

Solutions for Green Future

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SUSTAINABLE DEVELOPMENT GOALS



GOAL 9

BUILD RESILIENT INFRASTRUCTURE, PROMOTE INCLUSIVE AND SUSTAINABLE INDUSTRIALIZATION AND FOSTER INNOVATION

SUSTAINABLE DEVELOPMENT GOALS
More at sustainabledevelopment.un.org/sdgsproposal

Sustainable development, Sustainability

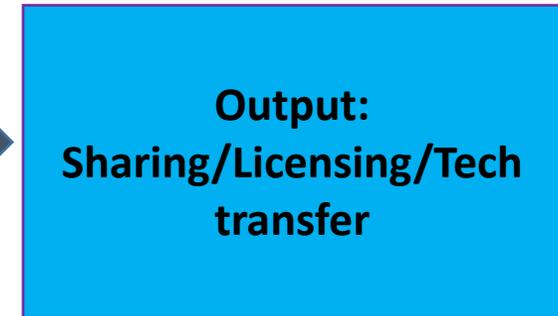
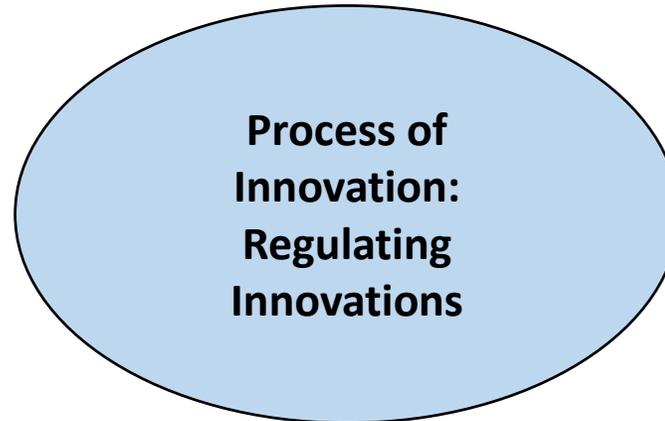
- Sustainable development (Report of the World Commission on Environment and Development/WCED, 1987):
 - “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.
 - “the process of change in which the exploitation of resources, the direction of investments, the *orientation of technological development* and *institutional change* are all in harmony”.
- Sustainability usually defined through interconnected pillars that include a wide variety of environmental, economic and social issues. [Rodrigues, 2012]
- Sustainability is also defined as the social foundation for humanity within ‘planetary boundaries’. [Rockström, 2009]
- Division between ‘weak’ and ‘strong’ sustainability: while weak sustainability brings environmental concerns into the existing structures and systems of business, strong sustainability aims at integrating business into environmental systems by challenging existing structures so that the industrial activities would actually fit within the capacity of the Planet. [Roome, 2012]

