

Environmental Sustainability and Misleading Practices in the Italian Jurisdiction

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Abstract

The article traces the evolution of European and Italian efforts to combat greenwashing and promote environmental sustainability. First, it reviews the EU's broad legislative framework, and then examines Italy's layered approach, where consumer-protection rules, corporate-governance duties and competition law already sanction misleading environmental claims. Particular focus is given to the new Empowering Directive 2024/825, which amends existing consumer law to require clear and verifiable sustainability information, thereby expanding the scope of unfair commercial practices. The author concludes by highlighting the risks and benefits that this dense regulatory network, which strengthens consumer and environmental safeguards, could create.

I. A Brief Introduction About the European Approach to the Environmental Protection

Environmental concerns have become an increasingly prominent and widely discussed issue. While the goal of '*protecting and enhancing the environment for current and future generations*' has been a global priority since the 1972 Stockholm Declaration,¹ it is only in recent years that national governments have begun to fully acknowledge the dangers of climate change and environmental degradation.²

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¹ The 1972 United Nations Conference on the Human Environment in Stockholm marked the first global effort to address environmental issues, resulting in the Stockholm Declaration – comprising 26 principles – and an Action Plan focused on environmental assessment, management, and international cooperation. A key outcome was the creation of the United Nations Environment Programme (UNEP), which became a central institution in global environmental governance. United Nations Declaration on the Human Environment, Conference on the Human Environment, held in Stockholm 5-16 June 1972, available at <https://documents.un.org> (last visited 31 January 2026).

² The TFEU does not define 'environment,' reflecting the fact that environmental protection was not a primary concern when the founding treaties were drafted. Recognition of its importance grew with economic and social development, leading to the inclusion of Title VII on the Environment in the 1987 Single European Act. The 1992 Rio Conference further emphasized the need for environmental policy, prompting the Maastricht Treaty to introduce the concept of sustainable development and the co-decision procedure for environmental measures. The Lisbon Treaty reinforced this framework, explicitly committing the EU to sustainable development, high-level environmental protection, and shared competence with Member States in environmental matters (Arts 3, para 3 and 4, para 2, lett e) TFEU).

Recently, in its Communication to the European Parliament,³ the European Commission highlighted the importance of pursuing ‘sustainable environmental development’ that ‘meets the needs of today without compromising the ability of future generations to meet their own needs’. Among the many goals set, the reduction of carbon emissions stands out in importance. The reason is evident: climate change is having increasingly noticeable impact on people's lives and consequently, there has been a significant rise in legal actions taken by individuals or advocacy groups against states or corporations in the energy sector.⁴ These actions often seek compensation, aim to halt harmful practices, and, where possible, restore the previous state of affairs.⁵

Although the EU's commitment to environmental issues has steadily increased over the past decades, it is in recent years that European policy appears to be fully dedicated to improving the environment's conditions and ensuring sustainable development.⁶

Indeed, the number of EU regulations, directives, and delegated acts on the environment and sustainability are significant and involve different fields and industries.

In this regard, the EU reaffirmed the need of pursuing a sustainable environmental development in the European Green Deal, in which the EU

³ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 22 November 2016 on Europe's sustainable future: next steps. European action for sustainability COM(2016) 739 final, available at eur-lex.europa.eu.

⁴ On climate justice, see D. Castagno and M.P. Gasperini, ‘Procedural Hurdles of Climate Change Litigation in Italy: Prospects in Light of the ECtHR Decision in the KlimaSeniorinnen Case’ *The Italian Law Journal*, 91 (2024); J.S. Dryzek et al, *The Oxford Handbook of Climate Change and Society* (Oxford: Oxford University Press, 2011) passim; R. Jean-Baptiste et al, ‘Recent Developments in Climate Justice’ 47(12) *Environmental Law Reporter News & Analysis*, 11005-11017 (2017).

⁵ Internationally, several notable rulings address this issue. For example, on 24 March 2021, the German Constitutional Court ruled that national emission regulations were in conflict with fundamental constitutional rights, see German Constitutional Court, 24 March 2021, available at <https://www.bundesverfassungsgericht.de>. Equally significant is the decision by the District Court of The Hague, which mandated that Royal Dutch Shell PLC must reduce its emissions by 45% from 2019 levels by 2030, see The Hague District Court 26 May 2021, available at <https://tinyurl.com/5k7b3d5v> (last visited 31 January 2026). In the Spanish legal system, on 15 September 2020, Greenpeace Spain, Oxfam Intermón and Ecologistas en Acción filed a motion to notify the Supreme Court of their intention to sue the Spanish government, arguing that it had failed to take adequate action on climate change, see *Greenpeace v Spain I*, available at <https://tinyurl.com/4a4c6zz6> (last visited 31 January 2026). Similarly, the Dutch Court of Cassation upheld the Dutch directive requiring a 25% reduction in greenhouse gas emissions from 1990 levels, see *The Hague District Court, Urgenda v The State of the Netherlands* 24 June 2015, available at <https://tinyurl.com/mwb75c3z> (last visited 31 January 2026); *Gerechthof Den Haag Urgenda v The State of the Netherlands* 8 October 2018, available at <https://tinyurl.com/mpfxr5yw>; Court of Cassation 13 January 2020, available at <https://tinyurl.com/3c5232ks> (last visited 31 January 2026). In Italy, a consumer association has filed a lawsuit against the Italian state, seeking a court order to cut greenhouse gas emissions by 92% from 1990 levels by 2030. See <https://tinyurl.com/2vz578bu> (last visited 31 January 2026).

