

## *Fashion Law, Italian Style - Symposium*

### **Sustainable Fashion... Italian Style!**

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#### **Abstract**

In *Sustainable Fashion...Italian Style!* Barbara Pozzo begins the Symposium by addressing a hot topic in the fashion industry: sustainability. Acknowledging the work that has been done to incentivize sustainable development at the supranational level, Pozzo presents the EU framework for sustainable development and the relevant EU legislation for the textile and fashion industries. Highlighting registration and labeling norms, Pozzo also highlights the ethical codes of conduct that have been implemented by brands, luxury conglomerates, and industry associations, including the *Camera Nazionale della Moda*. Despite the laws currently in place and other encouraging steps, Pozzo highlights the continued prevalence of greenwashing and the importance of viewing sustainability policies from a 360-degree angle. With a history of creating textiles through processes that are closely linked to historic practices, traditions, and the environmental benefits of a specific territory, Italian fashion brands are offering, as Pozzo presents, innovative sustainable initiatives that can benefit the global fashion industry. The city of Como in Italy already embodies many of the best practices of sustainability, and Pozzo points out how the fashion brands in Como have instituted a number of important initiatives and collaborations.

#### **I. Introduction**

Fashion and Sustainability seem – at first sight – opposing concepts. Fashion is ephemeral and recalls the idea that once the season is gone, the dress should be set aside to make room for new models. As Coco Chanel said, ‘Fashion is made to become unfashionable’.

On the other hand, fashion is the end-product of a heavily impactful industry. The textile industry contributes to consistent pollution of the planet and is not much different from a steel mill as far as environmental impacts are concerned. Further, through its rapid production methods that supply the latest catwalk styles almost instantaneously to the high street, the fast fashion model has revolutionized the fashion industry, while generating a significant carbon footprint and a host of social concerns.<sup>1</sup>

If we look to recent data, the picture emerges in all its drama: 150/180 billion garments are produced each year worldwide, of which only 1% is recycled as

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<sup>1</sup> K. Fletcher, *Sustainable Fashion and Textiles* (New York: Routledge, 2<sup>nd</sup> ed, 2014); S.S. Muthu, *Assessing the Environmental Impact of Textiles and the Clothing Supply Chain* (Cambridge: Elsevier, 2014), 40-55.

clothing. In Europe the consumption per year and per capita amounts to 26 kg. Among the most thought-provoking data there is the fact that 30% of the total textile production does not reach the consumer (10% as production rejects, 20% as unsold garments).<sup>2</sup>

Sustainable fashion is a part of a new growing philosophy, the goal of which is to create a supply chain that becomes bearable in terms of environmental *impacts* and in terms of *social responsibility*. Different sectors can be involved in this transition to a more sustainable fashion. Areas that can be affected concern for example the choice of materials with a more limited environmental impact, or that could be produced out of environmental-friendly raw materials or materials derived from traceable cultivations that have a lower environmental impact. The choice of materials could be also connected to the use of recycled materials; or the use of fibers and materials certified according to recognized international standards.

Other areas where it would be possible to have an impact with a dedicated policy on sustainability are the reduction of waste and rejects, and the control of energy consumption and of natural resources, for example by installing plants to produce energy from renewable sources. The control could be extended to dangerous substances used, minimizing the emission of pollutants in the atmosphere and in water bodies.

New strategies can also be developed at the distribution stage, for example encouraging rational and efficient ways of shipping goods by preferring carriers that are committed to reducing environmental impacts.

In a context where consumers become more important day by day, information plays a role of utmost importance by providing the data that is useful for making informed choices from a sustainability point of view. That is why it is possible to also intervene with specific labelling policies and advertising policies, to neutralize greenwashing strategies.

Finally, as history teaches us, we cannot forget how it is especially important in the fashion supply chain to pay special attention to the basic rights of workers, in order not to expose them to situations that might be hazardous to their health and safety.

With this in mind, we can understand why Ambassador Inga Rhonda King, President of the UN Economic and Social Council, introduced the Sustainable Fashion Summit, Friday, 1 February 2019 by stating that 'Sustainable fashion is key to the achievement of the 2030 Agenda'.<sup>3</sup>

<sup>2</sup> 'Sustainable Fashion 2023: A Look at the Industry's Impactful Statistics', May 12, 2023, available at <https://tinyurl.com/2p9ambkm> (last visited 20 September 2023).

<sup>3</sup> H.E. Ambassador Inga Rhonda King, 'Remarks' *Sustainable Fashion Summit ECOSOC Chamber*, 1 February 2019, available at <https://tinyurl.com/2x35b3h8> (last visited 20 September 2023).

## II. The EU Legal Framework for Sustainable Development

The debate on sustainable fashion in Italy must be contextualized in a regulatory framework that has evolved at the EU level over time, recognizing an increasingly prominent role for the principle of sustainability.<sup>4</sup>

Initially, the Treaty establishing the European Economic Community in 1957 did not provide for any specific Community competence in the environmental field; this competence was, instead, introduced only in 1987 with the Single European Act.

With the Maastricht Treaty in 1992 the principle of sustainable development was introduced in Art 2:

‘The Community has the task of promoting, ..., a harmonious and balanced development of economic activities throughout the Community, sustainable, non-inflationary and environmentally friendly growth ...’

Nowadays the Treaty on European Union features the *principle of sustainable development* in various provisions, as well as in the Preamble. In particular, the principle of sustainable development is established in Art 3, where it is put in connection with the establishment of the internal market

(‘The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment’),

but also with the role that Europe wants to play at the international level in order to promote sustainable development worldwide

(‘In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter’).

Art 21 further foresees that sustainable development will have a guiding role in the Union’s external action. In particular, the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in

<sup>4</sup> B. Pozzo, ‘Sustainable Development’, in S. Baldin and S. De Vido eds, *Environmental Sustainability in the European Union: Socio-Legal Perspectives* (Trieste: Edizioni Università di Trieste, 2020), 11-38.

all fields of international relations,

‘foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty’<sup>5</sup> and

‘help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development’.<sup>6</sup>

The principle of sustainable development is further recalled in Art 37 of the Charter of Fundamental Rights dedicated to the environment, which states that

‘A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development’.

The idea encapsulated within the principle of sustainable development – in theory – appears to be simple: it is to leave future generations at least the same level of opportunity as we ourselves have had. As the Brundtland Report stated:

‘Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>7</sup>

On the other hand, it is more difficult – from a practical point of view – to determine what legislative measures should be adopted, and what the right mix of legal instruments (between public law and private law) is to achieve this magical point of equilibrium between the needs of today and those of tomorrow.<sup>8</sup>

Sustainable development as a concept has remained relatively open-ended, providing ‘a space for dissension and socio-political struggle where competing discourses of the economic and environmental paradigms are joined’.<sup>9</sup> Others have suggested that the concept of sustainability has a more long-term function, claiming that it falls within the classification of ‘ideas that make a difference’.<sup>10</sup>

<sup>5</sup> Art 21 d), Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

<sup>6</sup> Art 21 f), Consolidated Version of the Treaty on European Union [2008] OJ C115/13.

<sup>7</sup> Brundtland Commission, *Our Common Future* (Oxford: Oxford University Press, 1987).

<sup>8</sup> E. Brown-Weiss, *In Fairness to Future Generation: International Law, Common Patrimony and Intergenerational Equity* (New York: United Nations University, 1988); A.S. Manne, *Intergenerational Altruism, Discounting and the Greenhouse Debate* (Manuscript Stanford: Department of Operations Research, Stanford, 1996); D.A. Farber and P.A. Hemmersbaugh, ‘The Shadow of the Future: Discount Rates, Later Generations, and the Environment’ 46 *Vanderbilt Law Review*, 267-304 (1993).

