

The Legal Perspectives of Green Bond Issuance's Contribution to Sustainable Economic Development

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Abstract

Green bond issuance has presented rapid growth since its launch in 2007. This study provides a multispectral perspective on green bond issuance and its role on sustainable development. A detailed legal framework is employed in order to analyze the viability of green bond issuance as concerns financing programs with environmental and economic benefits. Funding environmentally-friendly projects through bond issuance is analyzed from a legal perspective of economic development. We argue that the legal framework is not preventive towards green bond purchases. Nevertheless, higher efforts for cohesion in the European Union are necessary so that the legal framework could render friendlier towards low-carbon investments. Liquidity injections through green bonds could prove efficient for preserving stability in the global financial system but only in a limited extent and a temporary basis.

Keywords: Green bonds, Sustainable development, Legal framework, Unconventional monetary policy

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1. Introduction

The main purpose of the study is to highlight the qualitative and quantitative value of green bond issuance to sustainable development, from both a legal and an economic perspective. More specifically, with green bonds being conceived as means of bridging developmental and environmental goals, this paper ventures to answer the question if the widely believed conflicting correlation between them really exists or, in fact, development encloses environmental protection. In this context, green bonds are perceived as a possible solution to the speculation about how sustainable development is going to balance two implicitly legislated human rights, which are the right to development and the right to a clean and healthy environment. In light of the above, the qualitative green bonds' significance lies right in the fact that they manage to overcome the traditional contradiction between the two fundamental human rights, which stems from the fact that none of them could be excluded in favour of the other's promotion, since both of them derive from legislative provisions carrying equal legal force.

From a quantitative point of view, green bonds' importance, apart from proving statistically the former assertion, is also traced to their serving as a way of funding sustainable development (Monk and Perkins, 2020; Sartzetakis, 2021), especially in the context of the global financial crisis, where the fiscal stimulus activated as a response to its consequences could perfectly serve as an ideal opportunity to subsidise environmental initiatives (Tienhaara, 2020, p. 199), regarding environmentally friendly policies and infrastructure. On the contrary, the increase of public debt triggers governments' unwillingness to deal with social and ecological matters and along with the deficiency in liquidity that repels central banks' interest in financing "green" ventures, the degradation of social ethics and values that results in divergence from rather than adherence to sustainable development goals, the income increase that broadens the income gap and shrinks the middle class, causing less mass demand for environmental awareness and justice, constitute factors that inhibit green market's growth (Brunnhuber, 2015, pp. 112, 113).

However, though the green bond market, introduced in 2007, when World Bank issued the first green bond to finance projects helping the climate, admittedly, is not

as wide and robust as expected or wished, lately, appears to gain ground, expanding in a rapid manner and in a relentlessly increasing rate, stimulating assumptions related to its future success (Banga, 2019, pp., 18, 21; Suborna and Chiesa, 2019, pp. 1131, 1133; Fatica and Panzica, 2021, p. 1). Nonetheless, the lack of a regulatory or unanimously accepted normative definition of green bonds as well as their deficient and not legally binding legislative framework arise investors' skepticism on disposing part of their fortune on them, since their concept remains unclear and is easily misinterpreted as a simple concern for the environment (Talbot, 2017, pp. 127,134-135).

In cohesion with the above, the primary sense of green bonds can be summarised in their orientation to finance or refinance new or existing eligible green projects, like renewable energy resources, eco-friendly buildings, clean transportation, sustainable land use and waste management, biodiversity and clean water, in compliance with the outline set by Green Bond Principles (GBP) and other similar voluntary standards (Agliardi and Agliardi, 2019, pp. 608-610; Maltais and Nykvist, 2020). Therefore, these financial tools' green feature is rooted in their innate ecological goal they are bound to achieve and this is exactly how green bonds compromise the right to development and the right to environment, enabling their equal, though simultaneous, exercise.

