ESG as a Business Model for SMEs

Law Working Paper N° 642/2022
May 2022

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ECGI Working Paper Series in Law

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Abstract

Whenever there is a crisis in the corporate world or the economy more generally, the same questions continue to surface: What is the purpose of a corporation? Is the purpose of a corporation simply to make money? Or do they have a broader role in society? Do corporations also have a social responsibility to help improve the world? The message is clear. Corporate strategies must include environmental and social factors — together with good (or, at least, better) governance. These elements are usually referred to as "ESG." Still, "ESG" gets a lot of pushback. And, sure, companies often use ESG-statements as marketing tools to respond to the growing societal and political pressure to be more responsible. But, it's not all jargon. ESG-strategies are here to stay. Companies that ignore the current trends will find themselves in an impossible position. More and more often, we see business leaders being put on the spot and asked, "what is your company doing to make the world a better place?" Silence or evasion isn't an option either. It will be viewed as inaction. And inaction will be seen as a lack of concern or a tacit endorsement of the current state of affairs in the world. Smooth-talking will be viewed as a lack of sincerity and commitment. But there has been little or no discussion (yet) about how ESG strategies and ESG reporting (and ESG dialogue) will offer solutions to the many problems that SMEs face in today's world – particularly in attracting and retaining investors, employees, and customers. This paper sets out the impact of ESG on the performance of SMEs.

Keywords: Business, environment, corporate governance, corporation, digital transformation, disclosure, ESG, investment, reporting, shareholder primacy, stakeholder primacy, stakeholders, sustainability, transparency
JEL Classifications: D23, F23, G34, K22, L14, L21, L26, M13, M14

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ESG as a Business Model for SMEs

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Abstract: Whenever there is a crisis in the corporate world or the economy more generally, the same questions continue to surface: What is the purpose of a corporation? Is the purpose of a corporation simply to make money? Or do they have a broader role in society? Do corporations also have a social responsibility to help improve the world?

The message is clear. Corporate strategies must include environmental and social factors — together with good (or, at least, better) governance. These elements are usually referred to as "ESG." Still, "ESG" gets a lot of pushback. And, for sure, companies often use ESG-statements as marketing tools to respond to the growing societal and political pressure to be more responsible. But, it's not all jargon. ESG-strategies are here to stay. Companies that ignore the current trends will find themselves in an impossible position. More and more often, we see business leaders being put on the spot and asked, "what is your company doing to make the world a better place?" Silence or evasion isn't an option either. It will be viewed as inaction. And inaction will be seen as a lack of concern or a tacit endorsement of the current state of affairs in the world. Smooth talking will be viewed as a lack of sincerity and commitment.

But there has been little or no discussion (yet) about how ESG strategies and ESG reporting (and ESG dialogue) will offer solutions to the many problems that SMEs face in today's world – particularly in attracting and retaining investors, employees, and customers.

This paper sets out the impact of ESG on the performance of SMEs.

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1. Introduction

Small and medium-sized enterprises (SMEs) are struggling to find a strategy to survive the realities of doing business in today's world.

Digital technologies are turning the world upside down.

Think about it. Digital technologies have changed consumer behavior. Consumers don't appreciate mass production anymore. Brand loyalty is increasingly fragile. Digital technologies have made consumers way more knowledgeable and sophisticated. They will only stay if "products" offer them a meaningful and personalized experience. They expect data and data analytics to deliver more advanced services and "user feedback." Social media has given them the "voice" to express their views and educate themselves about a business' performance.

The same can be said about employees. People are no longer satisfied with the prospects of becoming anonymous cogs in a hierarchical corporate machine.They are looking to maximize their personal potential. They want to do things that they care passionately about.

The digital transformation has created an unprecedented degree of choice. There are endless possibilities. Employees don't stay because it is hard to walk away. They stay if they have the opportunity to engage in a meaningful life project through "work." The younger generation that started to work at my company all left as soon as the job didn't offer them that sense of fulfilment anymore. "Last-in first-out" has become the new normal.

Finally, digital technologies are empowering investors as well. Artificial intelligence tools that analyze website traffic and social media engagement offer institutional and other professional investors a better understanding of a company's growth opportunities and prospects. Smart analysis of earnings transcripts helps investors capture and assess management sentiment.

Investors need to be encouraged to take 'intelligent risks' that focus on stakeholder-oriented companies. This chapter will explain what we call 'intelligent investing' - risky, but smart investments in businesses that take a more socially responsible view of the purpose of corporation. In addition, it will set out the impact of ESG strategies on the performance of companies, and the relevance of adopting an ESG strategy for SMEs. The chapter will conclude by making some post pandemic predictions in the aforementioned context. It will also argue that there is a role for UNCITRAL to help SMEs develop an ESG strategy.

2. From shareholder primacy to stakeholder capitalism

Traditionally management of and investment in joint-stock corporations were financially orientated - the so-called shareholder primacy. This supported the view that the sole purpose of a corporation is to maximise the return for investor-shareholders. In recent years, however, this financial model of the corporation and investment has been heavily criticised, and we have seen the emergence of new demands for more responsible forms of corporate behaviour and an overall shift to a so-called stakeholder primacy. This embodied a shift from the very traditional ideology of profit maximisation when one thought of companies in general, to a modern and holistic approach to companies, taking cognisance of a much wider ideology, including a social as well as an environmental dimension. But how did this happen?

Whenever there is a crisis in the corporate world or the economy more generally, the same questions continue to pop up: What- or Who- is a corporation for? Is the purpose of a corporation simply to make money? Or do they have a broader role in society? Do corporations also have a social responsibility to help improve the world?

Since the 1980s, there has been a broad consensus on these questions. The primary goal of a corporation is to make a profit for the investor-shareholders – so-called 'shareholder primacy.' Nobel- prize winning US economist Milton Friedman famously took this view. An often-quoted line from his 1970 article in the New York Times Magazine expresses the following thought:

> "There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits."[5]

In 1994, the famous business concept the "triple bottom line" became a fundamental principle to be used not only by corporate lawyers, but also academics and economists.[6] This principle moved

[5] Friedman, Milton. 1970. 'The Social Responsibility of Business.' *New York Times Magazine*. September 13, 1970. P. 2.

