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ARTICLE

Centralised ESG Data Sharing and EU Competition Law: Safeguards for the Twin Transition

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Abstract

Over the past decade the European Union (EU) has transformed sustainability into a dense matrix of legally binding ESG reporting obligations for companies. Compliance increasingly hinges on firms' ability to collect and verify thousands of datapoints deep into global supply chains – an exercise that is costly, error-prone and may yield non-comparable results. (Semi-)centralised ESG data-sharing arrangements – shared hubs where suppliers post one or more verified sets of sustainability figures that all their customers can reuse – can restore some efficiency by eliminating duplicate requests and supplying standardised, audit-ready inputs, but this amplifies competition-law risk. Drawing on competition law and policy and recent Dutch banking practice, the paper devises a set of legal "firewalls" and access rules that neutralise collusive potential resulting from the information exchange that takes place while safeguarding smaller market players from exclusion. These safeguards are essential to ensure that ESG data collaboration supports – not hinders – the EU's Twin Transition towards a green and digital economy.

Keywords: Article 101 TFEU; competition law; data sharing; ESG reporting; twin transition

I. Introduction

The European Union (EU) has transformed "sustainability" into a binding legal objective. Under Article 3(3) of the Treaty on European Union (TEU) the EU "shall work for the sustainable development of Europe," while Article 11 Treaty on the Functioning of the European Union (TFEU) obliges every EU policy field to integrate environmental protection. To operationalise those constitutional commitments, the European Climate Law establishes binding targets, requiring at least 55 per cent net-emission reduction by 2030 and climate neutrality by 2050.[1] The Commission's twin-transition narrative[2] links

[1] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law").

[2] Twin Transition is the Commission's term for the simultaneous digital and green transformations. In EU law vocabulary it is therefore an integrated policy objective, not an autonomous legal principle. Distinguishing goals from principles matters because competition-law balancing under Article 101(3) TFEU is stricter when the countervailing "benefit" is merely a policy goal rather than a principle of constitutional rank.

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that climate trajectory to digitalisation, presenting the combined digital-and-green overhaul as a route to long-term European competitiveness.[3]

Within this framework the investment term "ESG" has acquired hard-law status.[4] The Corporate Sustainability Reporting Directive (CRSD)[5] obliges undertakings to report against twelve European Sustainability Reporting Standards (ESRS) that disaggregate into individual datapoints.[6] The Sustainable Finance Disclosure Regulation (SFDR), the Taxonomy Regulation and the forthcoming Corporate Sustainability Due Diligence Directive (CSDDD) layer sector-specific duties on investors and supply-chain operators.[7]

The data-collection model that feeds these obligations is decentralised and duplicative. For example, each firm mines its own supplier network for Scope 3 emissions, human-rights metrics and biodiversity impacts, generating parallel questionnaires and mounting compliance costs. But perhaps the biggest challenge for ESG investing and integration is the lack of consistent, transparent, and standardised sustainability data, making it difficult for investors to assess companies reliably and opening a "black box" of unclear ratings and reporting.[8] The Commission's 2024 survey on SFDR implementation highlighted data gaps, legal uncertainty, and comparability issues – especially due to misalignments with other ESG frameworks – as primary hurdles to effective ESG disclosure.[9]

To address these systemic issues, centralised or semi-centralised ESG data-sharing platforms have been proposed, promising efficiency through standardised data collection, audit-ready inputs, and cost reductions, particularly for SMEs. Such platforms could underpin the envisioned Green Deal Data Space, but depending on the way these are realised,[10] their implementation may introduce significant competition-law risks, such as facilitating tacit collusion or creating barriers through discriminatory access conditions.[11]

Recent enforcement practice suggests the obstacle is surmountable. The Dutch banking sector's joint project to standardise ESRS interpretation was informally cleared by the

[3] European Commission, "2030 Digital Compass: the European way for the Digital Decade" COM(2021) 118 final; European Commission, "The European Green Deal" COM(2019) 640 final. See also more recently, European Commission, "The Clean Industrial Deal," COM(202) 85 final following up on the Letta and Draghi reports.

[4] ESG in this paper refers to the statutorily defined disclosure obligations under the Taxonomy Regulation, SFDR, CSRD and (forthcoming) CSDDD. They operationalise Articles 114 and 192 TFEU (internal market + environment).

[5] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting [2022] OJ L322/15.

[6] European Financial Reporting Advisory Group (EFRAG), EFRAG IG 3: Detailed ESRS Datapoints Explanatory Note (May 2024).

[7] The EU has recently acknowledged the significant administrative burdens arising from these obligations. Under the newly adopted "Omnibus I" package and the accompanying "Stop-the-clock" directive, the EU seeks to simplify ESG regulations to enhance legal certainty and ease reporting burdens, notably by delaying the application of certain CSRD and CSDDD requirements. European Council press release, 14 April 2025.

[8] See, e.g., C Rossi, JGD Byrne and C Christiaen, "Breaking the ESG Rating Divergence: An Open Geospatial Framework for Environmental Scores" (2024) 349 Journal of Environmental Management 119477. https://doi.org/10.1016/j.jenvman.2023.119477 (last accessed 21 April 2025); IS Rasmussen, "The ESG Data Challeng" (*Aleta*, 5 September 2023), available at <https://aleta.io/knowledge-hub/the-esg-data-challenge> (last accessed 21 April 2025).