⁶ The most significant provisions will be analysed in para 1.2.

expressly stated that it aims to reduce climate-altering gases by 2030.⁷

In order to make the political commitments adopted with the Green Deal binding, the European Climate Law⁸ was passed with the aim of achieving climate neutrality by 2050. The legislation pursues the goal of reducing pollutant emissions from 40% to 55% by 2030. In particular, the EU specifies that in order to achieve such goal, it is necessary to get different industries and all sectors of the economy involved.⁹

Most recently, the Joint Committee of the European Supervisory Authorities (ESA) released a Consultation Paper, including a draft set of guidelines for incorporating ESG¹⁰ risks into supervisory stress testing,¹¹ because, as highlighted

⁷ European Commission Communication of 11 December 2019 on the European Green Deal COM(2019) 640 final, available at eur-lex.europa.eu.

⁸ European Parliament and Council Regulation (EU) 2021/1119 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'), [2021] OJ L243/1.

⁹ The growing focus on environmental issues has also extended to sustainable finance, since the European Union is committed to promoting a sustainable economic model throughout Europe by establishing a regulatory framework toward sustainable investments. On this point, see G. Trovatore, 'Sull'enforcement degli obblighi di sostenibilità nel mercato finanziario' *Giurisprudenza Commerciale*, 616 (2024); G. Strampelli, 'L'informazione non finanziaria tra sostenibilità e profitto' *Analisi giuridica dell'economia*, 145 (2022); A.E. Caterini, 'Green Financial Instruments: 'Ecological' Patrimony and 'Social' Obligatory Relationships' *The Italian Law Journal*, 41 (2024); M. Rescigno, 'Note sulle regole dell'impresa sostenibile. Dall'informazione non finanziaria all'informativa di sostenibilità' *Analisi giuridica dell'economia*, 165 (2022). The European Union has recently introduced a comprehensive legal framework to standardize corporate sustainability practices. Regulation (EU) 2020/852 ('Taxonomy Regulation') establishes a classification system for environmentally sustainable economic activities, providing common criteria for companies and investors to identify and promote genuine green investments while discouraging greenwashing. An activity is deemed sustainable if it contributes to one or more environmental objectives, does not significantly harm others (DNSH principle), and complies with the technical screening criteria set by the European Commission. Complementing this, the Corporate Sustainability Due Diligence Directive (CSDDD) imposes due diligence obligations on EU and non-EU companies to prevent and mitigate adverse impacts on human rights and the environment. It also requires firms to adopt transition plans to align their operations with the goals of the Corporate Sustainability Reporting Directive (CSRD) and the 1.5°C global warming target, see L. Ruggieri, 'Corporate Due Diligence Between the Needs for the Implementation of Sustainability and Protection of Human Rights' *The Italian Law Journal*, 15 (2024), that offers a deeper analysis of the CSDDD; F. Di Silvestre, 'Attempts to Redefine Corporate Purpose and Consequences on Directors' Duties – Enel Use Case' 10 *The Italian Law Journal*, 363 (2024), where the author explores whether such legislative initiatives could promote a redefinition of corporate purpose, enabling companies to safeguard stakeholders' interests while still pursuing long-term shareholder value maximization and, using the Enel case study as an example, assesses whether a realistic and profitable implementation of sustainable corporate governance could be practically achievable.

¹⁰ For a more in-depth analysis on this topic, please refer to the following paragraph.

¹¹ ESA, Joint Consultation Paper on draft joint guidelines to ensure that consistency, long-term considerations and common standards for assessment methodologies are integrated into the stress testing of environmental, social and governance risks pursuant to Art 100(4) of European Parliament and Council Directive 2013/36/EU of 27 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [2013] OJ L176/338 and Art 304c(3) of European Parliament and Council Directive 2009/138/EC of 25 November

above, the EU commitment in pursuing an eco-friendly and sustainable policy is increasingly growing.

The described EU legal framework introduces transparency obligations and aims at preventing misleading practices, particularly from companies that falsely claim to engage in environmentally friendly activities.

II. The Italian ‘Sustainable Approach’

The increasing focus on environmental concerns and the search for tools to promote 'sustainable' economic growth¹² have led to the development of a model that fully integrates environmental, social, and governance factors.

