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Urszula Konarzewska
- University of Bialystok
- e-mail: u.konarzewska@uwb.edu.pl
- ORCID: 0000-0003-1257-3749

THE IMPORTANCE OF THE LEGAL AND REGULATORY FRAMEWORK FOR THE DEVELOPMENT OF SOCIALLY RESPONSIBLE INVESTING: EVIDENCE FROM THE NETHERLANDS

Abstract

- *Goal* – the purpose of the article is to identify trends associated with the functioning of the socially responsible investing market in the Netherlands compared to other European Union countries and the role the legal and regulatory framework adopted at the national level may play in the development of this form of investing.
- *Research methodology* –various methods of research were used in this paper, such as the method of desk research consisting of an analysis of data on socially responsible investing published by Eurosif and EFAMA and the analysis of the legal and regulatory framework in the field of socially responsible investing, established by public authorities, regulatory institutions, non-governmental organizations, business representatives, and the investor community.
- *Score/results* – the conducted studies showed that the Netherlands is a country that not only stands out from other European Union countries in terms of the level of socially responsible investing, but it is also characterised by a large range of legal and regulatory framework in this field, as well as a long history of its implementation. A characteristic feature of the legal and regulatory framework established over the years in this country is also its great complexity. It contains several mandatory requirements and voluntary recommendations regarding the principles that institutional investors should adhere to when investing capital. A significant role in developing socially responsible investing in this country was also played by the fiscal instruments and the solutions enabling comparison of investment practices of selected institutional investors.
- *Originality/value* – the article intends to fill the research gap in the field of socially responsible investing and the factors that may stimulate its development in individual

capital markets. This aspect is still underrepresented in research, yet it is increasingly important. Understanding the factors stimulating the development of this form of investing may be key to eliminating the territorial differentiation in this area. This paper provides a starting point for further research. Therefore, the focus is solely on one country and one factor that may influence the development of this form of investing in individual capital markets.

Keywords: socially responsible investing, legal and regulatory framework, the Netherlands.

1. Introduction

The growing interest in corporate social responsibility and its penetration into all spheres of economic life influenced the functioning of capital markets [Michalczuk, Konarzewska, 2018: 132]. This is due to the fact that an increasing number of investors concentrate not only on maximising the financial benefits of their investments but they are also interested in allocating funds in such a way that will contribute to solving specific social and environmental problems [Waring, Edwards, 2008: 135]. This results in the development of a new form of investing, i.e. socially responsible investing (SRI).

Socially responsible investing is an increasingly important concept in the global capital market, and the growing value of such investments reflects this. In 2022 socially responsible investments worldwide amounted to 30.32 trillion dollars. For comparison, in 2012 and 2016 it was 13.26 trillion dollars and 22.89 trillion dollars, respectively. The largest share of the global socially responsible investing market is held by the United States and Europe, in which the main role is played by the European Union countries [GSIA, 2012: 9–10; GSIA, 2016: 7–8; GSIA, 2022: 5]. However, the European Union market is not homogeneous. It is characterised by the diversified level of socially responsible investing in individual Member States.

The diversification of the level of socially responsible investing raises questions about the factors that stimulate the development of this form of investing in individual capital markets. The approach to investing following the principles of social responsibility results largely from the investors' preferences. Nevertheless, developing this form of investing in individual countries also requires appropriate systemic solutions, which should be associated with introducing a specific legal and regulatory framework in socially responsible investing.

The purpose of the article is to identify trends associated with the functioning of the socially responsible investing market in the Netherlands compared to other European Union countries and the role the legal and regulatory framework adopted at the national level may play in the development of this form of investing.

2. Literature review

In recent years, the issue of socially responsible investing has become the subject of numerous analyses and scientific studies. Nevertheless, to date no consistent position on defining this concept has been established. The definitions presented by individual authors vary in the degree of detail and the inclusion or omission of certain elements. They are also burdened with a high degree of subjectivity.