2. The traditional conflict between the right to environment and the right to development: Their equivalent legislation as the main cause

Balancing environmental protection and economic development becomes an absolute necessity, since there is no hierarchical relationship between them but they are equally recognised as fundamental human rights. Precisely, in an international level, an explicit legislative statement of an environmental right is limited⁴ and, under

⁴ See Boyd (2019, pp. 31-32) where is stated that the first explicit recognition of an environmental right dates in 1981, in article 24 of the African Charter on Human and Peoples' Rights. Subsequently, article 11 par. 1 of the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol) provides a right to live in a

the European regulatory framework, is utterly absent, since neither the European Charter of Fundamental Rights⁵ nor the European Convention of Human Rights directly includes an environmental right. However, European Court's of Human Rights jurisprudential approach of environmental protection, indicates that environmental degradation can meet with the infringement on substantial human rights (Mijatović, 2019), like the right to life⁶, to prohibition of inhuman or degrading treatment⁷, to liberty and security⁸, to a fair trial⁹, to private and family life and peaceful enjoyment of home¹⁰, the freedom of expression and to receive and impart information¹¹, the freedom of assembly and association¹² and the protection of property.¹³ Also, the Aarhus Convention of 1998 has been used by European Court of Human Rights to base a right to the environment, primarily, from a procedural point of view, since it ensures the rights on information, participation and access to justice in environmental matters, incorporated both in European environmental and domestic legal order (Verschuuren, 2015, p. 370; Boisson de Chazournes, 2020).

Eventually, despite the absence of a well-rounded legislative framework on a right to the environment, its significance is implied and inferred by the concept of the rest directly acknowledged and legislated human rights. Nevertheless, the United Nations declared that a point has been reached, at which an environmental right cannot be implicitly found on other human rights, therefore it is bound to recognise a

healthy environment. Lately, the Human Rights Declaration of 2012, in its para. 28 (f), introduces a right to a safe clean and sustainable environment.

⁵ See Council of Europe (2012, p. 26) where is stated that the European Charter of Fundamental Rights includes no right to a healthy environment, albeit it could be reasonably asserted that such a right derives from its article 11 on the right of protection of health.

⁶ *Budayeva and others v Russia*, App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, (ECHR, 20 March 2008), *Özel and others v Turkey*, App nos 14350/05, 15245/05 and 16051/05 (ECHR, 17 November 2015).

⁷ *Florea v Romania*, App no 37186/03, (ECHR, 14 September 2010), *Eleftheriadis v Romania*, App no 38427/05 (ECHR, 25 January 2011).

⁸ *Mangouras v Spain*, App no 12050/04, (ECHR, 28 September 2010).

⁹ *Kyrtatos v Greece*, App no 41666/98, (ECHR, 22 May 2003), *Howald Moor v Switzerland*, App nos. 52067/10, 41072/11, (ECHR, 11 March 2014), *Karin Andersson and others v Sweden*, App no 29878/09, (ECHR, 25 September 2014), *Bursa Barosu Başkanlığı and others v Turkey*, App no 25680/05, (ECHR, 19 June 2018).

¹⁰ *Vilnes and others v Norway*, App nos 52806/09, 22703/10, (ECHR, 5 December 2013), *Brincat and others v Malta*, App nos 60908/11, 62110/11, 62129/11, 62312/11, 62338/11, (ECHR, 24 October 2014), *Cordella and others v Italy*, App nos. 54414/13, 54264/15, (ECHR, 24 January 2019).

¹¹ *Vides Aizsardzības Klubs v. Latvia*, App no 57829/00 (ECHR 27 May 2004).

¹² *Costel Popa v Romania*, App no 47558/10, (ECHR, 26 April 2016).

¹³ *Papastavrou and others v Greece*, App no 46372/99, (ECHR, 10 April 2003), *Depalle v France*, App no 964/07 (ECHR, 2 February 2010), *Dimitar Yordanov v Bulgaria*, App no 3401/09, (ECHR, 6 September 2018).

human right to a healthy environment, in favour of those who defend land, forests, water and wildlife, since the perception that human rights and environment were divisible matters has already faded away, as proved by the 16 Framework Principles of Human Rights and the Environment (Watts, 2020). As a consequence, humanity faces the question if an environmental Constitution is needed, with an answer not being easy to be given.