The term ESG (Environmental, Social, and Governance) refers to a system designed to ensure the implementation of policies that mitigate the effects of climate change.¹³

2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) [2009] OJ L335/1, available at eur-lex.europa.eu. The guidelines introduce a harmonized framework for integrating ESG risks – initially climate-related, and later social and governance – into supervisory stress tests. Their objectives are to enhance legal certainty and transparency, ensure methodological consistency across the EU financial system, and strengthen overall financial stability. The approach follows the principle of proportionality, adapting methods to the size and complexity of institutions, and promotes greater coordination among supervisory authorities. The public consultation runs until 19 September, with final adoption expected by the end of 2025 and publication in early 2026.

¹² On sustainability, understood not only as environmental protection but also as social equity and economic prosperity, see L. Gatt, ‘Il paradigma della sostenibilità nel diritto privato tra vulnerabilità relazionale e “principio responsabilità”’, in I.A. Caggiano and A.A. Mollo eds, *E.U. Green Rights: Re-shaping fundamental rights for future generations. La sostenibilità nella prospettiva europea dei diritti*, (Napoli: Suor Orsola Benincasa Università Editrice, 2025), 15.

¹³ M. Stella Richter jr, ‘Long-Termism’ *Rivista delle Società*, I, 16 (2021), which highlights how the ESG relates to three factors that are inhomogeneous and inconsistent from the point of view of the conception of social interest that they presuppose. On this topic see, *ex multis*, R. Costi, ‘Responsabilità sociale dell’impresa e diritto azionario italiano’ *La responsabilità dell’impresa: convegno per i trent’anni di Giurisprudenza Commerciale, Bologna, 8-9 ottobre 2004*, (Milano: Giuffrè, 2006), 102; R. Lener, ‘Il ruolo della corporate governance nell’economia globale’ *Banca Impresa Società*, 3 (2017); C. Angelici, ‘Divagazioni sulla ‘responsabilità sociale’ d’impresa’ *Rivista di Diritto Societario*, 3 (2018); U. Tombari, ‘Poteri’ e ‘interessi’ nella grande impresa azionaria, (Milano: Giuffrè, 2019); M. Siri and S. Zhu, ‘L’integrazione della sostenibilità nel sistema europeo di protezione degli investitori’ *Banca Impresa Società*, 3 (2020); R. Ibba, ‘L’introduzione di obblighi concernenti i fattori ESG a livello UE: dalla direttiva 2014/95 alla proposta di direttiva sulla Corporate Sustainability Due Diligence’ *Banca Borsa Titoli di credito*, 433 (2023); M. Lembo, ‘Servizi di investimento e sostenibilità ESG: il nuovo assetto normative alla luce della più recente disciplina comunitaria’ *Diritto del Commercio Internazionale*, 63 (2023); M.C. Cossu, ‘Sostenibilità e mercati: la sostenibilità ambientale dell’impresa dai mercati reali ai mercati finanziari’ *Banca Borsa Titoli di credito*, 558 (2023); G. Racugno and D. Scanu, ‘Il dovere di diligenza delle imprese ai fini della sostenibilità: verso il Green deal europeo’ *Rivista di Diritto Societario*, 726 (2022); P. Benazzo, ‘Organizzazione e gestione dell’impresa complessa’: compliance, adeguatezza ed efficienza. E pluribus unum’ *Rivista di Diritto Societario*, 1197 (2020); F. Massa ed, *Sostenibilità Profili giuridici, economici e manageriali delle PMI italiane* (Torino: Giappichelli, 2019); M. Maugeri, ‘Informazione non finanziaria e interesse sociale’ *Rivista di Diritto Societario*, 992 (2019); M. Pennasilico, ‘Emergenza e ambiente all’epoca pandemica. Verso un diritto dello “sviluppo umano ed ecologico”’ *Giustizia*

In this regard, it is necessary, on the one hand, to develop practices that identify, measure, and mitigate such risks, and, on the other hand, for companies to establish operating models that prevent unfair practices (eg, greenwashing), which could impede the development of such sustainable approach.¹⁴

Italy does not have a dedicated legal framework specifically addressing ESG. However, there are various provisions that focus on environmental protection, ecosystem preservation, and promoting environmental and social sustainability, as well as corporate governance.

With regard to environmental protection, several legislative provisions are relevant. Notably, the EU Directive 2004/35/EC, which represents a significant milestone in the development of the European (and domestic) framework on environmental liability. Likewise, the decreto legislativo 3 April 2006 no 152, which sets out the core provisions governing environmental regulation in Italy and which constitutes a key pillar of the domestic system. More recently, the legge 28 December 2015 no 221, introducing environmental measures aimed at promoting a green economy and reducing the consumption of natural resources, together with the decreto legge 14 October 2019 no 111 on ‘Urgent measures to comply with the obligations under Directive 2008/50/EC on air quality’ have further strengthened the national legal framework in this field.

With regard to social sustainability, the most relevant provisions include the decreto legislativo 9 April 2008 no 81, concerning the protection of workers’ health and safety in the workplace, and the legge 29 October 2016 no 199, aimed at combating forced labour and labour exploitation. From a broader social perspective, the decreto legislativo 8 June 2001 no 231 also plays a crucial role within the Italian legal framework. By introducing the regime of corporate liability, such decree compels companies to adopt organizational and managerial models designed to prevent the commission of criminal offences in the conduct of corporate activities.