One of the most important issues that distinguishes particular approaches is the importance given to financial and non-financial aspects. Among the many definitions, some focus exclusively on non-financial elements related to the need to include social, environmental, ethical or corporate governance issues in the investors' decision-making process. For example, according to Langbein and Posner, socially responsible investing means "excluding the securities of certain otherwise attractive companies from an investor's portfolio because the companies are judged to be socially irresponsible, and including the securities of certain otherwise unattractive companies because they are judged to be behaving in a socially laudable way" [Langbein, Posner, 1980: 73]. According to the definition provided by Foo, socially responsible investing means "integrating non-financial factors – such as ethical, social or environmental concerns – into the investment process" [Foo, 2017: 4].

However, many definitions draw attention to the need to treat socially responsible investing as a key element of the investment process based on traditional financial analysis. The Sustainable Investment Forum (US SIF) assumes that SRI is "an investment discipline that considers environmental, social and corporate governance (ESG) criteria to generate long-term competitive financial returns and positive societal impact" [US SIF, 2021: 1]. The European Sustainable Investment Forum (Eurosif) defines socially responsible investing as "a long-term oriented investment approach which integrates ESG factors in the research, analysis and selection process of securities within an investment portfolio. It combines fundamental analysis and engagement with an evaluation of ESG factors in order to better capture long-term returns for investors, and to benefit society by influencing the behaviour of companies" [Eurosif, 2018: 12]. According to Gomes, socially responsible investing "relates to the decisions of investors which combine financial objectives with concerns about the environment, the society, and governance in general" [Gomes, 2020: 4].

The author of this article defines SRI as an approach to investing consisting of a selection of companies for the investment portfolio, based both on traditional financial criteria and set standards of social and environmental responsibility related to the undertaking of specific activities by these companies and ensuring information transparency related thereto.

Socially responsible investing is a very important and current concept, as evidenced not only by the growing value of this type of investment on a global scale but also by the fact that, in recent years, it has increasingly become the subject of interest of public authorities, as well as of various types of regulatory institutions around the world. Over the years solutions creating favourable conditions for developing socially responsible investing have played an important role in activities undertaken by, among others, the United Nations. They were related to the adoption of the Millennium Development Goals, the Sustainable Development Goals, and such initiatives as the United Nations Global Compact and the Principles for Responsible Investment. A significant contribution to the development of socially responsible investing, especially in recent years, has also been made by specific initiatives of the European Union related to, among others, the implementation of the Sustainable Finance Disclosure Regulation (SFDR) and Corporate Sustainability Reporting Directive (CSRD). Despite these activities, there is a noticeable territorial differentiation in the level of socially responsible investing. This indicates that the reasons for this differentiation should be sought within the legal and regulatory framework adopted in individual countries.

The legal and regulatory framework for socially responsible investing may be published in documents such as acts, ordinances, decrees, and agreements, including ratified international agreements, as well as other legal laws adopted by public authorities. They should define the principles of operation and the rights and obligations of investors and investees. They should also facilitate, discipline, and coordinate financial markets [Richardson, 2008: 7]. An equally important role in developing socially responsible investing may be played by norms, guidelines, procedures, and voluntary codes of conduct established by regulatory institutions, non-governmental organizations, business representatives, and the investor community.

According to MacNeil and Esser, one of the most important elements on which the legal and regulatory framework for socially responsible investing focuses is the issue of sustainable development. Such solutions indicate how corporate governance and financial sector entities' investment activities can contribute to solving or mitigating negative externalities and support the transition towards a more fair and sustainable economy [MacNeil, Esser, 2022: 10]. A crucial area that should be covered by the legal and regulatory framework for socially responsible investing is also the fiduciary duty of institutional investors and companies. This type of solution controls the extent to which the business strategy and investment policy are focused on results related to environmental, social and governance aspects [MacNeil, Esser, 2022: 20; McGowan, 2022].