[9] European Commission, "Summary Report of the Open and Targeted Consultations on the SFDR Assessment" (14 September–22 December 2023).

[10] The Green Deal Data Space can be structured into various "subspaces" tailored to different purposes and user groups. For example, it may be used by a single firm in relation to its own supply chain. The associated competition-law risks are considerably lower in such a narrow setting than in broader configurations involving multiple competitors.

[11] See European Commission, "Commission Staff Working Document on Common European Data Spaces" SWD (2024) 21 final; European Commission, "EU Funding & Tenders Portal: Call for Proposal – European Green Deal Data Space" 2024, DIGITAL-2024-CLOUD-AI-06-GREENDEAL.

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Duch Authority for Consumers & Markets because participation was voluntary, information was aggregated, and access was open.[12]

Building upon these developments, this paper argues that EU competition law, appropriately structured, should not hinder but rather facilitate the establishment of an EU-wide Green Deal data space.[13] Specifically, it identifies key design principles as critical to ensuring that large-scale ESG data sharing can be both efficient and competition-compliant.

II. ESG disclosure obligations and their operational risks

1. ESG data requirements on EU level

Societal, political and legal focus on environmental and social issues has increased significantly.[14] Leading to amongst others a Climate law on the EU level, which goals are to: (i) make the EU's climate, energy, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55 per cent by 2030, compared to 1990 levels and (ii) ensure the EU is to become the first climate-neutral continent by 2050.[15]

In order to achieve those legally binding goals, it is key that a shift is made towards more sustainable production and consumption. In turn, to be able to make this shift it is a prerequisite that companies have insights in the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment.[16] Moreover, in order to enable stakeholders like consumers, civil society organisations and investors to make sustainable choices, greater transparency and disclosure regarding companies' ethical practices is required.[17] To this end several rules have been introduced.

What these rules have in common is that they require companies to collect sustainability data from their supply chains. For example, the Taxonomy Regulation requires companies to include in its non-financial statement information on how and to what extent the company's activities are associated with economic activities that qualify as environmentally sustainable as defined in the regulation.[18] The SFDR requires reporting about principal adverse impacts on investment decisions on sustainability factors and on due diligence policies with respect to those impacts,

[12] Netherlands Authority for Consumers and Markets, *Informal Guidance Regarding Collaboration on ESG Data* (Case no ACM/24/189306, Document no ACM/UIT/626583, 14 August 2024).

[13] While there are numerous legal dimensions to consider in the transformation of ESG data management – ranging from data privacy to intellectual property – this paper will focus specifically on the competition law implications.

[14] See for example Julie Patterson, "ESG: the Race has Begun" (2020) KPMG Horizons, available at <https://kpmg.com/dp/en/home/insights/2020/02/horizons-fs.html#1> (last accessed 28 August 2024); *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

[15] Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law") [2021] OJ L243/1.

[16] See, for example, S Tang and C Higgins, "Do Not Forget the 'How' along with the 'What': Improving the Transparency of Sustainability Reports" (2022) 65 (1) California Management Review 44.

[17] See, for example, Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU (CSRD), as regards corporate sustainability reporting [2022] OJ L322/15.

[18] Art 8 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation) [2020] OJ L198/13; Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Arts 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (First Delegated Act supplementing Art 8 of the Taxonomy Regulation) [2021] OJ L443/9.

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although limited to financial market participants.[19] The CSRD requires a double materiality assessment which means that companies must identify and report about both their impacts on people and environment (material impact) as well as the sustainability matters that financially impact the company (financial impact).[20] Exactly what companies must report is detailed in the ESRS.[21] The ESRS contain twelve standards covering everything from climate change to workforce. The CSDD, in turn, requires companies to publish an annual statement on their website in which companies are expected to describe (i) their due diligence policies and processes, (ii) the identified potential and actual adverse impacts, (iii) the measures taken to address these impacts and (iv) a transition plan for combating climate change.[22] Other than the formalities listed above, the CSDDD provides no clarity on the information and level of detail that should be included in the CSDDD report. The European Commission must issue delegated act(s) clarifying the specific content and criteria for the CSDDD report by March 2027.[23]

2. *Implementation of ESG data requirements*

In our view, above reporting obligations imply a sort of sustainability "know your customer" requirement to be able to identify, and report about, ESG risks. This means that companies that fall within the scope of these ESG regulations must (continuously) collect data not only of their own activities, but also from customers and other relationships within the chain of the undertaking's activities. The regulatory duty to "know your customer" morphs into a business risk in two steps: (i) legislators turn ESG criteria into mandatory datapoints; and (ii) firms, unable to obtain or verify them, face enforcement penalties and green-washing litigation. The subsection below traces that causal chain.