[6] John Elkington "25 years I coined the phrase "triple bottom line." Here's why it is time to rethink it" https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it

away from the profit-orientated idealism companies used to follow as referred to above. All of a sudden, the three P's - People, Planet and Profit, became the new measuring stick when investors examined companies to invest in. What it basically meant was that companies had to be managed in such a way to improve the lives of people and to regard the planet.

Despite this shift from shareholder primacy to a more stakeholder-orientated approach, it appears that the financial model of the corporation as a shareholder-oriented organisation remains hugely influential, leading most companies to continue to focus on shareholder value and short-term (quarterly) financial performance. Even SMEs seem determined to base their business model on the "impersonal behaviour"[7] of larger corporations.

This approach is challenged when shareholders/investors start demanding companies to serve other stakeholders as well, such as customers, employees, partners, the community and society at large. This shift is increasingly observed worldwide, from IKEA's commitment "to be circular and climate positive by 2030, and to inspire and enable the many people to live a better everyday life within the boundaries of the planet",[8] to LEGO's move to use sugarcane to manufacture sustainable LEGO bricks.[9] In another example, Henk Jan Beltman, the Chief Chocolonely Officer of Tony's Chocolonely, joined by 49 businesses in the Netherlands, wrote a letter to minister Kaag[10] for an urgent call for support for a proper due diligence. The letter stressed the importance of legislation to create a transparent supply chain which has the potential to eliminate the negative effects on human rights and to prevent or repair damage done to the environment. Tony's Chocolonely's mission is "100% slave free chocolate." It concretely highlights the misalignment which currently exist between child labour, slavery and the farmer who receives a minimal return on produce. SMEs are urged to support this initiative and by completing their information on the call for this "Serious statement"[11] to support due diligence legislation in the Netherlands. In return the names of the supporting businesses are added to the letter. IKEA Netherlands already joined

Harvard Business Review accessed 24 March 2022.

[7] Dennis Jaffe "From Shareholder Primacy To Stakeholder Primacy: How Family Businesses Lead The Way", 24 Feb 2021, available at: https://www.forbes.com/sites/dennisjaffe/2021/02/24/from-shareholder-primacy-to-stakeholder-primacy-how-family-businesses-lead-the-way/.

[8] IKEA "Transforming into a circular business", available at: https://about.ikea.com/en/sustainability/a-world-without-waste.

[9] LEGO "First sustainable LEGO bricks will be launched in 2018" available at: https://www.lego.com/en-us/aboutus/news/2019/october/lego-plants-made-from-plants/.

[10] The then minister for Foreign Trade and Development Cooperation.

[11] https://tonyschocolonely.com/nl/nl/onze-missie/serious-statements/steun-due-diligence-wetgeving-in-nederland-samen-met-tonys accessed 23 March 2022.

the initiative. This letter was in response to the European Commission's proposal for mandatory due diligence legislation

Not considering the separate issue of greenwashing, it may appear from changed business models that shareholders increasingly take criteria based on environmental, social, and governance (ESG)[12] into account when making investment decisions. The Business Roundtable, consisting of 181 chief executive officers (CEOs) of the leading American companies including Jeffrey P. Bezos of Amazon and Tim Cook of Apple,[13] all recently committed to "leading their companies for the benefit of all stakeholders - customers, employees, suppliers, communities and shareholders."[14]

But is stakeholder primacy an integral consideration for investors in SMEs? The data does not give a clear-cut answer yet. For a start, many people are strongly attached to shareholder primacy. They have a hard time 'un-learning' what they have preached for so many years (the only purpose of a company is shareholder wealth maximisation and the purpose of regulation is to ensure that the agents of the company always act in the best interests of the shareholders).[15]

Only a decade ago, a Delaware court (representing a key jurisdiction for corporate law matters in the United States), in the case of eBay Domestic Holdings Inc. v. Newmark C.A, was adamant that the "Inc." after a company name means that the corporation exists at the very least to create value for shareholders.[16] According to this type of viewpoint, a stakeholder view is confusing. How can you serve multiple masters with different, and often conflicting interests? According to this type of viewpoint, trying to find a balance is illusory and could even hurt the corporation (including all its stakeholders) in the future.

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[12] The term was in use since 2004, when it appeared in The Global Compact Who Cares Wins, Connecting Financial Markets to a Changing World", available at: https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FFinancial_markets%2Fwho_cares_who_wins.pdf

[13] For a full list of signatories, see: https://opportunity.businessroundtable.org/ourcommitment/.

[14] Business Roundtable "Business Roundtable Redefines the Purpose of a Corporation to promote 'An Economy That Serves All Americans'", 19 Aug 2021, available at: https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

[15] eBay Domestic Holdings, Inc. v. Newmark,16A.3d1(Del.Ch.2010); Bebchuck, Lucian A. and Tallarita, Roberto. 2020. 'The Illusory Promise of Stakeholder Governance.' *Working Paper*. March 2020 as referenced in: Mark Fenwick & Erik Vermeulen "New Models of 'Intelligent Investing' for the Post-Crisis Economy" ECGI Working Paper No 534/2020 9.

[16] Witold Henisz, Tim Koller & Robin Nuttal "Five ways that ESG creates value - Getting your environmental, social, and governance (ESG) proposition right links to higher value creation. Here's why." Nov 2019, available at: https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx.

This viewpoint neglects the fact that a CEO or the investors don't solely define the corporation. A corporation, whether large or small, isn't a single person or group. It is a complex, evolving ecosystem of people (including employees, consumers, investors, founders of related start-up companies, and other organisations) committed to working together *as a team* to reach a diverse set of different goals.

