ENABLING COMPANY BOARDS TO CREATE SUSTAINABLE COMPANIES: THE CONNECTION BETWEEN SUSTAINABILITY, COMPANY LEADERSHIP AND LAW

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1. INTRODUCTION TO SUSTAINABILITY AND COMPANY LEADERSHIP

1.1. Law to Support Company Leaders for Sustainability

Sustainability is increasingly advocated for and recognised as a business mega-trend that companies can no longer ignore.[1] In a similar manner to Information Technology (IT), globalisation and the quality movement,[2] sustainability requires companies to transform their business in order to ensure their long-term viability in a rapidly changing social and environmental context.[3] Peter Bakker, the president of the World Business Council for Sustainable Development (WBCSD),[4] mentions:

> At WBCSD, we have been making a concerted effort to ensure that each of these companies is on the same page with respect to the SDGs, so that their initiatives across sustainable development are significant, relevant and meaningful.[5]

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1 T.E. Lambooy, 'Leadership, Entrepreneurship and Stewardship in Corporate Law' (Inaugural lecture at the occasion of accepting the position as a professor of Corporate Law at the Nyenrode Business University on 21 September 2016) [Lambooy 2016] <www.nyenrode.nl/FacultyResearch/research/Documents/Inaugural%20lectures/Tineke_Lambooy_Inaugural_Lecture.pdf> accessed 29 June 2018; B. Sjåfjell and B.J. Richardson, *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015); Sustainable Development Goals Advocates, 2016; A. Wijkman and J. Rockström, *Bankrupting nature: denying our planetary boundaries* (Taylor and Francis 2013).

2 R.E. Cole and W.R. Scott, *The quality movement & organization theory* (Sage 2000).

3 P.M. Senge, *The necessary revolution: How individuals and organizations are working together to create a sustainable world* (Doubleday 2008); D.A. Lubin and D.C. Esty, 'The sustainability imperative' [2010] 88 Harvard Business Review 5, 42-50.

4 The World Business Council for Sustainable Development (WBCSD) is a membership organisation, which comprises over 200 company members and among them the largest multinationals in the world.

5 P. Bakker, 'The SDGs, one year in: Where do we stand?' (25 September 2016) <www.wbcsd.org/Overview/News-Insights/Insights-from-the-President/The-SDGs-one-year-in-Where-do-we-stand> accessed 27 March 2018. See information concerning the Global Reporting Initiative (GRI) at GRI <www.globalreporting.org/Pages/default.aspx> accessed 23 July 2018. See also the Sustainable Development Goals (SDG) Compass: A Guide for Business Action to Advance the Sustainable Development Goals, 'Home' <https://sdgcompass.org/> accessed 23 July 2018. See concerning the Sustainable Development Goals in the UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015, A/RES/70/1) <www.refworld.org/docid/57b6e3e44.html> accessed 23 July 2018.

In order to respond adequately to global and local sustainability challenges, company boards need to proactively put sustainability onto the agenda and to integrate it into their strategic decision-making. In doing so, they may find themselves at odds with the viewpoint[6] that company boards' prime responsibility is to maximise shareholder value, which takes precedence over taking responsibility for seemingly distant stakeholders (in both time and place), such as climate change, nature and future generations. From this viewpoint there is an inherent conflict between maximising shareholder value and creating shared value.[7] We also point at the stakeholder theory, according to which the company's purpose is to generate value for all stakeholders, including nature and communities.[8] Among business practitioners, the view of maximising shareholder value is still commonly adhered to, often because of assumed principles of law, such as the Anglo-Saxon concept of the board's fiduciary responsibility toward shareholders.[9] The challenge of sustainability requires these views to be adjusted in favour of the stakeholder theory with the support of legal arguments and instruments.

In fact, a growing number of company boards have recognised sustainability as an inevitable trend and have taken measures to adopt business strategy toward the creation of sustainable stakeholder value.[10] Unilever is an example of this type of company. In Unilever's strategy for growth, sustainability is embedded and explicitly manifested.[11] With the exception of 'single-issue companies' that might be entirely dedicated to one sustainability issue – such as social enterprises[12] – for the majority of companies the

6 M.E. Porter and M.R. Kramer, 'Creating Shared Value' [2011] 89 Harvard Business Review 1-2, 62-77.

7 Ibid.

8 The stakeholder theory is also embedded in Dutch Corporate Law. See on this topic the doctoral dissertation of B. Kemp, *Aandeelhoudersverantwoordelijkheid: De Positie en Rol van de Aandeelhouder en Aandeelhoudersvergadering* (Deventer: Kluwer Juridische Uitgevers 2015) 84-86.

9 B. Sjåfjell, A. Johnston, L. Anker-Sørensen and D. Millon, 'Shareholder primacy: The main barrier to sustainable companies', in B. Sjåfjell and B. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015) 79-147. See also on this topic: T. Lambooy, K. Maas, S. Foort and R. van Tilburg, 'Biodiversity and natural capital: investor influence on company reporting and performance' [2018] 8 Journal of Sustainable Finance & Investment 2, 158-184 [Lambooy et al. 2018].

10 Porter and Kramer 2011; R.G. Eccles, M.P. Krzus and G. Serafeim, 'Market Interest in Nonfinancial Information' [2011] 23 Journal of Applied Corporate Finance 4, 113-127; C. Laszlo and N. Zhexembayeva, *Embedded sustainability: The next big competitive advantage* (Stanford Business Books 2011).

11 Unilever, 'Our strategy for sustainable business <www.unilever.com/sustainable-living/our-strategy/> accessed 27 March 2018.

12 T.E. Lambooy and A. Argyrou, 'Improving the legal environment for social entrepreneurship' [2014] 11 European Company Law 2, 71-76; A. Argyrou, T. Lambooy, R.J. Blomme, H. Kievit, G. Kruseman and D.H. Siccama, 'An empirical investigation of supportive legal frameworks for social enterprises in Belgium: A cross-sectoral comparison of case studies for social enterprises from the social housing, finance

process of addressing sustainability as a business challenge is a process of stages involving increasing degrees of motivation of the board and senior management.[13] The research in this article reveals that both company leadership and law can play an important role in the system change urgently needed in society to address the worldwide and local sustainability challenges as identified, among others, by the UN Sustainable Development Goals (SDGs), i.e. a universal declaration of the need for action towards the end of poverty, the protection of the planet and peace.[14] Leadership and law both influence the decisions that company boards take. Company boards are very important for the system change as they have the ability to move their companies through the stages towards sustainability, and to adapt the strategy of the company in accordance with the latest scope of implementing sustainability. The models of Van Marrewijk and Werre,[15] Baumgartner and Ebner[16] and Van Tulder et al.[17] are particularly helpful in that they display the role of various incentives (such as law, for instance) in moving from one stage to the next.

Accordingly, a triggering event – for example pressure from consumer groups or Non-Governmental Organisations (NGOs) – demanding compliance to minimum legal and ethical standards may force companies to move towards sustainability. Leaders may start putting sustainability on the business agenda to please external stakeholders.[18] The motivation behind these actions is often rather defensive. External pressures and reputational concerns drive this change. Only when companies develop a comprehensive

and energy sector perspective', in V. Mauerhofer (ed), *Legal Aspects of Sustainable Development: horizontal and sectorial policy issues* (Springer International Publishing 2016) 151-185 [Argyrou et al. 2016a]; A. Argyrou, T. Lambooy, R.J. Blomme and H. Kievit, 'An understanding how social enterprises can benefit from supportive legal frameworks: a case study report on social entrepreneurial models in Greece' [2016] 16 International Journal of Business and Globalisation 4, 491-511 [Argyrou et al. 2016b]; A. Argyrou, T. Lambooy, R.J. Blomme and H. Kievit, 'Unravelling the participation of stakeholders in the governance models of social enterprises in Greece' [2017] 17 Corporate Governance: The international journal of business in society 4, 661-677 [Argyrou et al. 2017]; A. Argyrou, *Social enterprises in the EU: Law promoting stakeholder participation in social enterprises* (Wolters Kluwer 2018) [Argyrou 2018].

13 B.K. Googins, P.H. Mirvis and S.A. Rochlin, *Beyond "good company": Next generation corporate citizenship* (Palgrave Macmillan 2007); M. Van Marrewijk and M. Werre, 'Multiple Levels of Corporate Sustainability' [2003] 44 Journal of Business Ethics 2-3, 107-119; M. Van Marrewijk, 'Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion' [2003] 44 Journal of Business Ethics 2-3, 95-105; R.J. Baumgartner and D. Ebner, 'Corporate sustainability strategies: sustainability profiles and maturity levels' [2010] 18 Sustainable Development 2, 76-89.

14 See supra UN General Assembly A/RES/70/1. See also the United Nations Development Programme (UNDP), 'SDGs' <www.undp.org/content/undp/en/home/sustainable-development-goals.html> accessed 24 July 2018.

15 Van Marrewijk and Werre 2003, 112.

16 Baumgartner and Ebner 2010, 84-85.

17 R. van Tulder, R. van Tilburg, M. Francken and A. de Rosa, *Managing the Transitions to Sustainable Enterprise; Lessons from Frontrunner Companies* (Earthscan/Routledge 2014).

18 Van Marrewijk 2003; Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010.

Corporate Social Responsibility (CSR)[19] strategy do they move their organisation forward towards sustainability. They thereby often involve some sort of community outreach and engage their employees in CSR efforts.[20] Here company boards will have left the narrow view of maximising shareholder value, taking on a broader and far-reaching perspective on creating stakeholder value while achieving a high degree of internal alignment around sustainability.[21] Companies may also adopt a proactive attitude towards sustainability and start to see the sustainability-challenge as an opportunity to bring the organisation to a higher level of social, environmental and financial performance.[22] For instance, by taking proactive steps in developing a proactive corporate human rights policy when doing business in failed states and conflict zones[23] or by proactively developing a sustainable water policy to reduce related risks with water shortages.[24] At the proactive stage, sustainability has become a business-critical issue that features firmly on the business agenda and is embedded within the organisation.[25]

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19 We regard CSR as the business contribution towards society's transition to sustainability. See in T.E. Lambooy, *Corporate Social Responsibility: Legal and semi-legal frameworks supporting CSR developments 2000-2010 and cases studies* (Kluwer 2010) [Lambooy 2010a]. Our understanding also aspires to the EU definition of CSR as "the responsibility of enterprises for their impacts on society". See in the European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011-14 for Corporate Social Responsibility', COM/2011/0681 final.

20 T.E. Lambooy, 'A Model Code on Co-determination and CSR – The Netherlands: A Bottom-Up Approach' [2011] 8 European Company Law 2/3, 74-82 [Lambooy 2011a].

21 We regard stakeholder value creation as the companies' activities to enhance the value of all stakeholders in the dimensions of society, environment and economy. See R.E. Freeman and D.L. Reed, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' [1983] 25 California Management Review 3, 88-106. See Porter and Kramer 2011; see also Van Marrewijk 2003; Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010.

22 Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010; Van Tulder et al (2014).

23 UN Human Rights Council, 'Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie' (7 April 2008, A/HRC/8/5); Lambooy 2010a; T.E. Lambooy, 'Corporate due diligence as a tool to respect human rights' [2010] 26 Netherlands Quarterly of Human Rights 3, 404-448 [Lambooy 2010b]; T.E. Lambooy, A. Argyrou and M. Varner, 'An analysis and practical application of the Guiding Principles on providing remedies with special reference to case studies related to oil companies', in S. Deva and D. Bilchitz (eds), *Human Rights Obligations of Business Beyond the Corporate Responsibility to Respect?* (Cambridge University Press 2015) [Lambooy et al. 2015]. See supra the Guiding Principles on Business and Human Rights.

24 T.E. Lambooy, 'Corporate social responsibility: sustainable water use' [2011] 19 Journal of Cleaner Production 8, 852-866 [Lambooy 2011b].