To start with the datapoints: the amount of those ESG datapoints is vast. The European Financial Reporting Advisory Group (EFRAG) delineated the 12 standards of ESRS into approximately 1,191 individual qualitative and quantitative datapoints.[24]

One of the hurdles companies seem to encounter in complying with the rules is that the collection and management of so much data is complex and requires the right analytical tools or expertise to handle the ESG data which not all companies might have. Moreover, that information must be available. At the moment, it seems that not all the information

[19] Art 4(1) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR) [2019] OJ L317/1.

[20] Art 19(a), 29(a) and 40(a) CSRD.

[21] See, for example, Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards [2023] OJ L2023/2772.

[22] Art 16(1) Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L2024/1760.

[23] Art 16(3) CSDDD. Following the Commission's "Omnibus I" simplification package of 26 February 2025, which amends the CSRD, the CSDDD and the EU Taxonomy Regulation, the European Parliament approved the package on 3 April 2025, and the Council gave its final green light on 14 April 2025. The first "stop-the-clock" directive therefore postpones the application of several CSRD and CSDDD obligations, while a second directive – now before Parliament's Legal Affairs Committee – aims to streamline the substantive reporting requirements; EFRAG has been mandated to provide the necessary technical advice. Although the broad direction of travel is now clearer, the full effects on the interaction between the CSRD, the CSDDD and the Taxonomy Regulation will only crystallise during 2025–2026, and the package is already facing NGO challenges before the European Ombudsman.)

[24] EFRAG, June 2024, available at <https://efrag.sharefile.com/share/view/s6e410fb208aa4685bf9c482ee405f48d/foa75419-44c9-4081-85a5-43217a6e8732> (last accessed 30 August 2024).

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needed is sufficiently available.[25] Companies often rely on complex global supply chains, and obtaining ESG data from them, or other partners, might be challenging, especially in emerging markets. Even if the information is available, a third hurdle is that the information might be inconsistent or unreliable. That is partly because there are different measurement and reporting frameworks worldwide,[26] with limited guidance on EU level[27] while there is a lack of legal clarity regarding key ESG concepts[28] and about more basic notions, such as whether commuting distance should be included when reporting on distance traveled and whether the outcome of standards should be expressed in euros or kilotons CO2.[29] Also, it is not always clear what calculation methods and data sources can be used as reliable sources to work out a criterion, like scope 3 emissions.[30] A survey (2024) under the previously enacted Directive on Non-financial reporting found, for example, that 60 per cent of the respondents labelled information as unreliable.[31]

The above bears the risk of companies using different interpretations, swamping customers and other business relations with requests for ESG data, likely on the basis of different interpretations, probably leading to reports that become incomparable due to those different interpretations and may contain errors and omissions.[32] As a result, it becomes more difficult for investors, civil society organisations, consumers and other stakeholders to evaluate the sustainability performance of companies. In turn, this might lead to insufficient progress to achieve the sustainability goals the EU has set.[33] The following quote from the summary report of the consultations on the implementation of the SFDR illustrates this:

> *However, 77% of respondents also highlighted key limitations of the framework such as lack of legal clarity regarding key concepts, limited relevance of certain disclosure requirements and*

[25] Mr. Drs. W Knibbeler, "Toezicht door de ACM op verantwoord en duurzaam internationaal ondernemen" in HJ de Kluiver (ed), Open normen, toezicht en duurzaamheid: perspectieven op komende duurzaamheidswetgeving vanuit het bestuursrecht, het mededingingsrecht en het financieel toezichtsrecht (*Koninklijke Vereeniging 'Handelsrecht' Preadviezen)* (Publisher Paris 2023) 61-102, 79. See also mr. Drs. W Knibbeler, "Mededingingsrechtelijke aspecten bij de implementatie van de CSDDD" (2024) 27 (4) Markt en Mededinging 153-160.

[26] Such existing standards and frameworks include the Global Reporting Initiative, the Sustainability Accounting Standards Board, the International Integrated Reporting Council, the International Accounting Standards Board, the Task Force on Climate-related Financial Disclosures, the Carbon Disclosure Standards Board, and CDP, formerly known as the Carbon Disclosure Project.

[27] Currently, on EU level general ESRS have been established and the European Commission published FAQs on CSRD and SFDR implementation in November 2024. In the coming years there will also be specific ESRS for some sectors but those have been delayed for now. See Commission, "Proposal for a Decision of the European Parliament and of the Council, Amending Directive 2013/34/EU as Regards the Time Limits for the Adoption of Sustainability Reporting Standards for Certain Sectors and for Certain Third-Country Undertakings" COM(2023) 596 final.

[28] European Commission, "Frequently Asked Questions on the Implementation of the EU Corporate Sustainability Reporting Rules" (Draft Commission Notice) (2024). See also para 45 of the ESRS; prof. Mr. HJ de Kluiver, "Open normen, toezicht en duurzaamheid in de CSDDD" in HJ de Kluiver (ed), Open normen, toezicht en duurzaamheid: perspectieven op komende duurzaamheidswetgeving vanuit het bestuursrecht, het mededingingsrecht en het financieel toezichtsrecht (*Koninklijke vereniging handelsrecht, preadviezen 2023)* (Publisher Paris 2023) 11-36, 20, who explains that many ESG criteria are based on open norms.

[29] ACM, informal guidance collaboration between banks, *supra* note 4.

