

# GPBL Practice Group ESG

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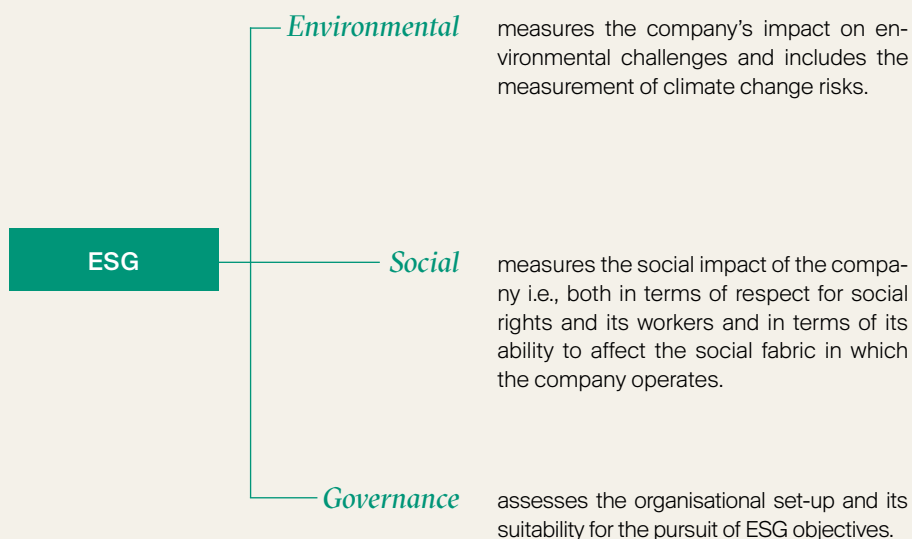
*ESG to create value*



# 01. Introduction

**ESG** or “Environmental, Social and Governance” represents the acronym of the factors that **qualify and measure** corpo-

rate activities based on the parameters of “responsible” investment”. Specifically:



## The centrality of ESG factors

In recent years, the **focus** on sustainability issues has grown exponentially on both the part of public and private **investors** and the **final users**, coinciding with the enactment of a legislative and regulatory framework that imposes - both at the, supranational, European and national level - more stringent disclosure and verification obligations regarding sustainability.

*The transition to “NetZero” is bringing about a wave of regulatory changes with the aim of integrating ESG factors into investment decision-making processes and **facilitating the flow of capital into sustainable economic activities and projects aimed at achieving ESG goals.***

**Regulators** demand information transparency so that the market and market operators are able to understand and assess the ESG impact of their investment decisions and gain trust that products and activities labelled as “sustainable” actually embed sustainable features and pursue sustainable goals.

The **market** demands from companies:

- strategic planning
- Governance structure
- internal control and risk management system;

that take ESG factors into due account.

Even access to capital and debt markets already requires an ESG **assessment**.

**Institutional investors** in turn embrace the principles of **responsible investment**.

A scenario is envisaged in which companies are evaluated by the market, customers, creditors, the corporate population and all stakeholders in terms of **ESG impact**, understood:

- both as the company's impact on ESG factors,
- and the impact of ESG factors **on the company**.

## 02. ESG brings complex challenges for boards

Against this backdrop, it is evident that the corporate governing bodies are increasingly held accountable for the achievement of sustainable development objectives, so that - apart from compliance with

regulatory requirements from which they cannot be disregarded - they will also be held accountable for unsatisfactory strategies and results.

### TAKE AWAYS

- The current legal and regulatory framework is constantly evolving and needs to be constantly monitored.
- Corporate procedures (including compliance, audit, and reporting systems) must be diligently and expertly constructed with ESG in mind.
- Personnel policies, staff and management incentive and remuneration systems must take ESG factors into account.
- Strategic plans and business models, including the composition of capital structure, must integrate ESG factors.
- The governance set-up must take into account not only regulatory requirements, but also the demands and requests of the market and investors, and have regard to the codes of conduct of each market.



# 03. How can we help you?

With a **multi-disciplinary team** able to assist clients active in different business sectors and professionals ready to develop targeted responses, efficient and effective solutions.

Gatti Pavesi Bianchi Ludovici qualifies as an ideal partner to support clients in structuring and implementing ESG projects.

The GPBL team works synergistically and offers assistance in various areas from an ESG perspective.



