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## What has the EU ever done for Responsible Investment? (Part I)

**Has the shock of Brexit resulted in collective amnesia about the EU and Responsible Investment?**

by [Paul Watchman](#) | February 2nd, 2017

The United Kingdom (UK) has been a member of the European Economic Community (EEC) and the European Union (EU) for more than 40 years. However, since the vote to exit the EU there has been dismay about the effect that this vote (commonly referred to as Brexit) may have on responsible investment (RI). For example, Sustainalytics wrote in 2016 that the adverse risk of Brexit can be seen in the prompt abolition of the Department of Energy and Climate Change (DECC), government support for fracking, a declining interest in public green finance and a potential watering down of the UK's commitment to environmental issues, such as climate change, recycling and air pollution. Dr. Ian Williams is equally concerned on behalf of ShareAction and others. In his report A Sustainable Finance Plan for the European Union, Williams paints a very gloomy picture of the UK government's approach to sustainable finance and social and environmental issues in the run up to Brexit and post-Brexit compared with that of the European Commission. For example, Williams asserts that the EU has acted in ways that have prevented domestic UK initiatives which would negatively impact on human rights, working rights, consumer rights, the environment and animal welfare whereas the "EU has served to safeguard rights and standards in these areas." The problem with these fears of an environmental and social equality wasteland, it is submitted, is that they are misplaced and there is little evidence that the EU, European Parliament or the European Commission has ever played a leading role in the development of sustainable or responsible investment.

This is a contrarian view and, as such, it requires explanations and perhaps justification; particularly as the EEC/EU has issued important directives such as those on which UK environmental regulations for matters such as air quality, environmental assessment and waste reduction, recycling and reuse are founded. Whereas such initiatives form the bedrock of environmental stewardship and sustainability, they do not address or further sustainable investment per se.

To explain and justify the case against the EU being a leader in driving forward responsible investment and a bulwark against the erosion of key environmental and social protections, it is important to define the parameters of the case to be argued.

First, the case against the EU being an important responsible investment leader is not based on the EU's record of establishing a corpus of environmental laws or its concerns about the need for the delivery of humanitarian aid. Second, although many laws relating in particular to workers' rights and discrimination, such as equal payment, redundancy protection and legislation against unfair dismissal, race equality and rights for the disabled and chronically ill actually preceded or were in legislative form or policy train prior to the UK joining the EEC. No attempt will be made to critique whether the EEC and EU created or furthered these rights. It is accepted that important social rights have been created, extended, or protected by the EU. It is also accepted that the UK government have, in some cases, sought to oppose the creation or extension of such rights. Third, there appears to be some confusion about the respective roles of the EU and the ECHR in respect of human rights protection but that is not germane to the question of EU and RI leadership. Fourth, many people are concerned about the mechanics of Brexit. The full complement of judges in the Supreme Court heard arguments for and against the use of the prerogative powers to trigger Article 50 divided against the government by a majority of 8 to 3.

The focus of this paper is also not concerned with the EU enforcing EU standards. Although, in passing, air pollution is a good example of the pusillanimity of the EU as it was environmental rights law firm ClientEarth, not the European Commission, that hauled the UK government to court twice in the last two years for dragging its feet on the Air Quality Directive. This paper also does not take issue with the ShareAction vision of an investment system that is a force for good, or question the need for international co-operation such as developed within the European Responsible Investment Network (ERIN) across Europe and beyond to achieve this goal. However, this paper does express considerable doubt as to whether the EU is a road-worthy vehicle to further this ambition. The focus of this paper is fixed firmly on RI—and EU leadership on RI—rather than on these much wider politically divisive questions of the impact of Brexit generally, or of the EU and human rights law, environmental standards or enforcement. These matters, it is submitted, are where the argument in support of the EU and RI has tended to get muddled and lose clarity.

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**Page 2 - What has the EU ever done for Responsible Investment? (Part I)****What has the EU Actually Done for Sustainable Finance and Responsible Investment?**

The European Commission, under the leadership of former UK Commissioner Jonathan Hill, announced the Capital Markets Union (CMU) initiative. However, according to leading and respected organisations Global Witness and Friends of the Earth, the "CMU barely mentions sustainability, environmental, social and governance" and "has stepped back from promoting economic growth." In response to such trenchant criticism of their anaemic approach to responsible investment, the European Commission announced a "CMU expert group to develop a comprehensive strategy on sustainable finance." Such a delayed afterthought – failing to acknowledge that an expert group appointed to advise on what was always a critical issue for the CMU – leaves a very bad taste in the mouths of stakeholders. If, for the moment, we set aside this proposal to set up an expert group as well as the substantive environmental and social equality and diversity laws and instead focus on responsible investment: what has the EU actually done for RI in the last 40 years?

**Directives**

There are some Directives which can be seen as RI-friendly. Notably, the Accounting Directives and Shareholder Rights Directives. The Accounting Directive requires public interest entities (PIEs, including listed companies employing more than 500 employees in a financial year on a consolidated basis) to disclose non-financial and diversity information on policies, risks, and results on matters such as human rights, anti-corruption, bribery, environmental matters and social and employee issues, including diversity. This may be seen as a major step forward from the largely PR-exercise which is voluntary corporate responsibility reporting. However, the Directive lacks real teeth. It applies only to very large companies and other public interest entities. Although it was adopted in 2014, it does not come into force until 2017. The 2014 Shareholder Rights Directive (SRD) adds to the Accountancy Directive.

The SRD incentivises institutional investors and asset managers to take account of what the EU refers to as "non-financial matters," and for companies to engage with institutional investors and asset managers on environmental, social and governance (ESG) and other issues of responsible investment.

However, since the ShareAction conference on the question of whether Brexit provides an opportunity to create a more sustainable financial system and Capital Markets Union in November 2016, something remarkable happened. The European Parliament passed a Directive requiring workplace pension funds to consider ESG issues in their investment decision-making and to be more transparent with the members of workplace pension funds on their investment decision-making. This has been described by 350.org as a game-changer for carbon divestment. A decade after the Freshfields Report and 40 years after the UK became a member of the EEC, however, it is permissible to question if this is the best the EU can do on responsible investment or, as Shakespeare puts it, is it simply "sound and fury signifying nothing"? Much depends on the transposition of the directive by member states in the EU into national laws, but the timetable for the possible implementation of this Directive into UK law may well be longer than the timetable for Brexit.

Some sectorial directives can be added to those above. Examples include those in respect of timber and minerals, the EU Sustainable Development Goals, general policies on carbon trading (EU ETS) as well as the EU Corporate Social Responsibility Strategy, the EU Action Plan on Responsible Business Conduct members and a rather belated and weak stab at fiduciary duties and investment which pale against the works of Freshfields, the UK's Law Commission and the PRI on this subject.

*Paul Watchman is the Director of Sustainable Finance at CCP Research Foundation, a UK-based trust focused on changing societal expectations, public trust in institutions and relationships between civil society, government and enterprise.*

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