[30] See, for example, F Klaver, A Griffioen, I Mol and T Moolhuijsen, *Challenges and Solutions: Scope 3 Emissions* (Deloitte 2023), https://www2.deloitte.com/nl/nl/pages/risk/articles/challenges-and-solutions-in-measuring-and-reporting-scope-3-emissions.html.

[31] European Commission, "Summary Report of the Public and Targeted Consultations on the Implementation of the Sustainable Finance Disclosures Regulation (SFDR)" (2024).

[32] S Tang and C Higgins, "Do Not Forget the 'How' along with the 'What': Improving the Transparency of Sustainability Reports" (2022) 65 (1) California Management Review 2.

[33] As is recognised by the European Commission in her FAQ. See note 29.

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> *issues linked to data availability. According to many respondents, these limitations have hindered the effectiveness and usability of the framework.*[34]

On top of this all, complying with ESG regulations can entail high administrative costs. Identifying ESG risks in the supply chain, such as human rights violations or environmental impacts, requires extensive due diligence, which can be time-consuming and costly in itself even without the hurdles mentioned. Especially since it is not a one-time exercise but an ongoing process. This is apart from the costs involved in handling data in general (like compliance with privacy rules). In addition, companies risk being accused of greenwashing if their ESG claims are not well substantiated. This can lead to reputational damage and loss of trust among consumers and investors.

III. Two strategic approaches that could transform ESG data management

In the previous section, it was shown that there is a need for efficient methods for collecting and sharing sustainability data. A Dutch SEO report titled "Increased sustainability by digitalisation" (*Duurzamer door Digitalisering*) (2023), prepared at the request of the Dutch government, highlights the untapped potential of data sharing in optimising material use and advancing sustainability goals. However, this potential remains largely unrealised due to the absence of policies that incentivise data sharing among private entities.[35] Without a structured approach, opportunities for significant sustainability gains are missed, particularly as companies grapple with the resource-intensive processes of ESG data collection and reporting. This section explores two strategic approaches that can significantly enhance the management and transparency of ESG data, thereby addressing the inefficiencies and risks of inconsistent reporting identified in the current system.

1. Enhanced collaboration among companies within the same sector

A first approach would be enhanced collaboration within industries. When companies within the same sector work together, they can achieve improvements in efficiency, data accuracy and regulatory compliance. This collaborative approach facilitates the harmonisation of reporting practices, particularly in areas like ESG data, enabling consistency and reducing redundancy. It also allows for the sharing of best practices, the development of standardised methodologies, and the pooling of resources.

A practical example of this collaborative approach can be found in the Dutch banking sector, where banks work together for their ESG reports. Supported by the Dutch Association of Banks (*Nederlandse Vereniging van Banken* or NVB) and informally assessed by the Dutch Authority for Consumers & Markets (*Autoriteit Consument en Markt* or ACM), this initiative demonstrates how sector-wide collaboration can be compliant with the competition rules and beneficial from a sustainability point of view.[36] The banks developed a data project to interpret ESG criteria, establish suitable and reliable calculation methods and data sources.[37] This effort was amongst others aimed at addressing the challenges posed by the CSRD, potentially increasing the comparability of ESG reports across the sector and ensuring that meaningful progress is made toward sustainability goals.[38]

[34] European Commission, summary report, see note 32. Although regulation (EU) 2024/3005 of 27 November 2024 introduces transparency and integrity rules of ESG rating activities in the financial sector, these rules are only applicable to such activities and will only apply as of July 2026.

[35] SEO Report, p 23.

[36] ACM, informal guidance collaboration between banks, *supra* note 4.

[37] Ibid.

[38] Ibid.

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The ACM's analysis confirmed that this initiative does not pose significant risks to competition, provided that participation remains voluntary, the initiative is open to all competitors, and no sensitive competitive information is exchanged. The focus on objective criteria and transparency were key factors in mitigating potential anti-competitive concerns in addition to the fact that each bank remains responsible for its own ESG report.[39]

This example from the banking sector illustrates that such a collaborative model could be expanded to other industries, where shared methodologies aligned with regulatory expectations could improve the quality of ESG disclosures.

The Dutch government's Action Plan for Sustainable Digitalisation, particularly Action 2.b.1, aims to build on this concept of collaboration.[40] The plan proposes to gather insights from existing data-sharing initiatives across both public and private sectors, with the goal of developing a framework that the government can use to stimulate and facilitate data sharing. By doing so, the plan seeks to unlock the sustainable potential of data sharing, helping industries to better align with the CSRD and CSDDD directives.[41]

Other industries have already begun exploring similar collaborative approaches. For instance, in the Netherlands the agriculture and food industry has initiated platforms for sharing data on sustainable farming practices, such as the worldwide Partnership for Biodiversity Accounting Financials (PBAF), which aims to standardise the calculation and reporting of biodiversity impacts.[42] The energy sector, too, has developed shared platforms for tracking and reporting carbon emissions and renewable energy usage, with initiatives like the international Net-Zero Data Public Utility leading the way. Net-Zero Data Public Utility is a specialised platform that aggregates data on carbon emissions and renewable energy use. These examples further illustrate the growing trend across various sectors to adopt data-sharing platforms, enhancing sustainability efforts while ensuring compliance with evolving regulatory standards.