25 Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010; C. Laszlo, *Encyclopedia of sustainability: Volume 2* (Great Barrington 2010). This is also the message shared by the Task Force on Climate-related Financial Disclosures (TCFD), established by the Financial Stability Board, which launched a report suggesting innovative methods for reporting on probable future developments related to climate change in 2016. The recommendations were affirmed in a final report published in 2017. See TCFD, 'Final Report, Recommendations of the Task Force on Climate-related Financial Disclosures' (15 June 2017) <www.fsb-tcfd.org/wp-content/uploads/2017/06/FINAL-TCFD-Report-062817.pdf> accessed 12 July 2018.

Companies will then be intrinsically motivated and proactively work with stakeholders on aligning business and sustainability objectives. Sustainability should then be embedded into the business purpose and strategy, and be accordingly transposed into all parts of the business.[26]

The gradual transition that brings tangible benefits for the company, the employees, clients and other stakeholders, does not happen automatically. At each stage, the board and senior leadership will need to adopt new mind-sets, policies and programmes, and stimulate internally the employees' attitudes toward sustainability, gradually expanding their scope and sense of responsibility. Overcoming these barriers between the stages can be regarded as 'tipping points' for change. Barriers can be overcome by positive and negative value drivers, which serve as 'carrots and sticks', whilst there is always a mixture of internal and external dynamics.[27] In any event, these tipping points require leadership from the board of these companies. Legal instruments and other external incentives play an important role in supporting leadership on this journey. That happens especially in the first stages, i.e. at the 'beginning' or at a 'compliance driven' level when a company may tend to adhere to the limited doctrine of maximising shareholder value at the exclusion of wider stakeholder concerns.[28] This article will explore to what degree the law (and specifically one legal instrument, i.e. the company purpose) can help boards in taking steps towards designing their company as a sustainable company. Accordingly, the following research question will be responded in this article: While the law (legal framework) is sometimes used by leaders as an excuse for not being able to strive for sustainability, how can the law be used to support company leaders to achieve sustainability?

1.2. Key Concepts: Sustainability, Company Leadership and Law

Regarding the concept of sustainability, we adhere to the environmental perspective as explained by Rockström et al. in their seminal work concerning the 'planetary boundaries'.[29] This goes hand in hand with social considerations concerning providing better human conditions (the 'social

26 D. Grayson and N. Exter, *Cranfield on corporate sustainability* (Greenleaf Pub 2012); Van Marrewijk 2003; Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010.

27 Van Marrewijk 2003; Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010.

28 Van Marrewijk 2003; Van Marrewijk and Werre 2003; Baumgartner and Ebner 2010.

29 J.W. Rockström, K. Steffen Noone, Å. Persson, F.S. Chapin, E. Lambin, T.M. Lenton, M. Scheffer, C. Folke, H. Schellnhuber, B. Nykvist, C.A. De Wit, T. Hughes, S. van der Leeuw, H. Rodhe, S. Sörlin, P.K. Snyder, R. Costanza, U. Svedin, M. Falkenmark, L. Karlberg, R.W. Corell, V.J. Fabry, J. Hansen, B. Walker, D. Liverman, K. Richardson, P. Crutzen, and J. Foley, 'Planetary boundaries: exploring the safe operating space for humanity' [2009] 14 Ecology and Society 2, 32; W. Steffen, K. Richardson, J. Rockström, S.E. Cornell, I. Fetzer, E. Bennett, R. Biggs and W. Vries, 'Planetary boundaries: guiding human development on a changing planet' [2015] 347 Science 6223, 736-747; Sustainable Market Actors for Responsible Trade (SMART) < www.smart.uio.no/> accessed 29 June 2018.

foundation'[30]) as explained by Kate Raworth and set out in the UN Global Compact norms,[31] the OECD Guidelines for Multinational Enterprises[32] and the SDGs explained above among others. In this article particularly, we build on the concepts of the 'planetary boundaries' and the 'social foundation' as outlined in the EU Sustainable Market Actors for Responsible Trade (SMART) Horizon 2020 Research project on coherence of policy for development.[33] In terms of leadership, in this study, we consider the members of the management boards and supervisory boards of companies as well as their various names across jurisdictions as the relevant group of people because they hold the legal right to make decisions on behalf of the company, or as the case may be, the group of companies. If an enterprise comprises a group of companies, the board of the ultimate parent company usually sets the strategy for the group and has the legal right to instruct the boards of the subsidiaries. Hence, company boards are legally entitled to exercise leadership. In addition, we do not consider the ethical and/or psychological approach of leadership but we limit ourselves to an understanding how leadership by corporate boards works in law and in practice.[34]

With regards to the law, in this article, we consider company law and corporate governance as the most relevant legal instruments that direct company boards in their decision-making. Company boards' decisions can have a wide impact, especially in case of multinational companies. In the latter situation, the decisions made by the board of the ultimate parent company affect all divisions and suppliers in the multiple countries, in which the corporate group is operating and sourcing, respectively.[35]

1.3. Reading Guide

In Section 2, we explain in detail the method used for the development of this review. Section 3 displays the outcome of a literature review

[30] K. Raworth, 'Why it's time for Doughnut Economics' [2018] 24 Ippr Progressive Review 3, 216-222. K. Raworth, *Doughnut economics: Seven ways to think like a 21st century economist* (Chelsea Green Publishing 2017).

[31] See the United Nations Global Compact, 'Home' <www.unglobalcompact.org/> accessed 24 July 2018.

[32] Organisation for Economic Co-operation and Development, 'OECD Guidelines for Multinational Enterprises' (Paris: OECD Publishing 2011) <www.oecd.org/corporate/mne/> accessed 26 March 2018.

[33] See supra SMART <www.smart.uio.no/> accessed 29 June 2018.

[34] We delimit our research against top management and we limit ourselves to the company boards because company laws generally across jurisdictions contain specific descriptions of the tasks of company boards but not of various layers of management. T.E. Lambooy and J. Stamenkova van Rumpt, 'Can Corporate Law on Groups Assist Groups to Effectively Address Climate Change? A Cross-Jurisdictional Analysis of Barriers and Useful Domestic Corporate Law Approaches Concerning Group Identification and Managing a Common Climate Change Policy' [2014] 2 The Dovenschmidt Quarterly 3, 76-101.

[35] Ibid.

concerning sustainability, company leadership, and law and their intersection. Section 4 provides an analysis concerning identified challenges in reality towards sustainability and company leadership, and the solutions that law can provide in that respect. Accordingly, Section 5 discusses the role that the legal concept of company purpose across jurisdictions can play to support company boards to put sustainability on the agenda. Conclusions are presented in Section 6.

2. METHODOLOGY

This article assesses existing studies regarding sustainability, company leadership, and law. Our study is a follow-up study inspired, designed and implemented on the basis of an empirical study (applying a qualitative methodology) conducted by Norwegian scholars as part of an interdisciplinary and international research project in 2010-2014, namely the 'Sustainable Companies Project', which was coordinated by the University of Oslo.[36] With our research, we also aim to contribute to the theoretical part of the SMART EU Horizon 2020 Research project on policy coherence for development mentioned above.[37]

This article provides a systemic literature review[38] of 115 published mostly empirical peer-reviewed studies examining the topics of sustainability, company leadership, and law. In the collection of articles, certain limitations and criteria were applied. All the collected studies concerned mostly empirical studies published in peer-reviewed journals from 2007 onwards (11 years) that were accessible and published in the English language. In these collected studies, the term 'sustainability' is predominantly used to indicate the environmental and social dimensions.

Accordingly, the following search engines were used: EBSCO, Scopus, HeinOnline, JSTOR, Google scholar, SSRN, Microsoft Academic Engine. The keywords used for the identification of the collected articles included:

36 See the 'Sustainable Companies Project' at <www.jus.uio.no/ifp/english/research/projects/sustainable-companies/> accessed 27 March 2018.

37 SMART has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 693642. The contents of this article are the sole responsibility of the authors and do not necessarily reflect the views of the European Union. SMART, <https://cordis.europa.eu/project/rcn/200116_en.html> and <www.smart.uio.no/> accessed 17 July 2018.

38 D. Tranfield, D. Denyer and P. Smart, 'Towards a methodology for developing evidence-informed management knowledge by means of systematic review' [2003] 14 British Journal of Management 3, 207-222; M.M. Crossan and M. Apaydin, 'A Multi-Dimensional Framework of Organizational Innovation: A Systematic Review of the Literature' [2010] 47 Journal of Management Studies 6, 1154-1191; G. Apostolakis, G. van Dijk and P. Drakos, 'Microinsurance performance – a systematic narrative literature review' [2015] 15 Corporate Governance 1, 146-170.

company leadership; sustainability (mainly social and planetary aspects); climate change; company decision-making; corporate decision-making; corporate leadership; company leadership, corporate governance; company interest; shareholder interest; soft company law; personal drivers, orientation; company board; corporate board and CEOs; although this article focuses only on company boards and their equivalent terms in other jurisdictions. The identified empirical studies were classified in a database,[39] i.e. a temporary virtual space to accommodate all the collected articles based on the criteria mentioned above.[40]

Complementarily, 13 interviews[41] were conducted with academic experts from different disciplines[42] to explore the conceptual link between sustainability, company leadership, and law. The expert interviews also assisted in the identification and collection of further empirical studies concerning sustainability, company leadership, and law developed in research from various and different disciplines. The questionnaire used for the interviews was semi-structured and comprised questions such as 'Is there empirical research in your knowledge field that is related to sustainability, law and company leadership?' and 'Would you be able to mention some key authors related to company leadership, law and sustainability?'. The content of each interview was captured and distilled into an interview report. The interview reports were returned to the interviewees for validation and approval. Subsequently, the applied methodology comprised the development of a matrix[43] (Table 1), which included coded information retrieved from the interviews regarding the topics of company leadership, sustainability and law.[44] The interview data in the matrix were sorted, categorised and classified vertically on the basis of three *verbatim (in vivo)* codes,[45] primarily: sustainability, company leadership, and law, and horizontally on the basis of five thematic categories identified in literature (Table 1):

39 The list of articles contained in the database can be retrieved from the website of the International and Comparative Corporate Law Journal <www.jus.uio.no/english/research/areas/companies/iccl-journal/> accessed 10 September 2018.

40 In the database, the collected articles were categorised based on: author, title of publication, abstract, keywords, research method employed, region and framework. The collected articles were further classified into the six thematic categories based on their content, research question and discipline.

41 J.W. Creswell, *Qualitative inquiry and research design: Choosing among five traditions* (Thousand Oaks 2007); J.M. Corbin and A.L. Strauss, *Basics of qualitative research: Techniques and procedures for developing grounded theory* (Sage 2015).

42 The interviewed experts were from both Nyenrode Business University and Oslo University from the disciplines of: Governance, Law, Business Administration, Strategy, Sociology, Economics, Leadership, Institutional Investment, Management, Accounting and Business Ethics. A large majority of the interviewees was appointed professors at the time of the interviews.

43 M.B. Miles and A.M. Huberman, *Qualitative data analysis: An expanded sourcebook* (Sage 1994).

44 J. Saldana, *The coding manual for qualitative researchers* (Sage 2009).

45 Ibid at 74: 'In vivo' is the standard term used in qualitative researcher to express a code which is a "word or short phrase from the actual language found in the qualitative data record".