Finally, with regard to governance policies, the most relevant provisions include the Arts 2086 and 2391 of the Italian Civil Code, which set out the general duties of corporate management and address conflicts of interest. In addition, the legge 6 November 2012 no 190 defines the requirements that State-owned or State-

civile, 495 (2021); G. Strampelli, ‘Gli investitori istituzionali salveranno il mondo? Note a margine dell’ultima lettera annuale di BlackRock’ *Rivista di Diritto Societario*, 51 (2020); E. Bellisario, ‘Rischi di sostenibilità e obblighi di disclosure: il d.lgs. n. 254/16 di attuazione della dir. 2014/95/UE’ *Le Nuove leggi civili commentate*, 19 (2017); S. Bruno, ‘Dichiarazione “non finanziaria” e obbligo degli amministratori’ *Rivista di Diritto Societario*, 974 (2018); A. Davola, ‘Informativa in materia di prodotti finanziari sostenibili; tutela dell’investitore e contrasto al greenwashing: le criticità dell’assetto europeo tra norme primarie e disciplina di dettaglio’ *Rivista di Diritto Bancario*, 513 (2022); A. Del Giudice, *La finanza sostenibile. Strategie, mercato e investitori istituzionali*, (Torino: Giappichelli, 2nd ed, 2022); M. Bianchini, ‘Some Backdrops and Prospective Scenarios About the Emerging ‘Law of Sustainable Business Organizations’ 10 *The Italian Law Journal*, 297 (2024).

¹⁴ M. Stella Richter jr, n 13 above, 16, according to which it is not necessarily the case that pursuing socio-environmental and governance sustainability in the choice of investment makes the investment itself sustainable for the same reasons that economic-financial sustainability may not go (*id est*: does not necessarily go) hand in hand with socio-environmental sustainability.

controlled companies must meet in order to adopt effective anti-corruption models. At the European level, key measures include the EU Regulation (EU) 2088/2019 on sustainability-related disclosures in the financial services sector, the EU Directive 2021/1269 on the integration of sustainability factors into product governance obligations, and, finally, the EU Regulation 2021/1253, which incorporates sustainability factors, risks, and preferences into certain organisational requirements and operating conditions for investment firms.

According to some scholars,¹⁵ corporate sustainability and ESG criteria cannot be left to mere voluntary or reputational dynamics. Rather, they require binding national and European regulations grounded in constitutional values. While private economic initiative remains a fundamental freedom, it is constitutionally constrained by the principles of social utility and the prohibition against causing harm to security, liberty, and human dignity, as well as to health and the environment.¹⁶ The pivotal challenge, therefore, lies in achieving a proper balancing of constitutional values, one that must be operationalised through reasoned and reviewable public decision-making rather than through mechanisms of self-regulation.

From this perspective, this ‘constitutional’ and ‘regulated’ model envisions a system in which private enterprises remain drivers of economic growth, but operate within a binding and transparent set of rules. This normative framework internalises externalities and turns ESG principles into a genuine structure of corporate governance, rather than leaving them as a merely rhetorical label. The key objective should be to focus on a normative ecosystem capable of guiding corporate behaviour, assessing impacts, managing conflicts, and ensuring substantive protection for individuals, the environment, and the market alike.

Recently, the Bank of Italy published the main findings of its monitoring the implementation of action plans developed by Less Significant Institutions (LSIs) to integrate climate and environmental risks into their business processes.¹⁷

¹⁵ F. Fimmanò, ‘Art. 41 della Costituzione e valori ESG: esiste davvero una responsabilità sociale dell’impresa?’ *Giurisprudenza Commerciale*, 777 (2023); G. Perlingieri, ‘«Sostenibilità», ordinamento giuridico e «retorica dei diritti». A margine di un recente libro’ *Foro Napoletano*, 106 (2020); V. Cariello, ‘Per un diritto costituzionale della sostenibilità (oltre la “sostenibilità ambientale”)’ *Orizzonti del Diritto Commerciale*, 413 (2022).

¹⁶ The reference is to Art 41 of the Italian Constitution, which provides that private economic initiative may not be conducted in a manner that causes harm to health or the environment, as well as to security, liberty, and human dignity, and that social utility serves both as a guiding principle and a limitation on entrepreneurial activity. It also refers to Art 9 of the Constitution, which expressly includes the protection of the environment, biodiversity, and ecosystems ‘also in the interest of future generations,’ thereby elevating environmental protection to the status of a fundamental constitutional principle and introducing an intergenerational dimension into the balancing of constitutional values. On this topic, see R. Bifulco, ‘La legge costituzionale 1/2022: problemi e prospettive’ *Analisi giuridica dell’economia*, 7 (2022); M. Cecchetti, ‘La revisione degli articoli 9 e 41 della Costituzione e il valore costituzionale dell’ambiente: tra rischi scongiurati, qualche virtuosità (anche) innovativa e molte lacune’ *Quaderni Costituzionali*, 285 (2021); G. Arconzo, ‘La tutela dei beni ambientali nella prospettiva intergenerazionale: il rilievo costituzionale dello sviluppo sostenibile alla luce della riforma degli articoli 9 e 41 della Costituzione’ *Diritto dell’Economia*, 177 (2021).