A significant role in stimulating the development of socially responsible investing may also be played by the legal and regulatory framework relating to fiscal instruments that encourage investors to take into account the criteria of social responsibility in the process of building an investment portfolio [Richardson, 2009: 558–560]. They aim to increase investor interest in companies with a lower level of environmental risk, which implement low-carbon technologies and demonstrate sustainable business practices [Guan, 2024: 189].

3. Research methodology

The research conducted in the article focuses on identifying trends associated with the functioning of the socially responsible investing market in the Netherlands compared to other European Union countries and the role the legal and regulatory framework adopted at the national level may play in the development of this form of investing. This is currently a significant issue from the point of view of both science and economic practice. Understanding the factors stimulating the development of this form of investing may lead to eliminating the territorial differentiation in this area.

Specifically, this research sought to answer the following questions:

1. What was the value of socially responsible investments made in the Netherlands in 2007–2017 compared to other European Union countries?
2. What was the value of assets managed in the Netherlands in 2021–2023 by the funds operating in accordance with SFDR articles 8 and 9 compared to other European Union countries?
3. What legal and regulatory framework creating favourable conditions for developing socially responsible investing has been adopted in the Netherlands over the years?

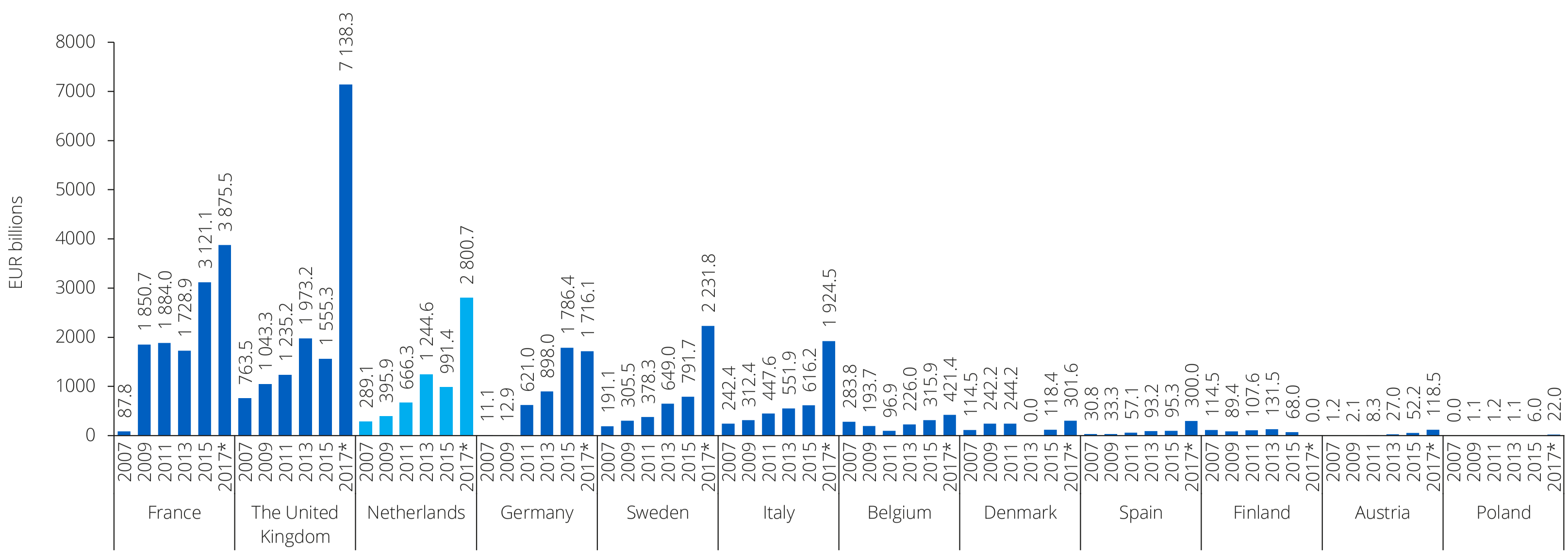
Answering the research questions posed above required the application of various methods and data sources. The starting point was desk research, which consists of assembly, collation and analysis of information that has already been published [Armstrong, 2006: 53]. The desk research conducted in this article consisted of analysing the data published by Eurosif and EFAMA. The research has made it possible to present socially responsible investing in the Netherlands in terms of value, as well as to show the place of this country in the socially responsible investing market in the European Union. To answer the third research question, the researcher conducted the analysis of the legal and regulatory framework in the field of socially responsible investing, established by public authorities, regulatory institutions, non-governmental organizations, business representatives, and the investor community.