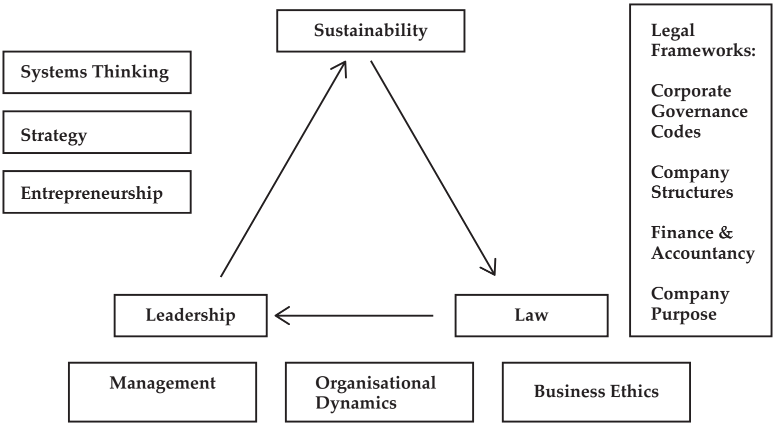
Table 1. Interview Matrix

Disciplines	Corporate governance	Organisational dynamics	Leadership and Management	Business ethics	Strategic decision-making
Sustainability	Financial sustainability equals with long-term profits with an emphasis on non-financial risk analysis.	Sustainability is expressed in people's activities within an organisation. It is about a participatory dialogue of stakeholders to improve the climate of an organisation.	Sustainability is a process, which creates value and it has a transformational character -Sustainable Transformational Process.	Sustainable leadership exists only in leaders with a young heart of a Child. Old generations should invest in young leaders to keep their Child-system alive. Without a living Child-system people are becoming old and old-fashioned, a resistance for a creative and motivating leadership. By investing their Child system in young people, old generations create an innovating creativity, the basis for sustainability.	Sustainability is part of companies' DNA. It is in the basic functions of the role of the company. Is expressed through well-organised strategy with a long-term view and through fair balance between stakeholders' interest with the company.
Company Leadership	Leadership and how it could be valued when women are on board.	Shared, emancipator, egalitarian leadership, which is characterised by the involvement of people from the bottom too, i.e. not only from the top.	Sustainable Leadership is a shift towards positive thinking. It is a long-term approach on how to translate your part in the future.	Spirituality in leadership is about Transcending High Goals meaning spirit and personality, in order to be connected. It means contribution to the bottom line, development and connection with the people. The most important factor in leadership is the focus on the well-being of an enterprise by providing possibilities (individual well-being) or values.	Leadership is expressed through value creation towards an efficient business model. What makes a company successful is a healthy future with long-term profits which results form a healthy business policy.
Law	It is difficult to regulate in law the practice of shareholders because many of them are international institutional investors. They operate internationally.				Company behaviour is influenced by NGOs rather than laws on sustainability issues. Social media also influence corporate decisions. The board members are concerned with what clients think. Companies do what the clients say. Sustainability is not an issue that is limited to a specific country. Companies follow the laws in each country but NGOs actually rule in this respect.

- Corporate governance
- Organisational dynamics
- Leadership and Management
- Business ethics
- Strategic decision-making

In addition, the content of the interviews and the findings of the literature review were discussed in an expert meeting, which accommodated the views of the experts already interviewed in the study and the elaborations of the authors included in this article. In the expert meeting, the authors and the experts discussed and analysed the findings of the interviews and the content of the literature review. The discussion contemplated how sustainability, company leadership, and the role of (company) law as a systemic change agent[46] can be related in order to empower leaders to include sustainability in the leadership. It resulted in a visual portraiture (Figure 1) of the relationship between sustainability, company leadership, and company law.[47] Figure 1 indicates how the different disciplines which we identified in the literature review regard and influence the development of the concepts of sustainability, company leadership and law.

Figure 1. The relationship between sustainability, company leadership, and law



46 See Wijkman and Rockström 2013. Wijkman and Rockström identify corporate law as an agent capable of causing systemic changes.

47 The outcome of the expert meeting was summarised in a detailed report: A. Argyrou, T. Lambooy and S. Tideman, 'Meta-Study on Company Leadership and Sustainability (15 May 2013) Nyenrode Business University. The expert meeting report was circulated to the experts-interviewees who provided input regarding its content. In addition, the literature list of the outcome of the literature review was updated in April-May 2018. The literature review and the expert meeting can be retrieved from the website of the International and Comparative Corporate Law Journal. < www.jus.uio.no/english/research/areas/companies/iccl-journal/> accessed 10 September 2018.

In the next section, we provide a literature review that explains in depth the three concepts of leadership, sustainability and law from the perspective of various disciplines in social sciences.

3. A LITERATURE REVIEW ON SUSTAINABILITY, COMPANY LEADERSHIP, AND LAW

3.1. Introduction to the Literature

The consideration of sustainability into business has induced only few company leaders to espouse a new era for company leadership.[48] In this new era, the affiliation of business activities with the principles of sustainability introduces social, environmental and governance concerns into the company boards' agenda. For a long time, company leadership was mainly characterised by the ramifications of growing global competition, i.e. fast technological innovation, constrained access to natural resources and strict regulatory requirements for business. However, the international debate regarding the need that companies also address the challenge of notably climate change and the respect of international human rights[49] challenges the temporary and classical business models,[50] and can no longer be ignored. The existence of risks and liabilities that may harm the companies' performance and reputation should urge company leadership to adhere to the principles and standards of sustainability.[51] An example is the Volkswagen emissions scandal, in 2015, which reportedly resulted in the drop of the Volkswagen's stock price and the declining of the company's car sales immediately after the scandal was

48 S. Gröschl, P. Gabaldón and T. Hahn, 'The co-evolution of leaders' cognitive complexity and corporate sustainability: The case of the CEO of Puma' [2017] Journal of Business Ethics; Global PwC CEO Survey of 2016-2018; P. Lacy, A. Haines and R. Hayward, 'Developing strategies and leaders to succeed in a new era of sustainability: Findings and insights from the United Nations Global Compact-Accenture CEO Study' [2012] 31 Journal of Management Development 4, 346-357. The UN Global Compact-Accenture CEO Study on Sustainability of 2013; A. D'Amato and N. Roome, 'Toward an integrated model of leadership for corporate responsibility and sustainable development: a process model of corporate responsibility beyond management innovation' [2009] 9 Corporate Governance: The International Journal of Effective Board Performance 4, 421-434.

49 Lambooy 2010a; 2010b; Lambooy et al. 2015; See supra the Guiding Principles on Business and Human Rights.

50 C. Wright and D. Nyberg, 'Grant hippies on the third floor: Climate change, narrative identity and the micro-politics of corporate environmentalism' [2012] 33 Organization Studies 11, 1451-1475.

51 M. Robinson, A. Kleffner and S. Bertels, 'Signalling sustainability leadership: Empirical evidence of the value of DJSI Membership' [2011] 101 Journal of Business Ethics 3, 493-505; A. Klettner, T. Clarke and M. Boersma, 'The governance of corporate sustainability: Empirical insights into the development, leadership and implementation of responsible business strategy' [2014] 122 Journal of Business Ethics 1, 145-165.

divulged.[52] Yet only few company boards tend to view sustainability as an element that has an immediate impact on their company's business performance.[53]

Progressive company leadership tends to realise the integration of sustainability into the decision-making processes, strategy, business goals/ practices, by adopting internal incentives, motivational drivers and decision tools that support the transition to sustainability.[54] The integration of sustainability into the company boards' agenda is the benchmark of the transformation of existing leadership models to sustainable leadership.[55] Such a transformation is generally be characterised by: (i) the introduction of significant alterations into the boards' structure and composition of top management;[56] (ii) the introduction of sustainability performance

52 See N. Jagadeesh and B. Lysaght for Bloomberg, 'Volkswagen Recoups Stock Losses since Emissions Scandal: Chart (1 november 2017) <www.bloomberg.com/news/articles/2017-11-01/volkswagen-recoups-stock-losses-since-emissions-scandal-chart> and P. Campbell for the Financial Times, 'Volkswagen's market share falls after scandal' (15 July 2016) <www.ft.com/content/35575f80-4a75-11e6-b387-64ab0a67014c> all websites accessed 24 July 2018.

53 J.A. Fuente, I.M. García-Sánchez and M.B. Lozano,' The role of the board of directors in the adoption of GRI guidelines for the disclosure of CSR information' [2017] 141 Journal of Cleaner Production, 737-750; Klettner et al. 2014; J.Q. Zhang, H. Zhu and H. Ding, 'Board composition and corporate social responsibility: An empirical investigation in the post Sarbanes-Oxley era' [2013] 114 Journal of Business Ethics 3, 381-392; C. Mallin, G. Michelon and D. Raggi, 'Monitoring intensity and stakeholders' orientation: How does governance affect social and environmental disclosure?' [2013] 114 Journal of Business Ethics 1, 29-43. H. Jo and M.A. Harjoto, 'The causal effect of corporate governance on Corporate Social Responsibility' [2012] 106 Journal of Business Ethics 1, 53-72.

54 Lozano 2015; G.F. Peters, A.M. Romi and J.M. Sanchez, 'The influence of corporate sustainability officers on performance' [2018] 3 Journal of Business Ethics, 1-23; S. Young and V. Thyil, 'Corporate social responsibility and corporate governance: role of context in international settings' [2014] 122 Journal of Business Ethics 1, 1-24; E. Eberhardt-Toth and D.M. Wasieleski, 'A cognitive elaboration model of sustainability decision making: investigating financial managers' orientation toward environmental issues' [2013] 117 Journal of Business Ethics 4, 735-751. S. Hallstedt, H. Ny, K.H. Robèrt, G. Bromana. 'An approach to assessing sustainability integration in strategic decision systems for product development' [2010] 18 Journal of Cleaner Production 8, 703-712; C.J. Kock, J. Santaló and L. Diestre, 'Corporate governance and the environment: What type of governance creates greener gompanies?' [2012] 49 Journal of Management Studies 3, 492-514; M. Tonello, 'Sustainability in the Boardroom' (2010) The conference board director notes, No. DN-008 <https://ssrn.com/abstract=1626050> accessed 29 June 2018.

55 J. Eijsbouts, 'Corporate codes as private co-regulatory instruments in corporate governance and responsibility and their enforcement' [2017] 24 Indiana Journal of Global Legal Studies 1, 181-205; E. Paramonova, 'Steering toward "true North": Canadian corporate law, corporate social responsibility, and creating shared value' [2016] 12 McGill International Journal of Sustainable Development Law and Policy 1, 25-48; J. Walls and P. Berrone,' The power of one: How CEO power affects corporate environmental sustainability' [2015] 145 Journal of Business Ethics 2, 293-308; C. Mason and J. Simmons, 'Embedding corporate social responsibility in corporate governance: A stakeholder systems approach' [2014] 119 Journal of Business Ethics 1, 77-86.

56 Peters, Romi and Sanchez 2018, 1-23; Fuente et al. 2017; N. Ortiz-de-Mandojana and J.A. Aragon-Correa, 'Boards and sustainability: The contingent influence of director interlocks on corporate environmental performance' [2015] 24 Business Strategy and the

measurements;[57] (iii) the introduction of integrated reporting;[58] and finally (iv) the establishment of compensation mechanisms that are dependent on sustainability performance.[59] Accordingly, the law applicable to company boards has a role to play in the transformational process.[60]

However, the integration of sustainability into company leadership and particularly into the decision-making processes of the boards has

Environment 6, 499-517; M. Adams, 'Board diversity: more than a gender issue?' [2015] 20 Deakin Law Review 1, 123-152; 'Walls and Berrone' 2015; R. Strand, 'The chief officer of Corporate Social Responsibility: A study of its presence in top management teams' [2013] 112 Journal of Business Ethics 4, 721-734; J. Galbreath, 'Are boards on board? A model of corporate board influence on sustainability performance' [2012] 18 Journal of Management and Organization 4, 445-460; J. Galbreath and G.J. Nicholson, 'Board of director attention and sustainability performance: An empirical study' [2013] Academy of Management Proceedings 1, 11859; Zhang et al. 2013; N. Rahman, E. Rubow and C. Post, 'Green Governance: Boards of directors' composition and environmental corporate social responsibility' [2011] 50 Business and Society 1, 189-223; S. Ayuso and A. Argandoña, 'Responsible corporate governance: towards a stakeholder board of directors?' [2009] 6 Corporate Ownership and Control 4, 9-19.