¹⁷ Bank of Italy, ‘Piani d’azione sull’integrazione dei rischi climatici e ambientali nei processi

The report highlights the areas in which most progress has been made. These include: (i) governance and organizational structure, in which 57% of the planned initiatives have been completed; and (ii) business model and strategy, with 69% of banks having begun to expand their ESG product offerings and 87% having formally designated ESG responsibilities to their Boards.

These findings demonstrate the importance of formally assigning ESG responsibilities within governance structures, updating internal regulations and improving the correct data disclosure and, at the same time, balancing constitutional values and private economic initiative.

III. Liability's Profiles in Case of Misleading Conduct

The analysis conducted above of the previous topics naturally raises the question of what consequences may arise when a company pretends to be compliant with environmental principles and regulations while it is not.¹⁸

First, it is important to mention that, according to the good faith principle, a company shall behave correctly and honestly, declaring to having adopted sustainable measures only if these measures are effectively adopted.

If a company undertakes misleading conduct to give shareholders and consumers the impression that it complies with environmental principles and regulations, it may be engaging in the so-called practice of greenwashing.¹⁹

According to the Italian jurisprudence, greenwashing is a deceptive marketing practice whereby a company falsely claims of being eco-friendly and to have adopted sustainable measures.²⁰

aziendali delle LSI: principali evidenze e buone prassi', May 2025, available at <https://tinyurl.com/bdhn9853> (last visited 31 January 2026). The analysis evidenced also two areas continue to pose significant challenges: (i) data governance and IT systems, where banks face ongoing difficulties in accessing reliable ESG data and integrating it into internal systems, often due to delays from IT vendors; and (ii) disclosure, which, despite a growing number of banks voluntarily reporting on emissions (scopes 1, 2, and 3) and sustainability policies, remains at an early stage for many institutions.

¹⁸ F. Bertelli, 'Pratiche commerciali scorrette. Le asserzioni di sostenibilità e la Dir. 2024/825/UE' *Osservatorio di diritto civile e commerciale*, 333 (2024); A. Troisi, 'Enforcement e normative di contrasto al fenomeno del greenwashing' *Giurisprudenza Commerciale*, 1262 (2022); L. Zoboli, 'Il greenwashing e la tutela della corretta comunicazione d'impresa' *Rivista di Diritto Bancario*, 271 (2024); M. Tommasini, 'Green claim e sostenibilità ambientale. le tutele ed i rimedi apprestati dall'ordinamento contro le pratiche di greenwashing' *Diritto famiglia e persona*, 858 (2023); L. Botti, 'Greenwashing e comunicazione d'impresa. L'ecologismo di facciata' *Diritto Industriale*, 496 (2024); C. Galli and A. Rainone, 'La Direttiva 'greenwashing': un common ground per la sostenibilità in Europa' *Diritto Industriale*, 13 (2025).

¹⁹ Consiglio di Stato 27 April 2017 no 1960, available at www.onegale.wolterskluwer.it, according to the greenwashing practice could be defined as: 'appropriazione indebita di virtù ambientaliste finalizzata alla creazione di un'immagine 'verde'.

²⁰ 'A fronte di un'espansione rapida del fenomeno patologico del green-washing, può ravvisarsi pubblicità ingannevole in messaggi pubblicitari che inducono nel consumatore un'immagine green dell'azienda senza dar conto di quali siano le politiche aziendali che

In such a scenario, a company could be held liable for realizing unfair commercial practices, prohibited under the Arts 20 – 27 of the Consumer Code, or misleading advertising, expressly forbidden by the decreto legislativo 2 August 2007 no 145, and be condemned to compensate the consumers for the damage it caused. Moreover, a greenwashing practice realised by a company could be considered a case of unfair competition under the Art 2598 of the Italian Civil Code, subject to injunctive relief and compensation claims.

Similarly, the Italian jurisprudence has considered unfair a misleading corporate governance conduct.²¹ Specifically, the Italian Court of Cassation clarified that directors are required to follow the voluntary code adopted by the company they manage.²² The Court of Rome has also established that directors cannot unjustifiably deviate from the self-regulatory codes they have voluntarily adopted.²³

consentono un maggior rispetto dell'ambiente e riducano fattivamente l'impatto ambientale dei prodotti. In tema di tutela dell'ambiente, infatti, il Codice di Autodisciplina della Comunicazione Commerciale prevede, all'art. 12, che la comunicazione commerciale che dichiara o evoca benefici di carattere ambientale o ecologico deve basarsi su dati veritieri, pertinenti e scientificamente verificabili (nel caso di specie, risultano contestati da un lato claim pubblicitari molto generici, quali 'scelta naturale, amica dell'ambiente, la prima e unica microfibra che garantisce eco - sostenibilità durante tutto il ciclo produttivo, microfibra ecologica'; dall'altro lato alcuni concetti riportati nella compagna pubblicitaria trovano smentita nella stessa composizione e derivazione del tessuto, pubblicizzato come fibra naturale ma non avente tale natura)', Tribunale di Gorizia 26 November 2021, available at www.dejure.it.