This is best captured in the words of Microsoft CEO, Satya Nadella, with his "multi-constituent" view as he remarked:

> "I didn't realize how multi-constituent the CEO job is. Now I recognize it's about customers; it's about partners; it's about all your employees, your investors, governments. It's about all of them, all the time."[17]

Like any team, a corporation is a multi-faceted entity that cannot be reduced to a simple formula. At least, reducing it to a simple formula is both dishonest – it obscures the reality of the thing it describes – and counter-productive – in the sense that any suggestions for improving performance are likely to miss the target. And, of course, serving multiple masters is difficult. But, embracing the messy reality of building a successful team that delivers a meaningful experience for everyone is undoubtedly a better, more human option than the pursuit of financial gain. Just to be clear, stakeholder capitalism isn't equal to corporate social responsibility (CSR) or ESG.[18] It's a necessary strategy to ensure that corporations remain relevant in a fast-changing world.

However, corporations that seem to embrace a stakeholder-oriented purpose outperform their peers when it comes to stock market returns. This is also a relevant consideration for SMEs - especially if you consider start-ups with growth potential. Consider the ten best-performing stocks of the last decade (only taking large-cap corporations into account). The list was published by the financial and investing advice company 'The Motley Fool.'[19] What made these companies such an excellent investment in the 2010s? Nine out of ten companies are known for taking their stakeholders very seriously. They understand that the digital transformation has forced them (and

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[17] Sachin Waikar "MIcrosoft CEO Satua Nadella: Be bold and be right" 26 November 2019 https://www.gsb.stanford.edu/insights/microsoft-ceo-satya-nadella-be-bold-be-right accessed 24 March 2022.

[18] Skapinker, Michael. 2019. 'Responsible Business: Is this Time Different?' *Financial Times*. December 24, 2019 as referenced in: Mark Fenwick & Erik Vermeulen "New Models of 'Intelligent Investing' for the Post-Crisis Economy" ECGI Working Paper No 534/2020 9.

[19] McKenna, Beth. 2020. 'The 10 Best Performing Stocks of the Decade.' *The Motley Fool*. January 6, 2020 as referenced in: Mark Fenwick & Erik Vermeulen "New Models of 'Intelligent Investing' for the Post-Crisis Economy" ECGI Working Paper No 534/2020 9.

has also given them the tools) to remain relevant. The key to their success (and the success for any business in these unprecedented times) was to build and maintain relevance in the marketplace, while also remaining relevant to all the various stakeholders within the organisation such as employees and investors. Relevance in the market means delivering products or services that matter for consumers. Relevancy to stakeholders means offering a meaningful experience that allows individuals to develop a unique identity and related capacities, communicate an image, and participate in a fulfilling collaborative project. These two objectives are interconnected in the sense that a business that remains relevant to stakeholders gives itself the best opportunity to stay relevant in the marketplace.

3. ESG as a determinant of shareholder value

In line with the growing international support for sustainable development, ESG developed from the previously known concept of Corporate Social Responsibility (CSR). despite the fact the principle of ESG was "invented" in the early 2000,[20] the idea of ESG investing started as early as 1960 when investors started to look at business activities of companies more intensely and ultimately excluding stocks or industries if these were not aligned with their businesses or where political situations were taken into account.[21] Most recently, the 2030 Sustainable Development Agenda caused a renewed shift in corporate law, further redirecting the focus from "external impact of corporate activities" to the "risk and return implications for financial investors of failing to address ESG issues".[22] It is also possible to organise CSR and ESG as subsets of sustainable development, with CSR focusing more on corporate aspects and ESG focusing more on financial or investment aspects such as risk and return.[23]

ESG basically consists of three interweaved criteria indicated by the *E* (for environment), the *S* (for social) and the *G* (for governance). These criteria are equally important. It is also important to be realistic when thinking of ESG in today's day and age. The following reference to ESG summerises it perfectly: "ESG is a journey, not a destination"[24] It is also an ever-changing

[20] Note 11 *supra*.
[21] https://www.msci.com/esg-101-what-is-esg/evolution-of-esg-investing accessed 24 March 2022.
[22] Iain MacNeil and Irene-marié Esser "From a Financial to an Entity Model of ESG" 13 December 2021 European Business Organization Law Review.
[23] Iain MacNeil and Irene-marié Esser "From a Financial to an Entity Model of ESG" 13 December 2021 European Business Organization Law Review.
[24] https://gresb.com/nl-en/2021/04/30/the-rise-of-the-s-in-esg-reporting/ accessed 22 March 2022.

concept. If one think back to the early days of the ESG phenomena, the E was covered if one took cognisance of the ozone layer, the S was covered if one considered the employees in any other perspective than income generated objects and the G was ticked if the company had a board of directors. This playing field changed drastically over the last few years. It is therefore vital for SMEs to regard ESG as a compass to be guided to a destination, rather than the destination itself. Today ESG is an all-inclusive phrase when talking about sustainability in a business and it's not all about the *E*.[25] The environmental criteria is centred around the energy and resources a company uses, the waste a company creates, and the contribution a company makes to climate change by expelling greenhouse gas emissions.[26] It also looks at a company's use of clean technology and the use of green buildings.[27] The social criteria pertains to the relationships and the reputation of the company within the community it is situated, which can include the international community and commonly involves matters such as human rights and the reduction of poverty.[28] It also goes further and regards human capital with a focus on health and safety and labor management, product liability and social opportunities such as access to communication, access to finance, access to healthcare and even access to health and nutrition.[29] The governance criteria refers to the "internal system of practices, controls and procedures [the] company adopts in order to govern itself, make effective decisions, comply with the law, and meet the needs of external stakeholders" and it can include issues such as fair corporate compensation and anti-corruption.[30] Board diversity, accountability and corporate behaviour regarding business

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[25] Richard Bernau "Five steps to get started on ESG" 28 Oct 2021, available at: https://www.cbi.org.uk/articles/five-steps-to-get-started-on-esg/

[26] Witold Henisz, Tim Koller & Robin Nuttal "Five ways that ESG creates value - Getting your environmental, social, and governance (ESG) proposition right links to higher value creation. Here's why." Nov 2019, available at: https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx.

[27] https://www.msci.com/esg-101-what-is-esg/evolution-of-esg-investing accessed 24 March 2022.