<sup>9</sup> M.A. Hajer, *The Politics of Environmental Discourse: Ecological Modernisation and the Policy Process* (Oxford: Clarendon, 1997).

<sup>10</sup> D. McNeill, ‘The Concept of Sustainable Development’, in K. Lee et al eds, *Global Sustainable Development in the 21<sup>st</sup> Century* (Edinburgh: Edinburgh University Press, 2000).

In order to give consistency to the principle, sustainable development has been mainstreamed into EU policies and legislation, implementing a specific *EU Sustainable Development Strategy* of 2001,<sup>11</sup> where the Commission states that economic growth, social cohesion and environmental protection must go hand in hand, calling for a better coordination among the wide range of policies to address the economic, environmental and social dimensions of sustainability and launching the global role of the EU in this field.

With the Fifth Environmental Action Program adopted by the Commission in 1992 entitled ‘Towards Sustainability’,<sup>12</sup> consideration was given to broadening the range of environmental policy instruments.

To drive change in the approach to environmental issues and with the idea of fostering a spirit of ‘shared responsibility’, the Commission was advocating the need to propose a broader range of instruments that would make business part of a process of raising awareness and consciousness of environmental issues.

Alongside the traditional environmental policy instruments, those based on the command-control model, came so-called market-based instruments, which include taxes, charges, specific environmental incentives, permit exchange systems, eco-labeling and environmental budgeting schemes, the regulation of liability for damage caused to the environment and, finally, environmental agreements.<sup>13</sup>

Subsequently, with the Sixth Environmental Action Program,<sup>14</sup> which launched the strategies for 2002-2010, the Commission clearly indicated that one of the aims of environmental policy should be to induce the market to work for the environment through better cooperation with the business community, introducing reward programs for companies with the best environmental performance, promoting a move toward greener products and processes, and encouraging the adoption of eco-labels that would enable consumers to compare similar products on the basis of environmental performance.

In the most recent Seventh Union Environment Action Programme, entitled ‘Living well, within the limits of our planet’,<sup>15</sup> the Commission sets out the guidelines

<sup>11</sup> Communication from the Commission of the European Communities ‘A sustainable Europe for a Better World: A European Union Strategy for Sustainable Development’, [2001] Brussels 15.5.2001 COM 264 final, available at <https://tinyurl.com/2nrxnxxnj> (last visited 20 September 2023).

<sup>12</sup> ‘Towards Sustainability’, [1993] OJEC C 138/5, available at <https://tinyurl.com/msjazmjfb> (last visited 20 September 2023).

<sup>13</sup> Communication from the Commission of the European Communities ‘Europe’s environment: what directions for the future? The global assessment of the European Community programme of policy and action in relation to the environment and sustainable development’, [1999] COM (99) 543 final, available at <https://tinyurl.com/5n99cv73> (last visited 20 September 2023).

<sup>14</sup> Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the Sixth Environment Action Programme of the European Community ‘Environment 2010: Our future, Our choice - The Sixth Environment Action Programme’, [2010] COM/2001/31 final, available at <https://tinyurl.com/547jy97c> (last visited 20 September 2023).

<sup>15</sup> European Parliament and of the Council Decision 1386/2013/EU of 20 November 2013 on a General Union Environment Action Programme to 2020 [2013] OJ L 354/171, available at

through to 2020, bringing together – as part of a revised conception of well-being in which economic prosperity and the well-being of the Union are closely related to its natural capital–environmental concerns and market dynamics.<sup>16</sup>

The Seventh Action Programme reflects the Union’s commitment to transform itself into an inclusive green economy that can guarantee growth and development, protect human health and welfare, create decent jobs, reduce inequalities, and invest in biodiversity.<sup>17</sup>

To achieve these ambitious goals, the Commission stresses that there is a need for ‘an appropriate mix of policy instruments’<sup>18</sup> to enable businesses and consumers to improve their understanding of the impact of their activities on the environment and to manage that impact. These political instruments crystallise in a broad examination of legal instruments, public and private law, including economic incentives, market instruments, information requirements, and in voluntary measures and instruments which commit stakeholders on various levels, as supplements to legislative frameworks.<sup>19</sup>

Sustainability has further become ‘one of the founding principles of consumer law’.<sup>20</sup> The EU Consumer Policy strategy 2007–2013<sup>21</sup> highlighted the importance of correct and reliable information given to consumers:

‘Empowered and informed consumers can more easily make changes in lifestyle and consumption patterns contributing to the improvement of their health, more sustainable lifestyles and a low carbon economy’.

In the new Circular Economy Action Plan of 2020,<sup>22</sup> the Commission proposes a revision of EU consumer law to ensure that consumers receive trustworthy and relevant information on products at the point of sale, including on their lifespan and on the availability of repair services, spare parts, and repair manuals. The Commission is also considering further strengthening consumer protection against green washing and premature obsolescence, setting minimum requirements

<https://tinyurl.com/yz6pd3uc> (last visited 20 September 2023).

<sup>16</sup> *ibid* recital 17.

<sup>17</sup> *ibid* recital 10.

<sup>18</sup> *ibid* recital 33.

<sup>19</sup> *ibid*

<sup>20</sup> H. W. Micklitz, ‘Squaring the Circle? Reconciling Consumer Law and the Circular Economy’, in B. Keirsbilck and E. Terry eds, *Consumer Protection in a Circular Economy* (Cambridge - Antwerp-Chicago: Intersentia, 2019) 323-345.

<sup>21</sup> Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, ‘EU Consumer Policy strategy 2007-2013 - Empowering consumers, enhancing their welfare, effectively protecting them’, Brussels [2007] COM (2007) 99 final, available at <https://tinyurl.com/mr35fvh6> (last visited 20 September 2023).

<sup>22</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘A new circular economy action plan for a cleaner and more competitive Europe’, Brussels [2020] COM (2020) 98 final, available at <https://tinyurl.com/5x7t84v5> (last visited 20 September 2023).

for sustainability labels/logos and for information tools.<sup>23</sup> In the same direction, the EU Parliament Resolution of 25 November 2020, *Towards a more sustainable single market for business and consumers*,<sup>24</sup> focuses on consumer rights and the reduction of planned obsolescence, facilitating repair and reuse.

### III. The Relevant EU Legislation for Textile and Fashion Industries

Against the backdrop of this framework that emphasizes the role of sustainability and – at the same time – the need for the market to cooperate, the EU has issued a set of laws that have regulated businesses' behaviors and incentivized consumers' information.

The Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation,<sup>25</sup> which came into force on 1 June 2007, constitutes an important step towards the objectives of health and environmental protection. In particular, the regulation makes the registration of chemicals mandatory, requiring companies to prepare dossiers containing the full chemical, toxicological and environmental profile of products, and restricting professional use to chemicals registered for that particular use. This obligation also has significant repercussions on the importation of chemical products, which will have to be registered to enter the European market.

For these reasons it is important to develop and support a system of controls over imported items. In Italy for example, the Associazione Tessile e Salute supports the Health Ministry and the competent authorities in ensuring that the REACH requirements are also adopted by foreign manufacturing companies to avoid a substance that is banned in Europe being present in imported products and causing harm to consumers' health.<sup>26</sup> Altogether the REACH regulation represents a major compliance challenge for the textile and clothing industry, with relevant strategic business implications that could promote transparency in the use of chemicals and stimulate the adoption of more sustainable alternatives.<sup>27</sup> Furthermore, in this context it should be noted that the pressure of humanitarian and environmentalist movements creates a kind of domino effect in the fashion industry's dynamics: brands urge their suppliers to act sustainably, and these suppliers in turn put

<sup>23</sup> *ibid* 5.