57 H.J.H Lenders, 'Measuring the sustainability performance of our decisions' [2015] 5 International Journal of Social Quality 2, 62-80; A.L. Jones and C.H. Thompson, 'The sustainability of corporate governance-considerations for a model' [2012] 12 Corporate Governance: The International Journal of Effective Board Performance 3, 306-318; Eccles et al. 2011.

58 C. Villiers and J. Mahonen, 'Accounting, auditing, and reporting: supportive or obstructing the sustainable companies objective?', in B. Sjåfjell and B.J. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press, 2015), 175-225; R.I.S. Chandok and S. Singh, 'Empirical study on determinants of environmental disclosure: Approach of selected conglomerates' [2017] 32 Managerial Auditing Journal 4/5, 332-355; Fuente et al. 2017; P. Hąbek and R. Wolniak, 'Assessing the quality of corporate social responsibility reports: the case of reporting practices in selected European Union member states' [2016] 50 Quality and Quantity 1, 399-420; B. Fernandez-Feijoo, S. Romero and S. Ruiz-Blanco, 'Women on boards: Do they affect sustainability reporting?' [2014] 21 Corporate Social Responsibility and Environmental Management 6, 351-364; K.K. Rao, C.A. Tilt and L.H. Lester, 'Corporate governance and environmental reporting: an Australian study' [2012] 12 Corporate Governance: The international journal of business in society 2, 143-163; Eccles et al. 2011.

59 C. Francoeur, A. Melis, S. Aresu and S. Gaia, 'Green or Greed? An Alternative Look at CEO Compensation and Corporate Environmental Commitment' [2017] 140 Journal of Business Ethics 3, 439-453; M. Fabrizi, C. Mallin and G. Michelon, 'The role of CEO's personal incentives in driving corporate social responsibility' [2014] 124 Journal of Business Ethics 2, 311-326. A. Kolk and P. Perego, 'Sustainable Bonuses: Sign of Corporate Responsibility or Window Dressing?' [2014] 119 Journal of Business Ethics 1, 1-15; J.L. Walls, P. Berrone and P.H. Phan, 'Corporate governance and environmental performance: is there really a link?' [2012] 33 Strategic Management Journal 8, 885-913; P. Berrone and L.R. Gomez-Mejia, 'Environmental performance and executive compensation: An integrated agency-institutional perspective' [2009] 52 Academy of Management Journal 1, 103-126; Eccles et al. 2011.

60 Lambooy 2016; Eijsbouts 2017; Sjåfjell and Richardson 2015; S. De Hoo and M. Olaerts, 'Sustainable development and the need for sustainable oriented corporate law and regulation' (2011) University of Oslo Faculty of Law Research Paper No. 2011-29 <https://ssrn.com/abstract=1926065> accessed 30 June 2018.

proven a complicated, complex and challenging objective.[61] It is related to external as well as internal motivational drivers such as the national legislative environment, ownership and company structure, personal values, culture, education; traits and characteristics also followed by customers' preferences and demand.[62] This process is also highly related to the levels of the leaders' competence, values, inspiration, strategic thinking and willingness for social contribution.[63] Organisations are complex systems and company leaders should develop extraordinary capabilities and competences in order to deliver sustainability.[64] The complexity of combining company leadership and sustainability in an organisational system requires leaders who "who can read and predict through complexity, think through complex problems, engage groups in dynamic adaptive organisational change and have the emotional intelligence to adaptively engage with their own emotions associated with complex problem solving".[65] Sustainability can be then institutionally and strategically introduced by company leadership as an example of innovative change within the organisation.[66]

61 B. Brown, 'Leading complex change with post-conventional consciousness' [2012] 25 Journal of Organizational Change Management 4, 560-575.

62 B.W. Lewis, J.L. Walls and G.W.S. Dowell, 'Difference in degrees: CEO characteristics and firm environmental disclosure' [2014] 35 Strategic Management Journal 5, 712-722; J. McCann and M. Sweet, 'The Perceptions of Ethical and Sustainable Leadership' [2014] 121 Journal of Business Ethics 3, 373-383; D. Bevan and M. Gitsham, 'Context, complexity and connectedness: dimensions of globalization revealed' [2009] 9 Corporate Governance: The international journal of business in society 4, 435-447; B. Gabzdylova, J. Raffensperger and P. Castka, 'Sustainability in the New Zealand wine industry: drivers, stakeholders and practices' [2009] 17 Journal of Cleaner Production 11, 992-998; Rahman et al. 2011.

63 Lozano 2015; S.A. Eisenbeiß and F. Brodbeck, 'Ethical and Unethical Leadership: A Cross-Cultural and Cross-Sectoral Analysis' (2014) 122 Journal of Business Ethics 2, 343-359; C. Marsh, 'Business executives' perceptions of ethical leadership and its development' [2013] 114 Journal of Business Ethics 3, 565-582; D.A. Waldman and D. Siegel, 'Defining the socially responsible leader' [2008] 19 The Leadership Quarterly 1, 117-131; A.H.B. De Hoogh and D.N. Den Hartog, 'Ethical and despotic leadership, relationships with leader's social responsibility, top management team effectiveness and subordinates' optimism: a multi-method study' [2008] 19 Leadership quarterly 3, 297-311.

64 Ortiz-de-Mandojana and Aragon-Correa 2015; P. Perego and A. Kolk, 'Multinationals' accountability on sustainability: The evolution of third-party assurance of sustainability reports' [2012] 110 Journal of Business Ethics 2, 173-190; L. Metcalf and S. Benn, 'Leadership for sustainability: An evolution of leadership ability' [2013] 112 Journal of Business Ethics 3, 369-384; P. Hind, A. Wilson and L. Gilbert, 'Developing leaders for sustainable business' [2009] 9 Corporate Governance: The international journal of business in society 1, 7-20; S. Sweet, N. Roome and P. Sweet, 'Corporate environmental management and sustainable enterprise: the influence of information processing and decision styles business strategy and the environment' [2003] 12 Special Issue Corporate Social Responsibility and Governance for Sustainability 4, 265-277.

65 Metcalf and Benn 2013.

66 D. Caprar and B. Neville, "Norming" and "conforming": Integrating cultural and institutional explanations for sustainability adoption in business' [2012] 110 Journal of Business Ethics 2, 231-245; I. Bonn and J. Fisher, 'Sustainability: the missing ingredient in strategy' [2011] 32 Journal of Business Strategy 1, 5-14; Hallstedt et.al. 2010; D'Amato and Roome 2009.

Sustainability-oriented company leaders are pivotal agents of change and transformation towards sustainability.[67] Their engagement with the principle and good practice of sustainability creates awareness concerning various social and environmental risks and challenges and it promotes innovation. Company leadership may also significantly influence internal and external organisational stakeholders such as employees, investors and consumers towards sustainability.[68]

The growing number of company leaders committed to the integration of sustainability into core business has encouraged researchers to translate leaders' incentives and actions into sustainability metrics.[69] Models for measuring and monitoring sustainability in relation to company leadership practices have been introduced in the scientific arena.[70] Some of these models, indicatively, involve variables related to the level of independence and diversity of members of company boards.[71]

Furthermore, the connection between sustainability, company leadership, and law at the board level is translated into: (i) priorities including sustainability in decision-making by the company's board;[72] (ii) a change to the company's purpose;[73] (iii) board composition and transparency;[74] (iv) meeting the demands of stakeholders at a

67 T. Clarke, 'Dangerous frontiers in corporate governance' [2014] 20 Journal of Management and Organization 3, 268-286; S. Wagner, E. Hespenheide and K. Pavlovsky, 'The responsible and sustainable board' (2009) 4 Deloitte Review <www2.deloitte.com/insights/us/en/deloitte-review/issue-4/the-responsible-and-sustainable-board.html> accessed 25 July 2018; B.A.G. Bossink, 'Leadership for sustainable innovation' [2007] 6 International Journal of Technology Management and Sustainable Development 2, 135-149.

68 A. Rego, M.P. Cunha and D. Polonia, 'Corporate sustainability: A view from the top' [2017] 143 Journal of Business Ethics 1, 133-157; Eijsbouts 2017; J. Wolf, 'The relationship between sustainable supply chain management, stakeholder pressure and corporate sustainability performance' [2014] 119 Journal of Business Ethics 3, 317-328.

69 Lenders 2015; I. Boulouta, 'Hidden connections: The link between board gender diversity and Corporate Social Performance' [2013] 113 Journal of Business Ethics 2, 185-197; Eccles et al. 2011.

70 Lenders 2015; Jones and Thompson 2012; J.L.F. Sánchez, L.L. Sotorrío and E.B. Díez, 'The relationship between corporate governance and corporate social behavior: a structural equation model analysis' [2011] 18 Corporate Social Responsibility and Environmental Management 2, 91-101.

71 J.M. Prado-Lorenzo and I.M. Garcia-Sanchez, 'The role of the board of directors in disseminating relevant information on greenhouse gases' [2010] 97 Journal of Business Ethics 3, 391-424. B. Clarke, 'The role of board directors in promoting environmental sustainability', in B. Sjåfjell and B.J. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press, 2015) 148-174.

72 K.D. Fairfield, S.J. Behson and J. Harmon, 'Influences on the organizational implementation of sustainability: an integrative model' [2011] 8 Organization Management Journal 1, 4-20.

73 Ayuso and Argandoña 2007.

74 Rahman et al. 2011; Ayuso and Argandoña 2007.

board level;[75] (v) implementation of sustainable practices by the top management;[76] and finally (vi) operational environmental performance improvement.[77]

3.2. Findings from Various Disciplines Concerning the Concepts of Sustainability, Company Leadership, and Law

3.2.1. Sustainability

In organisational scholarship, sustainability is predominantly related to stakeholder theory and is often considered as CSR. In this case, it is described as the engagement of the company board with decisions, practices and policies concerning social and environmental issues and concerns with the objective to satisfy stakeholders' interests.[78]

Sustainability has also been defined as the environmental and social dimension of a business activity related to potential information provided by the board concerning the company's environmental and social performance.[79] It is "the alignment of the interests expressed by critical stakeholders aiming at the company's successful operation".[80]

Sustainability is a term with a very wide scope of application, which varies per industry and sector. Empirical evidence shows that 506 out of 766 CEOs (i.e. 66 per cent) from different countries in the world consider climate change – as part of environmental sustainability – to be an imperative factor of their business success, due to the emerging resource scarcity and the social and economic developments that alter the rules of supply and demand.[81] Thus, environmental sustainability is related to environmental issues with significant impact on the company's governance.[82] These issues are environmental liabilities and risk exposure, potential to limit environmental business opportunities and the company's ability to deal with environmental risks and opportunities.[83]

75 Fairfield et al. 2011; Ayuso and Argandoña 2007.
76 Fairfield et al. 2011.
77 Walls et al. 2012.
78 Fuente et al. 2017; Rego et al. 2017; Ortiz-de-Mandojana and Aragon-Correa 2015; Strand 2013; Ayuso and Argandoña 2007; Walls et al. 2012.
79 Ortiz-de-Mandojana and Aragon-Correa 2015; Prado-Lorenzo and Garcia-Sanchez 2010.
80 Tonello 2010.
81 Lacy et al. 2012.
82 H.R. Dixon-Fowler, A.E. Ellstrand and J.L. Johnson, 'The role of board environmental committees in corporate environmental performance' [2017] 140 Journal of Business Ethics 3, 423-438; Walls and Berrone 2012; 2015; Eberhardt-Toth and Wasieleski 2013; Rahman et al. 2011.
83 J. Salo, 'Corporate governance and environmental performance: Industry and country effects' [2008] 12 Competition and Change 4, 328-354.