First of all, a Constitution consists a state's supreme law, declaring its national sovereignty and setting restrictions on public power. Although all Constitutions do not share a similar legal status, more often than not, they are divided into two main parts, involving, on the one hand, procedural rules, regarding the establishment of political institutions of a community and determining their mode of function, and, on the other hand, containing provisions for the protection of substantial human rights. Up to the point that globalisation and common economic, environmental and social policies result in limiting authority of states to form and implement domestic environmental protection measures, while international environmental treaties and conventions, to a great extent, carry a non-legally binding feature, international environmental law is about to be in need of an increased legitimacy, in order to face worldwide environmental matters. What is more, international environmental law appears to lack in a joint goal, since it reflects a fragmented manner of function, without a united authority, but only based on independent centers of shaping policies, while enjoying equal legal authority to affect the global environmental crisis, through their actions (Kim and Bosselmann, 2013, pp. 285, 293).

In this context, an international environmental Constitution is of the essence (Bodansky, 2009, 565, 582-583). On the other hand stands the right to development, as stated and recognised through the UN Declaration on the Right to Development and, definitely, endorsed ever since Vienna Declaration and Programme of Action in 1993. In consistency with UN Declaration's article 1 par. 1, three substantial principles are inferred. Firstly, the right is provided as alienable, in that it cannot be taken or bargained away. Secondly, development is conceived as a process, over the course of which human rights and fundamental freedoms can be fully realised. Thirdly, participation in that process of economic, social, cultural and political

development is not only allowed, but also encouraged (Sengupta, 2013, p. 68). Under this specific approach, it is quite prominent that development is conceived as a complete system, capable of serving people's essential needs and deeply attached to a formation of a healthy, just, lucrative, thriving and, eventually, sustainable society. So, clearly, it goes far beyond than measurable economic growth, since it manifests itself in respect of fundamental human rights. As a result, the right to development turns out to be a right to the process of development.

What is more, in light of European law, is not stated an explicit right to development, though the freedom of exercising economic activity is established, regulated and widely admitted. Precisely, the Treaty of Rome, directed to impose a closer cooperation of the contracting parties, so as to promote general economic and social progress as a whole, by eliminating trading and any other borders among them, by bridging social and economic divergence among the interlinked states, by improving working conditions for European citizens and by adopting the United Nations Charter's principles, provides a complex of freedoms, renowned as “four economic freedoms”, that is the free movement of goods, of workers, of capital and of services, composing the notion of freedom of economic activity (Biblitz, 2018, 337-339; Münchau, 2020). Furthermore, those four economic liberties were duly consolidated, under the Treaty of Lisbon. However, the intense controversy, related with the issue whether these freedoms constitute fundamental human rights or not, minding its significant status, cannot be neglected. The argument alleging that the four economic liberties should be treated as essential human rights, is rooted in European Court's of Justice acclaiming them as fundamental freedoms, fundamental principles of the Treaty or fundamental Community provision and in their institutional dimension, though their application sustains restrictions in view of domestic rules and in the place of “internal situations”, thus their fundamental nature becomes doubtful (de Vries, 2013, pp. 169, 175-177).

Additionally, the legal foundation of the liberty of economic activity lies on the basis of the freedom to choose an occupation and the right to engage in work (article 15 of the European Charter of Human Rights), the freedom of enterprise (article 16 of the European Charter of Human Rights) and the right to property (article 17 of the European Charter of Human Rights (Bernitz, Groussot and Schulyok, 2013, p. 281).