4. Results

4.1. The place of the Netherlands in the EU socially responsible investing market

Over the last dozen years statistics on socially responsible investing in Europe, and consequently in the European Union countries, have been published primarily by the Eurosif. Based on the available data for the years 2007–2017 (Chart 1), it can be stated that the highest value of socially responsible investments among the European Union countries in this period was characteristic of France. In 2007, the SRI market in France was estimated at EUR 87.8 billion, which constituted 4.1% of the EU market. For comparison, in 2013, socially responsible investments in this country amounted to EUR 1,728.9 billion. In 2015, it was as much as EUR 3,121.1 billion. This resulted in a 23% and 32.8% share of the socially responsible investing market in the European Union, respectively. Socially responsible investments in 2017 amounted to EUR 3,875.5 billion. The data for this year, however, cannot be the basis for making an accurate value comparison with previous years because it presents only the total value of all strategies used by investors per country. Due to the fact that investors can use more than one strategy in their investment process, aggregation of these data leads to overestimating the real value of investments made in the individual SRI markets within the EU.

Chart 1. The value of socially responsible investments in the EU countries between 2007 and 2017



* The data for 2017 presents the total value of all strategies used by investors.

Source: the author's own work based on: Eurosif, 2010: 22–58; Eurosif, 2012: 63; Eurosif, 2014: 21; Eurosif, 2016: 57, Eurosif, 2018: 83.