Sustainability, in organisational studies also involves “organisational and performance implications which integrate social and environmental issues into a company’s strategy and business models through the adoption of company policies”.[84] It has been also referred to as “corporate sustainability” or “the responsibility of the corporation to stakeholders representing people, planet, and profit”.[85] Additionally, sustainability is defined as “the social, economic and environmental impacts of actions that performance measurement systems must measure in order to facilitate effective decision-making”.[86]

From a corporate governance perspective, sustainability comprises the “fiduciary obligation of senior leaders to make sure that they have the structures, processes and organisational vision in place that will foster a culture of longevity”.[87] Sustainability could be also defined as the promotion of longevity from one generation to another through the maintenance of resources. All this done while limiting the impact on the environment and providing social equity and community awareness.[88] Accordingly, the pursuit of sustainability on a company board level can be viewed as an expansion of the company board’s fiduciary duties.[89]

Management studies define sustainability as “the process of creating long-term value by adopting a business approach mindful of economic, social, and environmental implications”.[90] ‘Corporate environmentalism’ – which is the synonym for integrating the environmental dimension of sustainability into managerial concerns – integrates environmental concerns into managerial decisions.[91] There, sustainability is considered “a paradigm shift which could foster a competitive advantage”.[92]

In strategy studies, sustainability is defined as an “aligned and integrated strategic planning and budgetary process that focuses on the needs and

84 Eccles et al. 2011, 2; Fairfield et al. 2011, 2.

85 T. Angus-Leppan, L. Metcalf, S. Benn, ‘Leadership styles and CSR practice: An examination of sensemaking, institutional drivers and CSR leadership’ (2010) 93 Journal of Business Ethics 2, 189-213, at 189-190.

86 M.J. Epstein and S.K. Widener, ‘Facilitating sustainable development decisions: measuring stakeholder reactions’ [2011] 20 Business Strategy and the Environment 2, 107-123, at 107.

87 E. Fibuch and C.W. Van Way III, ‘Sustainability: A Fiduciary Responsibility of Senior Leaders’ (2012) 38 Physician Executive 2, 36-43, at 36.

88 Ibid.

89 Tonello, 2010.

90 Caprar and Neville 2012, 231.

91 H. Cherrier, S.V. Russell and K. Fielding, ‘Corporate environmentalism and top management identity negotiation’ [2012] 25 Journal of Organizational Change Management 4, 518-534.

92 H. Uecker-Mercado and M. Walker, ‘The value of environmental social responsibility to facility managers: revealing the perceptions and motives for adopting ESR’ [2012] 110 Journal of Business Ethics 3, 269-284.

requirements of the customers".[93] It focuses on the effective management of natural resources while it addresses problems such as the depletion of natural resources, the elimination of biodiversity and the extended environmental pollution. Sustainability that is integrated into the company's strategy leads successful business activities towards innovation. Furthermore, "it informs key business strategies to be more successful than competitors through innovation, design".[94] It is related to environmental and societal concerns as a fiduciary responsibility for managers and executives "to adopt sustainable policies and practices only if such actions complement and promote the organisation's business – and corporate-level strategies".[95]

Finally, sustainability encompasses social responsibility that is defined as "an internalised belief of a moral obligation to help others without any consideration of an expected personal benefit".[96] Social responsibility is further characterised by moral-legal standards of conduct, internal obligation, concern for others, concerns concerning consequences, and self-judgment.[97]

3.2.2. Company leadership

In corporate governance scholarship, the board is the vehicle by which companies are directed and controlled. Therefore, corporate governance involves "a specific distribution of rights and responsibilities among shareholders and directors and the rules and procedures for making decisions on corporate affairs".[98] The board "controls the organisation's sustainable behaviour while being accountable to the various interest groups e.g. shareholders, stakeholders".[99] The board "is the company's main governing body and it acts as the entity responsible for safeguarding the interests of the stakeholders in the company by carrying out its duties".[100] In various countries, empirical studies examine corporate governance structures and the composition of top management in relation to sustainable decision-making.[101] Other studies

93 Bonn and Fisher 2011.
94 Hallstedt et al. 2010, 704.
95 D.S. Siegel, 'Green management matters only if it yields more green: An economic/strategic perspective' (2009) 23 Academy of Management Perspectives 3, 5-16, at 5-6.
96 K. Groves and M. LaRocca, 'An Empirical Study of Leader Ethical Values, Transformational and Transactional Leadership, and Follower Attitudes Toward Corporate Social Responsibility' (2011) 103 Journal of Business Ethics 4, 511-528, at 513-514.
97 De Hoogh and Den Hartog 2008, at 299.
98 Ayuso and Argandoña 2007.
99 Prado-Lorenzo and Garcia-Sanchez 2010, 396.
100 Ibid.
101 Peters et al. 2018; Fuente et al. 2017; Ortiz-de-Mandojana and Aragon-Correa 2015; Adams 2015; Walls and Berrone 2015; Strand 2014; Klettner et al. 2014; Galbreath 2012; Galbreath and Nicholson 2013; Zhang et al. 2013; Rahman, et al. 2011; Ayuso and Argandoña 2007.

support the creation of an alternative view of leadership for sustainability with more women sitting on the board.[102]

Leadership encompasses the duties of the company board and the incentives provided to top management.[103] Sustainable company leadership entails the creation "of customer value and community awareness aligned and integrated with strategic plans based on the needs and requirements of the customer and organisational culture".[104] The three dimensions of sustainable company leadership entail: (i) the paradigm shift calling for a change in managerial mind-set toward environmental concerns; (ii) the managerial response to the diverse needs of stakeholders and the natural environment; and finally (iii) the strategic integration of environmental considerations in business decisions provides competitive advantages to the company.[105]

Company leaders are the persons that make strategic decisions that affect the long-term performance of an organisation.[106] Decisions concerning sustainability which are strategically oriented and perceived as long-term

102 R.A. Diepeveen, T.E. Lambooy, R.M. Renes, 'The two-pronged approach of the (semi)-legal norms on gender diversity: exploratory empirical research on corporate boards of Dutch listed companies' [2017] 12 International and Comparative Corporate Law Journal 2, 103-139 [Diepeveen et al. 2017]; W. Ben-Amar, P. McIlkenny and M. Chang, 'Board gender diversity and corporate response to sustainability initiatives: evidence from the Carbon Disclosure Project' [2017] 142 Journal of Business Ethics 2, 369-383; M.A. Chisholm-Burns, C.A. Spivey, T. Hagemann and M.A. Josephson, 'Women in leadership and the bewildering glass ceiling' [2017] 74 American Journal of Health-System Pharmacy 5, 312-324; Adams 2015; J. Du Plessis, 'The case for and against mandatory gender quota legislation for company Boards' [2015] 20 Deakin Law Review 1, 1-24; C. Glass, A. Cook, and A.R. Ingersoll, 'Do women leaders promote sustainability? Analyzing the effect of corporate governance composition on environmental performance' [2016] 25 Business Strategy and the Environment 7, 495-511; C.T. Kulik, M. Ali and Y.L. Ng, 'Board age and gender diversity: a test of competing linear and curvilinear predictions' [2014] 125 Journal of business Ethics 3, 497-512; Fernandez-Feijoo et al. 2014; Boulouta 2013; M. Lückerath-Rovers, 'Women on boards and firm performance' [2013] 17 Journal of Management and Governance 2, 491-509; M. Nekhili and H. Gatfaoui, 'Are demographic attributes and firm characteristics drivers of gender diversity? Investigating women's positions on French boards of directors' [2013] 118 Journal of Business Ethics 2, 227-249; J. Marshall, 'Engendering Notions of Leadership for Sustainability' [2011] 18 Gender, Work and Organization 3, 263-281.

103 Paramonova 2016; Clarke 2014; J. Maskill, 'Extending directors' duties to the natural environment: Perfect timing for greener companies in Aotearoa New Zealand?' [2016] 22 Te Mata Koi: Auckland University Law Review, 281-314; Eccles et al. 2011.

104 Fibuch and Van Way 2012, at 37.

105 Cherrier et al. 2012.

106 Rego et al. 2017; Young and Thyil 2014; M.S. Fifka, N. Berg and R.J. Baumgartner, 'Managing corporate sustainability and CSR: A conceptual framework combining values, strategies and instruments contributing to sustainable development' [2014] 21 Corporate Social Responsibility and Environmental Management 5, 258-271; G.F. Peters and A.M. Romi, 'Does the Voluntary Adoption of Corporate Governance Mechanisms Improve Environmental Risk Disclosures? Evidence from Greenhouse Gas Emission Accounting' (2014) 125 Journal of Business Ethics 4, 637-666; Fernandez-Feijoo 2014; Strand 2014; Bonn and Fisher 2011.

challenges for an organisation are always made at the level of the company's leaders or the upper-level of management.[107] Employees from lower organisational levels are obliged to comply and adhere to the company's strategic direction. In legal systems, in which co-determination has been adopted, e.g. in the Netherlands and Germany, employee-representative bodies, such as a works council, have the legal mandate to influence the board's strategy. However, a study conducted in the form of action research revealed that is a challenge for employee-representative bodies to exercise real influence on the corporate strategy.[108]

The classical models of company leadership have been challenged by "change-oriented leadership models and practices, including transformational leadership"[109] and, more recently, sustainable leadership.[110] Transformational leadership involves company leaders encompassing "ethical values" who "facilitate socially responsible changes" and a "fair and moral behaviour" towards their organisation and towards communities.[111] Sustainable leadership extends this ethical-based, socially responsible, moral and fair behaviour to all stakeholders, including society and nature.[112]

3.2.3. Law

Sustainability has not yet acquired the appropriate recognition in various domestic national legal systems.[113] Although there are hard rules addressing issues of sustainability in the provisions of domestic environmental, labour or human rights laws, these rules provide only the minimum standards to which all companies should adhere in their activities in their domestic territory. These rules rarely focus on the international value chain without introducing sustainability into the hard core of leadership, i.e. the decision-making processes of the board of directors and/or the top management.[114] The principle of sustainable development, albeit established into a variety of international, supra-national and national legislative and regulatory instruments, does not find ground in the hard provisions of domestic national company laws and corporate governance regimes.[115]

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107 Hallstedt et al. 2010.

108 T. Lambooy, 'A Model Code on Co-Determination and CSR - The Netherlands: A Bottom-Up Approach' [2011] 8 European Company Law 2-3, 74-82.

109 Marsh 2013; Groves and LaRocca 2011.

110 S.G. Tideman, M.C.L. Arts and D.P. Zandeer, 'Sustainable leadership: Towards a workable definition' [2013] 49 Journal of Corporate Citizenship, 17-33.

111 Groves and LaRocca 2011, 512; De Hoogh and Den Hartog 2008, 298.

112 Tideman, Arts and Zandee 2013.

113 Caprar and Neville 2012.

114 Sjåfjell and Richardson 2015; De Hoo and Olaerts 2011; Lambooy 2016; Lambooy and Stamenkova van Rumpt 2014.

115 B. Sjåfjell and A. Wiesbrock, *The greening of European business under EU law: Taking article 11 TFEU seriously* (Routledge 2015); Sjåfjell and Richardson 2015; G. Deipenbrock, 'Sustainable development, the interest(s) of the company and the role of the board from the perspective of a German Aktiengesellschaft' (2010) International and Comparative

Some of the international regulatory instruments adopting the principle of sustainable development are the SDGs,[116] the Rio Declaration on Environment and Development,[117] the UN Framework Convention on Climate Change (UNFCCC),[118] the Convention on Biological Diversity (CBD),[119] the Forest Principles and the Agenda 21.[120] European legal instruments include the Treaty of the European Union (TEU) in Article 3(3) and Article 11 of the Treaty on the Functioning of the European Union (TFEU).[121]

A comparative legal study covering the national company laws of 25 jurisdictions demonstrates that company laws mainly regulate the board's activities, composition, structure and accountability without introducing concepts of sustainability.[122] Lambooy indicates that Dutch company law directs company boards towards a managerial approach, but does not incentivise them to act as purpose-driven leaders.[123] As she explains it, a purpose-driven leader acts as steward of an organisation's purpose thereby employing the strengths of the organisations' capacities and qualities among other, to contribute to solving international social and environmental challenges.[124]

Despite the limited focus of the national company legislation on sustainability, the sustainable development principle has been introduced into multiple CSR soft law instruments and codes of conduct, corporate governance guidelines and codes of best practices.[125] These are published at

Corporate Law Journal, 15-46; B. Sjåfjell, *Towards a sustainable European company law: A normative analysis of the objectives of EU law, with the Takeover Directive as a test case* (Alphen aan den Rijn: Kluwer Law International 2009).