<sup>24</sup> European Parliament Resolution 'Towards a more sustainable single market for business and consumers', 25 November 2020, [2020] OJ C 435/11, available at <https://tinyurl.com/yc7n7mh6> (last visited 20 September 2023).

<sup>25</sup> European Parliament and Council Regulation (EC) 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [2006] OJ L 396/1, available at <https://tinyurl.com/2xtbe7n9> (last visited 20 September 2023).

<sup>26</sup> 'Associazione Tessile e Salute Website', available at <https://tinyurl.com/3tmh9tb9>.

<sup>27</sup> For a detailed discussion see V. Jacometti, 'Sustainable consciousness and consumer identity: Legal tools and rules', in E. Mora and M. Pedroni eds, *Fashion Tales, Feeding the Imaginary* (Bern: Peter Lang, 2017), 247, 259.

pressure on their own suppliers, often adopting highly detailed contractual specifications requiring compliance with REACH requirements.

Another area in which the EU has developed an important role concerns the labelling and marking of textile products. In 2011 the EU adopted a Regulation establishing harmonized provisions on the labelling and marking of textile products in order to eliminate barriers to the internal market in the textile sector and to guarantee consumers adequate information.<sup>28</sup> All products containing at least 80% by weight of textile fibers, including raw, semi-worked, worked, semi-manufactured, semi-made, and made-up products are covered by the regulation.

The Regulation makes labelling or marking of the fiber composition compulsory to ensure that correct and uniform information is made available to all consumers in the Union, to enable them to make informed choices.<sup>29</sup>

In order to place a textile product on the market its fiber composition shall be indicated in a label or mark; such label or mark shall be durable, easily legible, visible, accessible and, in the case of a label, securely attached and the information must be accurate, not misleading, easily understandable and provided in the official language or languages of the Member State where the product is offered to the consumer.

In Italy, Legislative Decree no 190 of 15 November 2017,<sup>30</sup> provides for specific sanctions for violations of EU labelling regulations, with the aim to guarantee the consumer correct information on product composition. Legislative Decree no 190/2017 therefore represents a fundamental step both to strengthen the protection of the consumer, who is increasingly exposed to the risks of the globalized and low-cost market and lacks effective protection regarding the technical characteristics of the product, and to protect entrepreneurs with a view to strengthening 'Made in Italy' productions anchored to the enhancement and transparency of the production characteristics and materials used.

The Italian Decree of 2017 has stiffened the fines on manufacturers, suppliers and distributors and introduced the possibility of immediate seizure of goods. The measure assigns direct responsibility and accompanying heavy penalties (up to 20,000 euros) on those who actually label products (footwear and textiles), ie the

<sup>28</sup> European Parliament and Council Regulation (EU) 1007/2011 of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council, [2011] OJ L 272, 1–64, available at <https://tinyurl.com/mryj6tr> (last visited 20 September 2023).

<sup>29</sup> *ibid* 10.

<sup>30</sup> Decreto legislativo 15 novembre 2017 no 190 'Disciplina sanzionatoria per la violazione delle disposizioni di cui alla direttiva 94/11/CE, concernente l'etichettatura dei materiali usati nei principali componenti delle calzature destinate alla vendita al consumatore, ed al regolamento (UE) n. 1007/ 2011 del Parlamento europeo e del consiglio del 27 settembre 2011, relativo alle denominazioni delle fibre tessili e all'etichettatura e al contrassegno della composizione fibrosa dei prodotti tessili'.



manufacturer, the importer and the distributor, in a misleading way.<sup>31</sup>

#### IV. The Rise of Sustainable Fashion in Italy and the ‘Manifesto for Sustainability in Italian Fashion’

Besides the mandatory European norms that have been implemented in Italy, the topic of sustainability in fashion has come to the attention of an ever-widening public.

This phenomenon finds its basis in the framework just outlined in the context of the European Union, but also finds its lifeblood in movements that emphasize sustainability and the rights of future generations, such as *Fridays for future*.

This has also had far-reaching consequences in the textile and fashion industry, where the social and environmental impacts of this supply chain have become increasingly evident. Just to cite two examples in this field, it is important to recall the Greenpeace Detox Campaign, that was launched in 2011 to highlight the links between global clothing brands, their suppliers and toxic water pollution around the world. Greenpeace is underlying that for decades, companies have used nature, and in particular rivers and oceans, as a dumping ground for hazardous chemicals. Communities living near textile manufacturing facilities had to face water pollution as a daily reality, evidencing how regulations have not always prevented the release of toxic chemicals into the environment, particularly in the Global South. That’s why the NGO is calling on companies to commit to end the release of chemicals and to stop tarnishing rivers, lakes, lands, oceans, and people. Since its launch, Greenpeace has challenged some of the world’s most popular clothing brands to eliminate all releases of hazardous chemicals from their supply chains and products.<sup>32</sup> The campaign launched by Greenpeace was so successful in Italy that a consortium (the *Consorzio italiano implementazione DETOX*) was founded for this purpose with the adoption of a special code of ethics.<sup>33</sup>

Also of importance to remember, not only for its mediatic impact, is the *Clean*

<sup>31</sup> Art 3.7 of the Decree further introduces the assignment by the Supervisory Authority (CCIAA, Customs and Monopolies Agency) of a peremptory deadline of sixty days in which the manufacturer or its representative or the person responsible for first placing footwear or textile products on the national market must regularize the labelling or withdraw the products from the market. Persons who fail to comply within the allotted time limit shall be subject to an administrative fine ranging from €3,000 to €20,000. It is also important to know that the measure provides that - unless the act constitutes a criminal offence, a manufacturer, importer or distributor who fails to provide, when making a textile product available on the market, in catalogues, brochures or websites, the indications relating to the fibre composition in accordance with Regulation (EU) no 1007/2011 shall be subject to a pecuniary administrative sanction ranging from EUR 1,500 to EUR 20,000 - the distributor who makes footwear available on the market without having correctly informed the final consumer, of the meaning of the symbols adopted on the label, shall be subject to a fine of EUR 1,500 to EUR 20,000.

<sup>32</sup> Greenpeace, ‘Detox my Fashion’, available at <https://tinyurl.com/bdrsn83a> (last visited 20 September 2023).

<sup>33</sup> Consorzio Italiano Implementazione Detox, ‘Codice Etico di CID’, available at <https://tinyurl.com/2s3wxyxc> (last visited 20 September 2023).

*Clothes Campaign*, an alliance of various organizations, including trade unions and NGOs, in sixteen European countries, dedicated to improving working conditions in the global garment and sportswear industries,<sup>34</sup> which drew and is constantly drawing the attention of public opinion to the disaster which occurred at the Rana Plaza building in Dhaka, in Bangladesh, in 2013, which housed several shops, a bank and five garment factories. In the collapse of the building, at least 1,138 people were killed and thousands more suffered life-changing injuries. The *Clean Clothes campaign*, that in Italy was named *Abiti puliti*,<sup>35</sup> has highlighted the contribution of Italian brands such as Benetton to the exploitation of workers and aims to raise consumer awareness of these issues.

In 2012, the *Camera Nazionale della Moda Italiana* promoted *The Manifesto for the sustainability in Italian Fashion*, which aims at designing an Italian path to a responsible and sustainable fashion as well as fostering the adoption of models of responsible management throughout the fashion value chain for the benefit of the economic system of the whole country.

The *Manifesto* applies first to the businesses that are members of *Camera Nazionale della Moda Italiana*, but also has the ambition of establishing a model and of setting guidelines for other companies that could contribute with their know-how to the excellence of Italian products in the world.

Furthermore, item 10 of the *Manifesto* provides for specific actions to be undertaken by *Camera Nazionale della Moda Italiana* to achieve the largest circulation and greatest effectiveness of this tool.