Sustainability and European IP Law

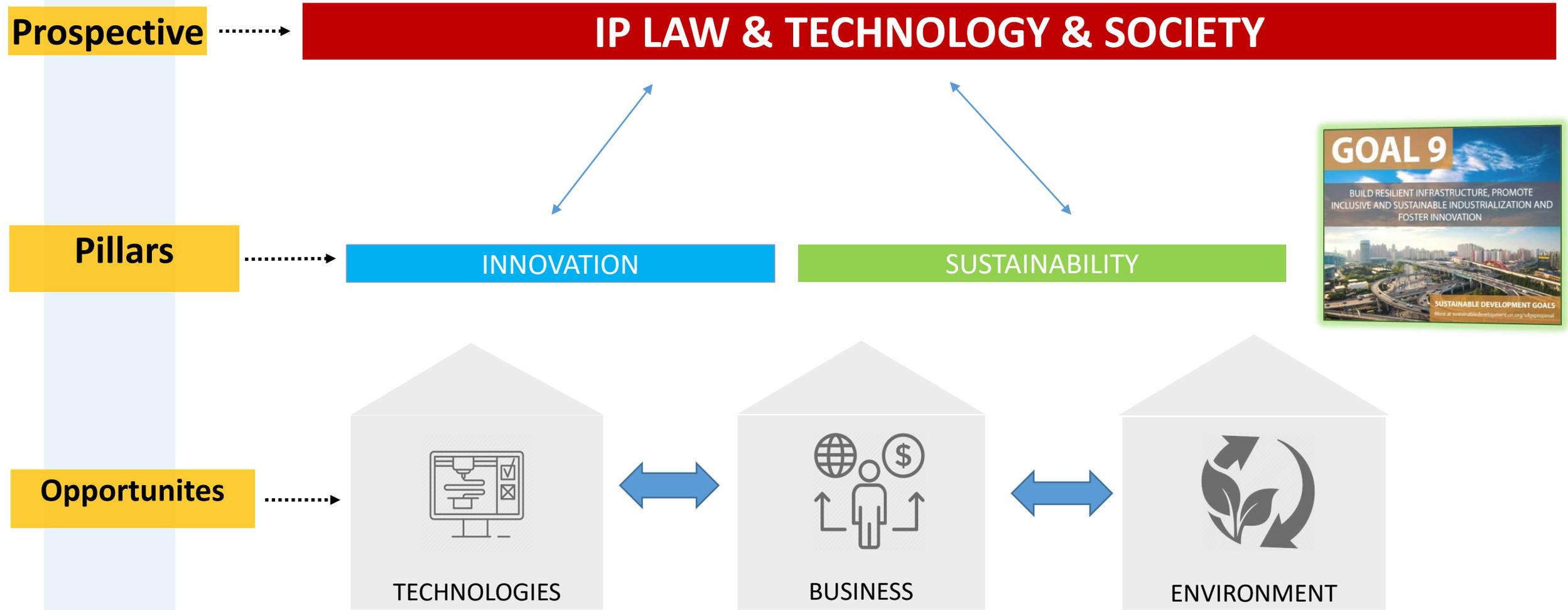
- Article 11 of the Treaty on the Functioning of the European Union (TFEU): “Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities [*indicating in all fields of EU regulation*], in particular with a view to promoting sustainable development.
 - This environmental integration obligation must be balanced with protection of intellectual property protection referred in Article 118 TFEU.
 - However: policy coherence and a holistic evidence-based approach for achieving sustainability within the IPR framework is still missing in the EU framework.



Steps of the Value Chain



IPR & SUSTAINABILITY: CHALLENGES & OPPORTUNITIES



IP Law Practices



Protectable Subject Matter

Current

- Article 53 of the European Patent Convention (also repeated in Article 6(1) of the EU Biotechnology Directive) states that: 'Inventions shall be considered unpatentable where their commercial exploitation would be contrary to ordre public or morality'.
 - Ordre public and morality thus far interpreted narrowly and only in relation to biotech inventions (e.g. gene technologies).

Future?

- Include sustainability in the interpretation of concepts like ordre public, public policy and morality - inventions that are considered as not sustainable should be banned from protection.
- Puls: stronger protection (as well as longer duration, or quicker examination) for incentivizing sustainable innovations.

IP Infringement

Current

- Exhaustion:
 - Limits the extent to which IPR holders can enforce their rights on a sold protected product after it has entered the market with the right holder's consent
 - As the good is no more protected by IPR, it can be *inter alia* used, re-used and repaired without the proprietor's consent
- Limits:
 - Repairing vs reconstructing (based on threshold of "normal working lifespan")

Future?

- Can we include the idea of a 'sustainable' lifespan as a core principle to consider within the scope of all the exclusive rights?
 - E.g. Only acts of repairing that go beyond the genuine purpose of maximising the lifespan of a product would constitute an infringement.