[28] Witold Henisz, Tim Koller & Robin Nuttal "Five ways that ESG creates value - Getting your environmental, social, and governance (ESG) proposition right links to higher value creation. Here's why." Nov 2019, available at: https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx; Richard Bernau "Five steps to get started on ESG" 28 Oct 2021, available at: https://www.cbi.org.uk/articles/five-steps-to-get-started-on-esg/

[29] https://www.msci.com/esg-101-what-is-esg/evolution-of-esg-investing accessed 24 March 2022.

[30] Witold Henisz, Tim Koller & Robin Nuttal "Five ways that ESG creates value - Getting your environmental, social, and governance (ESG) proposition right links to higher value creation. Here's why." Nov 2019, available at: https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx; Richard Bernau "Five steps to get started on ESG" 28 Oct 2021, available at: https://www.cbi.org.uk/articles/five-steps-to-get-started-on-esg/

ethics and diversity and inclusion policies also play an important role when considering corporate governance of a company.[31]

ESG factors influence stakeholder primacy and intelligent investing in one of two ways. Firstly, an investor may choose to consider a corporation's ESG record, in addition to its financial record, because it minimises future risk.[32] Secondly, an investor may choose to consider a corporation's ESG record because it correlates to the investor's personal values.[33]

A sceptic might suggest that the claim that companies need to look beyond shareholder value and to ESG doesn't really add anything new to the existing discussion. That is to say, concerns about stakeholders can be analysed perfectly well under the old model and that shareholder value maximisation already includes – or, at least, has the potential to include – some notion of stakeholder capitalism. In one sense, this is perfectly true. It is possible to say that concerns about stakeholders and ESG are just another aspect of shareholder value; it is simply a question of how one chooses to frame the metric of company success. However, the problem is that by framing the issue *exclusively* in terms of shareholder value it immediately creates a series of adversarial and hierarchical relationships between the different groups of stakeholders within a corporate organisation that has the potential to distort incentives in various damaging ways.

The problem is not so much that the existing theory is wrong, as such. Rather, it is incomplete and potentially misleading to focus *only* on maximising shareholder value. Such an exclusive focus has the potential to result in negative behavioural outcomes. For instance, it can hinder the realisation of the SDGs by exacerbating "income inequality". Most obviously, it incentivises "short-term mindset" amongst executives and window-dressing on the part of managers and employees who wish to portray a positive image of recent performance in order to satisfy investors.[34]

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[31] https://www.msci.com/esg-101-what-is-esg/evolution-of-esg-investing accessed 24 March 2022.

[32] Goldman Sachs "Measuring the Immeasurable: Scoring ESG Factors, Evaluating ESG in a portfolio" available at: https://www.gsam.com/content/gsam/global/en/market-insights/gsam-insights/gsam-perspectives/2015/esg/qis-article.html.

[33] Goldman Sachs "Measuring the Immeasurable: Scoring ESG Factors, Evaluating ESG in a portfolio" available at: https://www.gsam.com/content/gsam/global/en/market-insights/gsam-insights/gsam-perspectives/2015/esg/qis-article.html.

[34] Rick Wartzman "America's top CEOs say they are no longer putting shareholders before everyone else" 19 Aug 2019, available at: https://www.fastcompany.com/90391743/top-ceo-group-business-roundtable-drops-shareholder-primacy.

4. Linking ESG to company performance

For sure, companies often use ESG-statements as marketing tools to respond to the growing societal and political pressure to be more responsible. But, it's not all jargon. It can be submitted that there is an undeniable correlation between corporate financial performance (CFP) and environmental, social and governance criteria.[35] Even when a company only chooses to release information on one (or two or three) of the ESG criteria (not taking into consideration the actual ESG practice of the company), it has been shown that this can have a positive impact on the intellectual capital of the company.[36] In other words, mere ESG reporting can serve to create value when it comes to the intangible assets of the company such as "employee expertise, organisational processes, and the sum of knowledge contained within the organization."[37]

While the positive correlation between CFP and ESG is proven, the understanding of why the ESG criteria creates value is less clear.[38] An analysis by McKinsey shows that ESG is connected to cash flow in five main ways: firstly, top-line growth where the company attracts customers with more sustainable products; secondly, cost reduction where the company reduces its energy and water use; thirdly, regulatory and legal interventions where the company benefits from subsidies and support from government; fourthly, productivity uplift where the company boosts the general moral of employees and attracts top talent; and finally, investment and asset optimisation where the company considers longer-term environmental impacts.[39] In these ways ESG is also

[35] Gunnar Friede, Timo Busch & Alexander Bassen "ESG and financial performance: aggregated evidence from more than 2000 empirical studies", 2015, Journal of Sustainable Finance & Investment 5:4 210-233 210; Salim Chouaibi, Jamel Chouaibi & Matteo Rossi "ESG and corporate financial performance: the mediating role of green innovation: UK common law versus Germany civil law" 2021 Vol 17, Issue 1 Euromed Journal of Business 46-71.

[36] Juan C. Reboredo & Samih M.A. Sowaity "Environmental, Social, and Governance Information Disclosure and Intellectual Capital Efficiency in Jordanian Listed Firms" 2022 Sustainability 14 115; Wan Masliza Wan Mohammad & Shaista Wasiuzzaman "Environmental, Social and Governance (ESG) disclosure, competitive advantage and performance of !rms in Malaysia" 2021 2 Cleaner Environmental Systems 1-8.
Take note that the aforementioned studies are respectively based on on Jordanian listed firms and firms listed in the Bursa Malaysia.

[37] Juan C. Reboredo & Samih M.A. Sowaity "Environmental, Social, and Governance Information Disclosure and Intellectual Capital Efficiency in Jordanian Listed Firms" 2022 Sustainability 14 115; Wan Masliza Wan Mohammad & Shaista Wasiuzzaman "Environmental, Social and Governance (ESG) disclosure, competitive advantage and performance of !rms in Malaysia" 2021 2 Cleaner Environmental Systems 1-8.
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[38] Witold Henisz, Tim Koller & Robin Nuttal "Five ways that ESG creates value - Getting your environmental, social, and governance (ESG) proposition right links to higher value creation. Here's why." Nov 2019, available at: https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx.