116 See supra UN General Assembly A/RES/70/1.

117 Rio Declaration on Environment and Development UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).

118 UN General Assembly, 'United Nations Framework Convention on Climate Change: resolution/adopted by the General Assembly' (20 January 1994 A/RES/48/189).

119 Convention on Biological Diversity, 1760 UNTS 79; 31 ILM 818 (1992).

120 United Nations Conference on Environment and Development. (1992). Agenda 21, Rio Declaration, Forest Principles. New York: United Nations.

121 Article 3(3) of the TEU states: "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance." Article 11 of the TFEU states: "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development".

122 Lambooy and Stamenkova van Rumpt 2014.

123 Lambooy 2016.

124 Ibid.

125 Eijsbouts 2017; B. Ackers, 'Independent corporate social responsibility assurance: a response to soft laws, or influenced by company size and industry sector?' [2017] 14 International Journal of Disclosure and Governance 4, 278-298; A. Kalfagianni, 'Addressing the Global Sustainability Challenge: The Potential and Pitfalls of Private Governance from the Perspective of Human Capabilities' (2014) 122 Journal of Business Ethics, 2; Young and Thyil 2014; M.M. Rahim and A. Shawkat, 'Convergence of

a national and international level and aim to standardise the decision-making processes, practices and activities of the companies' corporate governance bodies. Soft laws and semi-legal instruments are used to influence and inspire leadership's decision-making and corporate practice towards sustainability without carrying a binding legal force. Examples of such soft-law instruments are the OECD Guidelines for Multinational Enterprises,[126] the ISO 26000 standard,[127] and the Dutch and South African Corporate Governance Codes.[128]

Empirical studies illustrate that legal compliance with hard law is considered by most business leaders to be an important societal responsibility.[129] However, few leaders would think of their responsibilities as going beyond legal requirements and duties. Other empirical findings show that one of the primary forces for environmental management is the existence of legislation.[130] Business leaders may also welcome legal standards on a global scale and the creation of a legally enabling environment, which rewards for sustainable businesses and practices. Peter Bakker, the President of WBCSD, mentions in that respect:

> While the SDGs themselves are not legally binding, they still serve as an important road map regarding potential future policy direction at international, national and regional levels. Companies that align themselves with the SDGs and are able to communicate clearly about how their business helps governments to achieve their goals, are likely to be able to consolidate a strong license to operate and to differentiate themselves from competitors. Likewise, those that don't will be exposed to growing legal and reputational risks.[131]

corporate social responsibility and corporate governance in weak economies: the case of Bangladesh' [2014] 121 Journal of Business Ethics 4, 607-620; T. Ferrando, 'Codes of conduct as private legal transplant: The case of European extractive MNEs' [2013] 19 European Law Journal 6, 799-821; I. Okhmatovskiy and R.J. David, 'Setting your own standards: Internal corporate governance codes as a response to institutional pressure' [2012] 23 Organization Science 1, 155-176; Lambooy 2010; Ayuso and Argandoña 2007.

126 OECD Guidelines for Multinational Enterprises 2011.

127 ISO 26000 <www.iso.org/iso-26000-social-responsibility.html> accessed 26 March 2018.

128 The revised Dutch Corporate Governance Code of 2016 <www.mccg.nl/?page=3779> accessed 26 March 2018.

129 Paramonova 2016; Clarke 2014; Maskill 2016; E.R. Pedersen, 'Modelling CSR: How managers understand the responsibilities of business towards society' [2010] 91 Journal of Business Ethics 2, 155-166.

130 P. Kanashiro and J. Rivera, 'Do chief sustainability officers make companies greener? The moderating role of regulatory pressures' [2017] Journal of Business Ethics; Uecker-Mercado and Walker 2012; C. Kjelland, 'Motivations and Decision-Structures in Companies' (30 August 2011) Research Paper for the 1st International Conference – Towards Sustainable Companies: Identifying New Avenues.

131 P. Bakker, 'The SDGs, one year in: Where do we stand?' (25 September 2016) <www.wbcsd.org/Overview/News-Insights/Insights-from-the-President/The-SDGs-one-year-in-Where-do-we-stand> accessed 27 March 2018.

The exploration of significant legal instruments of corporate legislation to address sustainability and company leadership – particularly hard company law rules – may enrich as well as stimulate the discussion of how sustainability could become an indispensable part of the company leaders' decision-making process. It will identify the role of law in empowering the board of directors to align the company's interest with sustainable development from a legal perspective enabling and promoting the connection between leadership and sustainability at the board level (Figure 2).

In the next section, an analysis is provided concerning the role of law in corporate sustainability and leadership.

4. ANALYSIS

4.1. Reality Observations

The foregoing studies illustrated that there is a growing interest of company boards and company leaders in issues of sustainability, i.e. social and environmental issues. As a result, company leadership progressively and increasingly tends to integrate sustainability into their decision-making processes, strategy, business goals/practices, thus starting a gradual process of progressing towards sustainability. Leadership and law could play an important role in the ability of company boards to move these companies along the stages towards sustainability. Sustainability needs, develops and supports a long-term focus.[132]

Company leadership is important for the integration of sustainability in companies.[133] The leadership power rests primarily with the company board. The role of company law as a systemic change maker is important in this regard.[134] Empirical evidence illustrates that company boards tend towards compliance; thus if laws advocate sustainability, boards tend to put sustainability on the agenda.[135] It supports them to implement sustainability in their discussion and to be accountable towards shareholders, employees and other stakeholders. The results hereof depend on the competence of the law, whether it is enforced, and whether the law is taken seriously by the addressees of the law (i.e. the culture).

132 R. Anderson, 'Climbing mount sustainability' [2000] 1 Reflections: The SoL Journal 4, 6-12.
133 Eccles et al. 2011.
134 Wijkman and Rockström 2013.
135 Pedersen 2010. L. Lessig, 'The New Chicago School' [1998] 27 The Journal of Legal Studies 2, 661-691.

4.2. Challenges in Reality

The present situation raises important considerations regarding the challenges and gaps with respect to companies on the way towards sustainability. Primarily, leadership associated with sustainable development entails a complex relationship of two concepts based on various social and environmental factors.[136] These complex aspects of sustainability are new to boards. The complexity as well as the novelty of sustainability aspects in company leadership is reflected into the fact that sustainability is mostly informally discussed in the board meetings. The complexity is further enhanced by existing cultural, political and institutional differences that affect the behaviour of company leadership with regard to sustainability. It is also reflected in the different perceptions of board members of what sustainability is. Furthermore, complexity exists in the various different initiatives that generate obligations to companies, e.g. the EU Directive 2014/95 as regards disclosure of non-financial and diversity information by certain large undertakings and groups.[137] The EU Directive 2014/95 indicates that companies must report on their sustainability strategy, policies and impacts, and can do so along the lines of a framework at choice, such as the GRI, OECD etc. Finally, complexity leads to confusion concerning how to measure or reflect social and environmental value creation as that is perceived to be more complicated than calculating and presenting figures and information on financial value.[138]

There is no global level playing field in sustainability for business.[139] Other than examples such as Unilever and Puma,[140] we refer to the EU Impact Assessment accompanying the document Proposal for an EU Directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups which states that most companies do not yet structurally assess the sustainability impact of their business activities.[141] Impact is not yet considered, neither internally nor externally, despite the existence of the foregoing (semi) regulatory or national regulatory

136 B. Brown, 'Leading complex change with post-conventional consciousness' [2012] 25 Journal of Organizational Change Management 4, 560-575; Gabzdylova et al. 2009; Sweet et al. 2003; Fairfield et al. 2011.

137 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330, 15.11.2014.

138 Lambooy and Stamenkova van Rumpt 2014.

139 Lacy et al. 2012; The UN Global Compact-Accenture CEO Study on Sustainability 2013.

140 Gröschl et al. 2017.

141 Commission Staff Working Document Impact Assessment: Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups, SWD/2013/0127 final, [para 3.1] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013SC0127> accessed 24 July 2017.

frameworks which encourage – and in some cases – require this, i.e. the EU Directive 2014/95, the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations 2017,[142] OECD Guidelines for Multinational Enterprises,[143] the UN Guiding Principles,[144] domestic corporate governance codes and environmental laws.[145] It seems that companies either lack information or do not use it well.[146] However, companies should move beyond CSR policies to a concrete assessment and measurement of their impact. According to the EU CSR-impact study, the impact thinking is poorly developed in companies due to: (i) not so clear understanding of performance and its relation to impact; (ii) the lack of knowledge on pathways of impacts; (iii) the lack of commonly agreed measurement methods (examples of impact measurement methods are the Base of the Pyramid (BoP) Impact Assessment Framework,[147] the 'SDG quick scan',[148] and the 'WBSCD Measuring Impact' framework;[149] (iv) the perceived high costs of measurement; (v) the fact that companies do not see a need for measurement; and finally (vi) the fact that companies do not see responsibility for measurement of impacts.[150] The study further revealed the necessity for companies to establish or accept methodologies and tools that measure and understand impacts on society.

There is an increasing demand from investors and other stakeholders for the disclosure of non-financial corporate information, on a global basis.[151] There is gap with disclosed and collected information and reliability is at stake. There is also demand for comparable information and indicators which are not necessarily translated into financial figures.[152] It is important for business leadership to understand how they can measure sustainability-related business endeavours and present clear information regarding this to stakeholders. Presently, the measurement methodology is dispersed and under development, thus considered by business

142 See supra concerning the TCFD Recommendations 2017 <www.fsb-tcfd.org/>accessed 25 July 2017.
143 OECD Guidelines for Multinational Enterprises 2011.
144 UN Human Rights Council, 'Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie' (7 April 2008, A/HRC/8/5).
145 Kanashiro and Rivera 2017; Tonello, 2010.
146 Prado-Lorenzo and Garcia-Sanchez, 2010.
147 T. London, 'Making better investments at the base of the pyramid' [2009] 87 Harvard Business Review 5, 106-114.
148 SDG quick scan, <https://www.sdgquickscan.nl/> accessed 24 July 2018.
149 WBCSD Measuring Impact <www.wbcsd.org/Programs/People/Social-Impact/Resources/WBCSD-Measuring-Impact> accessed 24 July 2018.
150 CORDIS, 'Final Report Summary – IMPACT: Impact Measurement and Performance Analysis of CSR 2014' (18 November 2014) <https://cordis.europa.eu/result/rcn/149310_en.html> accessed 28 March 2018.
151 Principles for Responsible Investment (PRI) <www.unpri.org/> accessed 23 July 2018; Lambooy 2010b; Lambooy et al 2018.
152 Lambooy et al. 2018.

leaders lacking or inadequate. In this respect, new laws such as the EU Directive 2014/95[153] were adopted, but the text thereof is still very general and insufficient to deal with the problem.[154] The text indicates that companies can report along the line of a framework at choice without any verification of the reported outcome. There is the necessity for the standardisation and mainstreaming of the sustainability reporting and measurement of sustainable impact. This would help boards to implement the sustainability programmes in their organisation and to set up systems to measure the results – the more this tends to compliance, the more attention it will get from boards

4.3. Possible Solutions and Improvements Related to (Company) Law and Legal Instruments

One crucial element of sustainable companies' organisation and sustainable business activities is related to the structure and the composition of the board of directors. Company law can make a difference by setting the rules to steer diversity in leadership.[155] That is for example: (i) to include independent experts from various stakeholder groups in the decision-making bodies of a company such as the board of directors; and finally (ii) to include persons with different gender and national backgrounds and expertise in the board of directors.[156] In general, the opinion is that diversification will create a better basis for leadership. Diversified boards can better deal with complex problems.[157] Company law can provide for rules on diversification of boards that will sustain a form of leadership that can put sustainability on the agenda. They can start with the board itself. They should improve the composition of the board, adequately representing the inclusiveness in decision-making and board composition. They could follow the social enterprise paradigm of inclusive and participatory governance including commercial and non-commercial stakeholders, such as advisory organs or representatives of employees in parallel with works councils in jurisdictions such as the Netherlands and Germany.[158] Other stakeholders should be represented on the board which are lacking now, especially the factor environment and local (marginalised rural and traditional) communities, as well as future generations, i.e. working groups comprising

153 European Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups OJ L 330, 15.11.2014.

154 Lambooy et al 2018.

155 Clarke 2015.

156 Ibid.

157 Diepeveen et al. 2017; Ben-Amar et al. 2017; Chisholm-Burns et al. 2017; Adams 2015; Du Plessis 2015; Glass et al. 2015; Ali et al. 2014; Fernandez-Feijoo et al. 2014; Boulouta 2013; Lückerath-Rovers 2013; Nekhili and Gatfaoui 2013; Marshall 2011.

