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The role of the certification systems in the EU legal framework for sustainability goals, current state and future perspectives

Il ruolo dei sistemi di certificazione nel quadro giuridico dell'UE per gli obiettivi di sostenibilità, situazione attuale e prospettive future

LAURA VALLE
Associate Professor of Private Law
Free University of Bozen-Bolzano

Abstract

Standards and certifications for sustainability are widely used by business operators to guide them in the introduction of sustainability practices and, through sustainability labels, to make their choices recognizable to competitors and consumers. The rules of standards and certifications supplement legal instruments for sustainability currently being developed at the European Union level. They are also particularly useful due to their potentially global nature, compared to statutory provisions, whose territorial applicability is limited. Within the European regulatory framework, EU Directive 2024/825 - directly aimed at regulating sustainability labels - has identified certain characteristics that certification systems must possess to avoid being classified as unfair commercial practices. Transparency, scientific justification of sustainability actions undertaken and reported, continuous monitoring and objective evaluation by a third-party organization of the activities carried out and the results achieved, and the importance (even if indirect) of measuring and measurable results. It follows that the Standards and Certifications currently in use, in order to fulfill their role in supporting the organization of business activities in a context driven by sustainability objectives, must undergo a process of improvement along the indicated lines.

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Abstract
Gli standard e le certificazioni di sostenibilità sono ampiamente utilizzati dagli operatori economici come guida per l'introduzione di pratiche sostenibili e, attraverso le etichette di sostenibilità, per rendere le loro scelte riconoscibili dai concorrenti e dai consumatori. Le norme relative agli standard e alle certificazioni integrano gli strumenti giuridici per la sostenibilità attualmente in fase di sviluppo a livello dell'Unione europea. Sono inoltre particolarmente utili per la loro natura potenzialmente globale, rispetto alle disposizioni di legge, la cui applicabilità territoriale è limitata. All'interno del quadro normativo europeo, la direttiva UE 2024/825 - volta direttamente a regolamentare le etichette di sostenibilità - ha individuato alcune caratteristiche che i sistemi di certificazione devono possedere per evitare di essere classificati come pratiche commerciali sleali. Trasparenza, giustificazione scientifica delle azioni di sostenibilità intraprese e riportate, monitoraggio continuo e valutazione obiettiva da parte di un'organizzazione terza delle attività svolte e dei risultati raggiunti, nonché importanza (anche se indiretta) della misurazione e dei risultati misurabili. Ne consegue che gli standard e le certificazioni attualmente in uso, al fine di adempiere al loro ruolo di supporto all'organizzazione delle attività aziendali in un contesto guidato da obiettivi di sostenibilità, devono essere sottoposti a un processo di miglioramento secondo le linee indicate.

Keywords: Certification; Standards; Sustainability; EU; Green

Summary: 1. Introduction. – 2. Certifications, standards and sustainability goals. – 3. Legal rules and private certifications. – 4. Certification schemes in the Recent EU Directives and EU Directive Proposals. – 5. EU Directive 2024/825, «Empowering Consumer for the Green Transition through better protection against unfair practices and through better information». – 6. The EU Proposal for a Directive on Green Claims. – 7. Certification schemes and the Corporate Sustainability Due Diligence Directive (CSDDD). – 8. The current state of standards and certification schemes under the EU Green Deal legal framework and the Clean Energy Development Plan. – 9. Conclusion.

1. Introduction.

Certification schemes have not attracted the wide attention of the legal literature so far, despite their consolidated role in several sectors of the contemporary economy,[1] and despite sometimes being expressly referred to in legal provisions.[2] This is the case in the fields of data processing and digital law,

[1] We can find scientific elaborations that connect certifications to the general theory of contract and to the legal system. About certifications as instruments to guarantee the protection of fundamental rights, L Maurin, *Contrat et Droits Fondamentaux* (LGDJ 2013) 364 ff. Certification systems and standards are indicated as instruments of a new sort of non-state protection of human rights by F Galgano, F Marrella, *Diritto e prassi del commercio internazionale* (Cedam 2010) 880-881. About contract law and certifications see also L Valle, *Il contratto e la realizzazione dei diritti della persona* (Giappichelli 2020) 305 ff.; J Yang, 'Contract Law Aspects of Sustainable Companies' Certification in the Global Value Chain' (2019) Eur. Rev. Contr. Law, 31 ff.
On ISO 26000 and SA 8000, see F Meco Tèbar, *ISO 26000 y IQNET SR10 Sistema de Gestión de Responsabilidad Social* and EE Taléns Visconti, 'SA8000: Cuestiones sociales y relativas al personal' in T. lo Blanch (ed.) *Responsabilidad Social y Sostenibilidad, El marco de actuación de la empresa* (Tirant 2023) 269 ff., 325 ff.

[2] A meeting between the representatives of the EU Commission and CEN (*Comité européen de Normalisation* – European Committee for Standardization) was held in June 2025 on key Regulations and Directives on

see for example Art. 42 of EU Reg. 2016/679 on the protection of natural persons with regard to the processing of personal data[3] and Art. 46 ff. of EU Reg. 2019/881 on cybersecurity certification schemes.[4] And now, in the field of sustainability law, see Recital 7 of EU Dir. 2024/825[5] which we will examine in this article.

One of the areas in which certification schemes currently play, and are going to play a role in the next future, is precisely that of the compliance with sustainability standards, both environmental and social.

Of particular current interest is examining how existing certifications operate within the framework of the emerging legal rules on sustainability goals. And – first of all – if the existing certification systems, and standards on which certifications are based, are in line with the rules on sustainability goals.

2. Certifications, standards and sustainability goals.

In the field of environmental law, re-known certification schemes were drafted well before the widespread interest in sustainability goals that characterize the current times, following the adoption of the UN Sustainability Development Goals (SDGs) and the Agenda 2030, agreed in 2015 and effective since 2016.

Those certification schemes are EMAS and Ecolabel established by EU public authorities in the '90s.[6]

EMAS was created by EU Regulation n. 1836/1993 as a voluntary tool that companies and other organizations can adopt to improve their environmental performances and to inform the public about the management of their environmental resources and issues. The purpose of EMAS was, since the

climate change and their interface with standardization. We can therefore ask ourselves whether things will change in the near future, towards an improvement in the use of ISO-CEN standards on climate change in the European legislative framework.

[3] That states that the recourse to a certification has the purpose to verify the compliance to the rules on data processing by the data controller or the data processor. Following art. 42.1, the certification organizations must be accredited by the competent supervisory authority or by the national organization of accreditation, in this last case in compliance with the standard ISO 17065/2012. D Poletti, C Causarano, 'Autoregolamentazione privata e tutela dei dati personali: tra codici di condotta e meccanismi di certificazione', in E. Tosi (ed.), *Privacy digitale. Riservatezza e protezione dei dati personali tra GDPR e nuovo Codice privacy* (Giuffré 2019) 369 ff.; 'Comment to Art. 42', in C. Kuner, L.A. Bygrave, C. Docksey (eds) *The EU General Data Protection Regulation (GDPR), A Commentary* (Oxford) 732 ff.

[4] Moreover, in the digital law field, the AI Act (EU Reg. 2024/1689) at art. 40 refers to standardization and harmonized standards. On standardisation and certification about Artificial Intelligence, see DE Harasimiuk, T Braun, *Regulating Artificial Intelligence* (1st edn, Routledge 2021) 95 ff.

[5] Recitals of EU directives or regulations are not themselves rules of law, nonetheless they have a strong importance for the interpretation of legislative provisions. On the role of *consideranda* or recitals, ECJ, 24.11.2005, C-136/04, and ECJ, 19.12.2019, C-418/18, that states that «the recitals of an EU act constitute important elements for the purpose of interpretation, which may clarify the intentions of the author of that act» and repeats, as was decided in 2005, that «however, the preamble to an EU act has no binding legal force and cannot be relied on as a ground either for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording». The EU Dir. 2024/825 amends previous directives, and for this reason its articles are very concise so that the *consideranda* (recitals) can play an important role in understanding the Directive's provisions. About the recitals and their content, M den Haijer, T van den Abeelen, A Maslyka, 'On the use and misuse of recitals in European Union Law', Amsterdam Law School Research Paper, No. 2019-31.

[6] We can think, in fact, that the concept of sustainable development is stated in the well-known Brundtland Report of 1987.

beginning, which of contributing to the achievement of the sustainable economic development.[7] This certification system is based on the standard ISO 14001:2004, and its communication to the public takes place through an Environmental Declaration that reports information and relevant data on the environmental impact of the organization. Organizations adhering to EMAS adopt a special label (logo)[8] and receive the registration on a special national list.[9]

Ecolabel is an EU trademark elaborated by CE Reg. n. 880/92 and is currently regulated by EU Reg. n. 66/2010, adopted to certify the environmental impact of products and services. This certification can be accessed on a voluntary basis by companies of all the EU Member States or companies from Norway, Iceland and Liechtenstein. The Ecolabel follows the standard ISO 14040 and, using a recognizable logo, gives to consumers the possibility to understand that the product is environmentally friendly throughout its life cycle.

Alongside these certification systems (EMAS and Ecolabel) regulated by EU law, private standards have made their first appearance in the field of environmental law at the international level.[10] In fact, private standards, that satisfy the need of the sector for detailed and technical rules, can have a global dimension. As observed, «over the past few decades, private or quasi-private international agencies and organizations have developed a vast variety of environmental standards, covering different areas of global production». They [the standards] could be developed by private and quasi-private actors, or created within the framework of international organizations. In some cases, environmental standards emerge from a collaboration through networks of private and public actors. «Such standards are often associated with certification and labelling schemes to attest the product or organization's compliance with the standards».[11]

The relationship between standards and certifications is of this kind: standards[12] provide the rules to follow when aiming at certain objectives, and

[7] EMAS II was regulated by EU Reg. 761/2001, later amended by EU Reg. 196/2006. EMAS III was regulated by EU Reg. 1221/2009 that repealed the previous EU Regulation.

[8] To be recognized as compliant to EMAS organizations need to pass a conformity evaluation by an accredited verifier, who validate the Environmental Declaration and its annual updates.

[9] The number of the registrations on this list is small compared to the number of ISO 14001 certifications accredited in Italy. In 2009 the number of accredited ISO 14001 certifications was about ten times more than the EMAS registration.