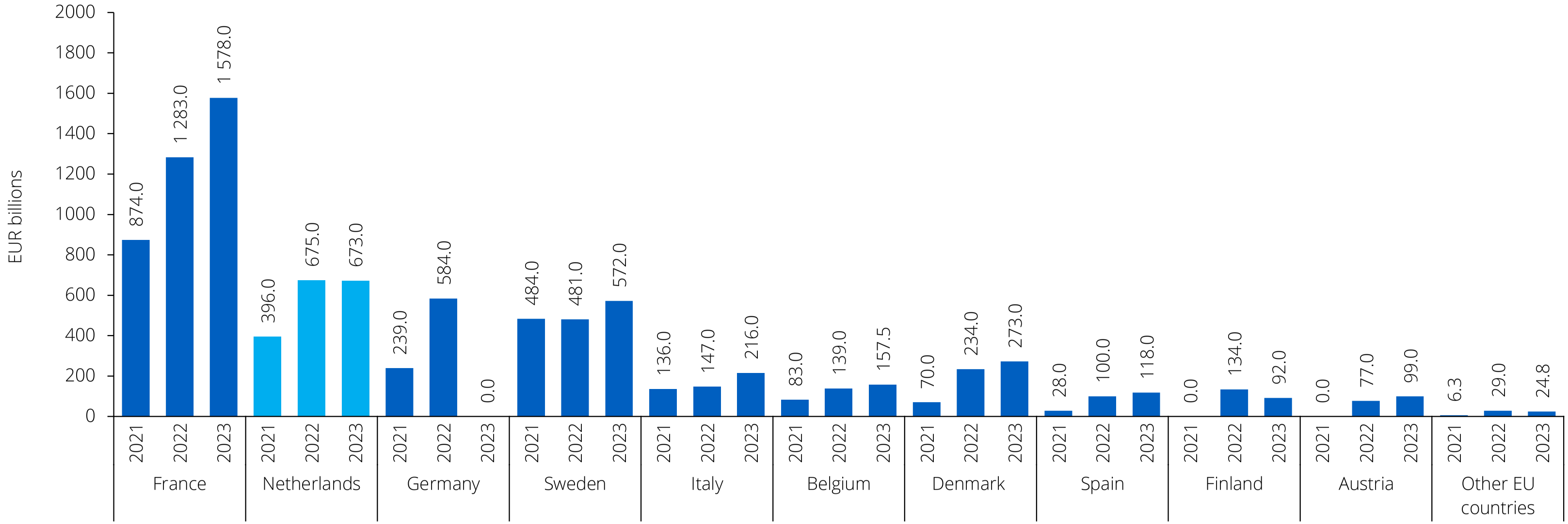
A very large share in the socially responsible investing market in the European Union in 2007–2017 was characteristic of the United Kingdom. In 2007 this country was the leader in the European Union in terms of socially responsible investments. Their value amounted to EUR 763.5 billion, which allowed the United Kingdom to achieve a 35.9% share in the total value of socially responsible investments in the European Union. In 2013, the SRI market in this country was estimated at EUR 1,973.2 billion, which constituted 26.2% of the total value of socially responsible investments in the European Union countries. In 2015, the value of the SRI market in the United Kingdom was EUR 1,555.3 billion, which means a decrease of 21.2% compared to 2013. However, it still enabled this country to take the leading place in this respect, with a share of 16.3% of the total value of socially responsible investments in the European Union. In 2017, socially responsible investments in this country, considering the total value of all strategies used by investors, amounted to EUR 7,138.3 billion.

Compared to all European Union countries, the situation in the Netherlands during the analysed period was very positive. In 2007, the SRI market in this country was estimated at EUR 289.1 billion, which accounted for 13,6% of the total value of socially responsible investments in the European Union countries. In 2013 and 2015, such investments amounted to EUR 1,244.6 billion and EUR 991.4 billion. This resulted in a 16.5% and 10.4% share of the SRI market in the European Union, respectively. In 2017, socially responsible investments in the Netherlands, considering the total value of all strategies used by investors, amounted to EUR 2,800.7 billion.

Statistics on socially responsible investing (Chart 2) in recent years are published by the European Fund and Asset Management Association (EFAMA). They relate to the value of assets managed by the funds that promote environmental and social aspects following SFDR article 8 and the funds that aim at sustainable investments following SFDR article 9 [*Regulation (EU) 2019/2088*].

Based on these statistics, it can be concluded that France was the leader in socially responsible investing among European Union countries between 2021 and 2023. In 2021, assets managed by the funds operating in accordance with SFDR articles 8 and 9 in this country amounted to EUR 874 billion. For comparison, in 2023, it was already EUR 1,578 billion, which means an increase of 80.5% compared to 2021. This resulted in a 41.5% share of the total value of assets managed by the funds operating in accordance with SFDR articles 8 and 9 in the European Union.

Chart 2. The value of assets managed in the EU countries between 2021 and 2023 by the funds operating in accordance with SFDR articles 8 and 9



Source: the author’s own work based on: EFAMA, 2021: 20; EFAMA, 2023: 50; EFAMA, 2024: 50.

In the analysis period, Sweden was also characterised by a high value of assets managed by the funds operating in accordance with the adopted criteria. In 2021, assets managed by the funds operating in accordance with SFDR articles 8 and 9 in this country amounted to EUR 484 billion. For comparison, in 2023 it was EUR 572 billion, which means an increase of 18.2%. During the considered period, the market in Germany was also interesting. In 2021 and 2022, the assets managed by funds operating in accordance with SFDR articles 8 and 9 amounted in this country to EUR 239 billion and EUR 584 billion, respectively. This allowed Germany to occupy a leading position among all European Union countries covered by the statistics in this area. Nevertheless, it is difficult to say whether this trend will continue, as this country was not covered by EFAMA statistics in 2023.