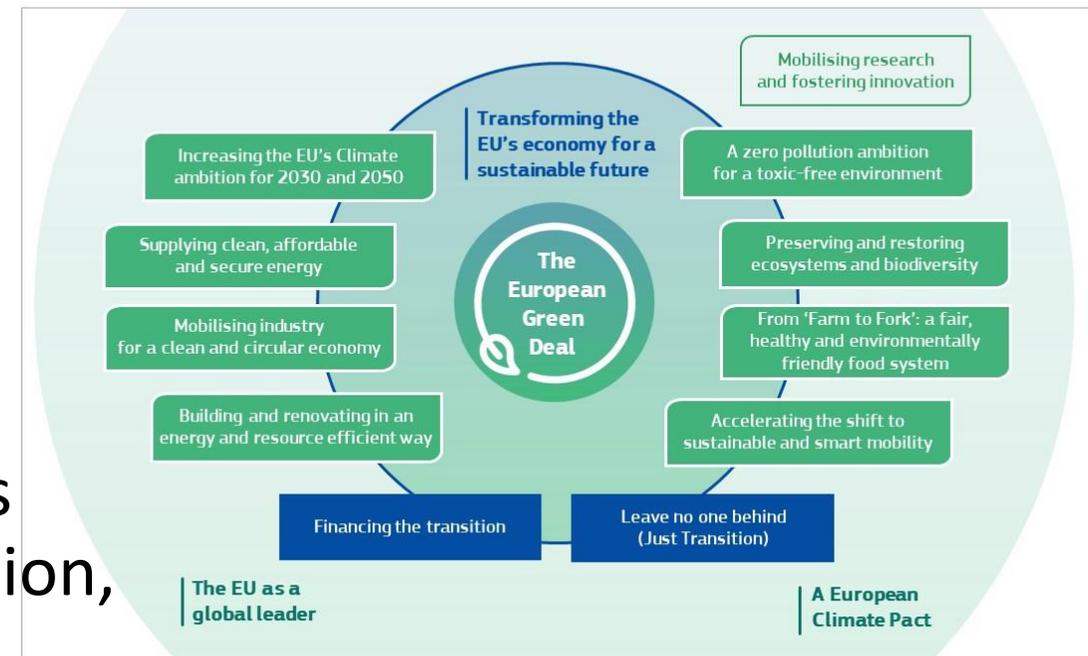
Licensing and Tech Transfer

- Sustainability transitions rely on complex, cumulative and open innovation processes, that involve multiple organizations across innovation ecosystems.
 - With new knowledge being at the core of sustainable technologies and related sustainable/sharing/circular business models, the adequate usage of IPR is crucial for unlocking innovation and accelerating diffusion processes, thereby facilitating sustainability transitions on a global scale.
- In this transition, IP licensing/tec. transfer practices are important for the diffusion and adoption of key technologies and innovations in the market (market making).
 - *Yet, the role of IP in effective sustainability transitions however remains insufficiently understood.*
 - *What's the role of IP regulation in promoting deployment, use and transfer of sustainable innovations, as well as in fostering developments of more sustainable business models?*
- Role of sustainability in major licensing categories
 - Particular focus on closed versus open types of innovation models.
 - New ways for the IP system to better embrace the principles of 'openness'.

IPRs and other Policy Tools

Promoting sustainable innovation with other policy tools

- Tools other than IP play a primary role in the EU's Green Deal
 - Transformation through regulation
 - Public funding / support
 - Measures affecting costs (tax, finance)
 - Commitment that all EU policies (e.g. IP) compatible with the priorities
- In general, IP has certain pros and cons in relation to other tools (e.g. information, costs, impact)



Role of IP in the broader policy context

- Still, IP policy needs to address issues that the other policies give rise to, such as
 - Stricter regulatory requirements: consistency with IP law (e.g. infringement, access to technologies)?
 - Transformed economic activities: new IP protection or infringement issues?
 - Cooperation: IP ownership and licenses in supported cooperation?
- Could IP play a more active role in pursuing the policy objectives?

Competition law issues with IPRs

- Also competition policy is examining how sustainability could be promoted
 - Potentially sustainable practices can raise competition law issues related to IPRs
 - Cooperation relating to sustainable practices
 - Trademarks for communicating sustainability
- ➡ To what extent can sustainability justify restricted competition?
- Another perspective is whether competition law should impose stricter duties on grounds of sustainability (e.g. grant of licenses)

Thank you!
Kíítos!

Grazie!

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ΚΙΤΟΣ!

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