[10] E Orlando, 'Principles, Standards and Voluntary Commitments in International Environmental Law', in E. Techera, J. Lindley, K.N. Scott and A. Telesetsky (eds) *Routledge Handbook of International Environmental Law* (2nd ed., Routledge 2021) 23 ff., refers that standards related to environment and sustainability are very diverse among them in terms of actors and addressees, as well as in relation to their objectives and substantive contents.

[11] Orlando (n 10) 24.

[12] When, in particular, the so-called technical standards are mentioned, those standards are elaborated for the uniformation of the safety and quality characteristics of certain goods or services. The EU Dir. n. 98/34, that deals with information procedures in the field of technical standards and regulations, states that a standard is a technical specification approved by a recognized standardization body for repeated or continuous application, the compliance with which is not mandatory and is included among the following: international standard (ISO), European standard (EN) and national standard (UNI). The EU Dir. n. 98/34 has been modified by EU Reg. n. 1025/2012. Those standards are legally binding only if recalled by a law or a regulation, or recalled by a contract or the contract documentation (including pictures, advertising, etc.) of a certain producer that indicate to be compliant with them, or in the case in which they incorporate the state of the art. Cfr. Valle (n 1) 300, note 123. About ISO see *infra*, note 24, and the text in correspondence of the footnote.

certification systems serve to evaluate whether these standards have been met.[13] This is true, even if in the practice of market operators and in everyday language standards and certifications are often referred to together, as if they were a single tool. To give an example with one standard among the others, it is common to mention the "certification ISO 14001" to indicate a certification process according to the ISO 14001 standard.

Certifications provide, then, an assessment of conformity about products, services and processes, which ensures that standards have been met. Indeed, not any set of standards is subject to a certification assessment. When this happens, these types of standards have been called «*norms sans certification*»,[14] while in the other case, where compliance with the standards is subject to an assessment, an audit, these standards have been called «*norms de certification*».[15]

Audits – which assess compliance with the "rules" - can be first, second or third party. The first-party audit is set up to be based on internal monitoring by the company itself, possibly with the help of an advisor. The second-party audit is performed by the client of the supplier, or by a contracted organization on behalf of the customer. The third-party audit is based on checks carried out by an independent certification body that, at the end of the procedure, if the outcome is positive, issues a certificate of conformity. The final documentation of the certification is then "the certificate".[16]

Nonetheless, not all standards are technical standards. Sometimes we have also standards coming from sectorial agreements or non-profit organizations (see, for an example, the standards elaborated by the foundation Fair Wear in the sector of clothing production, on which here further), that do not have this characteristic of uniformation, so that the use of the word standards in these last examples has a more general meaning. At the same time, as we will mention in the text, not all standards are subject to a certification. See for example the conditions and standards elaborated by the foundation Fair Wear, that are not subject to a certification; companies become members of the foundation and are not, as such, obliged to comply to all the conditions, but they commit to improve and must improve their working conditions in the production of clothing (which is the goal of the Fair Wear standards).

[13] Certification systems are programs offered on the market that certify/assure the conformity to a standard, that is a set of rules (for example technical rules) approved by a certain organization (usually a private organization, such as a non-profit organization, like for example the International Organization for Standardization, ISO, but not only, see *infra*, note 24). Certification systems are based on a contract relationship, and are based on the assessment by a third-party when impartiality of control is wanted/required. This characteristic – as we will see further in the text – has not always been an intrinsic character of a certification, but – as we will see in this article – the EU legislation is stressing the third-party control as a characteristic of a certification.

See EU Reg. n. 765/2008 that regulate the control over third-party certifications and the accreditation of the bodies responsible for certifications (art. 1: «this chapter shall apply to accreditation, used on a compulsory or voluntary basis, relating to conformity assessment, whether that assessment is compulsory or not, and irrespective of the legal status of the body performing the accreditation»). The impartial assessment in a certification system is assured by organizations which expertise and impartiality has been ascertain by an entity embodied by the national government, that in Italy is Accredia.

[14] An example of this kind of standards is the ISO 26000 (see also the following note), not thought to be subject to a certification, but to be chosen as a voluntary standard. That even if, in the reality, there are organizations offering services of independent evaluation on the company positioning on the basis of this standard, even if a certification process is missing.

[15] L Maurin (n 1) 364 ff., recalls as «*normes sans certification*» the system ISO 26000:2010 and the principles of the Global Reporting Initiative (GRI), that are standards for company reporting and, as «*normes de certification*», the standards SA 8000 on social issues and the ISO 14001 in the environmental field.

[16] See also Y Shen, M Faure, 'Private standardization for sustainability', in M. Santos Silva, A. Nicolussi, C. Wendehorst, P.S. Coderch, M. Clèment, F. Zoll (eds.) *Routledge Handbook of Private Law and Sustainability* (Routledge 2024) 450.

Only a certification that follows a third-party audit procedure is reputed to be trustworthy. The accreditation system for the organizations carrying out certification activities is regulated by EU Reg. 765/2008.[17] At the international level, accreditation is based on the international standard ISO/IEC 17011, which specifies the requirements for organizations that accredit conformity assessment bodies. The organization designated by the Italian government for accreditation in Italy is Accredia in both cases, in accordance with European regulations and international standards.

If we consider the wider area of "business and human rights",[18] here operate – at the international level – private standards known as Voluntary Sustainable Standards (VSS). As it was said, they «emerged to constrain the impact of business on human rights».[19] In particular, they can require products to meet specific economic, social and environmental sustainability metrics. They can refer to products quality or attributes, or to production and processing methods, as well as transportation.[20] The use of the acronym VSS has become consolidated, which helps us understand how voluntary sustainable standards have become commonly used.

The Voluntary Sustainable Standards emerged in the 1990s to discipline the production supply chain in response to a perceived failure of public governance to rule the field,[21] and in fact it was said that «VSS aim to provide more robust support for human rights than that offered by the state».[22]

By the 2000s certifications had become the "gold standard" of non-state regulation – as it was observed –, and the number of the Voluntary Sustainable Standards had grown by almost 400% between 1985 and 2016.[23]

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[17] Art. 1 of the Reg. states that it «lays down rules on the organisation and operation of accreditation of conformity assessment bodies performing conformity assessment activities». See also *supra*, note 13.

[18] The expression "Business & Human Rights" (B&HR) marks a field of interest and research that deals with doing business respecting human rights. This field is connected to environmental law when we think that environmental issues have an influence on human rights, and a safe environment has been recognized as protected based on the right to life, art. 2 of European Convention of Human Rights. On this last point see also *infra*, par. 8.

[19] EA Benneth, *The efficacy of voluntary standards, sustainability certifications, and ethical labels*, in A. Marx, G. Van Calster, J. Wouters (eds.), *Research Handbook on Global Governance, Business and Human Rights* (Elgar publ. 2022) 177.

[20] The expression Voluntary Sustainable Standards (VSS) is used at the international level, also for example by UNCTAD. About VSS, see *infra*, note 23. Certifications and labels serve to signal the successful implementation of VSS, i.e. to signal that they have reached a certain grade of impact. This description comes from the UNCTAD website. See also the UNCTAD Report *Understanding Voluntary Sustainability Standards*, 2023.

[21] Benneth (n 19) 179.

[22] Benneth (n 19) 180.

[23] Benneth (n 19) 181. Voluntary Standards are a broad and non-homogeneous category, starting from the fact that they can interest more possible areas, among which are those of business and human rights and that of the voluntary environmental standards. Furthermore, they can be elaborated by many different actors, as public bodies, NGOs, sectorial business association or can be the result of sectorial agreements among companies. In the category of the Voluntary Standards are also included the rules of very general and important instruments as the UN "Global Compact" and the OECD "Guidelines for Multinational Enterprises" on which see *infra*, note 74 and 80). For a table that summarizes the main characteristics of the different types of standardization in relation to public and private environmental standards, see Shen, Faure (n 16) 451; and for a map of the "territory" of voluntary standards relevant to the business and human rights sector, see A Rasche, 'Voluntary standards for business and human rights: reviewing and categorizing the field, in A. Marx, G. Van Calster, J. Wouters (eds.) *Research Handbook on Global Governance, Business and Human Rights* (Edward Elgar 2021) 164 ff., 167.

From a more general perspective, private standards of general and diverse adoption had already come into use much earlier, if we consider the fact that the International Organization for Standardization (ISO), which is one of the first and most recognized international standard-setting bodies, was founded in 1946. Its aim was – and is – to develop international standards to facilitate the international trade in goods and services.[24] ISO has historically focused on product specifications and technical engineering standards, and only later entered into the environmental field, through the development of process-oriented and performance standards.[25]

In current times, we are witnessing a change compared to the experience of the '90s, that was characterized by the spread of the use of the VSS. Indeed, with the aim of pursuing sustainability goals, legal rules on business and human rights and environmental protection have begun to be developed and implemented, with particular attention to the sustainability of economic activities.

Legal regulations having the object of the realization of sustainability goals have grown to a considerable number, starting with the publication of the EU Green Deal at the end of 2019, within the framework of which we can find: the Corporate Sustainability Responsibility Directive (CSRD, Dir. 2022/2464), the Corporate Sustainability Due Diligence Directive (CSDDD, Dir. 2024/1760), the Taxonomy Regulation (Reg. 2020/851), the Sustainable Finance Disclosure Regulation (Reg. n. 2019/2088), the Eco-design Regulation (Reg. 2024/1781), the EU Directive "Empowering consumers towards the green transition" (Dir. 2024/825), to name the probably best known ones. Even prior to the EU legislative initiatives in the field, national laws had been published and enacted, in particular about the control of the supply chain: in France the Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (2017), in Germany the Lieferkettengesetz[26] (2021), in Norway the Act relating to "Enterprises' transparency and work on fundamental human rights and decent working condition" (2021), in UK the English "Modern Slavery Act" (2015) and in the Netherland the "Dutch Child Labour Due Diligence Law" (2019). The Green Deal Plan was followed by the Clean Energy Development Plan published in autumn 2024,[27] more focused – in comparison to the previous one - on the development of circular production and clean energy, rather than on the control of the production's and supply chain. That means purely focused

[24] Orlando (n 10) 24. The International Organization for Standardization (ISO) is an independent, non-governmental organization composed of members of the national standards organizations of 161 States. The technique for adhering to ISO standards usually involves verifying compliance with the standards through a certification system. Cfr. L Valle, *Il contratto e la realizzazione dei diritti della persona*, cit., 300, note 123. For a short reference about ISO standards, F Marrella, 'Le organizzazioni non governative', in F. Galgano e F. Marrella, *Diritto e prassi del commercio internazionale* (Cedam 2010) 124. M Podrecca, M Sartor, *La qualità nelle organizzazioni, Certificazioni e standard internazionali* (McGrawHill 2025) 9, explain that in the '80s the growing globalization of commerce raised the need for shared standards at the international level to guarantee the quality of the production processes. Business enterprises in fact started to increasingly operate on a global scale, with supply chains spread across multiple countries and customers requiring consistent quality levels.