The European Charter of Human Rights is the first legally binding document to acknowledge the freedom to conduct a business in the European law, since it is not mentioned as a fundamental right neither in the European Convention of Human Rights nor in the Treaties. However, article 1 of the Protocol 1 to European Convention of Human Rights have been used as inserting a right to economic initiative (Usai, 2013, pp. 1867, 1868). Also, the freedom to conduct a business is, actually, rooted in the Constitutions of a number of Member States. In fact, this freedom has already been jurisprudentially shaped by the European Court of Justice, since early to mid-1970s, based on European Union's common market freedoms, having been existent in Member States' domestic Constitutions for over 150 years (European Union Agency on Fundamental Rights, 2015). Under the wording of Charter's article 16, it is utterly discernible that it is composed of three discrete rights, precisely the freedom to exercise economic or commercial activity, the freedom of contract and the right to free competition (Bernitz, Grousot and Schulyok, 2013, p. 281).

As a conclusion, the natural and cultural environment appears to inhibit and set boundaries to human economic progress. In practice, environment and economy seem to be goods counteracting, limiting one the implementation of the other. It is a result deriving from the fact that both environmental protection and economic development are associated with the roots of human rights law, being equally valuable. This is the reason why disputes arising from the contradiction between them constitute a common phenomenon, when it comes to jurisprudence. Practically, they tend to be resolved through an ad hoc judicial balancing procedure, in the context of proportionality principle, which results in a judgment whether environment or economy should prevail (de Vries, 2013, 172). This traditional and conventional dispute resolution method ends up restricting the exercise of the one right in favour of the others. During this process, sustainable development plays a dual role, serving as both an additional weighing criterion and as a goal itself.

3. Defining development as sustainable. A verbal redundancy?

A. Distinction between growth and development

Given the features that transform growth into development, the main speculation of this section lies in the question if the adjective “sustainable” carries any semantic value, adding something special to the innate and predetermined content of development. To be more precise, both the concept of growth and that of development encase the economic factor, though from a different point of view. The former constitutes a totally quantitative size regarding the increase in aggregate output, hence focusing merely on the macroeconomic level and on the maintenance of full employment job positions, whereas the latter carries a qualitative nature, getting more interested in the microeconomic sector, expanding to cover multiple aspects that affect human prosperity: involving human rights, social capital and its mobility, equal wealth and income distribution, innovation and technology (Petrakis, 2020, p. 38).

The above development is defined as the process that aims at the advancement of society and quality of human life, through the utilisation of individuals’, firms’ and communities’ potentials, taking advantage of innovative and technological achievements, based on an institutional framework directed to strengthen both the public and the private sector (Feldman et al., 2015, 6-15).

B. Interpreting sustainable development

As far as sustainable development is concerned, terminology appears to be an issue, because of variable parameters. A first cause lies in the overlap between sustainability and sustainable development. In spite of the fact that they are both referred to as having, approximately, the same meaning, there is a crucial semantic difference between them, which depends either on the option of promoting, exclusively, environmental protection or on the option of highlighting a flourishing economy and resilient urbanisation within a viable natural and cultural habitat. In the first case, it is all about sustainability, whereas, in the second case, sustainable development gains ground.

On the one hand, environmental-oriented perception, reflecting the conception of sustainability, sets as a main interest the balance of the ecosystems and the respect of environmental elements, which are urgent for the survival of the present and future generations and it can be defined as the maintenance of important environmental functions, and, thus, the maintenance of the capacity of the capital stock to provide those functions (Ekins, 2011, pp. 629, 637). Consequently, sustainability can be summarised, under the idea of justice (Bosselmann, 2016, p. 8-9), in the maintenance or increase of life, so any factor which is conducive to a loss of biodiversity or to species' extinction, or to natural resources' depletion or to environmental degradation in general means that sustainability is lost (Bolwell, 2019, p. 10). In this context, sustainable, usually, gets to be interlinked with "green" or eco-friendly policies, which is a tendency that does not respond to reality, since, in fact, sustainable is related with a positivity to change for the sake of a common environmental, economic and social good (Clark et al., 2017, p. 15).