The *Manifesto* interprets the global challenges of sustainability by defining concrete and distinctive actions to be taken by Italian businesses. It is a tool designed to show Italian companies how to take advantage of the opportunities offered by the greater attention given to environmental and social aspects and, at the same time, help them to manage reputational and operational risks in the best way.

The *Manifesto* is organized according to the stages of the value chain and includes some horizontal principles as well. It contains some specifications that businesses can utilize as a handbook as well as a benchmark for strategic and operative choices; a few tags, identified for each theme, can be used as references to investigate the most significant issues.

Other important initiatives are the *Greenitaly Report*<sup>36</sup> and the *Sustainable Fabrics and Accessories Catalogue*,<sup>37</sup> that regularly take stock of the development of sustainable production in Italy in the fashion and accessories sector.

<sup>34</sup> 'Clean Clothes Campaign', available at [www.cleanclothes.org](http://www.cleanclothes.org).

<sup>35</sup> Benetton, 'Abiti Puliti', available at <https://tinyurl.com/2n7v8tdk> (last visited 20 September 2023).

<sup>36</sup> Symbola, 'GreenItaly 2022', available at <https://tinyurl.com/2p9bzed3> (last visited 20 September 2023).

<sup>37</sup> Sustainability Lab, 'Catalogo dei tessuti sostenibili P/E2015 SS/2015', available at <https://tinyurl.com/yhcsc647> (last visited 20 September 2023).

## V. Ethical Codes

Many important brands<sup>38</sup> have implemented *Codes of Ethics*, that should guarantee for the future a better control on safety measures, minimal wages, and environmental impact.

Among the reasons fashion brands have adopted codes of ethics is to address various problems that might be connected to labor standards, corruption, or sustainability issues.

From a legal perspective, a code of ethics constitutes a contract between a company and its addressees, tending to oblige third parties to adhere to the code's principles.

In a recent analysis<sup>39</sup> that has taken into consideration the codes of ethics of important fashion brands, the companies surveyed explicitly state their codes of ethics are legally binding for all employees, collaborators, and suppliers, while some firms have expressly linked their codes of ethics to their primary supplier-buyer agreement.<sup>40</sup> This means that a violation of the ethical code constitutes a breach of the main contract (for services or procurement of goods). In this case suppliers will be incentivized to behave ethically, because of the threat of termination due to breach.

Some brands have also adopted specific principles in the area of sustainability. Gucci for example has adopted a specific document on sustainability,<sup>41</sup> that states that

'Gucci and Kering Group are committed to:

- ensure human rights, welfare and fair working conditions;
- ensure a basic living wage for all workers;
- avoid use of child and forced labour;
- use natural resources conscientiously and increase efficiency in the use of materials and resources;
- conserve and protect biodiversity and maintain ecosystem function;
- use water responsibly;

<sup>38</sup> Like Gucci (Kering, 'Code of Ethics', available at <https://tinyurl.com/2fcj2w9h>), Prada (Prada Group, 'Code of Ethics', available at <https://tinyurl.com/ehhhhsz>) and Armani (Armani/Values, 'People, Planet, Prosperity', available at <https://tinyurl.com/4bsprbfd>).

<sup>39</sup> R.E. Cerchia and K. Piccolo, 'The Ethical Consumer and Codes of Ethics in the Fashion Industry' 8(4) *Laus*, 23 (2019), available at <https://tinyurl.com/49fzxm3f> (last visited 20 September 2023).

<sup>40</sup> *ibid* ('Armani requires all Suppliers Armani contractually engages in business with to adhere to the following standards and requirements. The Supplier Code of Conduct is referenced in Armani's Terms and Conditions so as to hold Suppliers legally accountable to this Code' (citing to Armani, 2017, at 1)). See also Cerchia and Piccolo's discussion of Ralph Lauren referencing separate Fair Employment Practice Policy and Anti-Harassment Policy contained in employee handbook; and Ralph Lauren, 'Doing the Right Thing: Our Code of Business Conduct and Ethics', available at <https://tinyurl.com/5n8mhra3> (last visited 20 September 2023).

<sup>41</sup> Gucci, 'Sustainability Principles', available at <https://tinyurl.com/5n7pennx> (last visited 20 September 2023).

- optimise waste management and minimise waste production;
- promote resilience and mitigation of climate change;
- create positive impact within local communities;
- respect animal welfare, and ensure a minimal impact on the environment;
- support sustainable sourcing of production material and packaging.

These sustainability principles are in support of that commitment’.

The document further adds that ‘Gucci suppliers commit to comply with Sustainability Principles by signing and dating this document’, thus also managing to impose these principles on their suppliers.

However, the existence of a code of ethics does not guarantee compliance with the principles contained therein. In 2008 Benetton published its code of ethics, which stated:

‘safety, health and working conditions: the physical and moral integrity of the Recipients is considered a primary value of the Group. Safety is safeguarded, [as is] hygiene and health in the workplace and it is considered fundamental and a priority, in the performance of its activities, [to have] full respect for the health, physical integrity and rights of workers and full compliance with current legislation on safety, hygiene and health at work’.

Nevertheless, at the time of the collapse of Rana Plaza where the safety conditions of those working inside were deplorable, Benetton at first denied being involved in the activities conducted there. Later, when Benetton branded goods were found under the rubble, the company was forced to admit its involvement.<sup>42</sup>

It should be emphasized that although the rules contained in the codes of ethics are not binding, a company’s non-compliance with the rules contained therein can mean an enormous loss of reputation on the market. Particularly in the fashion sector, where consumer awareness of issues such as the protection of workers and the environment is increasingly on the rise, failure to comply with the pact concluded with the code of ethics could result in a very negative backlash for the company.

## **VI. Environmental and Sustainability Labels, Certifications, and Standards**

Another phenomenon that must be considered when studying sustainable fashion concerns the proliferation of labels and certifications aimed at introducing an independent monitoring by a third-party.<sup>43</sup>

<sup>42</sup> United Colors of Benetton, ‘La tragedia del Rana Plaza: I fatti e l’impegno di Benetton’, available at <https://tinyurl.com/3a68m2hv> (last visited 20 September 2023).

<sup>43</sup> M. Urminsky, ‘Self-Regulation in the Workplace: Codes of Conduct, Social Labelling and Socially Responsible Investment’ 1 *Management and Corporate Citizenship Working Paper*,

Among these we find *labels and certifications of general application*. The *International Organization for Standardization (ISO)* plays an important role in this regard: the best-known standard is the *ISO 14001*, which sets out the requirements for an environmental management system.<sup>44</sup> In the European context we further have to recall the *European Eco-Management and Audit Scheme (EMAS)* and the *EU Ecolabel*. EMAS<sup>45</sup> is a voluntary scheme with the objective of promoting improvements in the environmental performance of public and private organizations in all economic sectors. The *EMAS* environmental management system requirements are very similar to those of *ISO 14001*. The *EU Ecolabel*<sup>46</sup> is a voluntary label applicable to products with a low environmental impact throughout their life cycle, from the extraction of raw material through to production, use and disposal.

But in the fashion and textile industry, special certifications have also developed. Among these we recall the *Global Organic Textile Standard (GOTS)*<sup>47</sup> that certifies that textiles are made from organic fibres, and that takes into consideration ecological and social criteria, backed up by independent certification of the entire textile supply chain. GOTS certified final products may include fiber products, yarns, fabrics, clothes, home textiles, mattresses, but also personal hygiene products, as well as food contact textiles and more. Only textile products that contain at least 70% of organically grown fibers can be certified GOTS.