²¹ E. Barcellona, 'La sustainable corporate governance nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c.d. stakeholderism' *Rivista di Diritto Societario*, 1 (2022); P. Montalenti, 'I problemi della governance' *Giurisprudenza Commerciale*, 368 (2024); E. Rimini, 'Sostenibilità e nuova governance delle imprese azionarie nel diritto interno e comunitario tra realtà, criticità e prospettive' *Giurisprudenza Commerciale*, 285 (2024); F.M. Di Majo, 'The Eu Regulatory and standard setting action on corporate sustainability reporting and the environmental taxonomy: fighting against greenwashing practices with a global reach' *Diritto del Commercio Internazionale*, 207 (2024); E. Ginevra, 'Il Codice di Corporate Governance: Introduzione e Definizioni (con un approfondimento sul "Successo sostenibile")' *Rivista di Diritto Societario*, 1017 (2023).

²² The case analysed by the Corte di Cassazione 3 January 2019 no 5, concerns the failure of oversight by the Board of Statutory Auditors, which did not adequately perform its supervisory function and failed to report to *Commissione nazionale per le società e la borsa (CONSOB)*, the independent Italian authority overseeing financial markets, the omission of submitting to the company's Board of Directors the press release regarding the issuance of a bond. This was in violation of the company's corporate procedure for managing and publicly communicating privileged information.

²³ 'The meaning and limits of the business judgement rule also apply to the directors' organisational choices. The organisational function always falls within the broader sphere of corporate management and must necessarily be exercised employing an irrepressible margin of freedom, so that the decisions relating to its performance are included among the strategic decisions. Moreover, the preparation of an organisational structure does not constitute the object of an obligation with specific content, but, on the contrary, of an obligation that is not predetermined in its content, which acquires concreteness only having regard to the specificity of the business exercised and of the moment in which that organisational choice is made. This organisational obligation can be effectively discharged by looking not so much at rigid regulatory parameters (since a model of organisation that is useful for all situations cannot be deduced from the code), but rather at the principles elaborated by the corporate sciences or by trade associations or self-regulatory codes', Tribunale di Roma 08 April 2020, available at www.dejure.it.

According to this jurisprudential approach, therefore, once a company opts to follow a specific code of conduct, it is obligated to adhere to it under the 'comply or explain' principle.²⁴

This means that if a company declares its adoption of internal environmental compliance rules that exceed the level of protection provided by national legislation, the company (and its boards) commits themselves to adhering to the rules it has publicly adopted.²⁵

The jurisprudential approach is clearly aimed at protecting consumers and ensuring fair competition through informed decision-making process, anticipating the EU's legislative stance on this matter.

IV. The Empowering Directive

On March 26, the EU Directive 2024/825 on empowering consumers for the green transition through better protection against unfair practices and better information (the so-called 'Empowering Directive') entered into force.²⁶

The Empowering Directive introduces new rules aimed at effectively fighting unfair commercial practices that may mislead consumers and prevent them from making sustainable consumption choices, such as greenwashing. Even if this purpose is commendable, the considerable amount of legislative regulation in this field and the lack of direction regarding the harmonization with the existing regulation could lead to confusion among traders and rule makers that, according to the Art 3 of Empowering Directive shall adopt and publish the measures necessary to comply with the Directive.²⁷

²⁴ Corte di Cassazione 3 January 2019 no 5, available at www.dejure.it: 'The correct application of the principles just referred to requires that the self-regulatory rules provided for by internal provisions must also be considered binding for the company, even if they are more stringent than the general provisions laid down by law, regulatory sources or self-regulatory codes. When the company, as the result of an entirely free choice, decides to adopt rules of business conduct and to express this decision to the market, it is in fact bound to comply with them, the above choice representing a voluntary self-restraint on the part of the market operator'. On the 'comply or explain' rule, see also Corte di Appello di Venezia 02 August 2023 no 1697, available at www.dejure.it.

²⁵ Among the Italian companies embracing ESG principles, Snam S.p.A. stands out for amending its articles of association to explicitly pursue 'sustainable success', see <https://tinyurl.com/2f3c5ppf> (last visited 31 January 2026).

²⁶ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information [2024] OJ L2024/825, available at www.eur-lex.europa.eu. Among scholars, see F. Trimarchi Banfi, 'La sostenibilità dello sviluppo economico nel diritto dell'Unione Europea' *Diritto Amministrativo*, 631 (2024); L. Botti, n 18 above, 496; C. Galli and A. Rainone, n 18 above, 13; M. Lazzari and P. Spataro, 'La sostenibilità degli eventi aziendali: il caso Var Group S.p.A.' *Amministrazione e finanza*, 9 (2024); G. Riolfo, *L'impresa "sostenibile". La rilevanza esterna degli obblighi e delle responsabilità degli amministratori* (Padova: CEDAM, 2024), passim.