158 Lambooy and Argyrou 2014; Argyrou et al. 2016a; Argyrou et al. 2016b; Argyrou et al. 2017; Lambooy et al. 2017.

representatives of future generations institutionalised in public and corporate governance processes. [159] We have previously published on this topic and, and so did other scholars.[160] Hence, we will not further elaborate on this theme.

Second, there is a need to disclose information according to uniform and global standards that are independent and verifiable; the necessity for reliable information which enhances the trust of stakeholders. Companies publish non-financial information which is sometimes not properly verified and law can help in that. Clear measurements can be developed, so that companies can measure sustainable impacts on a standardised basis. In addition, legislation (global and local) is needed to create a level playing field for business to adhere to sustainability, because companies value a level playing field. In the current reality, this is lacking in many cases. In some cases, companies that ignore sustainability issues obtain competitive advantage compared to those that do not. Companies that are frontrunners in addressing sustainability challenges therefore ask for regulatory developments on sustainability. Stricter legal norms on corporate conduct as well as on the provision of information on corporate sustainability strategy, policies, impacts and outcome could increase the legitimacy of companies. As we and others have published on this topic,[161] we will limit the discussion about this subject in this article.

Most importantly, boards can overcome hesitations with regard to the novel and complex character of sustainability by rediscovering or reformulating their company purpose. Companies often deal with a company purpose that is too narrow and/or financially focused. Commonly, it contains a description of commercial activities without comprising anything concerning the substance of the purpose of the company, i.e. the vision, the mission and the strategy.[162] However, some companies have a mission that is not purely financial but includes social principles

159 Worldconnectors, 'Working Group Future Generations' <www.worldconnectors.nl/en/themes/future-generations/> accessed 12 July 2018. Worldconnectors, 'Institutionalising the needs, interests and rights of future generations, an ombudsperson for future generations in The Netherlands, Legal Background Paper' (2017) <www.scribd.com/document/133982864/Ombudsperson-Future-Generations-in-the-Netherlands-Legal-Background-Paper> accessed 12 July 2018.

160 Diepeveen et al. 2017. I. Ferrero-Ferrero, M.A. Fernández-Izquierdo and M.J. Muñoz-Torres, 'Integrating Sustainability into Corporate Governance: An Empirical Study on Board Diversity: Board Diversity, CSR Management Quality and Performance' [2015] 22 Corporate Social Responsibility and Environmental Management 4, 193-207.

161 Lambooy 2014; Lambooy 2016; Lambooy et al. 2018; C. Villiers and J. Mähönen, 'Article 11: Integrated Reporting or Non-Financial Reporting?', in B. Sjåfjell and A. Wiesbrock (eds), *The greening of European business under EU law: Taking article 11 TFEU seriously* (Routledge 2015).

162 Sjafjell and Richardson 2015; Lambooy 2016; Corporate Governance for a changing world: Round Table Report 2016.

or objectives.[163] Company laws can ask companies to make this mixed company purpose explicit by explaining in a mission statement or the articles of association the values that they strive to follow, the goals they want to achieve (in the long-term), or how to structure a hierarchy of their goals. This will help boards to increase the number of sustainability topics on the agenda. On this subject, the introduction of legislation on social entrepreneurship in a national context which sets the requirement from companies to state their social purpose in the articles of association is a good example for legislators and policy makers who are looking for legal instruments that can guide commercial enterprises towards implementing sustainability into their strategy, policies and activities.[164] Since little academic research is devoted to this topic, the latter suggested solution – that is: employing the company purpose – will be discussed in more detail in the following Section 5.

5. COMPANY PURPOSE TO SUPPORT COMPANY BOARDS TO PUT SUSTAINABILITY ON THE AGENDA

5.1. Company Purpose

Sustainability is part of companies' DNA. It is in the basic functions of the role of the company. It is expressed through well-organised strategy with a long-term view and through fair balance between stakeholders' interest with the company.[165]

From time to time, companies are confronted with many different claimants who believe that the enterprise exists to serve their interests. Demands are placed on a company by shareholders, employees, suppliers, customers, governments, societal interests' groups, and communities, forcing managers to weigh whose interest should take precedence over the other. In the 80s, employees were at the centre of the discussion, in the 90s, all over the world, shareholders of listed companies were complaining that boards neglected them. Since approximately 2000, sustainability provides a new dimension to the field of conflicting claims each calling for the company's attention. For example, a current debate is being conducted concerning the question as to what the rights of a community's nature, and future generations, i.e. 'stakeholders without voice', are versus those of shareholders. Who should be responsible for externalities of corporate activities such as environmental destruction and marginalising of rural and traditional communities: the state or the company that is

163 Lambooy and Argyrou 2014; Argyrou et al. 2016a; Argyrou et al. 2016b; Argyrou et al. 2017; Lambooy et al. 2017.

164 Lambooy and Argyrou 2014; Argyrou et al. 2016a; Argyrou et al. 2016b; Argyrou et al. 2017; Lambooy et al. 2017.

165 The quote is retrieved from the expert interviews. See Table 1.

causing the externalities? The company purpose can function as a fundamental principle – as a legal instrument – against which strategic options and conflicting claims can be evaluated. Company purpose can be defined as the reason for which a company exists.

The company purpose can be expressed explicitly or implicitly. Explicit expressions are: articles of association (by-laws) of the company, annual reports or other documentation (for example, mission statements), and more informal statements, such as press releases and interviews of senior executives in the media.

As leadership entails bringing all individuals of an organisation together to achieve common goals, the question emerges, what are those common goals? Dutch company law for example stipulates that a legal entity, such as a limited liability company (BV or NV), exposes its objectives in its articles of association, and files those with the Trade Register. However, these types of objectives are for the most part very different from the concept of purpose in the context of leadership. Currently, Dutch companies adopt a company purpose that just describes their business activities. The objectives in the articles of association do usually not echo a leader's vision, a mission or a strategy.[166] Under Dutch company law, and in other company law systems, the formal objectives – which are stated in the articles of association of a company – contain the boundaries within which the board has to lead the company. Hence, they constitute an important instrument for the board. Suppose that the company object clause allows the board, or one-step further, obliges the board to guide the enterprise in such a way that it addresses the global challenges in its strategy, ambitions and activities. Hence, a board will feel itself supported by this legal instrument when it decides to make a choice for a business model that promotes and supports a sustainable world. A similar argument is made by Sjåfjell et al.,[167] who propose to include the Planetary Boundaries as defined by an international group of scholars: Rockström et al.,[168] as a norm for corporate behaviour in the formal company purpose clause of a company.[169]

166 Lambooy 2016.

167 B. Sjåfjell, A. Johnston, L. Anker-Sørensen and D. Millon, 'Shareholder Primacy: The Main Barrier to Sustainable Companies', in B. Sjåfjell and B.J. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015).

168 Rockström et al. 2009.

169 B. Sjåfjell and J. Mähönen, 'Upgrading the Nordic Corporate Governance Model for Sustainable Companies' [2014] 11 European Company Law 2, 58-62; B. Sjåfjell, 'Corporate Governance for Sustainability: The Necessary Reform of EU Company Law', in B. Sjåfjell and A. Wiesbrock (eds), *The Greening of European Business under EU Law: Taking Article 11 TFEU Seriously* (Routledge 2015); B. Sjåfjell, 'Bridge Over Troubled Water: Corporate Law Reform for Life-Cycle Based Governance and Reporting' (2016). University of Oslo Faculty of Law Research Paper No. 2016-23 <https://ssrn.com/abstract=2874270> or <http://dx.doi.org/10.2139/ssrn.2874270> accessed 25 July 2018.

Corporate purpose was also the topic of a series of roundtables that were held in among other in the Netherlands, London, New York, Paris, Oslo, and Brussels, in 2015-2016.[170] The results of the roundtables were presented to and discussed with the European Commission in 2016. The common conclusion of the Dutch roundtable was that it is important for the board members to develop a clear mission. In addition, for the management of a large enterprise, it is even imperative to establish a clear purpose, vision and strategy, in order to test its ability to make decisions in accordance with the purpose; of course, all in consultation with the stakeholders.[171] In these meetings, it was suggested that every company – small or large – should develop a statement of purpose at the time of incorporation. The statement can be revisited at an 'annual stakeholder meeting', which resembles the annual general meetings of shareholders – but now with the addition of other stakeholders. This process would allow companies and stakeholders to arrive at a shared understanding of corporate purpose. The reason is that various stakeholders, such as environmental stakeholder groups and stakeholder groups that represent supply chain stakeholders, currently are not represented in the shareholders meeting. It was agreed in the roundtables meetings that some flexibility should cater for amending the indicators but that at all times the corporate culture must be retained to take decisions that are fully in accordance with the corporate purpose. We also note in this context that the influence by stakeholders in Dutch companies' governance and the decision-making processes currently is limited to primarily 'inside stakeholders', such as the supervisory board, shareholders and employees. To a certain extent, also creditors and contract parties have a voice.

As such, company purpose is an important instrument with a degree of legal power depending on how explicit and formal it has been expressed. Company purpose can also be implicitly expressed within a company. In this case, company purpose is defined as the corporate mission, which exists as a source of direction even if it is not written down. It consists of the fundamental principles, philosophies, beliefs, values, and definitions that give direction to strategic decision-making.[172] The 2016 Dutch Corporate Governance Code (hereafter 'Dutch GC Code 2016') also points

170 University of Oslo, 'Corporate Governance for a Changing World – Global Roundtable Series' <www.jus.uio.no/english/research/areas/companies/events/2016/roundtable.html> accessed 28 March 2018.

171 Corporate Governance for a Changing World: The purpose of the Corporation 2016. See also the executive summary of the Round Table's Report: 'Corporate Governance for a changing world' (15 February 2016) <www.purposeofcorporation.org/summary-dutch-roundtable_1.pdf> accessed 27 March 2018. See also the participants of the Summit organised in Brussels to discuss issues of the next generation of corporations with the title 'Creating Sustainable Companies Summit' (28 September 2016) <http://summit2016.purposeofcorporation.org/#overview> accessed 28 March 2018.