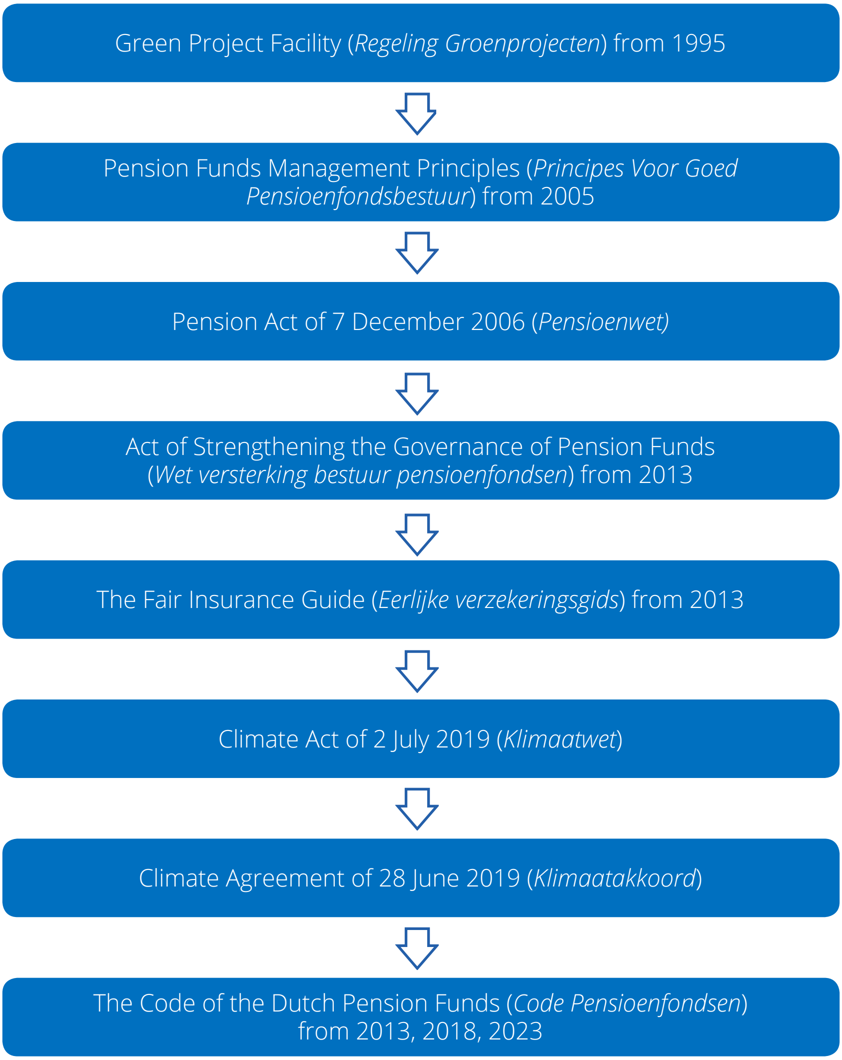
Regarding the value of the assets managed by the funds operating in accordance with SFDR articles 8 and 9, the situation in the Netherlands was very positive in the analysed period. This country has also noticed significant growth in this regard. It amounted to 69.9% (from EUR 396 billion in 2021 to EUR 673 billion in 2023). This resulted in a 17.7% share of the total value of assets managed by the funds operating by SFDR articles 8 and 9 in the European Union.

