

Mr. Luca Verzobio

LL.M. candidate in Corporate & Financial Law

University of Glasgow

Glasgow G12 8QQ, UK

Email: luca.verzobio@gmail.com

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UN Working Group on Business and Human Rights
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Re: Call for Input “Investors, ESG and Human Rights”

Introduction

I am grateful for the opportunity to contribute to the call for input issued by the Working Group on Business and Human Rights about “Investors, ESG and Human Rights.” I decided to contribute to this project since one of the questions is strongly related to the topic of my LL.M. dissertation (which I can make available if you think it might be helpful), written in collaboration with ClientEarth. More specifically, Question 13 in the “Corporate responsibility to respect human rights” Section asks about the potential role of stock exchanges in ensuring investors and businesses respect human rights. My LL.M. dissertation is about listing regimes and climate change, and one of its main assumptions is related to the need for stringent listing requirements considering climate science, countries' climate commitments, the goals of the Paris Agreement, and investors' interests (expanding on the work done by ClientEarth about the UK listing regime). I then elaborated on potential legal interventions with reference to the EU legal system, considering the role of listing authorities. In particular, stock exchanges seem to be able to influence the behaviour of investors towards an ESG approach when deciding which companies to invest in. While in my dissertation I focused on climate-related matters, I think similar conclusions can also be reached about the protection of human rights.

The role of listing authorities (considering both regulators and stock exchanges) can be relevant before and after listing. Before, admission to listing and prospectus approval must be considered; after, disclosure obligations should be taken into account. Given the important role that the financial sector could play in the implementation of the UNGPs, listing regimes can be seen as a pressure point to push investors and companies in the desired direction. In the next Section, more detailed recommendations will be made about the role of stock exchanges in ensuring respect for human rights.

Corporate responsibility to respect human rights - Question 13

Are there any roles which stock exchanges could play in ensuring investors, and the businesses in which they invest, respect human rights?

In recent years, a significant development in investment policy has been the expansion of capital market strategies and financial instruments aimed at encouraging investments in environmentally and socially responsible enterprises.¹ These measures and tools predominantly originate from stock exchanges and their governing authorities. Stock exchanges, in particular, possess a distinctive capacity to exert influence over investor and company behaviour, also being able to support regulators in the adoption of market standards.² Regarding human rights protection, stock exchanges actively seek ways to encourage responsible human rights conduct among the companies listed on their exchanges (e.g., see [Sustainable Stock Exchange Initiative](#) and its '[Stock exchange guidance on human rights disclosure](#)' Policy Brief).

Therefore, it seems possible to identify several ways for stock exchanges to promote and safeguard human rights:

1. Listing Requirements

The admission of securities to the official listing of a stock exchange is decided by the competent authorities as identified in each listing regime. For example, considering the EU legal framework, and more specifically the Listing Directive,³ Article 105 does not specify whether the competent authorities should be of a private or public nature. Therefore, either an exchange or a regulator can serve as the competent authority, and several Member States (e.g., Italy and Germany) identified the stock exchange itself as the competent authority for the admission to listing. According to Article 11(2) Listing Directive, the competent authorities can reject an application for admission to the listing if “the issuer's situation is such that admission would be detrimental to investors' interests.” Moreover, Member States can authorise competent authorities to set specific conditions for the admission of a security to official listing (Article 12). These special conditions, deemed appropriate by the competent authorities, can be established to safeguard the interests of investors. Once a company's securities are officially listed, the issuer is required to furnish the competent authorities with any essential information to safeguard investors or ensure the market's efficient operation. In cases where the protection of investors or the smooth functioning of the market demands it, the competent authorities can mandate the issuer to disclose specific information in a designated format and within specified timeframes. Failure to adhere to these requirements may prompt competent authorities to release the information independently (Article 16). In my dissertation, I tried to use these provisions as the “entry point” to consider climate-related financial risks in the listing process after having analysed how exposure to climate-related financial risks could influence market efficiency and investors' interests. Even if my analysis was limited to the EU legal framework and climate-related matters, since similar provisions are present in other listing regimes, and

¹ See ‘2018 Report on Progress: A Paper Prepared for the Sustainable Stock Exchanges 2018 Global Dialogue’ (Sustainable Stock Exchanges Initiative 2018) <https://sseinitiative.org/wp-content/uploads/2019/12/SSE_Progress_Report_2018.pdf>.

² See ‘World Investment Report - Investment and the Digital Economy’ (UNCTAD 2017) 148 <https://unctad.org/system/files/official-document/wir2017_en.pdf>.

³ Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities.

given the potential impact of human rights risks for investors and the market, I think similar arguments may generally be extended to human rights violations.

On the other hand, another important step in the listing process to consider is the prospectus approval, particularly the information that needs to be disclosed to be listed on a public stock exchange. It should be noted that an increasing number of investors are integrating ESG factors into their investment decision processes. There is a growing global awareness that neglecting to take ESG information into account represents a failure of an investor's fiduciary duty.⁴ Exchanges have a vital role in assisting markets in addressing emerging requirements related to ESG disclosure and management. In relation to human rights violations, stock exchanges should be able to set listing requirements that encompass compliance with human rights standards (potentially including the implementation of the UNGPs). They can require companies seeking to be listed to disclose their policies and practices concerning human rights. These requirements may also mandate companies to report on their human rights impact and efforts to mitigate adverse effects.

2. Transparency and Monitoring

After the admission to listing, stock exchanges can require listed companies to provide transparent and comprehensive disclosures regarding their human rights policies, risks, and impacts. This information should be readily available to investors and the public. Moreover, stock exchanges can periodically monitor listed companies' compliance with human rights standards (e.g., through periodic reviews, audits, or evaluations of a company's human rights performance).

3. Sustainability Indices

ESG indices continue to be the favoured sustainability tool within stock exchanges. These ESG indices serve to advance sustainable investments while also stimulating increased voluntary transparency among issuers.⁵ Certain exchanges provide sustainability indices that encompass human rights benchmarks. In this way, it seems possible for investors to identify companies that give precedence to human rights in their activities.

4. Education and Awareness

Among the various stock exchanges' tools to promote ESG practices, it is also important to consider ESG training.⁶ Stock exchanges can educate investors about the significance of taking human rights into account when making investment choices. This may involve providing resources, training, and information on evaluating a company's performance concerning human rights.

5. Stakeholder Engagement

⁴ See 'Fiduciary Duty in the 21st Century' (UNEP FI and PRI 2019) <<https://www.unepfi.org/wordpress/wp-content/uploads/2019/10/Fiduciary-duty-21st-century-final-report.pdf>>.

⁵ See 'World Investment Report - Investment and the Digital Economy' (n 2).

⁶ See 'The Role of Stock Exchanges in Fostering Economic Growth and Sustainable Development' (UNCTAD and WFE 2017) 16 <https://unctad.org/system/files/official-document/WFE_UNCTAD_2017_en.pdf>.

Stock exchanges can collaborate with a range of stakeholders, such as civil society groups and human rights experts, to ensure that their initiatives aimed at advancing human rights are in harmony with the broader community's expectations.

6. Penalties and Delisting

In case of continued violation of human rights, stock exchanges should consider imposing penalties or (in severe cases) delisting.

Conclusion

I would like to reiterate my gratitude for the opportunity to provide some input on this topic, even if limited to just one question. I hope that you will find some of these comments and recommendations useful for your final report, and I remain at your disposal to further clarify any comments that you might find interesting.

Yours sincerely,

Luca Verzobio