By following these examples and leveraging the lessons learned from the banking sector's collaborative approach to ESG reporting, the Dutch government can foster similar initiatives across other industries, thereby maximising the impact of digitalisation on sustainability and ensuring that regulatory compliance is both efficient and effective.

2. *Centralised sustainability data sharing platforms*

A second approach to enhance the management and transparency of ESG data would be to centralise ESG data with the use of data sharing platforms. The growing market for sustainability information, driven by new obligations under frameworks like the CSRD, underscores the increasing importance of third-party data providers. As these obligations expand, the market for sustainability data is expected to grow, necessitating the availability of data at reasonable costs.[43] This environment creates a compelling case for moving beyond collaboration within sectors (see previous paragraph) to more centralised data management solutions. Centralised or partially centralised data platforms could standardise ESG data, making it accessible to a broader range of stakeholders, including regulators, investors, and companies, thereby enhancing data comparability and reducing redundancy.

Centralisation can be achieved in various ways. One approach is the creation of private centralised databases. These platforms could be managed by industry consortia or third-

[39] ACM, informal guidance collaboration between banks, p 4. *Supra* note 4.

[40] Action plan sustainable digitalization, "De Digitale Sector Verduurzamen & Digitalisering Inzetten voor Verduurzaming" (2024), available at <https://open.overheid.nl/documenten/e872dd18-8733-4617-ab27-5607e750ad19/file>.

[41] Ibid, 12.

[42] Ibid, 15. See also <https://pbafglobal.com/>.

[43] CSRD, p 10.

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party providers and would serve as repositories where companies can submit standardised data, accessible by multiple users. Several existing examples illustrate the potential and limitations of this approach:

- Bloomberg's Terminal is a comprehensive resource for ESG data, extensively used by large financial institutions.[44]
- The Global Reporting Initiative (GRI) Database allows any organisation to submit their sustainability data.[45] However, because it relies heavily on self-reported data, there may be issues with the consistency and comparability of the information provided.
- In the financial sector, the CDP (formerly the Carbon Disclosure Project) operates a global disclosure system that encourages companies to report their environmental impacts, focusing primarily on metrics such as greenhouse gas emissions, water use, and deforestation.[46] While CDP is renowned for its rigorous and comprehensive environmental data, its coverage of social and governance factors appears more limited compared to its environmental focus. This emphasis aligns with CDP's origins as an environmental reporting platform, though they have been gradually integrating broader ESG elements.
- The Open Supply Hub, an open system run by a non-profit organisation, designed to map supply chains and increase transparency. It is currently limited to data relating to the production of goods and also relies on data reported by stakeholders and publicly available datasets.[47]

Private centralised databases for ESG data offer several advantages, such as enabling quick access to standardised and consolidated information from multiple sources, which can enhance the efficiency of decision-making for companies and investors. These platforms also provide valuable financial insights, especially for larger entities that can invest in more comprehensive datasets to improve their compliance and reporting processes. Additionally, industry-specific data available through these platforms helps companies align their sustainability efforts with sector-specific requirements.

However, these (types of) databases also present some limitations. Access appears to come at a significant cost, which may limit their availability to smaller organisations. Moreover, in some cases, the reliance on self-reported data can lead to variations in the consistency and comparability of the information provided. This may impact on the scope and overall reliability of the data, potentially making it more challenging to standardise ESG reporting across different sectors.

Public databases like the European Environment Agency's (EEA) data repository already provide a wealth of environmental data that is freely accessible.[48] However, these databases often lack the granularity and sector-specific focus needed for comprehensive ESG reporting. Moreover, they are generally limited to environmental data and do not cover the full spectrum of ESG criteria.[49] Another relevant example is the OpenCorporates database, which aggregates data on corporate structures and ownership from around the world.[50] While it provides valuable transparency and is freely accessible, its focus appears

[44] See <https://www.bloomberg.com/professional/products/data/enterprise-catalog/esg/>.

[45] See <https://www.globalreporting.org/reporting-support/goals-and-targets-database/>.

[46] See <https://www.cdp.net/en>.

[47] See, for example, SER, *Covenant on International Responsible Business Conduct in the Renewable Energy Sector*, (2023) Art. 3.4 (which includes the development of a private digital platform aimed at supporting and monitoring due diligence performance of participating companies); Progress Report, *International RBC Agreement for the Renewable Energy Sector, Year 1*, (May 2023 – April 2024).

[48] See <https://www.eea.europa.eu/en/datahub>.

[49] Staff Working Document, p 26.

[50] See <https://opencorporates.com/>.