As a result, this is the point where, sustainable development, in light of a human-oriented theory, is considered to confound with sustainability. A development featured as sustainable sets as a priority the promotion of human life's quality and the encouragement of pursuing economic interests, as this particular concern was encompassed in the term's three pillars, emerging from Brutland's definition, that is the environmental, the economic and the social ones. Although these three dimensions are not binding, since additional pillars, such as institutional, cultural or technical are supported (Liu, 2009, pp. 1412, 1415), the basic conflict lies in the question if they must be regarded as different aspects of sustainable development, in that social, environmental and economic sustainability, should be integrated in the direction of making development sustainable (Goodland, 1995, pp. 1, 4), or if they are entirely independent sectors, aiming at their own goals, with their interactions managed to meet these goals and the goal of sustainable development, as well (Purvis, Mao and Robinson, 2019, pp. 681, 689 – 690). In the first perspective, sustainability is conceived as a means of achieving sustainable development, as the lesser part that seeks for the total.

One more notice that should be made has to do with sustainable development's vague scope, which makes it susceptible to interdisciplinary interpretation, along with the controversial nature of Brundtland's definition (Caladona, 2014, p. 7). The latter was fiercely criticised for its failure to determine which are these needs that should be met, in view of sustainable development. Is it only about basic needs, such as food, water, shelter and clothing (Sands, Peel and MacKenzie, 2017, p. 10), or does it go far beyond than these, since people's essential needs tend to be differentiated, depending on various factors, like the degree of one country's or even region's development or a person's or family's standards of everyday life, like income, cars or travelling (Liu, 2009, p. 1414). Additionally, it does not state who or what should be developed, thus it is accused of confounding development with growth (Purvis, Mao and Robinson, 2019, p. 691). Also, it is not specified whose needs should be met and whose future welfare is in jeopardy. As a result, the broad of sustainable development seems to be expanded to cover the prosperity of people and species unknown for the time being. However, Brundtland's definition turned out to be all time classic, since it is scientifically approved and adopted until today as the prevalent and most accurate illustration of sustainable development, apparently, thanks to its flexibility and its capacity to adjust to the recent and rapidly changing economic, environmental, social and political circumstances.

C. A verbal redundancy?

In this context, the concept of development embeds the economic and social dimension, diverging from quantity and adhering to quality. Consequently, taking into consideration Brundtland's definition of sustainable development and its pillarisation, emerges the question if featuring development as sustainable adds something more to its inherent nature. Is it only the fact that sustainable development inserts the environmental dimension within the economic and social complex or is it something that goes beyond than this? And is environmental factor reasonably an autonomous pillar of sustainable development or environmental protection should be subcategorised as a social policy interrelated to the sector of fundamental human rights and to the goal of a viable, prosperous and equally wealthy society?

The disagreement between the offenders of a sustainable development's three-legged approach and the proponents of a sustainable development's two-dimension perception couldn't be ignored (Morelli, 2011, pp. 1, 2). In the second argument, the economic pillar, merely, addresses to social welfare and environmental health, rather than to economic growth, regardless of social impacts and decouple of natural capital (Purvis, Mao and Robinson, 2019, p. 690). In fact, this particular conception appears to divert from the context of economic growth, which implies a more quantitative expansion and to be closer to the general notion of development, enclosing a qualitative content (Goodland 1995, p. 9) and bringing in the center of attention a more holistic approach of human prosperity, hence ensuring a viable environment, providing all the necessary livelihoods and a socially lucrative community, focused on safeguarding ecological justice, access to and fair distribution of natural resources, poverty reduction, a rational spatial planning, the quality of living conditions and the assimilation of the environment's significance for people's survival (Peeters, 2012, pp. 287, 295). In this angle, the concept of sustainable welfare emerges, in an effort for social well-being for all people on the planet along with respect to ecological boundaries to be guaranteed (Khan, Hidingsson and Garting, 2020, pp. 383, 385).

Finally, since development itself is considered to pose and pursuit goals associated with viable societies, for what reason is the term sustainable needed to identify it as such? In light of the above, either such dispute is superficial or growth's transformation into development is yet to be accomplished.