[25] Orlando (n 10) 24.

[26] The full name of the law is *Lieferkettensorgfaltspflichtengesetz.*

[27] For the transition from the EU Green Deal to the EU Clean Energy Development Plan see L Tenreira and others, *Unpacking the European Green Deal: redifining approaches, shifting methodologies,* Working Paper Law 2025/5, 5 ff.

on sustainable production systems from the environmental point of view, and less on the business and human rights implications that characterize the supply chain, first of all the implications concerning the protection of the human rights of workers. As we will see further, at par. 8, even if the so-called Omnibus Package of February 2025 has opened the way to a simplification of the obligations for the business enterprises under certain regulations (CSDDD, CSRD, the Taxonomy Regulation), several relevant legal acts in the field are in force, and others have recently been approved, or are in the process of being approved. At the same time, in the financial sector the need to comply with a series of sustainability requirements is stable or even increasing.[28]

3. Legal rules and private certifications.

The fact that legislation has finally assumed a significant role in the various aspects of the sustainability of economic activities and their communication, does not mean that private law rules – as standards and certifications – will no longer have a part in regulating the actions of economic operators towards sustainability objectives.[29]

Private certifications evaluation standards such as for example SA 8000, ISO 26000, B Impact Assessment, and the Global Reporting Initiative Standards, are indicated as useful tools to increase the standards of respect for human rights of companies required to elaborate a sustainability report following the Dir. n. 2022/2464 EU (that has succeeded to the non-financial declarations of the Dir. n. 2014/95).[30]

The Report "Understanding Voluntary Sustainability Standards" published by UNCTAD in 2023[31] remarks that the Voluntary Sustainability Standards (VSS) «are likely to become even more prominent in the coming years as several new regulatory initiatives are imposing due diligence requirements on firms».

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[28] While the European Union is experiencing a simplification under the Omnibus Package, and the US a backtrack on sustainability policies, meanwhile, mandatory supply chain due diligence laws are being developed to make their appearance in other areas of the world. For example, in Thailand, that is drafting a mandatory supply chain due diligence law, see www.business-humanrights.org. Sustainability reporting standards requiring a double materiality assessment were published in December 2024 in China. They will be mandatory for large listed and dual-listed firms in 2026, and are receiving positive feedback, see the Guidelines No. 14 of Shanghai Stock Exchange for Self-regulation of Listed Companies. The regulation has two layers, the Chinese Corporate Sustainability Disclosure Standards (CSDS), that are the national backbone and align with global norms, and the CSR Guidelines from China's stock exchanges that are the practical rulebook. In October 2025 the South-East Asiatic countries associated in the Association of Southeast Asian Nations (ASEAN) adopted the Environmental Rights Declaration, that recognizes the fundamental rights to a safe, clean, healthy, and sustainable environment. Australia is doing steps ahead on sustainability obligations, it passed in 2025 a legislation on mandatory sustainability reporting for large entities, that New Zealand already has. At the same time, it witnessed the development of climate litigation. California is preparing to introduce the most ambitious sustainability reporting rules in the US, including non-voluntary reporting and data collection on Scopes 1, 2, 3, that obliges to an integration with the control of the supply chain.

[29] L Valle, MC Marullo, 'Contract as an Instrument achieving Sustainability and Corporate Social Responsibility Goals' (2022) 1-2 International Community Law Review 100 ff., 119 ff. See Shen, Faure (n 16) 462, who conduct an analysis based on the method of law and economics and affirm: «we found that private standardization can complement public regulation in achieving sustainability».

[30] F Gallo Perozzi, F Longo, F Bernardi and R Randazzo, *In brief: human rights compliance for businesses in Italy*, in <www.Lexology>.

[31] Available on the internet.

In fact, standards can help professionals to even know the new rules of law or can help operators in the understanding of those provisions, making it simpler and easier, can contribute to assure the access to the rules in an appropriate text for a specific economic sector, or serve to adapt the rules to a specific economic sector. [32] Furthermore, the processes structured by the certification systems, together with the goals designed by the standards, regularly prove to be of help to companies (likely even more so for SMEs, that have a simpler structure) in developing their internal organization for the purpose.[33]

The recourse to certifications as a useful tool is confirmed by a recent OECD Paper published in 2024 that affirms: «well designed and governed certifications (…) are among the many tools that companies can use to implement international human rights and environmental due diligence standards and meet emerging legislative requirements including on mandatory due diligence and sustainability disclosure».[34]

In some special sectors, such as those of timber and wood production and of agri-food production, which have long had dedicated legislation, certifications are regularly used.

The timber EU Regulation n. 995/2010, on obligation of operators «who place timber and timber products on the market» (that was preceded by EC Reg. n. 2173/2005 on import of timber in the European Union), has become effective in 2013, and has been followed by the new EU Reg. n. 2023/1115. There are very well-known certifications operating in the sector: the Forest Stewardship Council Certification (FSC) and the Program for Endorsement of Forest Certification scheme (PEFC), that are international, independent and third-party certifications. And in fact, the Guidance Document on EU Reg. n. 2023/1115 issued in August 2025 «directed primarily to stakeholders considering making use of certification or third-party verified schemes», affirms that they may consider using certification schemes. And that «given

[32] L Valle, MC Marullo, 'Contract as an Instrument achieving Sustainability and Corporate Social Responsibility Goals', cit., 120.

[33] Guidance started also to make their appearance as an useful instruments for companies, as an example see a recent "Implementation Guideline for child labour remediation case management" in Malaysia's palm oil sector (https://childrights-business.org/index.php/resources/my-voice-publishes-final-guideline-to-strengthen-child-labour-remediation-in-malaysia-s-palm-oil-sector). Another more general reference is the Practical Guide "Businesses – Affected Communities, Adopting a Human Rights-based Approach to Meaningful Engagement for Effective Impact Management", UN Global Compact Network France, launched in 2025. These Guidances do not contain standard rules but offers standardized procedures, practical tools and best practices to support case management. Private standards and private standards for certification are completely different instruments from guidances, as far as their regulatory characteristic is concerned. As experience has shown, the areas of business and human rights and environmental sustainability require voluntary standards as a necessary complement to hard form of regulation, «especially since corporate conduct cannot be easily regulated across national borders» *v se inserire anche altrove questo profilo*. Voluntary standards are part of the "smart mix" of regulatory measures supported by John Ruggie (the "father" of the UNGPs). About the "smart mix" of legal regulations and private rules, or soft law rules and private standards, Rasche (n 23) 176, concluding that «this requires that we rethink how public and private governance interact and how these interactions can be institutionalized and coordinated». About the integration of different sources of regulation in the fields of business and human rights and environmental sustainability, also L Valle, S Baroncelli 'Corporate Social Responsibility, Human Rights and Sustainable Development: Integrated Perspectives from International Law, EU law and Contract law' (2022) 1-2 Special Issue, 1-188.

[34] *OECD Alignment Assessments of Sustainability Initiatives in an Evolving Regulatory Context*, OECD Business and Finance Policy Papers (2024) 69, 6.

their potential added value [- of certifications -] in providing complementary information, such as on geolocation coordinates and supporting the operators' risk assessment undertaken as part of their due diligence exercise that relevant products are legal and deforestation-free».[35]

The applicative experience in the sector of wood and timber production shows that the recourse to a certification system is a useful tool to regulate the relationships in the supply chain, so that the buyer further down the supply chain can rely on certain production standards that the supplier should adhere to. Using a certification system can be even more useful in global commercial relations, which do not have common or harmonized legislation to share as it is the case for EU Member States.[36]

The agri-food sector is widely regulated by rules of law: a general law is EU Reg. n. 178/2002 (modified by EU Reg. n. 2019/1381), followed by EU Reg. n. 1169/2011[37] on the provisions on food information to consumers. Even in this sector, certifications are very present, as for example the BRC-Food (British Retail Consortium, necessary to export to UK), the IFS (International Food Standard), the ISO 22000 (HACCP method), the FSSC 22000 (Food Safety Certification Scheme, that merges ISO 22000 and ISO/TS 22002, and - in version 5 - merges also ISO 9001 and 14001), the organic certification in accordance with EU Reg. n. 848/2018, that entered into force in January 2022.

About conflict minerals, EU Reg. 2017/821 – entered into force on the 1st of January 2021 - introduced a due diligence obligation on Union importers of tin, tungsten, tantalum and gold, in line with the OECD Guidance for Responsible Supply Chain of Minerals from Conflict-Affected and High-Risk Areas.[38] The objective of the Regulation is to break the link between mineral exploitation and conflict financing, and to address human rights abuses in the supply chains. In this field, more set of standards complement each other to help the economic operators required to fulfill legal obligations. These are the Responsible Minerals Assurance Process (RMAP) and its facility standards of the Responsible Minerals Initiative (RMI), the Responsible Business Alliance (RBA) Code of conduct, and other key mining frameworks.[39] At the end of 2023, a joint statement by 20 NGOs has drawn the EU's attention to the difficult penetration of the legislative rules in this sector, warning against also overreliance on industry-led schemes and third-party audits. So that, while the EU Conflict Minerals Regulation represents a significant step towards responsible mineral sourcing, its effectiveness is hampered by a lack of transparency, enforcement challenges, and insufficient engagement with producing countries.[40]

[35] Guidance Document for EU Reg. n. 2023/1115, C/2025/4524, 12.8.2025, p. 22.
[36] A reported case is related to a Chinese wood supplier of Ikea, that provided certifications that were uncovered to be false, so that the origin of the wood was unknown. In fact, Ikea, that put in place a supply chain due diligence system for the entire wood supply, requires to its suppliers a certification FSC to ascertain the supply traceability.
[37] That modified UE Reg. nn. 1924 and 1925 of 2006.
[38] A Report by the EU Institutions on the EU Reg. n. 2017/821 was issued in September 2024, COM(2024) 415 final.
[39] See the website <www.responsiblemineralsinitiative.org>.
[40] See the Report Paper on the effectiveness of the EU Regulation 2017/821 IPIS, PAX, 'The EU Conflict Minerals Regulation. High Stakes, Disappointing Results' (responsiblemines) <www.responsiblemines.org>.