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primarily on corporate governance and financial data, with less emphasis on environmental and social metrics.[51]

The limitations of these private and public databases highlight the potential benefits of public centralised databases. For example, the EU's efforts to create a Common European Green Deal Data Space aim to integrate fragmented green data infrastructures across the EU into a cohesive system. This initiative could provide a public platform for ESG data that is accessible to all relevant stakeholders at minimal or no cost, ensuring that data is both comprehensive and comparable across sectors.[52]

By aligning private or public centralised data management with broader European initiatives like the Common European Green Deal Data Space, the EU can ensure that data-driven sustainability efforts contribute effectively to its overarching environmental and economic goals. Centralised data platforms, whether private or public, offer the potential to significantly enhance the quality, comparability, and accessibility of sustainability data, depending on the kind of data included in the database, provided they are implemented with careful consideration of the associated risks and aligned with broader European data strategies.[53]

IV. Competition-law assessment

1. Cartel prohibition and information exchange

One of the key features of a Common European Green Deal Data Space is that European rules and values are fully respected, including the competition rules.[54] Under these rules, companies may, for example, not enter into anti-competitive agreements or concerted practices that distort competition (cartel prohibition).[55]

When using a shared database, information is inherently exchanged.[56] Probable competitors contribute data to the database, in addition to other sources, like governments and NGOs.

All agreements and exchanges of information between actual or potential competitors that reduce strategic uncertainty in the market can, however, be seen as anti-competitive. Whether this is the case depends on several factors. Generally, information around prices, costs, turnover, capacity, production, quantities, market shares, customers, marketing plans, but also plans to enter or exit markets, or other important elements of a firm's strategy is considered commercially sensitive.[57] In the context of sustainability we think for example of a company's plans to adopt a specific sustainable strategy or promotional plan or investments in sustainable equipment or technology. This includes digital data sharing, in all possible forms and models of data access, including data pools, where data

[51] Staff Working Document, p 26.

[52] Ibid.

[53] CSRD, p 10; Staff Working Document, p 26.

[54] European Commission, "Commission Staff Working Document on Common European Data Spaces" SWD (2024) 21 final.

[55] Art 101 TFEU.

[56] With a shared database we mean a database which is not limited to one company and its own supply chain. In that case the information exchange may benefit from the block exemption provided by the VBER. This will be the case if the information exchange is directly related to the implementation of the vertical agreement between the parties and is necessary to improve the said conditions. See Art 2(1) and (5) of Regulation (EU) 2022/720 of 10 May 2022 on the application of Art 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2022] OJ L134. For a non-exhaustive list of examples of information that may, depending on the particular circumstances, be directly related to the implementation of a vertical agreement and necessary to improve the production or distribution of the contract goods or services, see paragraph 99 of the Communication from the Commission Guidelines on vertical restraints [2022] OJ C248.

[57] Horizontal guidelines, para 385.

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holders group together to share data.[58] Moreover, the cartel prohibition also applies to information exchanged via third parties (such as a service provider, platform, online tool) or via a website, to give some examples.[59]

2. Database without commercially sensitive information

To avoid violating the cartel prohibition, one option is to set up a database which does not include competitive sensitive information. As long as the database does not reduce uncertainty regarding recent or future actions of competitors in the market, it will not amount to an exchange of commercially sensitive information.[60] For example, a database containing general information about suppliers that have (un)sustainable value chains (for instance, suppliers that respect labour rights or pay living wages); use (un)sustainable production processes, or supply (un)sustainable inputs, or information about distributors that market products in a(n) (un)sustainable manner, will in general not restrict competition and fall outside the scope of the cartel prohibition.[61] The Dutch-bank collaboration cited earlier illustrates how a shared database can avoid competitively sensitive material: the participating banks confine their exchange to interpretations of ESG criteria, calculation methods and data sources, never customer data, and each institution decides independently how to apply those ESG criteria in its own sustainability report.

3. Database as a compliance agreement?

What if the exchange of commercially sensitive information is nevertheless required to set up the desired database? An option is to set up a database solely aimed at ensuring compliance with sustainability due diligence obligations. Sustainability compliance agreements fall outside of the scope of the cartel prohibition. According to the Commission:

> *[sustainability] agreements that aim solely to ensure compliance with sufficiently precise requirements or prohibitions in legally binding international treaties, agreements or conventions, whether or not they have been implemented in national law (for example, compliance with fundamental social rights or prohibitions on the use of child labour, the logging of certain types of tropical wood or the use of certain pollutants) and which are not fully implemented or enforced by a signatory State, fall outside the scope of Article 101. This exclusion from Article 101 only applies if the agreement provides that the participating undertakings, their suppliers and/or their distributors must comply with such requirements or prohibitions, for example, by preventing, reducing or eliminating the production or importation into the EU of products contrary to such requirements or prohibitions.*[62]

This option, of compliance agreements, requires, however, that several criteria set out above are met. Amongst others it must concern sufficiently precise requirements or prohibitions in legally binding treaties, agreements or conventions. Not all ESG datapoints are, however, mandatory for all companies. In addition, some key concepts are based on international open norms. Like the requirement to take "appropriate measures,"[63] which

[58] Ibid.
[59] Ibid.
[60] Horizontal guidelines, para 530.
[61] Assuming that the agreement does not forbid or oblige the parties to purchase from such suppliers or to sell to such distributors. See horizontal guidelines, para 530.
[62] Horizontal guidelines, para 528. See for a more liberal approach ACM, "Policy rule ACM's oversight on sustainability agreements," (2023) para 20 and 21.
[63] Art 8 CSDDD.