4. Green bonds' role in mitigating the contradiction between environment and economy under sustainable development

Returning to the innate sense of development as a process of integrating quantitative economic growth and substantial human rights, from which an environmental right can be deduced, undeniably, skepticism in regard with the conflict between economic development and environmental protection, emerges. What is more, under Brutland's definition of sustainable development a compromise between economy and environment is ventured, up to the extent of eliminating the

traditional contradiction between them and merging environmental and developmental goals, in the context of policy-making, aiming at the equitable enjoyment of food, water, natural resources, economic prosperity and redirection of technology (Sands, Peel and MacKenzie, 2017, p. 10). As a result, on condition that natural capital is determined as interrelated with human prosperity and the enjoyment of human rights and, at the same time, economic development, inherently, aims at a socially flourishing and financially lucrative community where robust institutions that promote economic growth operate in practice,¹⁴ is there actually a controversy?

However, whether a conflict between environment and economy becomes finally accepted or its eradication under the concept of sustainable development is supported, green bonds' contribution to both their co-existence and sustainable development goal's achievement couldn't be questioned. Green bonds constitute a new financial tool of funding green growth through green investments and, though their semantic content is yet to be fully defined, they are profoundly interlinked with the subsidisation of the economy's sustainability, while conserving natural resources for future generations (Pham, 2016, pp. 264, 266; Quirici, 2020, pp. 180-181). Even though there are no certain conclusions as to what extent they affect and encourage the flourishing of the green economy, due to the fact that they recently got to be considered as one of the green growth funding methods, according to the data that are available until today, assessments and further predictions about their potential to add to the economy's sustainability can be made (Draksaite, Kazlauskiene and Melnik, 2018, pp. 222-223, 225).

First of all, a significant parameter that determines green bonds' contribution to sustainable economy is attached to their ability to attract investors. In this angle, the prestige of green investments is surely an incentive, though not the primary one, for the former to deposit a part of their capital on investing green. In the same vein, issuing green bonds and undertaking green projects can boost companies' profile as environmental friendly (Sheng, Zheng and Zhong, 2021). However, issuing green bonds may turn out to be more expensive than issuing conventional bonds, since issuers have to manage green bond proceeds separately and carry out regular

¹⁴ See among many others, North (1990), Acemoglu and Robinson (2013), Georgiou, Kyriazis and Economou (2015) and Economou and Kyriazis (2019) on this.

reports, while investors appear to be cautious when it comes to a green bond investment, in case the latter turn out to be not green (Hyun, Park and Tian, 2020).

Furthermore, investments on green bonds are accompanied by advantages in light of taxation, in that the green bond holder benefits from an income tax exemption for the amount of money invested on a green bond, while the green bond issuer is rid of the obligation to pay interests for the green bonds issued (Trompeter, 2017, p. 4). Additionally, the profit for the investor, in case of selling a green bond he holds, could be five or six times the initial issuance, because of the increased demand for green bonds in conjunction with their limited number in the bond market, thereby they are easily sold but difficultly bought (Wang, 2018, pp. 467, 471-472). Thirdly, thanks to their similarity to conventional bonds, portions of green bonds can be exchanged with them, having negligible impact on investor's assets.

Finally, as for green bonds' liability, in comparison with conventional bonds, they are more transparent, when it comes to the way in which proceedings are invested, so that the risks can be better assessed (Demary and Neligan, 2018), albeit their transparency tends to be controversial, since its value gets diminished by the absence of standard green bond regulation, preventing their investor's confidence on their validity, especially when issued by the private sector (Deschryver and de Mariz, 2020, pp. 61, 66-67; Hyun, Park and Tian, 2019, pp. 128-129, 132). Consequently, legislative action is needed, since Green Bond Principles (GBP) and Climate Bond Standards (CBS), as non-binding and featured as guidelines, remaining imperfect, are not empowered enough to strengthen green bonds' reliability (Banahan, 2019, pp. 841, 859-861).

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