[39] Witold Henisz, Tim Koller & Robin Nuttal "Five ways that ESG creates value - Getting your environmental, social, and governance (ESG) proposition right links to higher value creation. Here's why." Nov 2019, available at:

connected to cash flow for SMEs,[40] which ought not to use lack of resources or capital as excuses not to report on (and benefit from) ESG reporting, as will be discussed below.[41]

Even though mere ESG reporting can create value, it remains imperative to distinguish between companies that focus on 'looking good' instead of 'being good.' Yes, you can fake authenticity, but there are ways to operationalise and 'measure' genuine authenticity as well. This becomes clear when we look at the eleven best and eleven worst stocks of the 11-year 'bull market' (from 2009 to 2020) that was published by American publisher of business forecasts, Kiplinger, on 13 May 2020 (see Table 1).[42]

Table 1: The best & Worst Stocks from 2009-2020

Company	11-year change	Company	11-year change
Jazz Pharmaceuticals	+20544.8%	PG&E	-59.8%
Nextstar Media Group	+18362.3%	First Solar	-60%
Lululemon Athletica	+9635%	Murphy Oil	-60.5%
Entegris	+9128.1%	Mosaic	-64.6%

https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Strategy%20and%20Corporate%20Finance/Our%20Insights/Five%20ways%20that%20ESG%20creates%20value/Five-ways-that-ESG-creates-value.ashx.

[40] Rafaela Gjergji, Luigi Vena, Salvatore Sciascia, Alessandro Cortesi "The effects of environmental, social and governance disclosure on the cost of capital in small and medium enterprises: The role of family business status" 5 Oct 2020 Business Strategy and the Environment 30:1 683-693.

[41] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[42] Available at: https://www.kiplinger.com/slideshow/investing/t052-s001-11-best-and-11-worst-stocks-11- year-bull-market/index.html as referenced in Mark Fenwick & Erik Vermeulen "New Models of 'Intelligent Investing' for the Post-Crisis Economy" ECGI Working Paper No 534/2020 11.

Exact Sciences	+8307.7%	Devon Energy	-65.6%
Dexcom	+8182.1%	Marathon Oil	-67.8%
LendingTree	+7104.1%	Fluor	-73.6%
Netflix	+6608.5%	EQT Corp.	-77.8%
Insulet	+6169.2%	Range Resources	-92.7%
Ulta Beauty	+5880.9%	Transocean	-95.1%
Domino's Pizza	+5771%	Chesapeake Energy	-98.5%

Source: Kiplinger

What is interesting is that, at first sight, both the best and worst stock price performing companies are all serious about ESG reporting. At least, it is easy to find statements on either their corporate websites or other public documents to that effect. This isn't surprising since many of the worst stocks over the last eleven years are energy companies and there has been significant pressure on these companies to be more socially and environmentally responsible.

Nevertheless, when you compare the best and worst performing companies there are some valuable lessons to be learned about the sincerity and effectiveness of ESG statements and strategies. In particular, it highlights the importance of identifying and developing metrics that can help us to judge whether a company is being authentic in its ESG-related activities or not. By way of an introduction, the four signals of genuine commitment to ESG are discussed below.

4.1 Effective Action, Not Fancy Slogans

The strategies (and public statements) of the companies at the 'bottom' of the rankings are usually 'over-produced' or bland – coming across as an empty, box-ticking exercise done for the purposes of appeasing criticism of a firm's activities. Such autopilot corporate strategies and approaches are much less likely to work anymore. Both investors and the public more generally are increasingly able to identify general, empty slogans. The marketing people and the consultants can't be left to come up with fancy words and images that look and sound great but mean nothing. ESG statements and strategies need to be actionable, and any proposed actions must be tangible and plausible. But a strategy isn't simply about talk. It also needs to be about action. A firm needs to be able to present tangible evidence and a narrative that demonstrates that ESG-words have been put into action.

4.2 A Clear Identity that Engages Everyone

There needs to be clarity and consistency on all aspects of corporate operations. ESG strategies must be lived and valued at every level within the company from the top down. Employees, investors, and also consumers and other stakeholders must become part of the ESG strategy. Everyone must be able to identify themselves with the company's commitment to being a more responsible social citizen. In this way, ESG needs to become part of everything a company says and does. It's not simply about 'giving back' to communities. It's about building communities and engaging with communities when it comes to innovation and the development of new products and services.

4.3 Lots and Lots of Traceability

Actions create an identity, and – done right – that identity leaves a traceable history that reveals a sustained commitment to a particular set of values. And this isn't only about corporate statements and reports – 'other' forms of disclosure (websites and social media, for example) are also helpful when it comes to traceability. Making a strategy traceable is crucial, as it encourages accountability, as well as demonstrating commitment. Particularly, if an approach is controversial – in the sense that it doesn't follow the current flow of ideas or events – traceability can help create and maintain long-term trust, even when a firm does something controversial or is 'caught out' in a particular situation.

4.4 Reflect, React, and Act Again

Traceability also creates transparency, which invites reactions, suggestions, and comments. Such feedback requires corporate leaders to be more reflective and helps them rethink future actions and the entire corporate identity, if needed. Reflection is essential. It keeps everyone vigilant and ensures that 'being good' will not transform into just 'looking good.' The better performing stocks invite stakeholders to share ideas; they have established grievance mechanisms and created an open culture that allows stakeholders to identify themselves with the corporation, learn, and participate in the decision-making process.[43]

In this view, defending stakeholder capitalism and ESG strategies are not only about fairness or doing the 'right thing.' It is also about maximising performance for the benefit of all. They are about social meaning *and* making money.