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sometimes depends on "reasonable expectations."[64] These requirements might make it more difficult to argue that a database regards a compliance agreement while not yet having discussed the other criteria. In a situation of mere encouragement by law or by public authorities to share information with other companies, or where companies still have discretion in deciding what information to share with other companies, the cartel prohibition continues to apply.[65]

4. Database with commercially sensitive information

Does this mean that a database which requires the exchange of commercially sensitive information is forbidden? No, not *per se*. Data sharing arrangements to which different competitors contribute data generally do not amount to a restriction of competition by object if it is established that they have genuine pro-competitive effects.[66] This might for example be different if the database is used as a means to agree on subjective interpretations of ESG criteria to enable the participants to come across more sustainable in their ESG reports than they would have on the basis of objective criteria.[67] This can be avoided by ensuring the robustness of a calculation method chosen and the reliability (accuracy and precision) of the data. For example, by checking data sources[68] or at least being transparent about it and show that an "best effort" has been made.[69]

Whether a database would have a competition restrictive effect depends on whether it artificially increases transparency between competitors in the markets, which can facilitate coordination of companies' behaviour and result in restrictions of competition.[70] Moreover, information exchange can also lead to anti-competitive foreclosure. For example, a database that covers a significant part of the relevant market and to which access is denied or delayed for other competitors may create an information asymmetry, placing those other competitors at a disadvantage compared to the companies that participate in the database.[71] This is especially true if access is denied to smaller players who may lack the resources, technical skills or infrastructure to collect data.

Whether a shared database can indeed have the effect of restricting competition depends on the economic conditions on the relevant market(s) and on the specific characteristics of the database concerned. These characteristics include the purpose of the database and the conditions of access to and participation in it, as well as the type of information exchanged.[72] For example, whether it is public or confidential, aggregated or detailed, historical, current or future information, the frequency with which the database is updated and the relevance of the information for setting prices, volumes or conditions of service.

Moreover, measures should be implemented to restrict access to the information exchanged and/or to control how it is used. For example, one could use an independent

[64] Art 10 CSDDD.

[65] Horizontal guidelines, para 372.

[66] Horizontal guidelines, para 418 and 419.

[67] ACM, informal guidance collaboration between banks, *supra* note 4.

[68] Autorite de la Concurrence, "Consumer Product and Services Rating Systems: The Autorité de la Concurrence Provides Guidance in the Light of Competition Rules" (2025), available at <https://www.autoritedelaconcurrence.fr/en/press-release/consumer-product-and-services-rating-systems-autorite-de-la-concurrence-provides>.

[69] Knibbeler, "Mededingingsrechtelijke aspecten bij de implementatie van de CSDDD" (2024).

[70] Horizontal guidelines, para 377.

[71] Horizontal guidelines, para 383. See Commission Decision of 30 June 2022 in *Insurance Ireland* (Case AT.40511) Commission Decision [2022] OJ C335/12, where the participants in the exchange accounted for 98 per cent of the relevant market. See also judgment of 23 November 2006, Case C-238/05 *Asnef-Equifax* [2006] EU:C:2006:734.

[72] Horizontal guidelines, para 383.

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third party to receive and process information. Furthermore, the database must be set up in a transparent manner.[73]

Even the sharing of aggregated data can, in specific market conditions, facilitate collusion, so every initiative must be assessed case by case.[74] Where a restriction of competition is identified, the exchange may still be lawful if (i) the efficiency gains outweigh the anticompetitive effects, (ii) those gains are passed on to consumers, (iii) the exchange is indispensable to realise them, and (iv) effective competition is not eliminated.[75]

Interestingly, assuming that the basis for a database is a platform, the Digital Markets Act (DMA)[76] and the Digital Services Act (DSA)[77] might in some instances already provide for the relevant safeguards by for example preventing dominant platforms from monopolising access to sustainability data.[78] For example, the DMA can ensure that gatekeepers do not restrict access to the data, enabling smaller players to also utilise the data for sustainability efforts and thereby creating a competitive environment. It might also enforce interoperability standards, which could facilitate the integration of various sustainability databases across the EU, ensuring that data from smaller platforms or local databases can be easily accessed and used in the centralised system, but also allowing for competing databases and therefore ensuring that innovation is not stifled. The DSA can ensure transparency and accountability by providing for the necessary regulatory oversight to protect against misuse, misinformation and violations of digital rights. This is also critical for preventing greenwashing cartels (and greenwashing claims) and ensuring that sustainability claims are backed by verifiable data, protecting users and smaller players from potential misuse or manipulation of data.

5. Impact of cartel prohibition on the potential of centralised data platforms

Sustainability databases can consolidate expertise, spur innovation and establish common benchmarks, making them powerful instruments for closing the current ESG-data gap. Yet the cartel prohibition still limits their potential on several fronts.

First, the very breadth of the information these platforms collect – that is, carbon-footprint figures, production methods, procurement strategies, cost structures and resource-efficiency metrics – can pose problems. Competition law demands strict "firewalls" around anything that could reveal a firm's competitive playbook; if the safeguards feel too onerous, companies may withhold the most valuable data and blunt the database's effectiveness.