²⁷ Recently, the Senate approved, in its session of 27 February 2025 and at first reading, the 2024 European Delegation Bill, which grants the Government the authority to adopt legislative

In particular, the new directive has amended the Directives 2005/29/EC 2011/83/EU by introducing several new unfair commercial practices and implementing fair commercial practices.

Indeed, the Empowering Directive aims to ensure a well-functioning internal market and support the green transition. In order to reach this goal, consumers should make informed purchasing decisions. This requires traders to provide clear, relevant, and reliable information, fostering sustainability and environmental protection.²⁸

In this regard, the Empowering Directive introduces new rules to combat unfair practices that mislead consumers and hinder sustainable choices, such as practices associated with early obsolescence, greenwashing, deceptive social claims, and unreliable sustainability labels.²⁹

The purpose of the Directive is to allow consumers to make informed decisions and to prevent companies' misleading conducts. Such goal is pursued increasing the misleading actions listed in the Art 6, paras 1 and 2, of the Directive (EC) 2005/29, transposed into the Art 21 of the Italian Consumer Code. Indeed, the Empowering Directive explicitly states that among the misleading commercial practices shall be included all false information regarding the main characteristics of the product.³⁰ Although this misleading practice – providing consumers with false information – was already actionable under the general provisions of the Consumer Code, the EU legislator chose to introduce a specific measure to eliminate any possible ambiguity. This decision, on the one hand, represents a clear attempt at increasing the level of consumer's protection, on the other hand, it is also a sign of an excessive and fragmentary legislation in this field.

The Empowering Directive establishes also that it shall be considered misleading all commercial practices that are able to influence the commercial

decrees implementing the following legal acts, as well as to transpose the directives listed in Annex A, among which Directive (EU) 2024/825 is also mentioned.

²⁸ Recital 1 Directive (EU) 2024/825: 'In order to contribute to the proper functioning of the internal market, based on a high level of consumer protection and environmental protection, and to make progress in the green transition, it is essential that consumers can make informed purchasing decisions and thus contribute to more sustainable consumption patterns. That implies that traders have a responsibility to provide clear, relevant and reliable information'.

²⁹ Recital 1 Directive (EU) 2024/825: 'Therefore, specific rules should be introduced in Union consumer law to tackle unfair commercial practices that mislead consumers and prevent them from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims ('greenwashing'), misleading information about the social characteristics of products or traders' businesses, or non-transparent and non-credible sustainability labels'.

³⁰ Art 1, para 2, lett (a) and (b) Directive (EU) 2024/825: 'the main characteristics of the product, such as its availability, benefits, risks, execution, composition, environmental or social characteristics, accessories, circularity aspects, such as durability, reparability or recyclability, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product'.

decisions of consumers, including:

‘making an environmental claim related to future environmental performance without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation’³¹ and ‘advertising benefits to consumers that are irrelevant and do not result from any feature of the product or business’.³²

This disposition should be welcomed since it is clearly stated that such practices are to be considered misleading provided that are able to influence consumer’s commercial decisions.

In the same direction, the Empowering Directive also condemns omissive practices, establishing that if a trader provides a service that compares products giving information on environmental or social characteristics or on circularity aspects, they must provide material information on the comparison method, including the measures in place to keep that information up to date to ensure data accuracy.³³

As noted above, the purpose of the Directive is to prevent unfair practices and ensure that consumers’ decision-making process is not distorted. To achieve this, the Empowering Directive seeks to encourage the use of durable goods. Accordingly, it states that:

‘Directive 2011/83/EU of the European Parliament and of the Council should be amended to provide consumers with pre-contractual information about durability, reparability, and the availability of updates.’³⁴

Moreover, to ensure that consumers are properly informed about the reparability of the goods they purchase, the Empowering Directive also provides that:

‘traders are obliged to provide consumers with information on the existence and the conditions of after-sales services, including repair services, where such services are provided. In addition, to allow consumers to make an informed transactional decision and choose goods that are easier to repair, traders should, where applicable, provide, before consumers are bound by

³¹ Art 1, para 2, lett b) and d) Directive (EU) 2024/825.

³² Art 1, para 2, lett b) and e) Directive (EU) 2024/825.

³³ Art 1, para 3 of Directive (EU) 2024/825: ‘Where a trader provides a service which compares products and provides the consumer with information on environmental or social characteristics or on circularity aspects, such as durability, reparability or recyclability, of the products or suppliers of those products, information about the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date, shall be regarded as material information’.

