

Contents

<i>Table of Cases</i>	ix
<i>Table of Legislation</i>	xi
<i>List of Abbreviations</i>	xxi
<i>List of Contributors</i>	xxiii
<i>About the Authors</i>	xxv
1. Corporate Purpose, Corporate Social Responsibility, and ESG: An Introduction to the Trans-Atlantic Dialogue <i>Jens-Hinrich Binder, Klaus J. Hopt, and Thilo Kuntz</i>	1
I. Introduction	1
II. Thematic Overview	5
2. Corporate Purpose and Stakeholder Value: Historical, Economic, and Comparative Law Remarks on the Current Debate, Legislative Options, and Enforcement Problems <i>Klaus J. Hopt</i>	17
I. The Current Debate on Corporate Purpose, Stakeholder Participation, and ESG	17
II. Current Economic, Social Science, and Policy Arguments, and Legislative Options	25
III. Making Stakeholder Governance Work: Enforcement Problems	39
IV. Conclusions and Theses	51
3. Corporate Purpose: Theoretical and Empirical Foundations/Confusions <i>Holger Spamann and Jacob Fisher</i>	55
I. Introduction	55
II. Theory of Purpose	57
III. Empirics of Purpose	72
IV. Conclusion	81
4. US ESG Regulation in Transnational Context <i>Virginia Harper Ho</i>	83
I. Introduction	83
II. The Transnational Context of ESG Regulation	84
III. US ESG Regulation: An Overview	87
IV. The US Institutional Context for ESG Regulation	95
V. Conclusion	102
5. Stakeholder Governance Models and Corporate Interests: Experiences from Germany <i>Rüdiger Veil</i>	105
I. Introduction	105
II. The Trustee Model of Stakeholder Governance: Enterprise Accountability of the Board in Germany	106

III. The Representative Model	119
IV. Conclusion	125
6. Corporate Purpose: The US Discussion and the Restatement of the Law of Corporate Governance	127
<i>Edward B. Rock</i>	
I. Introduction	127
II. The Restatement of Corporate Governance's Description of the 'Objective' of a Corporation	129
III. What Is 'Corporate Purpose'?	132
IV. The Link between the 'Objective of a Corporation' and 'Corporate Purpose'	133
V. The US Discussion of Corporate Purpose	135
VI. Shareholder-driven ESG Activism	136
VII. The Golden Thread: Corporate Law's Single Firm Focus	137
VIII. Conclusion	139
7. ESG Regulation, CSR, and Corporate Purpose: A UK Perspective	141
<i>Irene-marié Esser and Iain MacNeil</i>	
I. Introduction	141
II. UK Regulatory Position	142
III. Aligning ESG with UK Corporate Law: An Entity Model of ESG	153
IV. Conclusion	159
8. ESG and the Ethical Dimension	161
<i>Christine Osterloh-Konrad</i>	
I. Introduction	161
II. Corporations as Moral Agents?	162
III. Moral Behaviour and Fiduciary Duties	165
IV. Mandatory ESG Reporting and the Law-Morality Divide	167
V. Brave New World	170
VI. Concluding Remarks	170
9. Corporate Purpose in the United States 1800–2000	173
<i>Harwell Wells</i>	
I. Introduction	173
II. Purpose in the Nineteenth Century	174
III. The Origins of the Modern Debate	177
IV. Corporate Purpose at Mid-century	182
V. Back to Shareholders	189
VI. Conclusion	194
10. Corporate Purpose and the Blurred Boundaries of Internal and External Governance	195
<i>Ann M. Lipton</i>	
I. Introduction	195
II. The Great Debate	196
III. Corporations Are Designed to Benefit Multiple Constituencies	200

IV. Shareholder Primacy Is One Option for a Governmentally Mandated Design to Benefit All Stakeholders	203
V. The Stakeholderist Side of the Coin	212
VI. Rethinking the Form	215
VII. Conclusion	216
 11. Leading Wherever They Want? CSR, ESG, and Directors' Duties <i>Jens-Hinrich Binder</i>	 217
I. Introduction	217
II. Stakeholderism versus Shareholderism: The Backdrop in Traditional Corporate Law Doctrine	222
III. Which Duties? Emerging Obligations in the Light of Statutory Frameworks and International Standards—A European Perspective on a Global Trend	233
IV. How Will They Respond? The Reorientation of Directors' Duties and Their Implications in the Real World	241
V. Conclusions	244
 12. Stewardship and ESG in Europe <i>Guido Ferrarini and Michele Siri</i>	 247
I. Introduction	247
II. Main Legal Strategies	249
III. Investment Activities and ESG	258
IV. Engagement Activities and ESG	269
V. Concluding Remarks	273
 13. The French 'Duty of Vigilance' and the European Proposal on Companies' Due Diligence Duties <i>Alain Pietrancosta</i>	 275
I. Introduction	275
II. The Genesis of the French 'Duty of Vigilance' and the Proposed European Generalization of 'Due Diligence Requirements'	284
III. The French Vigilance and the European Diligence Compared	288
 14. Green Bonds and Their New Regulation in the EU <i>Christoph Kumpa</i>	 301
I. Introduction	301
II. Green Bonds	302
III. Self-regulation of Green Bonds	307
IV. EU Approach to Regulating Green Bonds	309
V. Summary	316
 15. ESG Demand-side Regulation—Governing the Shareholders <i>Thilo Kuntz</i>	 319
I. Introduction	319
II. Demand-side Regulation and Its Place in Corporate Governance	322
III. Direct Demand-side Regulation	334
IV. Indirect Demand-side Regulation	348
V. Conclusion	355

viii CONTENTS

16. Sustainability and Competition Law	357
<i>Stefan Thomas</i>	
I. Introduction	357
II. The Externality Problem in Competition Law	359
III. Integrating Externalities into the Consumer Welfare Paradigm	361
IV. Reducing Externalities beyond the Consumer Welfare Paradigm	365
V. Conclusions	368
Index	371