in Türkiye's sustainability agenda. Green transformation must address not only environmental objectives but also social equity, ensuring that vulnerable populations, including refugees and low-income groups, are not left behind. Initiatives such as vocational training for green jobs and promoting labor market participation in green sectors are essential for fostering inclusive growth.

One of the critical findings of this research is the need for enhanced corporate governance practices in Türkiye. As businesses play a pivotal role in driving sustainability, corporate leaders must embrace ESG principles not as regulatory burdens but as strategic opportunities. Investment in renewable energy, resource efficiency, and innovation can position businesses as leaders in the green economy, contributing to both economic growth and environmental sustainability.

The thesis also underscores the importance of a robust legal and policy framework to support green financing and the circular economy. Policies that encourage investment in renewable energy, reduce carbon emissions, and promote waste minimization are vital for building a resilient and sustainable economy. The Green Deal Action Plan's focus on these areas reflects a forward-looking approach, yet its success depends on effective implementation and active participation from all stakeholders, including the private sector, civil society, and international partners.

Türkiye's commitment to sustainability represents a recognition of the interconnectedness of global challenges and national priorities. However, the path to sustainability is fraught with challenges, including resource limitations, institutional inertia, and competing policy priorities. Addressing these challenges requires not only technical and financial resources but also a cultural shift toward valuing sustainability as a core principle of governance and development.

In conclusion, Türkiye stands at a critical juncture in its sustainability journey. The country's legal and institutional reforms, coupled with its international commitments, provide a strong foundation for progress. However, achieving the ambitious goals outlined in its Green Deal Action Plan and other frameworks will require sustained effort, strategic planning, and cross-sector collaboration. By embracing sustainability as a guiding principle, Türkiye can position itself as a regional leader in sustainable development, setting an example for other nations facing similar challenges.

This thesis contributes to the broader discourse on sustainability and governance by highlighting the critical role of law in shaping sustainable practices. It offers insights for policymakers, businesses, and researchers, emphasizing the need for a multi-stakeholder approach to addressing global challenges. Ultimately, the integration of sustainability into Türkiye's policies and practices is not only a response to international obligations but a strategic necessity for building a resilient, inclusive, and prosperous future.

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