³⁴ Recital 25, Directive (EU) 2024/825.

the contract, the reparability score for the good as provided by the producer and as established at Union level'.³⁵

In other words, the Empowering Directive is expected to strengthen the existing safeguards against unfair commercial practices, particularly in the fight against greenwashing. However, the introduction of a heightened level of transparency may give rise to a form of pre-contractual liability where companies fail to provide consumers with adequate information on durability and reparability. While this regulatory development may indeed raise awareness among businesses and discourage misleading conduct towards consumers, it could also result in an excessive level of consumer protection, potentially allowing individuals to exploit these rules to initiate legal actions against companies alleged to have engaged in greenwashing. It is important to note that Italy already has a solid regulatory framework in place, with the Consumer Code and the Competition Authority (AGCM) actively sanctioning misleading environmental claims. As previously mentioned, greenwashing practices have so far been addressed as unfair commercial practices. The new directive, however, introduces more stringent transparency requirements and stronger enforcement mechanisms, ensuring that companies substantiate their sustainability claims with verifiable and scientific evidence. In practice, this may lead to tighter oversight, more severe penalties for non-compliance, and a likely increase in disputes related to greenwashing. At the same time, it should be recalled that such measures could enhance consumer trust in sustainable products and encourage companies to adopt a more transparent approach, even if they might result in a heightened degree of consumer protection. It will therefore fall to the Italian legislator to transpose this regulation, seeking to strike a delicate balance between ensuring accurate information and transparency for consumers, and avoiding excessive burdens on companies and entrepreneurs, including the risk of abusive litigation in this area. The Italian legislator has already referenced the Empowering Directive among the measures to be implemented, granting the government the authority to adopt the provisions needed to comply with it. It is therefore foreseeable – indeed, desirable – that in the coming months the government will begin working on the adoption of these measures, guided by the need for balance outlined above.

V. Conclusions

As shown above, the EU legislator has made laudable progress in shielding consumers from deceptive environmental claims and in promoting genuinely sustainable business conducts, even if the breadth of this regulatory effort now risks becoming a source of uncertainty for traders, professionals, and enforcement

³⁵ Recital 34 Directive (EU) 2024/825.

authorities. Companies must simultaneously track evolving obligations under the Consumer Code, the Taxonomy Regulation, the CSRD, the forthcoming CSDDD, and, most recently, the Empowering Directive, all while mapping these rules onto complex global value chains.

Navigating the extensive array of EU regulations, directives, and delegated acts on sustainability and environment protection is far from straightforward for companies and their managers. This complexity is further heightened when considering the value chain assessment, which encompasses all activities, resources, and relationships a company relies on to produce and deliver its goods or services, from supply chain processes to consumption and end-of-life stages.

To prevent this dense framework from degenerating into a compliance maze, regulators and market participants should adopt a more collaborative and innovation-friendly approach. Regulatory sandboxes can provide a controlled environment in which businesses may test disclosure models and substantiation methodologies before full-scale deployment. A unified EU consumer-law compliance platform – integrated with sector-specific guidance and real-time updates – would give a single reference point for interpreting overlapping sustainability obligations. Complementary training programmes, delivered through industry associations and consumer-protection bodies, can translate technical legal requirements into accessible, sector-specific checklists.

Italy has already signalled its intention to implement the Empowering Directive, to align national enforcement practices with the Directive's enhanced transparency and verification standards, while avoiding duplication with existing rules on unfair commercial practices. Early engagement between legislators, the AGCM, business associations, and civil-society groups will be critical to calibrate sanctions, streamline disclosure templates, and ensure that supervisory guidance remains both rigorous and practicable.

The Empowering Directive, together with existing provisions in the Italian Consumer Code and the jurisprudential recognition of self-imposed corporate commitments, introduces a multilayered system of substantive and procedural safeguards. Traders must now substantiate any sustainability assertion with measurable, time-bound and third-party-verified evidence. Failure to do so not only triggers the general prohibitions on misleading practices, but also constitutes a specific infringement expressly identified by EU law. This mechanism enhances legal certainty: consumers can rely on consistent standards when assessing environmental claims, while companies are given clear compliance benchmarks.

Moreover, the deterrent effect of heightened enforcement creates tangible incentives for businesses to invest in genuine sustainability strategies. In parallel, initiatives such as regulatory sandboxes, specialised training programmes and dedicated compliance platforms can translate complex legislative requirements into practical guidance, thereby reducing inadvertent non-compliance and fostering a culture of transparency across the value chain.

Ultimately, combating greenwashing is not merely a regulatory exercise; it is a prerequisite for the efficient functioning of the internal market, the protection of fair competition and the acceleration of the green transition. When consumers receive reliable information, they reward truly sustainable products and services, channel capital towards responsible enterprises and catalyse systemic change.

In conclusion, if the steps mentioned above will be taken, the Empowering Directive may deliver its full promise: empowering consumers to make informed, sustainable choices, rewarding firms that invest in verifiable ESG performance, and fostering a marketplace in which environmental integrity and competitive fairness reinforce – rather than undermine – each other. In short, clarity, cooperation, and capacity-building now will determine whether Italy, and the EU at large, convert an ambitious legislative agenda into tangible environmental and economic gains by 2026 and beyond.