A possible recourse to certifications as instruments helping to comply with legislative provisions, can be found in a Guidance issued by the Danish Consumer Ombudsman about greenwashing practices. The Guidance requires that green claims that are not in contrast with legislative provisions on greenwashing shall be consistent with the lifecycle assessment process, to which the certifications under the ISO 14040, 14067, 14064 offer the methodological analysis required.

As seen, the same EU Dir. 2024/825 recognize a decisive role for certification systems, since from its entry into force sustainability labels, if not based on a legal provision, must be based on a certification system, with the characteristics we will see in the following paragraphs.

Even if this paragraph has highlighted the concrete relevance of certification systems, attested, among other things, by the fact that they are mentioned in legal regulations and various guidance and guidelines, in the final parr. 8 and 9 we will consider the current issues that need to be addressed for certification systems to fully play their role.

4. Certification schemes in the recent EU Directives and EU Directive Proposals.

The recent EU Dir. n. 2024/825 focuses on environmental claim, sustainability labels, commercial guarantees of durability and their communication to the public and deals also with certifications and their characteristics. [41] The Directive concentrates, in particular, on the communications by commercial and economic operators to the public of consumers. In fact, this Directive modifies EU Dir. n. 2005/29 "concerning unfair business-to-consumer commercial practices in the internal market"[42] and, as the Directive's title indicates,[43] it contains a regulation about unfair commercial practices, with the aim of ensuring that the labels and signs used on the market – among other practices - communicate a reliable sustainability content.

This Directive states, in its Recital 7, that sustainability labels can be used only if they are based on a certification system or on a system ruled by a public authority (as are for example EMAS and Ecolabel systems – referred to in par. 2 – that are regulated by the EU legislator).

EU Directive n. 2024/825 usefully gives a legal definition of certification, clarifying the characteristics required for the credibility of a certification, an issue that had already been questioned years ago about the Voluntary Sustainability Standards. [44] It has been reported, in fact, that «as VSS proliferated, the more rigorous initiatives became concerned about others' lack of rigorous standards, independent evaluation, benefits, impact assessment, and transparency. In 2002, they established the International

[41] For a general analysis of the EU Dir. 2024/825 (and the possible transposition in German law), see S Jung, M Dowse, 'Umweltwerbung in der EU – Quo Vadis?' 2025 (11) EuZW 506 ff.
[42] Other than the EU Dir. 2011/83 "on consumer rights".
[43] The title of the EU Dir. 2024/825 indicates the goal of "empowering consumers (…) through better protection against unfair practices and through better information".
[44] Benneth (n 19) 181.

Social and Environmental Accreditation and Labeling (ISEAL) Alliance [45] to improve VSS impact, credibility, uptake, and effectiveness by identifying best practices in social and environmental standards-setting and verification».[46]

As indicated by EU Dir. n. 2024/825, a "certification scheme" is a third-party verification scheme, that – among the other conditions - sets out procedures dealing with the non-compliance of the scheme's requirements. The procedures following the non-compliance are based on objective systems of monitoring the trader's compliance with the scheme requirements, that should be carried out by a competent and independent third party (Recital 7 and Art. 1, lett. *b*, *sub r*). For a more detailed analysis about the characteristics of certifications in EU Dir. 2024/825 see par. 5.

The Green Claims Directive Proposal focuses also on the communication of certification schemes, but not only. It deals with the issue of the proliferation of sustainability trademarks and labels and the necessity that, in the interest of the market clarity and consumers' information, the proliferation is avoided. Moreover, it introduces a "verification" procedure for the preventive assessment of claims and labels.

Both EU Dir. n. 2024/825 and Directive Proposal on Green Claims address communications based on CO2 emission reduction actions and related to climate neutrality. This is a point on which many labels and certifications make promises to the market, which are often – or, rather, most of the time – not very clear.[47]

EU Dir. n. 2024/825 focuses, in particular, on claims that create the impression that consumers can contribute to a low-carbon economy by purchasing retailers' products. Recital 4 states that «to ensure the fairness and credibility of such claims, Article 6(2) of Directive n. 2005/29 should be amended to prohibit such claims, following a case-by-case assessment, where they are not supported by clear, objective, publicly available and verifiable commitments and targets given by the trader and set out in a detailed and realistic implementation plan». In fact, as stated in Recital 8, «in cases where the displaying of a sustainability label involves a commercial communication that suggests or creates the impression that a product has a positive or zero impact on the environment, (…) that sustainability label should also be considered as constituting an environmental claim».

Recital 12 indicates that claims based on the offset of greenhouse gas emissions and asserting that a product, either a good or a service, has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions should be prohibited. Such claims – as "climate neutral", "CO2 neutral certified", "climate net zero", "reduced climate Impact", "limited CO2 footprint" - should only be allowed when they are based on the actual lifecycle impact of the product considered, and not based on the offsetting of

[45] ISEAL is currently a global membership organization for credible sustainability standards. It has issued Codes of Good Practice to support sustainability systems and improve their functioning.
[46] Benneth (n 19) 181.
[47] The EU is preparing the proposal for the upcoming Industrial Decarbonization Accelerator Act as a key part of the Clean Industrial Deal. The proposal is directed to accelerate the decarbonization of the Europe's energy-intensive industries, such as steel, cement, and chemicals, while ensuring that these industries remain competitive on the global stage. See 'Public Consultation for the Upcoming Industrial Decarbonization Accelerator Act' (*lexology, 1 may 2025*) <*www.Lexology.com*>.

greenhouse gas emissions outside the product's value chain, as the former and the latter are not equivalent. «Such claims should not prevent companies from advertising their investment in environmental initiatives, including carbon credit projects, as long as they provide such information in a way that is not misleading and that complies with the requirements laid down in Union law».[48] We can therefore understand that in the Directive's vision, carbon credits transactions should not be considered as actions to reduce CO2 emission, but as an investment in environmental initiatives, admitted if not misleading. The issues open by CO2 offset and its reliability relates anyway not only to claims and communication, but also to the contents and consistency of all the standards and practices operating through offsets, rather than on the actual reduction of the negative emissions. In fact, what can have a positive impact on sustainability goals is the real reduction of negative emissions and not their simple compensation, in which result the offset practices,[49] as we will see at par. 8.

A rule about certifications can be found also in the Directive on the due diligence of the supply chain, EU Dir. n. 2024/1760. Here the focus is on the objective that the adoption of a certification scheme by an entrepreneur cannot lead to dismissal for his liability, as we will see at par. 7.

Regarding certifications, EU Regulation on Eco-design (EU Reg. n. 2024/1781) at Recital 40 underlines that the EU Commission will consider, where appropriate, the development of a certification system for the digital product passport [50] service providers. Then, the development of a digital product passport service will be, possibly, under the control of a certification system.[51] Linked to Recital 40 is the provision of Art. 11.3 of the same EU Regulation.

5. EU Directive 2024/825, «Empowering Consumer for the Green Transition through better protection against unfair practices and through better information».

As seen, EU Dir. n. 2024/825 states the rule that sustainability labels can be used only if they are based on a certification system or on a system ruled by a public authority (Recital 7). «Displaying a sustainability label which is not based on a certification scheme or not established by public authorities constitutes an unfair commercial practice in all circumstances» (Recital 42). Moreover, if the

[48] In fact, the revenues from the compensation mechanism are invested in the scientific and technical development of systems to capture the CO2 from the atmosphere, and the funds invested up to now were insufficient.

[49] See C Kaupa, 'The Problem of the Carbon Credits and Offsetting in Corporate Climate Disclosure' 2025 (4) Eur. Bus. Law Rev. 573.

[50] The Digital Product Passport (DPP) is an innovation included in the EU Eco-design for Sustainable Products Regulation to store and to share relevant data on the sustainability, durability and other environmental aspects of a product. It can also host additional information, for instance product instructions or conformity documents. The DPP will help to make informed decisions and to increase the demand for sustainable products.

[51] A public consultation on the EU Commission's website – which also addressed the need for a certification system for service providers - closed in July 2025 (https://single-market-economy.ec.europa.eu/news/commission-launches-consultation-digital-product-passport-2025-04-09_en), so further developments are expected.

label does not communicate a reliable sustainable content, or communicate it in an unfair way, the use of that label could result in a greenwashing practice and be sanctioned as an unfair commercial practice under the regulation of EU Dir. 2005/29 as amended by EU Dir. 2024/825.

It is very important that the Directive provides a legal definition of "certification scheme", as certification systems can be organized in many different ways and have different characteristics, starting for example from audit processes, as seen above in par. 2.

Concerning the characteristics of a certification, lett. *r*) of the new Art. 2 of Dir. n. 2005/29 (modified by art. 1, Dir. n. 2024/825) states that a "certification scheme" is «a third-party verification scheme that certifies that a product, process or business complies with certain requirements, that allows for the use of a corresponding sustainability label, and the terms of which, including its requirements, are publicly available and meet the following criteria:

(i) the scheme is open under transparent, fair, and non-discriminatory terms to all traders willing and able to comply with the scheme's requirements;

(ii) the scheme's requirements are developed by the scheme owner in consultation with relevant experts and stakeholders;

(iii) the scheme sets out procedures for dealing with non-compliance with the scheme's requirements, and provides for the withdrawal or suspension of the use of the sustainability label by the trader in case of non-compliance with the scheme requirements;

(iv) the monitoring of a trader's compliance with the scheme's requirements is subject to an objective procedure and is carried out by a third party whose competence and independence from both the scheme owner and the trader are based on international, Union or national standards and procedures».

The definition of certification scheme is given by the Directive in the context of the unfair commercial practices regulation, in which certifications have the role of supporting the credibility and transparency of sustainability labels, as explained in Recital 7 of Dir. n. 2024/825. The Recital says that it is appropriate to prohibit the use of and the communication through sustainability labels that are not based on a certification scheme - understood in line with the definition seen here above - or that have not been established by public authorities. The system ISO 24010 is cited as a possible example of a standard basis for an accepted certification system (Recital 10).

Before displaying a sustainability label the «trader» (i.e. the business) should ensure[52] that the publicly available terms of the certification scheme meet the minimum conditions of transparency and credibility (in line with the provisions in the text of Art. 2, lett. i and ii, seen above).