4.2. Diagnosis of the legal and regulatory framework in the field of socially responsible investing in the Netherlands

The Netherlands is a country that not only stands out from other European Union countries in terms of the level of socially responsible investing, but it is also characterised by a large range of legal and regulatory framework in this field, as well as a long history of its implementation. It is important to emphasise that a significant part of this framework is focused on providing guidance to pension funds on their approach to management, conducting investment policy by the principles of sustainable development, and shaping relationships with stakeholders. Particular attention should also be paid to fiscal instruments, as well as to solutions enabling comparison of investment practices of selected institutional investors (Chart 3).

In 1995, the Dutch government introduced a fiscal instrument called the Green Project Facility (Regeling Groenprojecten). It aimed to exempt from taxation income from deposits and investments in institutions called Green Intermediaries, which are authorised to grant loans and invest in projects that meet strict green project criteria [Scholtens, 2005: 130]. These projects should concern, among others, such categories as nature, forests and landscape elements, organic farming, renewable energy, and sustainable housing [Emerton et al., 2006: 53].

Chart 3. Selected legal and regulatory framework influencing the development of socially responsible investing in the Netherlands



Source: the author's own work.

The Pension Funds Management Principles (*Principes Voor Goed Pensioenfondsbestuur*) published in 2005 by the Labour Foundation (Stichting van de Arbeid) were also important from the point of view of the development of socially responsible investing in the Netherlands. They concerned, among others, issues such as [Stichting van de Arbeid, 2005: 1–39]:

- responsibility, which involved the necessity to take into account the needs of all stakeholders in a balanced way. According to the assumptions of the *Principes Voor Goed Pensioenfondsbestuur*, this responsibility should also be demonstrated by conducting a structured dialogue between the management board of the pension fund and the stakeholders;
- internal supervision, which involved the need to conduct a critical review of the functioning of the pension fund. According to the assumptions of the *Principes Voor Goed Pensioenfondsbestuur*, this was mainly related to an assessment of political and administrative procedures and processes, control principles, as well as to the ways of managing and dealing with long-term risks;
- transparency, openness and communication, which related to the need to provide insight into the fund's policies and decision-making procedures, as well as to inform stakeholders in a comprehensible manner about pension results, the fund's situation and any significant changes;
- knowledge and the functioning of the management board – a principle that assumed the need to prepare a plan of expertise in which the requirements imposed on management board members should be defined. According to the assumptions of the *Principes Voor Goed Pensioenfondsbestuur*, it was also necessary to establish a procedure for periodic evaluation of both the functioning of the board as a whole and the activities of its members.

Significant provisions from the point of view of the development of socially responsible investing in the Netherlands can also be found in the Pension Act of 7 December 2006 (*Pensioenwet*) [*Wet van 7 december 2006*]. The primary goal of this legislation was to increase transparency, security and knowledge regarding pensions in this country. One of the aspects pointed out in this document was also the need for pension funds to ensure a certain level of participant involvement [VBDO, 2013: 22].

In 2013, the Act of Strengthening the Governance of Pension Funds (*Wet versterking bestuur pensioenfondsen*) was adopted, introducing amendments to the Pension Act. One of the key provisions of this act was to impose on pension funds an obligation to publish information in their annual report on how the implemented investment policy takes into account issues related to the environment, climate, human rights, and social relations [*Wet van 10 juli 2013*].

In the same year, several non-governmental organisations, such as Amnesty International, Oxfam Novib, Milieudefensie, FNV, Dierenbescherming and PAX, collaborated to create The Fair Insurance Guide (*Eerlijke verzekeringsgids*). The primary goal of this guide is to compare the most important insurance providers on the Dutch market in terms of their approach to sustainable development concerning issues such as workers' rights, health, corruption and transparency [Fair Finance International, 2021]. The evaluation process involves analysing both the policy and investment practices of insurance companies. The results of this analysis are published periodically. The other important thing is that, within The Fair Insurance Guide, its initiators conduct a constructive dialogue with insurers on issues related to sustainable development [Eurosif, 2014: 50–51].