In the same field, the *Organic Content Standard* is the certification for organic textiles promoted by *Textile Exchange*.<sup>48</sup> It involves the verification of the presence and amount of organic material in a final product, and it tracks the whole of the supply chain from the source to the end product. The process is certified by an accredited third party. It does not deal with the use of chemicals

Another set of standards relate to recycled materials. *Recycled Content Certification*<sup>49</sup> for example assesses products made from pre-consumer or post-consumer material diverted from the waste cycle, while the *Global Recycle Standard (GRS)*, applies to companies that are making and/or selling intermediate

(Geneva: ILO, 2001), 38 ss; O. Khuik, 'Fair Trade and Ethical Labeling in the Clothing, Textile and Footwear Sector: The Case of Blue Jeans' 11(3) *ILSA Journal of International and Comparative Law*, (2005), 619–635.

<sup>44</sup> International Organization for Standardization, 'ISO 14001 and related standards: Environmental management', available at <https://tinyurl.com/32tze452> (last visited 20 September 2023).

<sup>45</sup> European Commission, 'Eco-Management and Audit Scheme (EMAS)', available at <https://tinyurl.com/amw3en8r> (last visited 20 September 2023).

<sup>46</sup> European Commission, 'EU Ecolabel', available at <https://tinyurl.com/4s8bk975> (last visited 20 September 2023).

<sup>47</sup> Global Organic Textile Standard, 'Ecology and Social Responsibility', available at <https://global-standard.org/>.

<sup>48</sup> Textile Exchange, 'Organic Content Standard', available at <https://tinyurl.com/mr2c922a> (last visited 20 September 2023).

<sup>49</sup> Textile Exchange, 'Recycled Claim Standard (RCS) and Global Recycled Standard (GRS)', available at <https://tinyurl.com/yc48kr4j> (last visited 20 September 2023).

or end products with recycled content.<sup>50</sup>

There are finally multi- criteria labels specific to the textile and clothing sector. Among these, it is noteworthy to recall *Seri.co*,<sup>51</sup> that refers to a set of rules developed in the Como silk district. *Seri.co* is a product and process certification system based on a *Disciplinary*, the application of which is intended to provide the highest guarantees to the production process in accordance with the principles of quality, environment, health and safety, sustainability, social responsibility, and chemical risk management; on the textile product, both for technological and performance properties and for eco toxicological properties.

## VII. Greenwashing and the Challenge to Sustainability

Despite the undoubtable steps taken in the direction of making fashion more sustainable, recent studies of the industry show that, in reality, the presence of certifications and labels that should inform consumers about product qualities have not actually changed the way fashion is produced.

A recent Report published in March 2022 by Changing Markets Foundation entitled ‘Licence to Greenwash - How Certification Schemes and Voluntary Initiatives are Fuelling Fossil Fashion’<sup>52</sup> highlights that the existence of such schemes serves a dual purpose for the brands. On the one hand, these schemes consist in a genuine attempt to move towards sustainability in the absence of environmental legislation. On the other, nevertheless, they also enable the proliferation of ‘greenwashing’ on a remarkable scale.

According to the Report,

‘whether it is the use of certification labels on individual products – assuring customers that they can shop guilt free by putting their money where their values lie – or brands proudly communicating their membership of various fashion-related voluntary initiatives, the existence of these schemes and the inherent lack of accountability within them are a key part of the greenwashing machinery of the modern fashion industry’.<sup>53</sup>

The Report provides a qualitative analysis of the best-known initiatives with a focus on those that claim to address issues of circularity, overproduction and the rise of fast fashion, end-of-life management, and the elimination of toxic chemicals from production or manufacturing. In particular, of the ten initiatives analysed, some

<sup>50</sup> See V. Jacometti, n 27 above, 257.

<sup>51</sup> Further information on *Seri.co* may be found at Centro Tessile Serico Sostenibile, ‘About *Seri.co*’, available at <https://www.textilecomo.com/en/about-seri.co>.

<sup>52</sup> Changing Markets Foundation, ‘License to Greenwash: How Certification Schemes and Voluntary Initiatives are Fuelling Fossil Fashion’, available at <https://tinyurl.com/y433nj39> (last visited 20 September 2023).

<sup>53</sup> *ibid* 9.

are certification labels (bluesign®, Cradle to Cradle (C2C), EU Ecolabel, OEKO-TEX® and Textile Exchange's Global Recycled Standard and Recycled Claim Standard), others are multi-stakeholder initiatives (the Ellen MacArthur Foundation (EMF), The Microfibre Consortium (TMC) and (ZDHC) and others provide a set of self-assessment tools (the Higg Index and WRAP) for the industry to measure their sustainability.

The investigation sought to establish the robustness of these schemes and to assess whether they can claim credit for creating any transformational change.

In particular, the Report stresses that many schemes merely provide a smokescreen for companies that want to appear to be taking steps towards sustainability. According to this investigation, the majority of them do not set strict requirements and timelines for their members to progressively raise their ambition.

Among the critical aspects that the Report has shed light on are that most initiatives focus on only a few aspects of a seemingly arbitrary selection of the product's life cycle stages. This way of proceeding enables schemes to shape a certain vision of sustainability that may not reflect the reality. Further, most schemes are also not comprehensive, that is to say, they do not cover the full life cycle of textile production. Thus, a brand will often need to use several labels and be signatories to several initiatives to cover the various social and environmental impacts of their products across the supply chain.

The Report finally indicates a lack of accountability, independence and transparency across initiatives that offer labelling or certification, with no evidence of enforcement or consequences for those who commit to targets but fail to meet them. Most of the schemes are vulnerable to high levels of influence through the brands that fund the schemes or are otherwise involved in governance structures. Accountability is also severely compromised in this way, with little incentive for schemes to call out a lack of compliance from paying members and brands. As far as transparency is concerned, the Report points out these schemes are operating as a black box, with no external scrutiny. Transparency is not just about bombarding the public with information but is about presenting this information in such a way that information can be easily found and understood, and if necessary, challenged.

In order to counter such trends that undermine the credibility of environmental claims even by those companies that are serious about their commitment to sustainability and – at the same time – provide misleading information to consumers, several initiatives have been taken in recent years.<sup>54</sup>

In 2016, the new edition of ISO 14021:2016 'Environmental labels and declarations - Self-declared environmental claims (Type II environmental labelling)<sup>55</sup>

<sup>54</sup> B. Pozzo, 'I green claims, l'economia circolare e il ruolo dei consumatori nella protezione dell'ambiente: le nuove iniziative della Commissione UE' *Rivista Giuridica dell'Ambiente*, 707-748 (2020).

<sup>55</sup> The rules are available at <https://tinyurl.com/nhbe2pu6> (last visited 20 September 2023).

was published. It covers self-declared environmental assertions made by companies for their products, made by manufacturers, importers, distributors and retailers without independent third-party certification. Often placed on products and/or their packaging, self-declared claims are not limited to labelling but also include environmental claims disseminated through advertising, publications, the internet or in business relationships.

In particular, the new rules stipulate that vague or non-specific claims, which merely state that a product is beneficial for the environment, must not be used. Environmental claims such as '*environmentally friendly*', '*earth friendly*', '*non-polluting*', '*green*', '*nature friendly*', '*ozone friendly*' should therefore not be used.

ISO 14021:2016 also stipulates that an environmental claim professing to be '*X-free*' or '*without substance X*' or '*free of substance X*' may only be used if the level of the specified substance is no higher than what would be recognized as a trace contaminant or background level.

Finally, regarding claims of the sustainability of a certain product, the 2016 ISO rules emphasize that the notions referring to sustainability are very complex and are still being studied. At this point in time, there is no definitive method to measure sustainability. Therefore, claims regarding the achievement of sustainability should also be avoided.