Moreover, the «trader» should ensure that a system of objective monitoring of compliance with the requirement of the scheme, carried out by a third independent party, is in place (in line with the provisions in the text of Art. 2, lett. iv, seen above).

The monitoring system should operate in compliance with international, Unional or national standards and procedures, such as the international standard ISO 17065 on conformity assessment (containing requirements for

[52] This follows the general provision of EU Dir. 2005/29 that at Art. 5.2 (a) states that an unfair commercial practice is a practice «contrary to the requirements of professional diligence».

the organizations certifying businesses, processes, and services), or through the mechanism provided for by EU Reg. n. 765/2008, which establishes the rules for the accreditation of product conformity assessment bodies (Recital 7).

As said, the use of, and the communication through, sustainability labels is possible, when a certification scheme is missing, when such labels are established by a public authority, or when they are used in accordance with the art. 35 of Reg. n. 1169/2011 EU on food information to consumers. Examples of sustainability labels established by public authorities are – as said – the logos awarded in compliance with the requirements of EC Reg. n. 1221/2009, about EMAS, or EC Reg. n. 66/2010, about Ecolabel.

In conclusion, from the legal provisions regarding certifications contained in EU Dir. n. 2024/825, the following key points can be identified:

- certification schemes need to be clear and transparent in the way they communicate their sustainability contents to the market and consumers;
- the terms of the certification schemes should be developed by the scheme owner in consultation with relevant experts and stakeholders and be publicly available;
- they should be third-party verification schemes, by a competent and independent body;
- procedures for dealing with non-compliance with the scheme requirements have to be in place;
- certification schemes cannot result in a dismissal of the responsibility and liability of the interested company, either in the sense that companies cannot use certifications as a way to hide unsustainable contents under the appearance of a sustainable practice (for example, when the certification rely on systems based on "CO2 neutral" certified practices, when this claim is not supported by clear scientific proven evidence of its positive impact), either in the sense that they cannot rely on the role of certifications to dismiss their liability (the explicit reference on this last point is in EU Dir. 2024/1760);
- it is necessary to avoid the proliferation of certification schemes - which is an issue expressly addressed by the Green Claim Proposal Directive[53] - as an application of the transparency principle, and a way to prevent greenwashing.

6. The EU Proposal for a Directive on Green Claims.

EU Directive Proposal on Green Claims – that affirms to be a *lex specialis* to EU Dir. n. 2024/825 – deals with environmental claims and with certifications (to which the Directive Proposal refers mostly with the words "environmental labelling schemes" [54]) as systems that communicate to the public through the environmental labels.[55]

[53] About that point see the next par.

[54] The Directive Proposal uses the expression «environmental labelling schemes», affirming that it means «a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label» (art. 8).

[55] On the Proposal, see S Jung, M Dowse, 'Key Aspects of the Green Claims Directive Proposal' 2024 1 EuCML 11 ff. The finalization of the Proposal is expected to take place at the latest in 2026.

The legislator specifically focuses on the proliferation of environmental labels which aim to prove sustainability contents, and on the possible lack of transparency of the environmental labelling schemes. For that reason, EU Dir. n. 2024/825 – as seen in the previous par. - and the Directive Proposal on Green Claims indicate the need that labels are based on a certification scheme as defined in the new Art. 2 lett. r) of EU Dir. n. 2005/29, or, alternatively, established by public authorities.

Recital 39 of the Directive Proposal reports that in the EU market are currently in use more than 200 environmental labels, that differ greatly in their functioning. They differ for example in the transparency and comprehensibility of the standards, or the methods used, the frequency of revisions, and the level of auditing and/or verification. These differences affect the reliability of the information communicated by the environmental label.

Since evidence suggests that many environmental labels currently used on the EU market are misleading and, in particular, many environmental labels «lack sufficient verification procedures», Recital 39 continues stating that «explicit environmental claims made through environmental labels should be based on a certification scheme».

Recital 42 recalls the text of EU Dir. n. 2024/825 according to which – as seen above, at par. 5 - «displaying a sustainability label which is not based on a certification scheme or not established by public authorities constitutes an unfair commercial practice in all circumstances». «This means that the "self-certified" sustainability labels, where no third-party verification and regular monitoring takes place as regards compliance with the underlying requirements of the sustainability label are prohibited».

In Recital 42 the Directive Proposal recalls that the very concept of certification requires (in line with the definition of the new Art. 2 lett. *r*) of EU Dir. n. 2005/29, as seen above at par. 5):

- the verification of compliance by a third-party; and
- the regular monitoring by a competent and independent third party.

Recital 44 affirms that «in order to avoid further proliferation of national or regional officially recognized EN ISO 14024 type I environmental labelling ("ecolabelling"), and other environmental labelling schemes, and to ensure more harmonization in the internal market, new national or regional environmental labelling schemes should be developed only under the Union law. Nevertheless, Member States can request the [EU] Commission to consider developing public labelling schemes at the Union level for product groups or sectors where such labels do not exist yet in Union law and where harmonization would bring added value to achieve the sustainability and internal market objectives in an efficient manner».

In fact, «environmental labelling schemes established by private operators, if too many and overlapping in term of scope, may create confusion in consumers or undermine their trust in environmental labels. Therefore, Member States should only allow that new environmental labelling schemes are established by private operators provided that they offer significant added value as compared to the existing national or regional schemes in terms of environmental ambitions of the criteria to award the label, coverage of the relevant environmental impacts, and completeness of the underlying

assessment» (Recital 46). Consequently, the creation of new labels - and certifications - should be seen as something to be developed based on necessity or usefulness, taking into account harmonization at European level, and should otherwise be avoided.

The EU Commission will publish, and keep up-to-date, a list of officially recognized environmental labels that are allowed to be used on the Union market after the date of the entering into force of the Directive (Art. 8, par. 7).

Regarding the characteristics of environmental labelling schemes, Art. 8.1 states that «environmental labelling scheme means a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label». And that «only environmental labels awarded under environmental labelling schemes established under Union law may present a rating or score of a product or trader based on an aggregated indicator of environmental impacts of a product or trader».

Art. 8.2 of the Directive Proposals states that environmental labelling schemes – that is to say certification schemes - shall comply with the following requirements:

(a) the information on the ownership and the decision-making bodies of the environmental labelling scheme is transparent, accessible free of charge, easy to understand and sufficiently detailed;

(b) the information about the objectives of the environmental labelling scheme and the requirements and the procedures to monitor compliance of the environmental labelling scheme are transparent, accessible free of charge, easy to understand and sufficiently detailed;

(c) the conditions to join the environmental labelling schemes are proportionate to the size and turnover of the companies, in order not to exclude SME;

(d) the requirements for the environmental labelling scheme have been developed by experts that can ensure their scientific robustness and have been submitted for consultation to a heterogeneous group of stakeholders that has reviewed them and ensured their relevance from a social perspective;

(e) the environmental labelling scheme has a compliant and dispute resolution mechanism;

(f) the environmental labelling scheme sets out procedures for dealing with non-compliance and the withdrawal or suspension of the environmental label in case of persistent and flagrant non-compliance with the requirements of the scheme.

The indicated characteristics of an environmental certification scheme are therefore in line with the requirements of EU Dir. 2024/825, and complement them.

If the proposed Green Claims Directive is approved, and approved in its current text, environmental labels, as well as environmental claims, will be subject to a system of preventive verification. That will be implemented in accordance with the procedure set out in the Directive Proposal, which guarantee compliance with Artt. 3 – 7 of the Directive Proposal (Art. 10)[56]. The

[56] The verification system has a central role in the Directive Proposal, and has also been criticized for being too difficult to comply with and costly, despite the recognition of simplified obligations for SMEs and exemption for the system for microenterprises.

verifier shall be a third-party conformity assessment body, accredited in accordance with EU Reg. n. 765/2008 (Art. 11).

7. Certification schemes and the Corporate Sustainability Due Diligence Directive (CSDDD).

Further certification regulations can be found in EU Dir. n. 2024/1760 on Due Diligence of the Supply Chain, for the case in which the company uses a certification system to support its due diligence obligation. In fact, supply chain control activities can be subject to a certified process such as, for example, a process based on the ISO 28000 for the Supply Chain Security Management.

Art. 29, par. 4 of EU Dir. n. 2024/1760 states that «companies that have participated in industry or multi-stakeholder initiatives, or used independent third-party verification or contractual clauses to support the implementation of due diligence obligations may nevertheless be held liable in accordance with this Article».

The aim of the Directive is therefore to ensure that companies are always responsible and obliged to respect rights and resources along their supply chain, while the adhesion to collective agreements or the recourse to certification systems cannot be used to evade their responsibility and obligation as regulated by the Directive.

8. The current state of standards and certification schemes under the EU Green Deal legal framework and the Clean Energy Development Plan.

Following the entry into force of the new national regulations in European countries and the EU rules mentioned at the end of par. 2, doing business in compliance with sustainability goals has begun to become mandatory for economic operators[57] and, given the symptoms of climate change we are experiencing in the reality, also urgent, in the general interest.

The series of legislative acts addressing sustainability objectives has become significant, even if some important legal regulations are currently interested by a process of "simplification" and revision, under the so-called "Omnibus Package". Those are the CSRD (EU Dir. n. 2022/2464, already transposed in the Italian legal system by d.lgs. n. 125/2024), the CSDDD (EU Dir. n. 2024/1760), the Taxonomy Regulation (EU Reg. n. 2020/852) and the Carbon Border Adjustment Mechanism (CBAM, which entered into force on the 1st October 2023, but whose definitive period begins on the 1st of January 2026). At the same time a new plan, the Clean Energy Development Plan (issued in autumn 2024) focusing on circular production and clean energy, indicates a

[57] This affirmation is certainly general, but it corresponds to reality if we take into account the number of legal regulations in various economic sectors and the current developments in climate litigation, which we will see in this par. However, the obligations are different for large companies– which are more affected by legal obligations - and for small-medium enterprises, and differ across economic sectors.

sustainability path less concentrated on supply chain due diligence and more on the development of a circular production system and a circular economy.[58]

In any case, we must consider that there already exists a large set of legislative acts that indicate or impose sustainability objectives: those are, for example and not exhaustively, EU Dir. n. 2024/825[59] empowering consumers toward the green transition, EU Directive on the consumers Right to Repair (EU Dir. n. 2024/1799) [60], the deforestation legislation with EU Regulation n. 2023/1115 (EUDR)[61], the Regulation that bans the forced labor products (EU Reg. n. 2024/3015, amending the EU Dir. n. 2019/1937), EU Regulation on Eco-design that - among others - establishes rules on the Digital Passport (EU Reg. n. 2024/1781), EU Regulation on nature restoration (EU Reg. n. 2024/1991, amending EU Reg. n. 2022/869) about the restoration of the biodiversity, the Battery Regulation (EU Reg. n. 2023/1542), the Sustainable Finance Disclosure Regulation (EU Reg. n. 2019/2088), the Conflict Minerals Regulation (EU Reg. n. 2017/821).