Second, innovation-related disclosures create a parallel dilemma. Firms that have sunk significant resources into R&D or proprietary technologies worry that sharing those insights will erode their competitive edge, so the platform ends up with only partial – sometimes obsolete – information.

[73] Horizontal guidelines, para 406 and further, and para 418.

[74] Horizontal guidelines, para 391.

[75] Art 101 section 3 TFEU. See also horizontal guidelines, para 9.4. In the Netherlands, ACM takes a more liberal approach in its policy rule if it concerns an environmental damage agreement, *supra* note 66, para 22.

[76] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and Implementing Regulation 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission.

[77] Regulation (EU) 2022/2065 of the European Parliament and the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC.

[78] In addition to the Data Governance Act which provides a framework to enhance trust in voluntary data sharing for the benefit of businesses and citizens. Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724.

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Third, issues of accessibility arise when the database becomes a *de facto* passport to market credibility. Well-resourced incumbents can meet the entry requirements with ease, while smaller or late-entering rivals face higher costs or technical barriers, turning a tool meant to level the playing field into one that entrenches existing hierarchies.

Finally, without careful governance the database itself can morph into a coordination device: participating companies might use it to align purchasing of sustainable inputs or to co-invest in renewable-energy infrastructure. Although such collaboration can be welfare-enhancing, it simultaneously reduces independent decision-making and risks excluding non-participants – thereby triggering exactly the competition concerns that the platform was designed to avoid.

To unlock the full potential of these databases, companies must show that their agreements do not restrict competition or meet the exemption criteria under Article 101(3) TFEU. The burden of proof is, however, on the companies involved. This leads to uncertainty, has an impact on resources and potentially discourages participation out of fear of penalties for unintended breaches of the cartel prohibition. Clarity on permissible data-sharing practices and "safe harbours" for sustainability collaborations is critical given the EU's Green Deal priorities. The European Commission is aware of this and has, for example, adjusted its informal guidance procedure in 2022 to allow companies to seek informal guidance on the application of the EU competition rules to novel or unresolved questions, including explicitly those on sustainability.[79]

V. Conclusion

The growing demand for transparent, trustworthy ESG data – and for greater efficiency in reporting – underscores the value of centralised or semi-central data platforms. Properly designed, these platforms deliver clear benefits, while the sustainability-competition-law tension can be managed by limiting the scope of the data collected and embedding three legal "firewalls": (i) separation or anonymisation of competitively sensitive information, (ii) neutral, transparent governance with tiered, audit-ready access, and (iii) immutable audit trails. Together, these safeguards minimise competition-law risk. Collusion or the exclusion of smaller market players is a legitimate concern, yet through transparency, voluntary participation and open access such risks can be contained within the existing legal framework.

The Dutch banking sector's standardised ESG-reporting project shows that competitors can collaborate in ways that comply with competition rules and advance sustainability. Crucially, competition law is not an inherent barrier: if the development of central or semi-central ESG data platforms either avoids competitively sensitive information or adopts mitigation measures, no fundamental overhaul of competition rules is needed – only a strategic application of the rules already in place. Where such mitigation proves impossible, the relevance of "compliance agreements" and, potentially, Article 101(3) TFEU exemptions will rise.

Data-sharing platforms also spur innovation. Better information allows companies to identify risks, act on them and report more effectively. Even with a shared database, each firm remains responsible for – and can still differentiate itself through – its own ESG report. Easier, lower-cost access to quality data likewise helps smaller companies, not yet subject to mandatory reporting, to improve their sustainability performance and stand out. To realise these benefits, however, platforms must be open to all stakeholders on equal terms and host more than the bare minimum needed for compliance; otherwise,

[79] Commission SWD (2022) 326 final, 3 October 2022. Some national competition authorities have a comparable procedure. Like the ACM, see para 4 of its Policy Rule referred to in note 66.

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they risk triggering a race to the bottom. Equally, platforms must never be used to coordinate on doing "just enough" or for any other anticompetitive purpose. The balance between efficiency and ambition therefore deserves constant, critical scrutiny.

Global supply chains add another layer of complexity. Can a European ESG data platform, such as the proposed Common European Green Deal Data Space, capture the realities of cross-border data flows and divergent regulatory regimes? How will it interact with worldwide data systems, especially where transparency and regulation vary?

Ownership and control of the shared data also raise concerns. As companies disclose ever more detail about their operations and supply chains, who ultimately controls the information? Centralised platforms must avoid becoming gatekeepers able to shape market access or competitive outcomes simply by controlling essential sustainability data.

In short, open access, transparency and equitable participation are essential to prevent market distortions. The challenge lies less in rewriting competition law than in embedding robust safeguards and smart regulation that facilitate collaboration without undermining fair competition – and thereby supporting the EU's Twin Transition. By applying existing rules strategically and encouraging cooperation that serves the wider public good, the tension between sustainability objectives and competition principles can be managed. Still, unresolved questions around innovation incentives, global alignment and data control mean this field will continue to demand attention from regulators, businesses and policymakers to ensure ESG-data-sharing platforms deliver meaningful, equitable progress.

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