5. International law and stakeholder primacy

Not only is the discussion of stakeholder primacy relevant on a national legal level, but it is also relevant to the international legal agenda. The United Nations Commission on International Trade

[43] J.A. McCahery, M. Fenwick, and E.P.M. Vermeulen, 'The Future of Capitalism: 'Un-Corporating' Corporate Governance', in J. Farrar and S. Watson (editors), *Contemporary Issues in Corporate Governance*, Canterbury: Canterbury University Press 2017 as referenced in Mark Fenwick & Erik Vermeulen "New Models of 'Intelligent Investing' for the Post-Crisis Economy" ECGI Working Paper No 534/2020 13-14.

Law (UNCITRAL) has an established Working Group on Micro, Small and Medium-Sized Enterprises.[44] In 2013 the Commission requested Working Group 1, tasked with Micro, Small and Medium-Sized Enterprises, to start working on suggestions on how legal obstacles encountered by SMSE's during their lifecycle, can be reduced.[45] During the thirtieth session of the working group, some legal obstacles were identified and suggestions made on how to reduce legal obstacles faced by SMSE's.[46] In June/July of 2018 the report were published which dealt with the concerns identified and the suggestions raised during the thirtieth session in march of 2018.[47] UNCITRAL commits to the realisation of the sustainable development goals (SDGs) within this context,[48] including the economic, social and environmental dimensions which underlie ESG. UNCITRAL describes the following SDGs as being most relevant to its main goals, including goals within the field of micro, small and medium-sized enterprises: SDG 1 (No Poverty), SDG 4 (Quality Education), SDG 5 (Gender Equality), SDG 8 (Decent Work and Economic Growth), SDG 9 (Industry, Innovation and Infrastructure), SDG 10 (Reduced Inequalities), SDG 12 (Responsible Consumption and Production), SDG 16 (Peace, Justice and Strong Institutions), and SDG 17 (Partnership for the Goals). It is submitted that SMEs can play pivotal roles in the realisation of these SDGs, most notably SDG 8 and SDG 16.[49]

The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)[50] includes provisions related to financing for micro, small and medium-sized enterprises and underpins the connection between UNICITRAL's sustainable development vision for micro, small and medium-sized enterprises in this context.[51]

The Addis Ababa Action Agenda sets out a worldwide state commitment to the following:

> "[the] efforts and initiatives of [UNCITRAL], as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organisations active in the

[44] More information on Working Group I: Micro, Small and Medium-Sized Enterprises is available at: https://uncitral.un.org/en/working_groups/1/msmes.
[45] https://undocs.org/en/a/cn.9/933 accessed 25 March 2022.
[46] https://undocs.org/en/A/CN.9/WG.I/WP.110 accessed 24 March 2022.
[47] https://undocs.org/en/a/cn.9/933 accessed 25 March 2022.
[48] UNCITRAL "Sustainable Development Goals", available at: https://uncitral.un.org/en/about/sdg.
[49] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.
[50] United Nations General Assembly Resolution 69/313 (adopted 27 July 2015).
[51] United Nations General Assembly Resolution 69/313 (adopted 27 July 2015) 6/37 par 16.

> field of international trade law and at promoting the rule of law at the national and international levels in this field."[52]

At the same time the Addis Ababa Action Agenda recognises that each country will bear the responsibility of formulating its own sustainable business strategies, which are all uniquely impacted by a specific national context.[53] However, and specifically within the context of ESG and SMEs, the Addis Ababa Action Agenda recognises the importance of the promotion of "corporate sustainability, including reporting on environmental, social and governance impacts, to help ensure transparency and accountability."[54] The Agenda further calls upon national businesses (including SMEs) to "change behaviours, with a view to ensuring sustainable consumption and production patterns."[55]

In the Report composed by Working Group 1 and published in March 2018, the fist suggestion that was noted was that the "title" of the task was to be changed from "Reducing the legal obstacles faced by micro, small and medium-sized enterprises (MSMEs)" to "Adopting an enabling legal environment for the operation of MSME's".[56] A clear change of approach when dealing with legal matters is visible by this proposed change. It became positive and the emphasis is on "enabling" and not on "reducing" as the initial approach. The most important takeaways worth mentioning of this report, starts with the understanding of the business environments MSMEs operate within.[57] A proposal was included to take measure toward legal and policy reform as it might "facilitate business start-up and operations, stimulate investment opportunities, and increase growth rates and employment.[58] A clear reference to principles underpinned by ESG. Secondly, the focus was on the governance side where it was mentioned that it must be ensured that the "operation" of the MSME's are "simple and desirable" in the economy.[59] Thirdly, the importance of communication and education was included as important elements to ensure the reforms mentioned above are incorporated successfully.[60] The social component of ESG is recognised here where the roles of trade organisations or informal workers' associations and "developing courses for gender-specific trading or involving other disadvantaged groups" are

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[52] United Nations General Assembly Resolution 69/313 (adopted 27 July 2015) 26/37 par 89.
[53] United Nations General Assembly Resolution 69/313 (adopted 27 July 2015) 4/47 par 9.
[54] United Nations General Assembly Resolution 69/313 (adopted 27 July 2015) 7/37 par 17.
[55] United Nations General Assembly Resolution 69/313 (adopted 27 July 2015) 7/37 par 17.
[56] http://undocs.org/en/a/cn.9/1002, par 104; accessed 25 March 2022.
[57] http://undocs.org/en/a/cn.9/1002, Part D; accessed 25 March 2022.
[58] http://undocs.org/en/a/cn.9/1002, par 20; accessed 25 March 2022.
[59] http://undocs.org/en/a/cn.9/1002, Part III; accessed 25 March 2022.
[60] http://undocs.org/en/a/cn.9/1002, par 37 - 39; accessed 25 March 2022.

mentioned. In Part B of the report, possible “incentives” are discussed. The main idea behind these incentives is to encourage MSME’s to participate in the legally regulated economy. The following incentives mentioned, incorporate the “E” of ESG in a concrete manner: “Low-cost technological infrastructure.”[61]