All those legal regulations indicate a direction towards sustainability and protection against climate change that cannot be ignored, that we can find expressed also by very general principles and rules of law. Such as those of the EU Charter of Fundamental Rights (Art. 37 on environment protection, Art. 31 on fair and equal working conditions, Art. 32 on prohibition of child labor), those contained in the Paris Agreement of 2015, and now also expressed by principles included in national Constitutions (see for example, in Italy, Artt. 9 and 41 of the Constitution, in Holland, Art. 21 of the Dutch Constitution). So that, the last progress towards a revision of the CSRD and CSDDD with the postponement of some obligations by EU Dir. n. 2025/794 (Stop-the-clock)[62], and the simplification of some obligations (still in progress to be approved through a normal – and not urgent - legislative process) does not unequivocally mean that sustainability goals will play a less important role in the near future than before.

Indeed, it is necessary to consider both the significant number of existing regulations and the fact that they are in force in legal systems in which some general principles have incorporated the orientation towards the achievement of sustainability goals. Moreover, as we have seen above, national legislations are already in force in different European countries, as those on companies' due diligence obligation on their supply chain, as it is in France, Germany, UK,

[58] When discussing circular manufacturing and circular economy, it is important to note that not every type of circular manufacturing approach is associated with lower carbon emissions and potential climate mitigation outcomes, but only the "product redesign" strategy is associated with lower levels of scope 1 and scope 2 emissions, M Molinaro, G Orzes, J Sarkis, 'Unpacking Circular Economy Practices and Carbon Emission Relationships: co-benefits and Legitimacy Perspectives' 2025 Business Strategy and the Environment, 1-22.

[59] Not transposed yet.

[60] Not transposed yet.

[61] This Regulation guarantees that the products consumed by EU citizens do not contribute to deforestation or to forest degradation worldwide. The EU Reg. n. 2023/1115 repealed the previous important EU Reg. n. 2010/995 known as EU Timber Regulation (EUTR). The entry into force of the Regulation provisions have recently been postponed, for large and medium operators to the 31st December 2026, and for micro and small operators to the 30th June 2027.

[62] About which see, for example, G Bova Crispino, 'La CSDDD e la centralità del contratto come strumento di conformazione di un mercato unico europeo sostenibile' in G. Cassano, G. Capo, F. Costantino (eds.) *I Principi ESG e di sostenibilità* (Lefebvre Giuffré 2025) 69 f.

Netherland, Norway.[63] Therefore, foreign companies that are in commercial relationships with operators from those countries may be required – and regularly they are – to follow the standards arising from their legislations.

At the same time, progress towards circular production and eco-design of products is confirmed, for example by EU Regulation on Eco-design, EU Directive on the Right to Repair and some recent EU regulation proposals. Such as the Proposal about the Circular Economy Act (CEA) – due for adoption in 2026 – that aims at substantially improving the EU's economic security, resilience, competitiveness and decarbonization, establishes a single market for raw materials, increases the supply of high-quality recycled materials and stimulates the demand for these materials in the EU. The importance of assessing sustainability and climate change-related risks is currently evident in the financial sector. Banks continue to make further efforts to require the integration of ESG standards into business and management processes in line with the "EBA Guidelines on the Management of ESG Risk", that will become effective from 2026 for the bigger banks, and from 2027 for the smaller ones. In fact, ESG risks are reputed to influence the financial risk, and for that reason business enterprises are called to give more complete ESG information, among which data on greenhouse gas emissions, sustainable transition strategies and compliance to social and governance standards.[64]

A further element that confirms the importance of environmental and fundamental rights protection from climate change in legal systems[65] is the definitive affirmation of judicial cases of "climate change litigation"[66] in several countries, at European and international level.[67] In April 2024 the European

[63] Last information says that Germany and France would like to revise their internal law, the law on the *Devoir de vigilance* (2017) and the *Lieferkettegesetz* (2021). At the beginning of September 2025 the German Ministry of Labour and Social Affairs has published a draft amendment to the *Lieferkettengesetz* (LkSG) (see, www.bmas.de). Differently, a report about the application of the law in Norway (that entered into force in 2022) called "Non-paper" and addressed by the Norwegian Government to the EU Commission for the revision of the CSDDD, namely a Non-paper on the omnibus proposal, refers to an improvement of firms' supply chains and better supply chain management through the identification of significant risks after the application of the law. The report expresses the intention to continue to align with the UNGPs and the OECD Guidelines. On the other hand, the Paper also highlights that implementation can be challenging and that some companies perceive an increased administrative bu rden, https://www.regjeringen.no/contentassets/8b339b37f1ea48aa891dc0302ff0439b/norwegian-non-paper-on-the-omnibus-i-proposal-com-2025-81l1393877.pdf

[64] On the "EBA Guidelines on the management of environmental, social and governance (ESG) risks", see the "Final Report", EBA, EBA/GL/2025/01, 8.1.2025.

[65] The protection of the environment has been expressly acknowledged as a fundamental right of persons by the General Assembly of the United Nations in 2022, and already in 2021 the German Constitutional Court affirmed environment protection as a fundamental right of persons with reference to Art. 20a of the *Grundgesetz*, stating the right to a sustainable climate future and an intergenerational responsibility.

[66] On the interaction and possible convergence between due diligence legislation and climate change litigation to strengthen corporate climate change accountability, M Rajavuori, A Savaresi, H van Asselt, 'Mandatory due diligence laws and climate change litigation: Bridging the corporate climate accountability gap?' (2023) Regulation & Governance 944 ff. In the current uncertain time, we might consider climate change litigation a potential temporary substitute for due diligence legislation to help achieve sustainability goals.

[67] B Pozzo, 'Il contenzioso climatico nel prisma del diritto comparato' (2024) 4 Dir.Pubbl.Comp.Eur. 987 ff., addressing the origins of climate change litigation in the US and Europe, and observing that the climate change in Europe has found its reason for developing in the ineffectiveness of our legislative framework, together with the growing concern of environmental organizations.
The world's first decision ordering States to limit greenhouse gas emissions for reasons other than statutory obligations was issued in the case *Urgenda Foundation v. the State of the Netherlands*. The decision by the Dutch Supreme Court in December 2019 is based on art. 162 of the Dutch Civil Code (the rule corresponding

Court of Human Rights affirmed, in the case Klimaseniorinnen v. Switzerland, that this country had not made sufficient efforts to pursue the climate goals set out in the Paris Agreement. The European Court recognized a right to be protected against the climate change and its negative effects, on the ground of the right to a safe environment based on the right to life (art. 2, European Convention of Human Rights) and on the right to respect for private and family life (art. 8, European Convention of Human Right).[68] Climate litigation is registering also cases against companies, about the reduction of emissions, the requests for damages and the affirmation of the violation of human rights, such as the rights to life, health, undisturbed private life. Public authorities and business enterprises can then be held accountable for their inaction - or insufficient action - in achieving the objectives set at international level, by the Paris Agreement, or at EU level.[69] An Opinion by the International Court of Justice in the case filed by Vanuatu, given on the 23rd of July 2025 (that is a non-mandatory opinion, but a very important reference point for climate change lawsuits), affirmed that States that fail to comply with their climate change obligations commit a tort and may be held liable for damages caused to States most affected by climate change.[70] Moreover, the International Court of Justice affirmed in July 2025 that human rights, including the right to a clean, healthy, and sustainable environment, form the foundation of States' obligations to address climate change. It affirmed also the very important

to our art. 2043 c.c.), and art. 21 of the Constitution of the same country, read in the light of artt. 2 and 8 of the European Convention on Human Rights. Pozzo (n 67) 989; L Serafinelli, *Responsabilità extracontrattuale e cambiamento climatico* (Giappichelli 2024) 57 ff. In this decision we can see that artt. 2 and 8 of the European Convention produce their effect through a general rule of the civil code, integrating its content. For the direct or indirect effect of general principles or general rules of law - as those in the European Charter of Fundamental Rights or in national constitutions - in the horizontal relationships of private law, here about fundamental rights protection and damages arising from tort, see L Valle, *Il contratto e la realizzazione dei diritti della persona*, cit., 58, about private relationships of contract law. For the effect of international legal rules and conventions – including the European Convention of Human Rights – see Valle (n 67) 349, and note 82 and 83, see also note 46 at 94 ff. with regards to the European Convention of Human Rights.

[68] Cfr. Pozzo (n 67) 61 ff.

[69] See for example a recent Italian case by the Italian Supreme Court, Cass., ord. 21.7.2025, that affirmed that the Italian judges have jurisdiction on climate litigation cases, including those involving emissions from the company's (in this case it was Eni) foreign subsidiaries. The lawsuit was brought to court by some NGO and citizens demanding a reduction in emissions, along with a request for damages and a recognition of the violation of fundamental human rights to life, health and undisturbed personal life. About the duty of care of companies, see the recent developments in case decisions, in D Lawne, A Cooper, K Elias, 'Summer review: a watershed moment for climate litigation' (Lexology 26 august 2025) <www.Lexology.com>. Cases cited are: *Lliuya v RWE*, decided in May 2025 by the Regional Court of Hamm in Germany; *Milieudefensie s Shell*, decided in November 2024 by the Hague Court of Appeal and followed by an appeal and new claims; *Ogale & Bille Communities v Shell*, decided in June 2025 by the UK High Court, followed by a report on "aligned" and "non-aligned" litigation. About the duty of care by public authorities, the article mentions the cases *Held v Montana*, decided in December 2024 by the Montana Supreme Court, and *Torres Strait Island v Australian Government*, dismissed by the Federal Court.
About the position of business enterprises, see the articles in the collective books E. de Jong (ed.) *Corporate Accountability and Liability for Climate Change* (Elgar Publ. 2024). On the organization of sustainability management, in particular in German companies, see S Jung, C Siebeck, 'Green Governance als Hebel für eine nachhaltige Entwicklung deutscher Aktiengesellschaften' (2025) NZG 1555-1561.