A further step that has been taken concerns advertising. In almost all European countries there are private self-regulation rules, administered by independent private authorities, organized in turn into a network at the European level by the European Advertising Standards Alliance (EASA).<sup>56</sup> The first and common source of inspiration for European self-regulatory codes originated in the context of the Paris International Chamber of Commerce (ICC) in 1937 with the '*Code de Pratiques Loyales en matière de publicité*', which defined certain deontological rules that advertisers were obliged to respect '*on an ethical basis*', as well as establishing a first '*jury*'.<sup>57</sup>

The International Chamber of Commerce in Paris has revised its self-regulatory code several times, the latest version of which dates to 2018.<sup>58</sup> It should be emphasized that already in July 2011, the ICC had published a specific guide on responsible commercial communication on environmental issues,<sup>59</sup> and already in the 2011 version of the Code, there were specific guidelines in this regard.<sup>60</sup>

<sup>56</sup> V. Guggino et al, 'La natura, l'organizzazione dello IAP e il procedimento autodisciplinare', in C. Alvisi and V. Guggino eds, *Autodisciplina Pubblicitaria. La soft law della pubblicità italiana* (Torino: Giappichelli, 2020), 85.

<sup>57</sup> *ibid* 58.

<sup>58</sup> International Chamber of Commerce, *Consolidated ICC Code of Advertising and Marketing Communication Practice*, available at <https://tinyurl.com/nhzb7sea> (last visited 20 September 2023).

<sup>59</sup> International Chamber of Commerce Commission on Marketing and Advertising, *Framework for Responsible Environmental Marketing Communications*, ICC Document N° 240-46/665 – July 2011, available at <https://tinyurl.com/eaydjzx2> (last visited 20 September 2023).

<sup>60</sup> With the introduction of a new chapter dedicated to environmental declarations in the



The 2018 Consolidated ICC Code of Advertising and Marketing Communication Practice reformulates the principles on green claims in a separate chapter.<sup>61</sup> In particular, the ICC Code recommends that marketing communication should be structured in such a way that it does not abuse consumers' concern for the environment or exploit their possible lack of environmental knowledge. Furthermore, marketing communications should not contain any statements or visual treatments that could mislead consumers about environmental aspects, or the benefits attributed to products.<sup>62</sup>

Vague or non-specific statements of environmental benefit, which may convey a range of meanings to consumers, should only be made if they are valid, without qualification, in all reasonably foreseeable circumstances. In this sense, claims such as 'environmentally friendly', 'ecologically safe', 'green', 'sustainable', 'environmentally friendly' or any other claim implying that a product or activity has no impact - or only a positive impact - on the environment, should not be used without qualification unless a very high standard of proof is available. Furthermore, since there are no definitive and generally accepted methods for measuring sustainability, it is recommended to avoid using statements where sustainability is claimed to have been achieved.

In Italy, Art 12 introduced in the *Code of Marketing Communication Self-Regulation Italy* in 2014,<sup>63</sup> foresees that

'Advertising, claiming or suggesting environmental or ecological benefits must be based on truthful, pertinent and scientifically verifiable evidence.

Such advertising must ensure a clear understanding of which aspect of the product or activity the claimed benefits refer to'.

The purpose of Art 12 of this Code is to protect the public from the deception that green claims might convey by being ambiguous or too general. The application of Art 12 regarding commercial communication that focuses on environmental claims implies a necessary balancing act between the need for a high level of protection of consumers, made vulnerable by their sensitivity to environmental issues, and the freedom of the company to communicate to the market its investments in environmental protection.

However, so far, there have been no convictions against members of the fashion industry based on this article, not least because the fashion world has so far stayed away from the world of advertising self-regulation.

2011 version of the Code: *Chapter E: Environmental Claims in Marketing Communications*, 36. A 2011 version of the Code is available at <https://icc-portugal.com>.

<sup>61</sup> 'Chapter D: Environmental Claims in Marketing Communications', in *Consolidated ICC Code* n 60 above, 39 ss (2018 version).

<sup>62</sup> Art D1, n 60 above.

<sup>63</sup> Istituto dell'Autodisciplina Pubblicitaria, *Code of Marketing Communication Self-Regulation Italy*, 2021, available at <https://tinyurl.com/nhaumy43> (last visited 20 September 2023).

In August 2020, the Commission launched a new initiative on green claims to make them more reliable, but above all to create a common methodology on which to base them. The initiative, called ‘substantiating green claims’, assumes that the provision of reliable, comparable, and verifiable information on the actual environmental impact of different products, services and organizations is essential for actively involving consumers in European environmental policies.<sup>64</sup>

Regardless of the good results that have been achieved so far with the application of public and private mechanisms to assess the sincerity of green claims, it must be remembered that there are currently 457 different voluntary environmental certifications, obtained on the basis of disparate criteria, as there are currently no precise positive standards to measure their validity.

Finally, in March 2023 the Commission presented a new ‘Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims’ (Green Claims Directive),<sup>65</sup> that underlines how consumers are faced with the practice of making unclear or not well-substantiated environmental claims and with the use of sustainability labels that are not always transparent and credible. This has resulted in companies that offer truly sustainable products being disadvantaged on the market, when compared to those companies that do not offer such truly sustainable products.

According to Art 3 of the proposed Directive, ‘Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims’. Art 10 further establishes that Member States shall set up procedures for verifying the substantiation and communication of explicit environmental claims while Art 11 states that the verifier shall be a third-party conformity assessment body accredited in accordance with Regulation (EC) No 765/2008.<sup>66</sup>

With this initiative, the Commission intends to tighten controls on greenwashing, imposing greater control on states over the reliability of green claims and goes hand in hand with the Strategy on sustainable and circular textiles.

### **VIII. The New EU Strategy on Sustainable and Circular Textiles and the Italian Initiatives**

In March 2022, the Commission launched the *European Strategy for Sustainable and Circular Textiles*,<sup>67</sup> that foresees specific actions to address key

<sup>64</sup> European Commission, ‘Green Claims’, available at <https://tinyurl.com/ymw8t625>.

<sup>65</sup> ‘European Parliament and Council Proposal for a Directive on substantiation and communication of explicit environmental claims’ (Green Claims Directive), [2023] COM/2023/166 final, available at <https://tinyurl.com/eap9f27n> (last visited 20 September 2023).

<sup>66</sup> European Parliament and Council Regulation (EC) No 765/2008 of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 [2008] OJ L 218/31, 30, available at <https://tinyurl.com/mr98wkn5> (last visited 20 September 2023).

<sup>67</sup> Communication from the Commission to the European Parliament, the Council, the

issues of this sector. It first aims to ensure that by 2030, textile products placed on the EU market are recyclable and long-lasting, made as much as possible from recycled fibres, free of hazardous substances and produced with respect for social and environmental rights. It further promotes reuse and repair to avoid the production of textile waste and microplastics, introducing extended producer responsibility.

In more detail the Strategy foresees the introduction of mandatory Ecodesign requirements, as extending the life of textile products is the most effective way of significantly reducing their impact on the climate and the environment. To achieve this, product design has a key role. Failures in quality such as color fastness, tear strength or the quality of zippers and seams are among the main reasons for consumers to discard textiles. Increased durability will enable consumers to use clothing for longer and at the same time support circular business models such as reuse, renting and repair, take-back services, and second-hand retail, in a way that creates cost-saving opportunities to citizens.<sup>68</sup>

The Strategy further declares that the Commission will also introduce bans on the destruction of unsold products, including as appropriate, unsold, or returned textiles.<sup>69</sup> In addition, the Commission will take initiative to address the unintentional release of microplastics in the environment.<sup>70</sup>

Another initiative envisaged by the strategy that appears to be very interesting and relates what has just been said about greenwashing, the Commission will introduce a Digital Product Passport for textiles based on mandatory information requirements on circularity and other key environmental aspects. To ensure consistency with this new piece of legislation, the Commission will also review the Textile Labelling Regulation, which requires textiles sold on the EU market to carry a label clearly identifying the fibre composition and indicating any non-textile parts of animal origin. As part of this review and subject to an impact assessment, the Commission will introduce mandatory disclosure of other types of information, such as sustainability and circularity parameters, products' size and, where applicable, the country where manufacturing processes take place (*'made in'*).<sup>71</sup>

New EU rules will be introduced to ensure that consumers are provided with information at the point of sale about a commercial guarantee of durability as well as information relevant to repair, including a reparability score, whenever this is available. General environmental claims, such as *'green'*, *'eco-friendly'*, *'good for the environment'*, will be allowed only if underpinned by recognized excellence in environmental performance, notably based on the EU Ecolabel, type I ecolabels, or

European Economic and Social Committee and the Committee of the Regions: 'EU Strategy for Sustainable and Circular Textiles' [hereinafter Strategy], [2022] Brussels, COM (2022) 141 final, available at <https://tinyurl.com/ynzrrr3w> (last visited 20 September 2023).

