

Faculté de droit et de criminologie  
Institut pour la recherche interdisciplinaire en sciences juridiques  
Centre de recherche interdisciplinaire "Droit, entreprise et société" - Jean Renauld CRIDES

***EUROPEAN LAW INSTITUTE***

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**SHAREHOLDERS & SOCIALLY  
RESPONSIBLE INVESTMENTS (ESG  
issues)**

**PROF dr. Alexia Autenne,  
FNRS, UCLouvain & ULB**

# Plan

- 1. LEGAL STARTING POINTS
- 2. QUESTIONS
- 3. DEVELOPMENTS

# 1. LEGAL STARTING POINTS

- DIRECTIVE 2017/...OF THE EUROPEAN PARLIAMENT & OF THE COUNCIL AMENDING DIRECTIVE 2007/36/EC AS REGARDS THE ENCOURAGEMENT OF LONG-TERM SHAREHOLDER ENGAGEMENT
- DIRECTIVE 2016/2341 OF THE EUROPEAN PARLIAMENT & OF THE COUNCIL of 14 DECEMBER 2016 ON THE ACTIVITES AND SUPERVISION OF INSTITUIONS FOR OCCUPATIONAL RETIREMENT PROVISION

## 2. QUESTIONS

- Should institutional investors take SRI factors into consideration in their financial investments policy?
- Is this coherent with the classical fiduciary duties of funds' governing bodies and their financial responsibility?
- What about transparency requirements; are they enough?

## 3. DEVELOPMENTS

- **International background:** the "United Nation's Global Compact"" and the "United Nation' supported Principles for Responsible Investment"
- **The Freshfields Report:** taking environmental, social and governance considerations (ESG) into account in institutional investment may not only be legally acceptable under certain circumstances, but is legally binding on some occasions

- According to the Freshfields' approach, taking ESG into account in institutional investment may not only be legally acceptable under certain circumstances, but is legally binding on some occasions.
- → ESG considerations might be taken into account when purely financial considerations have been exhausted.
- → ESG considerations may have a financial relevance - ESG affect positively financial performance.
- → ESG considerations might be taken into account when the beneficiaries express a consensus therefore.

- **Critics**

- ESG and fiduciary duties
- a situation where the financial characteristic of two investments are exactly the same, so that trustees could choose the one integrating ESG considerations, is almost impossible
- the possible financial relevance of SRI is debated
- the consensus argument is difficult to handle

- **Other Avenues?**

- the extension of disclosure requirements concerning SRI.
- the allowance of tax incentives for appropriate consideration of ESG factors.
- the introduction of liability techniques.
- the compulsory appointment of beneficiaries' representatives in the governing body of the institutional investors.