[70] It will however be necessary to ascertain a direct causal link between the unlawful act and the damage, which is difficult, but not impossible, as the Court stated. The UN had asked to the Court to answer to two questions: which obligations have the States along international law, to protect the earth from the greenhouse gas emissions, for the purpose to protect the present and future generations? What are the legal consequences of such obligations for States that cause environmental damage, particularly for low-lying insular States?

principle that climate treaties inform the content of customary international law, and vice versa. In this way, States that are not party to climate agreements could still be bound by the customary international law obligations defined by the treaty regime, and have the burden of demonstrating compliance. This Opinion adds to the Advisory Opinion issued on the 3rd of July 2025 by the Inter-American Court of Human Rights (IACtHR) about the nature of the right to a healthy climate, the legal personality of nature, and the obligation not to cause irreversible damage to the climate and the global environment, as a norm of *jus cogens*. The Advisory Opinion confirmed a climate-focused reparations regime, the development of a *pro-natura* principle of interpretation of international obligations, the *nexus* between investment law, climate, human rights, and associated procedural rights.

As seen above in par. 3, standards and certifications based on those standards can be of help in applying practices and organizational methods in line with the sustainability objectives established by legal rules and principles. If required by law, compliance with a standard and the related certification may even be necessary, as indicated for example in art. 11.3 of the Eco-design Regulation and by EU Dir. 2024/825 itself, which states that sustainability labels not based on a certification scheme – or not established by public authorities – should be prohibited as an unfair commercial practice, «by including such practices in the list in Annex I to EU Dir. n. 2005/29» (Recital 7).

However, at the present time, for this role of standards and certifications to become fully operational and effective, significant preventive challenges must be overcome.

First, regarding their sustainability contents, since, starting from the standards on which they are based, certification systems are not always in line with the requirements of the new EU legislation and its sustainability goals, as we will see below. Second, as regards their structure and operation, since they are not always in line with the requirements established for certification systems by EU Dir. n. 2024/825 and Green Claims Directive Proposal, as already seen in the previous paragraphs.

In terms of their content, certification systems – and even the standards on which they are based – may not be aligned with real sustainability objectives.

For example, it is well known that some certification systems are based on practices that only *prima facie* appear virtuous in term of CO2 emissions, and compliant with rules with sustainability objectives. In reality, they are simply based on carbon credits offset and therefore do not directly contribute to combating climate change, for several reasons.[71]

As regards CO2 emissions, art. 3 of Green Claims Directive Proposal, at lett. *h*), states that in the assessment of environmental claims it is necessary to «specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate».

Recital 21 of Green Claims Directive Proposal highlights the difficulty of measuring carbon offsets, as the methodologies adopted are diverse and not always accurate, transparent and solid. Most important, it affirms that to

[71] Important and serious issues related to these certifications are reported by T Fischer, H Knuth in the German magazine *Die Zeit* with an article translated and published in Internazionale, 27 January 2023, 38 ff.

contribute efficiently to the mitigation of climate change, instead of relying on offsets, businesses should prioritize the effective reduction of the emissions across their own operations and value chains. Consequently, the compliance to those standards that rely on offsets, and the certifications based on those systems that follow carbon offset practices, does not assure the objective of substantially contrasting the climate change and reducing polluting emissions.

It has also been recently stated in the literature that «research shows that carbon credits are typically not effective[,] (…) since they do not deliver the climate benefits they claim to achieve, and are therefore not equivalent to real emission reduction or removal».[72]

Another example of issues arising from the contents of the standards themselves can be found about the ISO 26000 standard [73] and its relationship with the UN Guiding Principles on Business and Human Rights (UNGPs),[74] which are a very important point of reference in the sector, to which important legal instruments are also aligned, such as the EU Dir. 2024/1760 (CSDDD).[75] In the case of ISO 26000 standard, this alignment depends on how the standard terms are implemented by companies, as the ISO 26000 system itself is considered "too broad" and "too generic" to have a transformative and disruptive effect on traditional business practices.[76] In conclusion, it can be assumed that the reference by a company to a standard such as ISO 26000 does not guarantee substantial alignment with sustainability goals.

The above suggests that existing sustainability standards should be reviewed in light of the recent legal framework having sustainability objectives.

The revision of some standards is already in progress, as the revision of ISO 14067 on product carbon footprint and ISO 14064-1 on organization carbon footprint. At the same time, new standards for sustainability goals and/or to contrast climate change, such as the carbon neutrality standard ISO 14068-1:2023, have recently been developed, or are in the process of being released, such as the net-zero standard ISO 14060.

Furthermore, it can be observed that if the content of standards and certification clauses is in contrast with legal provisions, the consequence is that such clauses are null. It is important to note that this can operate as a conflict

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[72] Kaupa (n 49) 573 examines how the various instruments regulating corporate climate disclosure deal with carbon credits and offsetting.

[73] See also *supra*, note 14.

[74] The UNGPs (United Nations Guiding Principles on Business and Human Rights) were adopted by the Council of Human Rights of the United Nations in 2011 and are reputed as the leading global standard about business and human rights. They consist of soft law rules, but also by some rules that recall international law, already mandatory as such. They qualify themselves as rules to follow, and not just as a persuasive tool.

[75] The EU Directive on the due diligence of the supply chain (CSDDD) itself is drafted on the basis of the UNGPs and its principles, about which see *above*, the previous note.

[76] S Bijlmakers, *No ISO fix for human rights: a critical perspective on ISO 26000 guidance on social responsibility* (2021) 228, affirms that also the fact that the standard has not been updated since 2010 [even if the Italian version is of 2020], determines that it is out of date, considering the rapid changes in the CSR (Corporate Social Responsibility) field.

Despite the negative aspects recently highlighted, Bijlmakers reports that ISO 26000 has been considered a powerful statement on the moral and practical issues facing companies and other organizations, which makes valuable contributions to the realization of human rights, especially in developing countries (p. 205, citing A Henriques, 'ISO 26000: A Standard for human rights?' (2010) Sustainability Accounting, Management and Policy Journal, 103-105). Bijlmakers however concludes that «ISO 26000 has not been an impactful tool for human rights», and that «its substantive guidance seems to be out of tune with the UNGPs».

with specific legal provisions, or may even operate as a conflict with the general principles of climate change protection established by very general provisions of law, such as artt. 9 and 41 of the Italian Constitution. These last cases may be more difficult to identify and evaluate due to the very nature of the general principles, which require a greater role from interpreters.[77]

Following a private law approach, the possible nullity of standards and certifications' terms due to conflict with the contract consideration can be also considered. Being certification systems based on contracts, that can occur if the contract terms contradict the sustainability goal, as the purpose stated by the certification.[78]

9. Conclusion.

The analysis in the previous paragraphs shows that a new course for sustainability standards and certification systems is needed. To this new course contribute, as a starting point, EU Dir. n. 2024/825,[79] and will contribute, if approved, the EU Green Claims Directive Proposal. This conclusion will be further argued in the course of the paragraph.

The most important indications for the future of sustainability standards and certifications, as stated by EU Dir. 2024/825 and by Directive Proposal on Green Claims, seems to be those relating to:

- the transparency of the systems (on which the EU Dir. 2024/825 and the Green Claims Directive Proposal),
- the third-party control by a competent and independent body, and the continue monitoring of the operators' compliance (on which the EU Dir. 2024/825 and the Green Claims Directive Proposal),
- the determination of measurable contents in standards and certification systems (not explicitly directly addressed by the EU Dir. 2024/825 and the Green Claims Directive Proposal)
- the revision of the content of standards and certifications in line with the legal provisions on sustainability goals and with the most important set of rules at the international level, the UNGPs and the OECD Guidelines, which are a benchmark also for legislators. [80]

In addition to the points outlined above, which concern legally relevant issues, it must be added that the effective use of certifications requires a significant change in the mindset of many operators. Indeed, operators'

[77] For the direct effect of constitutional legal norms see Valle (n 67) 48 ff., where bibliographic references.
[78] This can be considered a general principle of contract law, identified in a famous case, the French case *Chronopost*, on which L Valle, *L'inefficacia delle clausole vessatorie* (Cedam 2004) 377.
[79] The B-Corp certification was revised after the entry into force of EU Dir. 2024/825, with the introduction of the assessment by a third-party.
[80] On the UNGPs, see *above*, note 74. The OECD Guidelines for Multinational Enterprises 1st version was released in 1976, in the 2011 edition a chapter on the protection of human rights was added (chapt. IV, which has as its reference the UNGPs), the most updated ed. is of 2023. UNGPs and OECD Guidelines are considered the most important benchmarks for the protection of human rights and environmental resources in the business activities at the international level, and have imposed themselves for the high reputation of their issuers and their moral suasion. They are regarded as sets of "soft law" rules, but a certain number of their rules come from already binding international treaties or custom international rules protecting human rights and natural resources.

attitude and purpose towards certifications cannot be of mere compliance and simple ticking-the-box, but must instead focus on satisfying the substance of the requirements for sustainability objectives.[81] That shift in mindset is something that still needs to be built on a broader level. Even if it seems likely that doing business through processes and objectives that are not aligned with sustainability goals will soon become unacceptable from a risk management perspective.[82]

As regards the indication on transparency, as can be understood from EU Dir. 2024/825, this seems to play the role of principle in the sector, as it is reiterated several times, in more diverse applications and meanings. The transparency of the labelling schemes on the information about the objectives of the environmental labelling scheme, and the requirements and procedures to monitor compliance of the environmental labelling scheme, are stated also by art. 8.2 *b*) of the Directive Proposals on Green Claims.[83]

As a first application of the transparency principle, transparency means that the terms of the certification schemes should be publicly available (art. 2, lett. *r*, Dir. 2005/29 as modified by art. 1, Dir. 2024/825), so that it is possible to have knowledge of the certification's standards. First of all, at the advantage of the contract counterparts; as they are standard terms, they might not be included in the text of the contract but they need to be knowable. And also of the consumers as final contractors,[84] and in the general interest of the market to which they communicate certain contents becoming recognizable through the labels.[85]

The possibility for consumers and for the market in general to know the certification's terms and the standards on which the certification is based is essential for the complete and clear communication of the sustainability

[81] See, for example, Podrecca, Sartor (n 64) 30, about ISO 9001.
It has been observed that a tick-box for sustainability reports is a kind of oversight that might have gone unnoticed a few years ago, but not today. The problem that we are currently witnessing is that the diluting of the CSDDD Directive and the US backlash opened a vacuum, in which too many companies are mistaking uncertainty for a reason to delay, "*Human rights due diligence inaction*" authored by T. Kramlova, T. Trier Hansen, P. Moloney, Ramboll Management Consulting, 2025, *online*.