5.1 UNICTRAL’s role in creating trust for SMSE’s when dealing with ESG

From the above it is clear that Working Group 1 has the ideals of ESG in mind when dealing with SMSE’s. It is also true that many misconceptions exist regarding ESG when it comes to micro, small and medium-sized entities. UNCITRAL, with the focused support of a working group has the potential to help to clear up these misconceptions. Some of the “myths” that still exist when thinking of ESG include the following:[62] firstly, the *E* is still perceived to be the most significant role-player when considering ESG. This is not true. In the discussion of the Report compiled by Working Group 1, not that much emphasis was given to the environment. On the contrary, the *E* was clearly lacking behind the focus that was given to *governance* and *social.*[63] Secondly, the idea that ESG compliance is both expensive and complex, received good focus from the Working Group and progress is made by including a “Draft legislative guide on key principles of a business registry”.[64] Lastly, it is unfortunately still true that measuring compliance with ESG is difficult. It definitely is easier to measure profit than to measure compliance with environmental, social and governance issues. But, even though it might be difficult to measure, it is time to move away from a yardstick approach to measure progress. The most important part is that ESG must become second nature for MSME’s. When that happens, value will be attributed, and measuring will not be needed. Ultimately, ESG is a value creator.[65]

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[61] http://undocs.org/en/a/cn.9/1002, par 42(s); accessed 25 March 2022.
[62] https://thefintechtimes.com/incomlend-examining-the-myths-impacting-esg-policy-adoption-by-smes/ accessed 22 March 2022.
[63] http://undocs.org/en/a/cn.9/1002, accessed 25 March 2022.
[64] https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/020/16/PDF/V1802016.pdf?OpenElement, part A; accessed 24 March 2022.
[65] https://www.businesstimes.com.sg/opinion/esg-as-a-new-value-creator-welcome-to-the-brave-new-world, accessed 28 March 2022.

6. SMEs and ESG reporting strategy

SMEs are significant contributors to the global workforce and economic growth.[66] While the above discussion remains relevant to SMEs, some elements of ESG strategy is more specific to SMEs than corporations in general. What is required to advance ESG reporting of SMEs specifically?[67] Most importantly, a better policy framework for developed and developing countries, since at present SMEs (in G20 countries at least) are not required to report on their ESG performance.[68]

Within Europe, the proposal for a European Directive 2021/0104 will require a number of corporations to report on non-financial matters.[69] The directive also provides for the possibility that SMEs may choose to report on non-financial matters.[70] Although there is a current policy gap, it should be noted that, in Europe at least, banks, investors, and financial consultants are required, in line with the EU Regulation 2019/2088,[71] to report on "their approach in evaluating ESG efforts spent by investee companies and the associated risks, including the supply of finance".[72] In this

[66] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[67] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[68] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[69] EUR-Lex Procedure 2021/0104/COD, available at: https://eur-lex.europa.eu/procedure/EN/2021_104.

[70] Patrizia Riva, Maurizio Comoli & Ambra Garelli "ESG for SMEs: Can the Proposal 2021/0104 for a European Directive Help in the Early Detection of a Crisis?" in Okechukwu Lawrence Emeagwali & Feyza Bhatti, Corporate Governance - Recent Advances and Perspectives, available at: http://dx.doi.org/10.5772/intechopen.101234.

[71] EU Regulation 2019/2088, adopted by the European Parliament and the Council on 27 November 2019 dealing with "sustainability-related disclosures on the financial services sector". Also see: Christos V. Gortsos "The Taxonomy Regulation: more important that just as an element of the Capital Markets Union" EBI Working Paper Series 2020 no. 8o, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3750039&dgcid=ejournal_htmlemail_regulation:of:financial:institutions:ejournal_abstractlink.

[72] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.
In terms of EU Regulation 2019/2088, adopted by the European Parliament and the Council on 27 November 2019 dealing with "sustainability-related disclosures on the financial services sector" (Sustainable Finance Disclosure Regulation / SFDR) - Christos V. Gortsos "The Taxonomy Regulation: more important that just as an element of the Capital Markets Union" EBI Working Paper Series 2020 no. 8o, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3750039&dgcid=ejournal_htmlemail_regulation:of:financial:institutions:ejournal_abstractlink.

context, the term ‘sustainable finance’ can be used to refer to finance which is aimed at achieving “the goals of the [ESG] movement”.[73]

Other limitations of SMEs when it comes to ESG reporting are the increased financial or human resources required in order to cope with the task of ESG reporting.[74] But, as recently suggested by a FS ESG director of KPMG, the task of ESG reporting might not be as difficult as initially feared.[75] While there are limited resources for SMEs, the size of SMEs does usually mean that faster decision-making is possible along with quicker implementation of strategies.[76] Furthermore, with time, and with the mainstreaming of ESG reporting, much like tax reporting, this should not present an insurmountable burden to SMEs. It is recommended that ESG reporting be required “proportionate to the size and financial return of the company” and in a progressive manner.[77]

It should be noted, that ESG reporting might have a negative impact on the performance of the corporation in the short run, based on a study performed on medium corporations in mainland China, although the long-term correlation is proven to be positive.[78] In this context, it is further forwarded that there will be inequality between SMEs of developed countries, and SMEs of less-developed countries,[79] but a complete discussion in this regard falls outside the scope of the chapter. Nevertheless, the bottom-line remains that increased transparency brought about by

[73] John Lin Linarelli, Steven L. Schwarcz & Ignacio Torado “Financial Inclusion, Access to Credit, and Sustainable Finance” 2021 no. 1 Law and Contemporary Problems 84:i i-ii.

[74] Martina Barbagila et al “Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20” Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[75] Richard Bernau “Five steps to get started on ESG” 28 Oct 2021, available at: https://www.cbi.org.uk/articles/five-steps-to-get-started-on-esg/

[76] Martina Barbagila et al “Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20” Sep 2020, available at: https://www.cbi.org.uk/articles/five-steps-to-get-started-on-esg/https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[77] Martina Barbagila et al “Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20” Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[78] Liang Chen, Tian Yuan, Richard J. Cebula, Wang Shuangjin and Maggie Foley “Fulfillment of ESG Responsibilities and Firm Performance: A Zero-Sum Game or Mutually Beneficial” 2021 Sustainability 13.