172 B. De Wit and R. Meyer, *Strategy: Process, content, context; an international perspective* (Cengage Learning 2010); Lambooy 2016.

out that long-term value creation should be the task of the board.[173] It prescribes in Principle 1.1 "Long-term value creation":

"The management board is responsible for the continuity of the company and its affiliated enterprise. The management board focuses on long-term value creation for the company and its affiliated enterprise, and takes into account the stakeholder interests that are relevant in this context. The supervisory board monitors the management board in this […]"

In the best practice provision 1.1.1 ('Long-term value creation strategy'), a recommendation is included, which states that the management board:

"should develop a view on long-term value creation by the company and its affiliated enterprise and should formulate a strategy in line with this. Depending on market dynamics, it may be necessary to make short-term adjustments to the strategy. When developing the strategy, attention should in any event be paid to the following: [...] v. the interests of the stakeholders; and vi. any other aspects relevant to the company and its affiliated enterprise, such as the environment, social and employee-related matters, the chain within which the enterprise operates, respect for human rights, and fighting corruption and bribery."

Similar provisions can be found in the new South African Corporate Governance Code 2016. When the company purpose is not explicitly defined, one cannot speak of any legal power residing in the purpose, and its impact within the organisation is generally reduced. An implicit corporate mission increases the chance of divergent interpretations within the organisation and among external stakeholders. The perception that the board and managers have of their organisational purpose will give direction to the strategy process and content of the organisation.[174] Campbell and Yeung distinguish three dimensions of company purpose.[175] It can provide: direction, legitimisation and motivation. We address these three dimensions below.

5.1.1. Direction

The company purpose can point the organisation into a certain direction by formulating a mission and a vision. Nonetheless, company mis-

173 Dutch Corporate Governance Code 2016 <www.mccg.nl/download/?id=3367> accessed 28 March 2018.

174 C.A. Bartlett and S. Ghoshal, 'Changing the role of top management: Beyond strategy to purpose' (1994) 72 Harvard Business Review 6, 79-88; A. Campbell and K. Tawaday, *Mission and business philosophy* (Heinemann 1990); R. Sisodia, D.B. Wolfe and J.N. Sheth, *Firms of endearment: How world-class companies profit from passion and purpose* (Wharton School Pub: Upper Saddle River 2007).

175 A. Campbell and S. Yeung, 'Creating a sense of mission' (1991) 24 Long Range Planning 4, 10-20.

sion is distinct from vision. While the company's mission outlines the fundamental principles guiding strategic choices, a vision outlines the desired future at which the company hopes to arrive. In other words, vision provides a business aim that can be achieved, while mission provides business principles on how the vision can be achieved. Lambooy indicates this as follows:[176] The 'mission' represents the 'why', i.e. why does the company exist (long-term). The 'vision' provides information on what type of activities the company engages in, in order to implement the mission, i.e. what type of business model the company employs, and how this is set up (medium term). The 'strategy' answers the how, i.e. how is the mission put in practice, e.g. what strategic choices are made, usually with a focus on the next years.[177] Tideman and Arts, apply similar concepts in defining the type of leadership that companies need in order to create long term sustainable value.[178]

5.1.2. Legitimisation

Company purpose is an element of corporate governance. The 'why' of the company is related to the 'who' of the company. For whom does the company operate, and who ensures that all stakeholder interests are served well? If this is specified clearly, the chances will increase that stakeholders accept, support and trust the organisation.[179]

5.1.3. Motivation

Where a consistent and compelling corporate mission is formed, this will infuse the organisation with a sense of mission, enhancing the emotional bond between members and motivating them to work together according to the mission.[180] Accordingly, employees experience a sense of 'shared purpose' with their companies: they recognise their own motivation in the mission of the organisation.[181]

5.2. Conflicting Views on Company Purpose

There are conflicting views on what is the right direction, legitimisation and motivation of company purpose. Business scholars have sum-

176 Lambooy 2016.

177 Ibid.

178 S.G. Tideman and M.C.L. Arts, 'Empowered leadership: Qualities and mindsets to create post-crisis economic, social and ecological value' in B. Hoogenboom (ed), *Gorillas, Markets and the Search for Economic Values* (Nyenrode University Press 2013).

179 R.E. Freeman and D.R. Gilbert, *Corporate strategy and the search for ethics* (Englewood Cliffs, NJ: Prentice Hall 1988).

180 Campbell and Yeung 1991; Sisodia 2007.

181 S.G. Tideman, *Business as Instrument for Societal Change – In Coversation with the Dalai Lama* (Greenleaf Publishing 2016).

marised this as a conflict between profitability and responsibility.[182] The sustainability-debate adds fuel to this tension, by emphasising that the company's responsibility should extend to those stakeholders that impact and are impacted by the long-term value creation of the company, as well the company's ecosystem dependency and social license to operate. In this view, the conflict is not so much between profitability and responsibility, but between short-term and long-term profitability and legitimacy. Without being responsible for the long-term, there may – at one point in the future – not be any short-term profitability. The recognition that in the modern world with increased awareness of social needs, responsibility has become a business survival issue lies behind the concept of Creating Shared Value (CSV), as expressed by Porter and Kramer.[183] Here societal needs, rather than financial needs, are seen as the only real long-term value driver for companies. By adequately serving societal needs, companies will enhance their value creation capacity and thus improve their competitive position. In the view of Porter and Kramer,[184] the tension between responsibility and profitability has become merely theoretical.[185] A similar vision is expressed by the TCFD: its recommendations encourage companies to prepare long-term scenarios in which they assess what the impact of climate change will be on their business model.[186] Clearly, in a world in transition towards renewable energy, some businesses will have to reinvent themselves if they intend to survive in the long run.

5.3. Purpose and Legal Innovation

Dissatisfaction with shareholder value thinking is not just confined to the academic world. A number of company laws of states in the USA now allow companies to be registered, which specifically do not have maximising shareholder value as a purpose. These so called 'benefit corporations' (B-Corps) are, generally, required to have a company purpose to create a

182 P.F. Drucker, 'Converting social problems into business opportunities: The new meaning of corporate social responsibility' (1984) 26 California Management Review 2, 53-63; De Wit and Meyer 2010; See also the Corporate Governance for a Changing World: The purpose of the Corporation 2016. See also the executive summary of the Round Table's Report: 'Corporate Governance for a changing world' (15 February 2016) <www.purposeofcorporation.org/summary-dutch-roundtable_1.pdf> accessed 27 March 2018. See also the participants of the Summit organised in Brussels to discuss issues of the next generation of corporations with the title 'Creating Sustainable Companies Summit' (28 September 2016) <http://summit2016.purposeofcorporation.org/#overview> accessed 28 March 2018.

183 Porter and Kramer 2011.

184 Ibid.

185 Ibid. They mention in 4: "The moment for a new conception of capitalism is now; society's needs are large and growing, while customers, employees, and a new generation of young people are asking business to step up (...) The purpose of the corporation must be redefined as creating shared value, not just profit per se".

186 See supra TCFD 2017.

material positive impact on society and the environment.[187] They provide for directors to have fiduciary duties to consider non-financial interests and they have an obligation to report on social and environmental performance assessed against an objective standard.

In the European Union (EU), similar legal structures for socially oriented enterprises have been developed in a national context.[188] Among other, Belgium, UK and Greece have introduced special legal vehicles for enterprises that aim to pursue a social purpose instead of making profit. The special legal structures are the *Vennootschap met Sociaal Oogmerk* (VSO) in Belgium, the Community Interest Company (CIC) in UK, and the Social Cooperative Enterprise (Koinsep) in Greece.[189] In the EU, other countries are in the process of introducing similar legal forms for social enterprises and purpose-driven enterprises. Among other characteristics, these social enterprises do not distribute (all of) their profits to shareholders. The profits are mostly reinvested to achieve their social purpose. They are required to state their societal purpose in the articles of association, to provide a special report that shows how the societal purpose has been pursued, to apply democratic and participatory models of representation on a governance level, and to include stakeholder consultation and participation in decision-making.[190] In an exemplary way, social enterprises might influence and drive ordinary and commercially driven companies to align the company purpose with a distinct societal and a more explicit position concerning what the company can do for the stakeholders.[191]

6. CONCLUSIONS

The research question posed in this study stated: While the law (legal framework) is sometimes used by leaders as an excuse for not being able to strive for sustainability, how can the law be used to support company leaders to achieve sustainability? In order to answer this question, we conducted a systemic literature review of 115 published mostly empirical peer-reviewed studies examining the topics of sustainability, company leadership, and law. In the collected studies, the term 'sustainability' is predominantly used to indicate the environmental and social perspective. The identified empirical studies were classified in a database, which assisted us in the analysis. Complementarily, interviews were conducted

[187] J.S. Hiller, 'The benefit corporation and Corporate Social Responsibility' [2013] 118 Journal of Business Ethics 2, 287-301.
[188] Lambooy and Argyrou 2014; Argyrou et al. 2016a; Argyrou et al. 2016b; Argyrou et al. 2017; Lambooy et al. 2017.
[189] Lambooy and Argyrou 2014; Argyrou et al. 2016a; Argyrou et al. 2016b; Argyrou et al. 2017; Lambooy et al. 2017; Argyrou 2018.
[190] Lambooy 2016, 42. See also in this issue A.G. Colenbrander and T.E. Lambooy, 'Engaging external stakeholders in Dutch corporate governance' (2018) *ICCLJ* 2018-2.
[191] Ibid.

with academic experts from different disciplines to explore the conceptual link between sustainability, leadership and law. Our research produced several valuable insights on the relationship between sustainability, company leadership and law. A brief recap and synthesis follows.

In the current business reality, the shareholder primacy model is still dominating the thinking of both management and investors. However, to state that there is conflict between shareholder value primacy and the stakeholder value perspective is rather misleading. Correct application of the shareholder primacy model implies concern for stakeholders, while the stakeholder-value perspective does not deny shareholders' right to dividends and share price appreciation. The conflict in essence is between maximising shareholder value with a short-term focus, which usually implies a trade-off with stakeholder value, versus generating stakeholder value as precursor for shareholder value with a longer-term focus. The synthesis between these approaches can be found in the notion that high profitability and high responsibility go hand in hand. Stakeholder value is necessary in order to generate shareholder value.

Our analysis indicates that it is necessary that commercial enterprises rediscover or recreate their social and environmental purpose for the generation of stakeholder value. This can be thought of as re-incorporating society into their company purpose. A company purpose is most effective if it identifies the stakeholders that it is aimed at. Such company purpose, which by definition is directed at a group of stakeholders that includes but is not limited to shareholders, will provide clear direction, legitimacy and motivation for all stakeholders involved, which are all value drivers for the company. To paraphrase Porter and Kramer, and link it to their concept of shared value, companies should formulate a 'shared purpose' linking business and society.

Since adherence to maximising shareholder value with a short-term focus runs counter to such company purpose and would necessarily lead to the destruction of stakeholder value, it is recommended that company purpose is made explicit, so as to avoid '*de facto*' adherence to maximising shareholder value with a short-term focus. Moreover, this will help boards in the transition towards sustainability, especially in the first stages where management is driven by an 'extrinsic' motivation, rather than an 'intrinsic' motivation, with regard to creating stakeholder value.[192] Legal instruments such as including an explicit societal value creation aim into the company purpose in the articles of association can function as the 'stick' needed to help boards to make sustainability a business-critical issue, and thus enhancing the capacity for long-term value creation of the company.

[192] Van Tulder et al. 2014.

To this direction, primarily, it is recommended that the domestic national company legislation specifically prescribe that companies articulate a company purpose which includes the societal values to which the company aims to contribute. Such a company purpose should be laid down in the articles of association, annual reports and other publicly available documentation of the company. Secondly, the societal values included in a company's purpose clause should include both the social and the environmental dimension (shared purpose) and it should explain in a precise manner in which way the company's activities contribute thereto. The purpose clause should also explicitly mention the company's stakeholders, or identify the groups of stakeholders for which the company aims to create value. Nature protection or restoration can also be included as a shared value, and representatives of nature organisations and/or local stakeholders can represent those societal values. Thirdly, in order to avoid *de facto* bias towards short-term maximising shareholder value, boards should be required by domestic national company law to put long-term value creation for stakeholders on the board's agenda.