When considering the legal and regulatory framework influencing the development of socially responsible investing in the Netherlands, it is also worth mentioning the Climate Act of 2 July 2019 (*Klimaatwet*) [*Wet van 2 juli 2019*] and the Climate Agreement of 28 June 2019 [*Klimaatakkoord*, 2019]. The Climate Act provides a general framework for developing a policy aimed at reducing greenhouse gas emissions in the Netherlands. The Climate Agreement, in turn, focuses on the involvement of many entities in achieving these goals. In the aftermath of the climate agreement, a special task force was established to focus on sustainable finance and the role of private actors in accelerating the transition to a low-carbon economy [Eurosif, 2014: 100].

A key factor in the growth of socially responsible investing in the Netherlands was the involvement of the Federation of Dutch Pension Funds (*Pensioenfederatie*) and the Labour Foundation (*Stichting van de Arbeid*). In 2013, they developed The Code of the Dutch Pension Funds (*Code Pensioenfondsen*). The main objective of the Code was to increase the certainty that pension funds take into account the interests of all stakeholders in a balanced manner and properly manage the assets entrusted to them. One of the most essential elements from the point of view of the development of socially responsible investing, on which the Code focused, was the need to explain how the funds take into account aspects related to the environment, climate, human rights and social relations. It was also necessary for pension funds, acting as investors, to promote good corporate governance in the companies they invest in [Pensioenfederatie, Stichting van de Arbeid, 2013: 17–40].

Over the years, The Code of the Dutch Pension Funds has undergone several updates. In the 2018 version the content of the original code remained unchanged. However, the focus has been placed on making it more transparent and easier to apply [Pensioenfederatie, Stichting van de Arbeid, 2018: 1–43]. The Code of the Dutch Pension Funds from 2023 focuses even more on stakeholders. This updated version of the code highlights the importance of analyses of stakeholder preferences and incorporating these preferences into the pension fund's strategic objectives and policies. It is also necessary to effectively cooperate with stakeholders and disclose related information in annual reports. The 2023 version places special emphasis on the importance of sustainable development. According to its assumptions, a pension fund should pursue an investment policy that includes environmental, climate, social and corporate governance factors as a recognizable part. The fund should also consider the long-term effects of investment policy on individuals, the environment, and society as a whole. [Pensioenfederatie, Stichting van de Arbeid, 2023: 1–31].

5. Conclusions

The conducted research on the socially responsible investing market in the Netherlands allows to conclude that the legal and regulatory framework adopted at the national level may play a significant role in developing this form of investing in individual capital markets. Among them, legal laws introduced by public authorities play a key role. However, as the experience of the Netherlands shows, their primary goal should not be solely to impose specific obligations on investors and investees. They should also be concerned with fiscal instruments that encourage incorporating environmental, social and governance aspects into investment processes and business activities.

A key role in developing socially responsible investing should also be played by activities undertaken by regulatory institutions, non-governmental organizations, business representatives, and the investor community. By creating specific norms, guidelines, procedures, recommendations or codes of conduct, these entities should indicate how to implement the principles of social responsibility both into the business activity and the investors' decision-making process.

This study is not without its limitations. It concentrates solely on one country and on one factor that may influence the development of socially responsible investing in individual capital markets. However, it may constitute a starting point for further research which should take into account a larger number of countries and focus on other aspects that may be important from the point of view of the development of this form of investing, such as the efficiency of socially responsible investing, and the degree of development of a system of non-financial reporting in individual countries.

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Wet van 2 juli 2019, houdende een kader voor het ontwikkelen van beleid gericht op onomkeerbaar en stapsgewijs terugdringen van de Nederlandse emissies van broeikasgassen teneinde wereldwijde opwarming van de aarde en de verandering van het klimaat te beperken (Klimaatwet), Staatsblad van het Koninkrijk der Nederlanden https://zoek.officielebekendmakingen.nl/stb-2019-253.html [date of access: 20.12.2024].