DIRITTO DEL COMMERCIO INTERNAZIONALE
ISSN 1593-2605
Anno XXXVIII Fasc. 1 - 2024

Francesco Maria 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

Estratto

GIUFFRÈ
GIUFFRÈ FRANCIS LEFEBVRE

FRANCESCO MARIA 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

CONTENTS:

Abstract

The article explores systematically and comprehensively several recent EU Directives and Regulations that seek to enhance corporate sustainability and avoid greenwashing practices through greater transparency, common standards for sustainability reporting and common criteria for assessing whether economic activities contribute to one or more of six identified environmental objectives (defined "Taxonomy-aligned activities"). The main EU acts discussed in this article are the EU Corporate Sustainability Reporting Directive (CSRD), which covers environmental, governance, social and human rights (ESG) factors, and the Taxonomy EU Regulation (2020/852) and its Delegated Regulations (2021-2023), to which the CSRD refers regarding environmental assessment. All these acts stem from commitments made by the EU with the 2015 Paris Agreement and are aimed at channeling private investments into sustainable activities. This article focuses primarily on the international dimension of Taxonomy criteria and of the value chain approach (which encompasses activities and relationships that companies use to create products or services from conception to delivery, consumption, and end-of-life), enshrined in the European Sustainability Reporting Standards (ESRS), mandatory since 1st January 2024 for companies to which CSRD applies. Finally, this article provides a critical analysis of the private enforcement measures, based on tort liability, that the Corporate Sustainability Due Diligence Directive intends to introduce.

1. *Introduction.* — The EU has recently introduced uniform criteria and rules both in corporate sustainability reporting (compulsory for listed and large companies) and in assessing (on a voluntary basis) the effective and substantial contribution of companies' economic activities to the achievement of environmental objectives (so-called "Taxonomy"). A review of this regulatory framework which identifies critical issues from an international legal perspective helps prevent EU companies and their directors from engaging in activities and investments in third countries that risk being considered *greenwashing* [1].

Behind these initiatives of the EU legislator there is awareness of a new standard of corporate responsibility. Such standard is no longer

[1] See European Securities and Market Authority (ESMA) "Progress Report on Greenwashing" of 31.05.2023, which aims to support, among others, "a better understanding of greenwashing and to assess which areas of the sustainable investment value chain (SIVC) are more exposed to greenwashing risks". According to ESMA's report "Greenwashing allegations have been growing in numbers, targeting both financial and non-financial entities, also resulting in the increasing attention of securities markets' regulators to this phenomenon. Professional investors and other industry players also seem to be sharing the concern that greenwashing risks have increased. Retail investors as well have grown increasingly wary of the issue, as demonstrated by surveys conducted by two National Competent Authorities (NCAs)" (p. 9). Furthermore, it is underlined that the "mismatch between growing demand for ESG products and the limited pool of assets that are deemed sustainable, in particular those in line with the high standard of the EU Taxonomy Regulation, creates a competitive drive for market participants to gain market share and revenue through bolstering their sustainability profiles, which may in some cases be misleading" (ibid., Executive Summary). Also, the European Banking Authority (EBA) "Progress report on Greenwashing monitoring and supervision" of 31.5.2023 showing "a clear increase in the total number of potential cases of greenwashing across all sectors, including EU banks" Executive Summary).