<sup>68</sup> *ibid* 3.

<sup>69</sup> *ibid* 4.

<sup>70</sup> *ibid* 5.

<sup>71</sup> *ibid* 5.

specific EU legislation relevant to the claim. As foreseen in the Proposal of the Green Claims Directive, voluntary sustainability labels covering environmental or social aspects must rely on a third party verification or be established by public authorities. Moreover, there will be conditions for making green claims related to future environmental performance, such as ‘*climate neutral by 2030*’, and for comparing to other products.<sup>72</sup> The Commission will also review the *EU Ecolabel criteria for textiles and footwear*<sup>73</sup> to support its uptake among producers and offer consumers an easily recognizable and reliable way to choose eco-friendly textile products.

Finally, the Strategy foresees the introduction of harmonized EU extended producer responsibility rules for textiles with eco-modulation of fees. The key objective will be to create an economy for collection, sorting, reuse, preparation for reuse and recycling, as well as incentives for producers and brands to ensure that their products are designed in respect of circularity principles.

In Italy, as provided for by decreto legislativo 3 September 2020 no 116,<sup>74</sup> the obligation of separate collection of textile waste has been triggered since January 1, 2022, anticipating the European legislation that provides for the activation of separate collection of this type of waste as of 2025. The regulation addresses municipalities but not companies. The municipalities that do not have separate collection for the textile fraction will therefore have to organize themselves by setting up the facilities and any agreements necessary to carry out the service.

The Ministry of Environment and Energy Security (MASE) and the Ministry of Business and Made in Italy (MIMIT) have prepared a Draft decree that introduces important novelties for textile manufacturers, introducing extended producer responsibility (EPR). According to what has recently been communicated by the MASE, the main novelties announced for producers in the textile supply chain can be summarized as follows. First, producers will have to take responsibility for ‘financing and organising the collection, preparation for re-use, recycling and recovery of waste from textile products’, including through collective or individual management systems; appropriate financial and organizational means will also have to be put in place in order to set up, through management systems and in agreement with the relevant bodies, a nationwide textile waste collection network as well as ‘selective collection systems to increase the quality of textile fractions’. The Draft Decree further envisages the payment of an environmental contribution, which, however, shall not exceed the costs necessary to provide the waste management service and shall ‘encourage innovation oriented towards circular economy models’. As regards the design phase of textile products, manufacturers will have to ensure that they develop, produce and market products ‘suitable for

<sup>72</sup> *ibid* 6.

<sup>73</sup> European Commission, ‘EU Ecolabel’, available at <https://tinyurl.com/4s8bk975> (last visited 20 September 2023).

<sup>74</sup> Decreto legislativo 3 September 2020 no 116, available at <https://tinyurl.com/3k878wfp> (last visited 20 September 2023).

reuse and repair, containing recycled materials, technically durable and easily repairable’.

In particular, the specific eco-design measures are identified, such as (i) the use of biocompatible textile fibres and natural materials, (ii) the elimination of hazardous components and substances also with reference to microplastics released into the environment, (iii) the reduction of product quality defects that lead consumers to discard them (iv) the use of fibre and fabric blending techniques that favour adaptability to various uses and reparability.

Finally, the Decree will also introduce specific provisions on the research, development, and use of advanced technologies for sorting fibers from waste treatment and for recycling, introducing a ‘digital labelling’ system to describe the characteristics and fibrous composition of textiles as well to highlight the possible presence of non-textile parts of animal origin.

In order to supervise the new system, the Draft Decree foresees a *Coordination Centre for Textile Recycling* (CORIT), composed of the individual and collective management systems recognized by the Ministry.

Meanwhile, a new Consortium has been launched by *Sistema Moda Italia* and *Fondazione del Tessile Italiano*: RETEX.GREEN.<sup>75</sup> The consortium’s objective is to anticipate the legislation on the recovery and recycling of fashion production waste, which will soon be implemented in Italy. In fact, it is a voluntary system of Extended Producer Responsibility (EPR) involving production companies of the Fashion System associated with *Sistema Moda Italia*. The consortium aims to become a hub to network all players in the fashion industry involved in the collection, sorting, reuse and recycling phases, through the coordination of a general contractor for waste management. In addition, the network will only admit companies that operate according to ethics and legality, in every step of their value chain.

## IX. The Como District

An interesting example on how sustainable fashion is developing in Italy concerns the town of Como. Como is the leading city of the Italian Textile Valley, a territorial district historically devoted to the textile tradition that includes the two provinces of Como and Lecco.

Already under the Sforza, the family that reigned on the Duchy of Milan after 1447, silk production developed in the Como area, mainly thanks to Duke Ludovico Sforza who imposed mulberry tree cultivation to the farmers.<sup>76</sup> More than this, the Duke went down in history as Ludovico il Moro, which comes from the name of the mulberry plant, which in Latin is ‘*bombix mori*’ and in Como’s dialect ‘*murun*’. In this region, the farmers already produced silk in springtime to improve

<sup>75</sup> See for further information *Retex Green*, available at <https://retex.green/>.

<sup>76</sup> B. Pozzo, ‘*Bello e Ben Fatto*’ - The Protection of Fashion “Made in Italy”’ 14 *Florida International University Law Review*, 545-570 (2021).

their low incomes, and women and children oversaw gathering and cutting mulberry leaves to feed the tiny worms. Since this moment onwards, the town of Como has been characterized by the transformation of silk into a fabric, which is still today one of the main features of the area.<sup>77</sup>

Even now, the art of silk plays a fundamental role, also with reference to the traditional production model: silkworm breeding and mulberry tree cultivation. Indeed, still today 70% of European silk is produced in the Como textile district, which boasts 1,376 companies (1,424 in 2019) and 15,515 employees.

Recently, the Italian town known for being the 'city of silk' applied and succeeded in winning UNESCO Creative City status with a project on fashion sustainability.<sup>78</sup>

The UNESCO recognition of Como as a city of sustainable fashion has generated a series of important initiatives and collaborations, including with the university and other research centres. It must be said that even before the recognition, local companies had been very dedicated to the topic of sustainability.

Just to quote a few examples, CANEPA<sup>79</sup> was the first textile company in the world to join in 2013 the *'Detox Solution Commitment'*, the Greenpeace program that aims to rid fashion of toxic substances. In particular, the company launched an initiative that aims to study and realize new formulations for sizing superfine yarns of valuable fibres of animal origin such as cashmere, merino wool, yak, camel, silk, and possibly also of vegetable, artificial and synthetic origin. The technology developed by Canepa involves the use of chitosan, a substance of natural origin obtained from the chitin contained in the exoskeleton of crustaceans. Chitosan, widely available on the market at a low cost, is non-toxic, biocompatible and biodegradable. It thus replaces polyvinyl alcohol, a synthetic material used today with a considerable environmental impact because it is non-recoverable and used with practically the same weight as the valuable fibre. With the use of chitosan, the whole process becomes much more sustainable and the fibres even more beautiful.