The firm works alongside its clients to develop **integrated, multidisciplinary** projects with the aim of promoting and

disseminating a **new culture of sustainability within companies, investors and institutions.**



# 04. Implementing ESG solutions to create value and monitoring/mitigating risks

Our professionals offer a specific range of services in the different subject areas

## CORPORATE AND FINANCIAL MARKET LAW

- Advising the administrative and controlling body on possible and new liability profiles introduced by the current and prospective regulatory framework
- Advice on governance structure and adequacy with respect to sustainability objectives (competences and committee structure, delegation system, policies, possible statutory changes) and regulatory requirements
- Sustainability disclosure (regulatory requirements)
- Extraordinary transactions and related decision-making processes, taking into account ESG profiles (financial instrument issues, sustainable IPOs, corporate reorganisations, public offerings)
- Support in managing stakeholder relations
- Strategies with respect to activist campaigns
- Support in managing relations with rating agencies

## SUSTAINABLE FINANCE

- Structuring and implementing bespoke debt and structured finance transactions embedding ESG features
- Drafting, negotiating and finalising “green”, “sustainability-linked” and ESG transition loans
- Green loan guaranteed by Sace S.p.A.
- Bond issues:
  - sustainability linked bonds
  - green bond
  - social bond

## LITIGATION

- Advice on unfair commercial practices and unfair competition in general
- Pre-litigation advice and assistance in litigation (both before courts and in arbitration) in corporate, contractual and non-contractual matters

### Focus - Greenwashing risks

Companies and financial institutions need to be made more and more aware of the importance of ESG factors by the new trend whereby consumer associations and activists are calling for the ESG impact of strategic choices to be taken into account.

Litigation related to ESG issues is developing especially abroad (e.g., the US, the Netherlands and the UK).

In Italy, there are indeed case studies linked mainly to issues of green-washing and class action cases (in general to protect the deceived consumer or the competitor damaged by unfair communication, abuse of slogans, mystification of reality).

A similar development to what is happening in other jurisdictions cannot be excluded in Italy.

Greenwashing can in fact have detrimental consequences not only for consumers (who are no longer able to distinguish which products have a genuinely positive impact on the environment), but also for investors, lenders and stakeholders (who rely on the information contained in sustainability reports or other communications to the public) and also for competitors (who see in the miscommunication an unfair competitive advantage of the competitor), with the resulting exponential increase in green claims.

# 04. Implementing ESG solutions to create value and monitoring/mitigating risks

## FUNDS AND ASSET MANAGEMENT

- Identification and structuring of ESG-related governance and compliance safeguards
- Structuring of carried interest on the basis of ESG parameters

## INTELLECTUAL PROPERTY AND CONSUMER PROTECTION

- Technical and legal support and advice in research and development and technological innovation activities
- Consultancy and assistance in the development of strategies for the protection and exploitation of patents and know-how
- Contractual assistance: in particular: licences, transfer agreements, R&D agreements, joint ownership agreements
- Judicial and extrajudicial assistance in industrial property protection
- Advertising law: preventive analysis and regulatory assistance

## LABOUR LAW: POLICIES AND INCENTIVE PLANS

- Development of policies and incentive plans also linked to the achievement of ESG objectives
- Internal policies and negotiation of agreements with staff, including trade union representatives, on corporate welfare and smart working

### Objectives of Personnel Corporate Policy

Improving productivity, work/life balance and employee well-being through the adoption of a smart working plan in a post-pandemic and normal workflow context.

Improving the level of productivity and participation of individual employees through the implementation of a welfare plan, regardless of the size of the company and the sector in which it operates.

Reducing gender differences within the company through careful statistical mapping of the roles, salaries and career progression of individual employees.

Reducing the environmental costs of reduced travel achieved through the adoption of a smart working plan in a post-pandemic and normal workflow context.

## TAX

- Assistance with tax strategy:
  - definition and formalisation of tax strategy and approach to tax
  - support in the fulfilment of tax compliance requirements
- Tax governance assistance:
  - assessment of the tax risk control
  - assistance in the identification of processes and procedures to support the internal tax risk management control system (Tax Control Framework) and in the on going monitoring of its adequacy and effectiveness
  - assistance in accessing tax compliance tools (APAs, Italian new investments tax rulings)
  - support for joining tax transparency regimes (cooperative compliance, enhanced relationship, tax rulings)
  - analysis of the impact of ESG policies on transfer pricing issues
- Support for the promotion of tax transparency:
  - assistance in the preparation of relevant information required for the filing of Country by Country Report
- analysis for the purpose of reporting requirements on cross-border aggressive tax planning mechanisms (DAC6)
- assistance in the preparation of sustainability reports
- assistance in the preparation of tax transparency reports (for example Total Tax Contribution Report)
- Assistance with environmental taxes and green incentives:
  - assistance in managing environmental taxes and accessing support measures for green investments
  - managing the transfer pricing effects of environmental taxes and green incentives
  - assistance for reporting requirements following the introduction of the Carbon Border Adjustment Mechanism (CBAM)

# 05. Our experts



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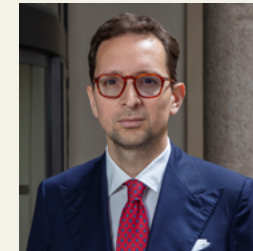
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