[79] Rafaela Gjergji, Luigi Vena, Salvatore Sciascia, Alessandro Cortesi “The effects of environmental, social and governance disclosure on the cost of capital in small and medium enterprises: The role of family business status” 5 Oct 2020 Business Strategy and the Environment 30:1 683-693; Ilze Zumente & Jūlija Bistrova “Do Baltic investors care about environmental, social and governance (ESG)” 2021 Vol. 8 no. 4 Entrepreneurship and Sustainability Issues 349-362.

ESG reporting will boost investment in SMEs,[80] and the correlation between ESG reporting and company performance in the long-term is positive.[81]

In this context, we should not forget that it is up to the management boards of SMEs to engage with stakeholders. The best way to do this is to frequently share information and communicate with them. This is also true for companies with a relatively small investor base, such as an early-stage startup. Clearly, the information is not so much about quarterly financial statements that focus on the past. As we all know, past performance is not always indicative of future success. It is more effective to use metrics that are forward looking and complement some of the more historical data that is available in the market. Attributes that are critical for future performance are customer satisfaction, employee engagement, and community connections, collaborations, and co-creation activities, but also the introduction of new products, product innovations, and/or entering new markets.

It is not just the mere sharing of information, but the interactive discussion between executive management, investors and other stakeholders, and also the board of directors that may prove to have a significant effect on the future performance of companies. There are generally three potential benefits for companies. First, the most important aspect of engagement may be in connecting with other leading investors across the globe to explain and discuss growth strategies (and invite input). These discussions assist the management in making better decisions and avoiding tunnel vision. Second, a similar focus is on identifying opportunities and getting a better sense of their peers and competitors that often attract the same investors. Third, (pro-)active engagement helps management in identifying expertise gaps on the board of directors and executive teams. It is in this collaborative context that investors and other stakeholders may have the most impact on the ESG strategy of SMEs.

[80] Martina Barbagila et al "Supporting SMEs in Sustainable Strategy Development Post-Covid-19: Challenges and Policy Agenda for the G20" Sep 2020, available at: https://www.g20-insights.org/policy_briefs/supporting-smes-in-sustainable-strategy-development-post-covid-19-challenges-and-policy-agenda-for-the-g20/.

[81] Liang Chen, Tian Yuan, Richard J. Cebula, Wang Shuangjin and Maggie Foley "Fulfilment of ESG Responsibilities and Firm Performance: A Zero-Sum Game or Mutually Beneficial" 2021 Sustainability 13.

7. Impact of Covid-19 on stakeholder capitalism

In predicting the future development of stakeholder capitalism within a national and an international framework, the recent impact of Covid-19 is significant. Is Covid-19 accelerating the acceptance of stakeholder capitalism? It is too soon to say definitively. But it has shone a light on corporations that promote socially desirable values.

Not only is the link between ESG and the performance of a company highlighted during a crisis such as Covid-19, but it is possible to argue that ESG factors are argued to have a "positive effect" on the performance of companies during the Covid-19 pandemic.[82] Post-pandemic challenges to SMEs in particular, include profit shortfalls and the need for liquidity. This situation presents an opportunity to push for new corporate and investment models. The pandemic has also made more people realise that a myopic focus on profits, and financial returns for investors, can hurt companies and society.

In the current crisis, some companies do take the health and welfare of stakeholders very seriously.[83] Investing in younger ESG-focused start-up and scale-up companies, including non-listed companies and SMEs, can prove lucrative. These companies, adopting a more stakeholder-oriented approach, might not yet be profitable but may end up delivering significant financial returns and social value in the future. As highlighted by Covid-19, the financially driven corporate world is losing its appeal. Intelligent investing of the future might address current sustainable development concerns by focusing on corporations that take a more stakeholder-oriented view.

8. Conclusion

It is possible to move towards more sustainable and democratic forms of capitalism. As we see the emergence of new demands for more responsible forms of corporate behaviour an overall shift from shareholder primacy to stakeholder primacy has occurred. The view that the sole purpose of a corporation is to maximise the return for investor-shareholders has been adjusted to make room for considerations of sustainable development. What's more, the new rules ought to

[82] Jana Reijonen "The importance of ESG factors for company performance during the Covid-19 pandemic" Master's thesis, Hanken School of Economics, Helsinki, 2021.
[83] See Kramer, Marc. 2020. 'Coronavirus is Putting Corporate Social Responsibility to the Test.' *Harvard Business Review* April 1, 2020. Available at: https://hbr.org/2020/04/coronavirus-is-putting-corporate-social- responsibility-to-the-test.

apply to all corporations, including SMEs. This chapter explained what we call ‘intelligent investing’, set out the impact of environmental social governance (ESG) on the performance of companies, and discussed the relevance of intelligent investing for SMEs.

In 2013, the Commission of a special agency of the United Nations, UNCITRAL, requested that a working group start work aimed at reducing the obstacles and barriers encountered by “smaller” businesses throughout their life.

The basic idea was that the higher the barriers the more likely it is that new businesses will be forced to operate in the so-called informal economy. Clearly, the informal economy has a number of disadvantages, including a lack of credit, a lack of protection in the event of non-payment, and unsafe working conditions.

UNCITRAL agreed that consideration of the issues relating to the creation of an enabling regulatory environment for smaller businesses should focus on:

1. simplifying business registration and operation
2. offering an efficient system for resolving disputes
3. providing access to financial services
4. ensuring better access to credit.

To encourage businesses to enter the formal economy and help them maximize their economic potential, the working group aimed to identify workable, effective, and low-cost solutions.

So far, so good.

But in thinking about the possible solutions to these issues, the working group has mainly focused on traditional regulatory initiatives. The emphasis is almost exclusively on identifying the “best” legal framework and then providing assistance — or, in UN speak a “legislative guide” or “model law” — to governments and regulators.

There has been little or no discussion (yet) about how ESG strategies and ESG reporting (and ESG dialogue) will offer solutions to the many problems that SMEs face in today’s world – particularly in the area of attracting and retaining investors, employees, and customers.

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