Another initiative put in place is the one developed by Mantero<sup>80</sup> that since 1902 has been producing and distributing silk and fine fabrics to several recognized fashion brands. Based in Como, Mantero has recently patented a new process to give silk waste a second life: RESILK®. The idea came out of the fact that while there is no complete comprehensive data around the amount of silk waste generated by the Como production district, it is reasonable to assume that every year more than 100 tons of dyed or printed silk become waste. For luxury segment productions, this waste is often destroyed or even burned in incinerators which have a clear environmental impact. The RESILK® Project was specially created to support objective no 12 in the 2030 Agenda for Sustainable Development: *Responsible Consumption and Production*. The idea was to recover the large amount of waste

<sup>77</sup> C.M. Belfanti, *Storia culturale del Made in Italy* (Bologna: il Mulino, 2019), 54.

<sup>78</sup> See for further information 'Como City of Crafts and Folk Art', *Como Creative City*, available at <https://comocreativecity.com/>.

<sup>79</sup> More information at *Canepa Como*, available at <https://www.canepa.it/>.

<sup>80</sup> More information at Mantero, 'ReSilk', available at, <https://tinyurl.com/4ejb6vuj>.

generated by the silk production processes, second-class fabrics and the surplus production, and transform it into a new material. At the end the result was particularly successful: RESILK® as a regenerated silk fabric made from silk production waste, resembles cashmere in its final form.

Tessitura TABORELLI,<sup>81</sup> on its turn, was among the first to make industrial use of Newlife yarn (made from plastic bottles) and is now experimenting with Orange Fiber, which makes yarn from orange peel. The company further invested in saving energy by using solar panels (400'000 kWh) self-produced and consumed almost entirely by the plants near Como. Introducing equipment with LED lighting it was possible to save other 350'000 kWh. It finally recovered the heat produced by the looms in the plant in Romania to heat over 1000 sq of warehouses.

## X. The Future of *Made in Italy*

The recent discussion on 'Made in Italy' has highlighted lights and shadows in the Italian fashion context.

On the one hand, since the second half of the nineties Italian firms are experiencing a growing process of relocation of production activities abroad. This process mainly applies to firms operating in the so-called 'Made in Italy' sectors.<sup>82</sup>

Two factors have rendered relocation more convenient than in the past: the progressive fall of barriers to international trade and the technological progress. In particular, new digital technologies allow an easier, quick and economic coordination of the various phases of the production process, even when these are located in various countries of the world.

In a recent inquiry, 'Made in Italy, The Dark side of Fashion',<sup>83</sup> Iorio sheds light on the investments made by famous Made in Italy brands in countries like Transnistria (officially the *Pridnestrovian Moldavian Republic*), a breakaway state in the narrow strip of land between the river Dniester and the Ukrainian border, internationally recognized as part of Moldova. Transnistria has been recognised only by three other mostly non-recognised states: Abkhazia, Artsakh, and South Ossetia. Workers have no rights, and their income is very low. The 2019 'Freedom in the World' Report, published by 'Freedom House', describes Transnistria as a 'not free' country.<sup>84</sup>

Beside the relocation phenomenon, there is also a strong problem related to the employment of immigrants in the textile sector. It is now evident that workshops that organize foreign workers have become very common in Italy. They offer a cheap

<sup>81</sup> More information at Tessitura Taborelli, <https://www.tessituratadorelli.it/>.

<sup>82</sup> F. Prota and G. Viesti, 'La delocalizzazione internazionale del made in Italy' *L'industria* 409-440, (2007).

<sup>83</sup> G. Iorio, *Made in Italy. Il lato oscuro della moda* (Roma: Castelvechi, 2018).

<sup>84</sup> <https://freedomhouse.org/countries/freedom-world/scores>

solution to all those businesses that are incompatible with a relocation process.<sup>85</sup>

However, it is not only a problem of costs, but also a question of lack of skilled Italian workers, as it becomes difficult to keep the Italian artisanship tradition alive.

Alongside the various initiatives developed by individual Italian designers as, eg: Della Valle,<sup>86</sup> Brunello Cucinelli<sup>87</sup> and Kiton<sup>88</sup> to prevent the loss of Italian know-how accumulated over the centuries, there are also recent initiatives by the Italian government.

On 31 May 2023, the Italian government published the so-called *Organic Provisions for the valorisation, promotion and protection of 'Made in Italy'*, which are expected to be included in a future bill.

The new *Provisions* intervene to support the development of national productions of excellence and promote the protection and knowledge of natural beauty, cultural heritage and national cultural roots, in Italy and abroad, and the valorisation of trades and the support of young people.

In more detail, the *Provisions* foresee at the educational level, the establishment already in 2024/2025 of a specific *made-in-Italy curriculum* beginning in high school (*Liceo del Made in Italy*). This curriculum will provide skills suitable for the promotion and enhancement of national production sectors and the specific vocations of territories. To promote integration into the labor market, the Government will establish a specific Foundation called *'Imprese e Competenze per il Made in Italy'* (*Enterprises and skills for the Made in Italy*).

To encourage the transfer of skills and knowledge between generations, the *Provisions* foresee the establishment of a *Generational Skills Transfer Programme* - for private enterprises with no more than 15 employees - which provides for the mentoring of young employees (under the age of 30) by retired workers.

The *Provisions* further establish the creation of a *National Made in Italy Strategic Fund*, with an initial endowment of one billion and the objective of stimulating the growth and consolidation of strategic national supply chains, including for the procurement of critical raw materials. In particular, ten million Euros have been allocated for the strengthening of self-entrepreneurship and female entrepreneurship initiatives.

For the protection of Made in Italy products, the creation of an official mark of Italian origin is planned to promote the intellectual and commercial property of goods.

<sup>85</sup> B. Pozzo, n 78 above, 566.

<sup>86</sup> L. Zargani, 'Diego Della Valle Speaks Up on Ensuring Future of Made in Italy Craftsmanship' *Women's Wear Daily*, June 19, 2023.

<sup>87</sup> M.R. Napolitano et al, 'La creazione di valore condiviso nell'impresa umanistica' *Micro & Macro Marketing*, 335-360 (2019); D. LaRocca 'Brunello Cucinelli: A Humanistic Approach to Luxury, Philanthropy, and Stewardship' 3 *Journal of Religion and Business Ethics*, Article 9 (2014), available at: <https://via.library.depaul.edu/jrbe/vol3/iss1/9>

<sup>88</sup> Kiton and its visionary founder Ciro Paone inaugurated in 2000 a revolutionary project to safeguard traditions and ensure the continuity of tailoring in the world, investing in training of a new generation of highly qualified tailors. See at <https://it.kiton.com/pages/tailoring-school>.



The *Provisions* deal with the use of new technologies and in particular the use of Blockchain for the certification of supply chains and the creation of a national catalogue for a census of the solutions that foster compliance with the regulations in force for the traceability of supply chains and to support and promote the development and use of distributed ledger technology (DLT).

Finally, the Provisions envisage the introduction of new sanctions on counterfeiting in the code of criminal procedure.

Of note is that the *Provisions* foresee that the promotion and incentive measures will have to be consistent with the *principle of environmental sustainability of production*, with the transition of production processes towards digitalization within a wider context of the safeguarding of craft peculiarities, with social inclusion and the valorization of female and youth work, and with the principle of non-discrimination between enterprises.

We could conclude that the future of *Made in Italy* lies in the challenge of sustainability. If sustainability is understood in a real sense and not as mere declarations, while implying an effective compliance cost, it also becomes a great opportunity for Italian fashion.