[82] For those companies that operate at risk of violating human rights, see T Kramlova, T Trier Hansen, P Moloney, *Human rights due diligence inaction*, 2025, online: «responsible business conduct is rapidly becoming a baseline requirement for market access, financing and license to operate». It is not only the field of business and human rights that should be concerned about human rights violation, since some involvement with human rights is always present in the activity of a business enterprise, especially when we consider workers' rights. P Taticchi, *Sostenibilità e innovazione* (Dedalo 2025) 13, states that sustainability concerns financial risk: sustainability issues transform into reputation issues, and reputation issues into financial issues. Risk management is also regulated for public administration activities. In the Italian legal system, see d.lgs. n. 103/2024, that states that the control system is based on voluntary risk identification. The definition of low risk takes into account different parameters, including having a certification on ESG factors, among others.

[83] On transparency of information about the ownership and the decision-making bodies of the environmental labelling schemes, see lett. *a*) of the same article.

[84] We can think to the fact that the terms of the standards integrate the contract's content and can also determine, for example, some characteristics of the object of the contract. See for example the case of a wood production certification, as a certification FSC (Forest Stewardship Council), which guarantees that the wood comes from ecologically managed forests and from a specific area with traceability along the entire supply chain.

[85] Regarding the application of the standard ISO 14001, L Maurin, *Contrat et Droits Fondamentaux*, cit., 369, reports that the major critique to the rule ISO 14001 is the lack of transparency, in the sense that the audit results are not necessarily made public. This issue seems to be satisfied by the European reference EMAS. On ISO 14001 and EMAS see Podrecca, Sartor (n 64) 33 ff.

practices adopted. In fact, only by reading the terms of the certifications together with the standards on which they are based it is possible to understand the characteristics of the certification systems as a whole.

A particularly important concern is the transparency of the standards on which certification systems are based - that is to say, the possibility of openly accessing them - since this application of the transparency principle is not explicitly addressed.

The fact that the new legal provisions about certification systems - on which sustainability labels are based – repeatedly enphasize the issue of transparency of terms and procedures, seems to allow the interpretation that the standards on which certifications are based must also be transparent and accessible to the public. In that sense, could be understood the provision of Green Claims Proposal which affirms that the «objectives of the environmental labelling scheme» must be possible to be known. In fact, without the knowledge of the standards, the whole objective of the scheme would remain (at least partly) hidden. The public availability of standards is currently not a reality, as standards – such as the most well-known ISO standards for example - are commonly available on the market only for purchase. This appears to be a situation that deserves a decisive change from the past, considering the use and future role of standards and certifications.[86]

If we interpret the legislative requirement for transparency as including, in addition to the transparency of the certifications standards, also the transparency of the standards on which the certification systems are based, then we read the words "certifications standards" as referring not only to the terms of the certification contracts (i.e. the standard terms of the certifications) but also to the underlying standards themselves. In fact, in practice it happens that when we talk about a certification, for example "ISO 14001 certification", we refer to the standard together with the certification system, and not just the certification itself or not only the standard alone.

Connected to the transparency issue is also the problem of the exaggerate number of certification systems available, expressly addressed by Green Claims Proposal Directive. An excessive number of certification systems available can lead to greenwashing, while on the contrary a limited number of schemes could open up competition issues, due to the consequent possibility of influencing competition on the market as a consequence of the few certification schemes available.[87]

Transparency also means ensuring that the terms of the certification systems and of standards are understandable, based on their scientific consistency and coherent development.

These conclusions arise from the provisions of EU Dir. n. 2024/825 and Directive Proposal on Green Claims, that are rules contrasting unfair commercial practices. They come also from very general rules of contract law, such as the general rules on standard contract terms regulation (EU Dir. n.

[86] A debate is open among professionals about the free accessibility to the public of the ISO carbon accounting standards, see at the London Climate Action Week of June 2025, the event with D Pernigotti and R Poivet "Free Access to ISO GHG Accounting Standards". One concern highlighted is that if the standards are not freely available they will be not taken into account across the world, and their use will inevitably decline.

[87] See Shen, Faure (n 16) 462.

93/13) that stress the transparency of the contract terms elaborated by one contract part only. In fact, standards on which certifications are based, and standards that regulate the certification itself, are standard contract terms.

Labels that communicate the use of the certification scheme have also to be used in a transparent way, following the general regulation on unfair commercial practices of EU Dir. 2005/29. This Directive has been amended for the protection against unfair practices in the green transition (such as greenwashing practices) by EU Dir. n. 2024/825 and Green Claims Directive Proposal, if it will be approved.

Another important aspect related to the organization of the certification system is that of third-party control by a competent and independent body which, until now, has not always been followed. And, besides of that, the continue monitoring of the operators' compliance. These points are affirmed both by EU Dir. 2024/825 and Green Claims Directive Proposal.

A concrete example of how important these issues are, is the case involving Ali Enterprises in Karachi, Pakistan. The assessment under the certification SA8000 (an international recognized standard for social accountability in the workplace that assesses, among others, the safety of buildings) had just passed, when a fire accident occurred, and many workers lost their lives. In the reality, the company did not have in place an effective system against fire accidents, and the Italian auditors (accredited by Social Accountability International) had subcontracted the auditing to a local organization.

That means that third-party control must not only be serious on paper, but the legislation and its implementation must aim to control the certification system and the continue monitoring, which must be rigorous and effective, across the entire certification relationship. A general critical comment about the actual efficacy of certification systems says that a system of control paid by companies' funds, cannot be successful in protecting workers and will never be successful in that.[88] For this reason, content, organization, controls of the certification systems must be rigorous and effective and operate within a framework of rules established by law.

Another important aspect related to the functioning of certification systems towards greater effectiveness concerns the objective determination of measurable contents in standards and certification systems.[89] Without measurable obligations and output, processes and objectives become empty, intrasparent and ultimately useless. An indirect - even not at all univocal in that sense - provision about this point is that according to which «the requirements for the environmental labelling scheme have been developed by experts that can ensure their scientific robustness» (art. 8, Green Claims Directive Proposal)[90]. Another reference to measurable targets can be found in EU Dir. n. 2024/825 at art. 1.2 *b*), that contain rules to amend art. 6.2 of EU Dir. n.

[88] TE Hoskins, *Il libro della moda anticapitalista*, (It. transl. of *The Anti-Capitalist Book of Fashion*, 1 ed., 2014, Pluto Press) (Il Saggiatore 2024) 148.

[89] For example, standard ISO 9001 has in its structure the point "performance evaluation" that requires a continue monitoring of the company performance. The evaluation process includes internal audit and the monitoring of the performance through KPI key indicators, followed by a review of the overall results to plan any action for improvement. See Podrecca, Sartor (n 64) 16, 23.

[90] The mention of the development by expert is also present in art. 1 of EU Dir. n. 2024/825, that modified art. 2 lett. *r*) of EU Dir. 2005/29.

2005/29 with the addition of lett. *d*), and says that an environmental claim cannot relate to future environmental commitment without «verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets (…)». We can think that sustainability labels, that in line with Recital 7 must be based on a certification scheme, are subject to the same control against unfair commercial practices to which claims are subject (that is the EU Dir. n. 2005/29). Therefore, if the legislator is consistent, in addition to claims and labels, certifications should also be based on measurable obligations, since they concern environmental performance and the related commitments. As other possible reference to measurable objectives, Recital 12 of the Dir. n. 2024/825 about claims based on the offset of greenhouse emissions states that such claims should be only allowed «when they are based on the actual lifecycle impact of the product considered». And Recital 21 of Green Claim Directive Proposal highlights the difficult task of measuring carbon credit offset, referring to the different methodologies, thus demonstrating concern for measurable objectives. Thinking to ISO standards they require the measurement of the performance through indicators similar to KPI (Key Performance Indicator). But they are not homogeneous on this characteristic, because while the ISO 9001 standard is based on performance measurement, the 14001 and 45001 standards see the application of measurability "when possible". Difficulties have been highlighted regarding the measurability of the sustainability metrics in the ESRS standards for sustainability reporting, meaning that the information collected according to these standards is poorly measurable and reliable.[91]

As we saw in the last part of the previous paragraph, the content of certifications, and perhaps even more important, the contents of standards, also need to be radically improved in terms of their alignment with the new sustainability legislation. They must obviously be consistent with existing and future legislation for sustainability goals, and - as they are the most important reference rules in the field - consistent with the UNGPs and the OECD Guidelines.

Indeed, a positive distinguishing feature of standards themselves is their potential global scope, as a global dimension of effectiveness.[92] This is a characteristic that give them a role in supplementing legislation to the benefit of transnational business.[93]

As a final conclusion, standards and certifications are a useful, and – we could say – a concretely necessary tool alongside the law, to pursue the realization of sustainability goals. As seen at par. 1, they are sometimes also referred to by legal provisions, as it is the case with EU Dir. 2024/825 itself which establishes

[91] MC De Cesari, 'Standards di sostenibilità, voto contrario dall'Oic' (Il Sole24ore, 4 december 2025), 40.

[92] Please note that in any case not all standards are global standards, since there are also national and regional standards, as for example the Certified Minas Coffee (CMC) in Brasil, or the national Indonesian Sustainable Palm Oil (ISPO), as in the forest sector there is a tradition of competition between national and international programs as the FSC. National standards could be a first step to the adoption of transnational standards. A Marx and others, 'Global governance through voluntary sustainability standards: Developments, trends and challenges' (2024) 15(4) Global Policy, 716.

[93] As we have seen *supra*, note 34, the areas of business and human rights and environmental sustainability require voluntary standards as a necessary complement to hard form of regulation, «especially since corporate conduct cannot be easily regulated across national borders». About the "smart mix" of legal regulations and private rules, or soft law rules and private standards, Rasche (n 23) 176.

that the use of sustainability labels which are not based on a certification scheme must be prohibited, unless established by a public authority.

Nonetheless, to play this important and necessary role, certification systems are required to turn into a decisive process of improvement, concerning their content, structure (with the provision of measurable objectives), functioning (for example operating through a continue monitoring), assessment process (operating through a third-party assessment) and communication, both in terms of transparency and in terms of the public availability of the content, including that of the underlying standards.