

LU ISS 

Corso di laurea in Politics, Philosophy & Economics

Cattedra Population, Environment and Sustainability

# Greenwashing legislation in the EU and Italy: the Dieselgate case

Prof. Alfonso Giordano

---

RELATORE

Anita Gioia Fischetti

---

090512

# Index

<b>Introduction</b> .....	<b>2</b>
<b>Chapter 1 - Defining greenwashing.</b> .....	<b>4</b>
1.1. <i>What is greenwashing?</i> .....	4
1.2. <i>Types of greenwashing</i> .....	4
1.3. <i>Factors of greenwashing</i> .....	6
1.4. <i>Effects of greenwashing</i> .....	8
1.5. <i>Related phenomena</i> .....	9
<b>Chapter 2 - How is greenwashing regulated?</b> .....	<b>9</b>
2.1. <i>European Union law</i> .....	9
2.1.1. <i>Introduction</i> .....	9
2.1.2. <i>Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088)</i> .....	11
2.1.3. <i>From NFRD to CSRD</i> .....	12
2.1.4. <i>The Taxonomy Regulation (Regulation (EU) 2020/852)</i> .....	13
2.2. <i>Italian legislation</i> .....	15
2.2.1. <i>Introduction</i> .....	15
2.2.2. <i>The Italian Constitution</i> .....	16
2.2.3. <i>The Consumer Code (Legislative Decree 206/2005)</i> .....	17
2.2.4. <i>The Civil Code</i> .....	17
2.2.5. <i>Legislative Decree 145/2007</i> .....	18
2.2.6. <i>Legislative Decree 254/2016</i> .....	18
2.2.7. <i>The Consolidated law on finance</i> .....	20
2.2.8. <i>Code of Self-discipline in Advertising</i> .....	20
<b>Chapter 3 - The Volkswagen case study</b> .....	<b>22</b>
3.1. <i>Dieseldate: the facts</i> .....	22
3.2. <i>Dieseldate in the US</i> .....	23
3.3. <i>Dieseldate in the EU</i> .....	25
3.4. <i>Dieseldate in Italy</i> .....	27
3.5. <i>Dieseldate – a new type of greenwashing</i> .....	29
3.5.1. <i>Dieseldate as deceptive manipulation</i> .....	29
3.5.2. <i>Dieseldate as high-tech greenwashing</i> .....	30
3.6. <i>How can legislation keep up with greenwashing?</i> .....	32
<b>Riassunto in italiano</b> .....	<b>36</b>
<b>Bibliography</b> .....	<b>41</b>

# Introduction

Climate change is widely acknowledged as being the biggest challenge that humanity is facing. Governments worldwide are finally starting to recognize the importance of this issue and the urgent need to tackle it. Citizens are also becoming more conscious of the environmental impact of their actions and therefore want to reduce their carbon footprint. This heightened awareness and urgency is seen by many businesses as a phenomenal opportunity for growth and profit. While for some this opportunity goes hand-in-hand with an earnest desire to operate more sustainably, for others it is a gold mine that can be exploited without any real commitment to becoming “greener”. Marketing is full of examples of sustainable pledges and promises that are inaccurate and purposely misleading. This not only ultimately hurts the brands which are found guilty of deceit but also damages environmentally conscious consumers who are lured to believe false claims, often paying premiums for supposedly green products.

Greenwashing has broader negative repercussions that impact society as a whole, because it harms the fundamental trust of individuals, who cease to believe that they can make a difference in turning the world “green”. Losing that trust can cause us all to disengage and become hopeless, and without the commitment of civil society, climate change is a lost battle. Consequently, it is crucial to understand the most effective ways to discourage and penalize greenwashing.

The present research proposes a comprehensive view of the legal instruments available in the EU and in Italy to deter and counteract greenwashing and analyses the legal actions taken to address Volkswagen’s *Dieseldate* scandal in the EU, in Italy and in the US. This thesis also reflects on the ways in which greenwashing legislation could be developed to keep up with the phenomenon and illustrates how – in part – this evolution already happening.

The first chapter introduces the phenomenon of greenwashing, by providing several definitions and identifying the main forms it can take. In addition, its causes and potential repercussions are examined.

The second chapter reviews the normative framework which applies to greenwashing. It is divided into two sections: the first analyses the legislation present at the EU level, while the second focuses on the Italian legal framework.

The third chapter introduces one of the most notorious cases of greenwashing in modern history: the Volkswagen scandal, also known *Dieseldate*. An initial analysis of the events which led to it is followed by a description of the legal repercussions on Volkswagen in three different contexts: the United States, the European Union and Italy. The comparative analysis between these contexts sheds a light on the voids present in EU and Italian legislation and suggests remedies for them.

Further, the thesis proceeds in analysing the *Dieseltgate* case as an unusual form of greenwashing, defining it as “deceptive manipulation” and “high-tech greenwashing”. This insight is useful to understand the ever-changing nature of greenwashing.

This observation then leads us to consider the ways in which legislators can keep up with the constant evolution of the phenomenon and outline ways in which legislation is already being updated to be more effective in counteracting greenwashing.

# Chapter 1 - Defining greenwashing.

## 1.1. What is greenwashing?

An exclusive definition of greenwashing is hard to come by, due to the complexity and inter-disciplinarity of this phenomenon. It has been tackled by several fields of research and its study is still a work-in-progress. However, one possible interpretation has been suggested by the Oxford English Dictionary, which considers greenwashing as *‘the creation or propagation of an unfounded or misleading environmentalist image.’*<sup>1</sup>

Greenwashing as an expression first showed up in a 1986 paper by the researcher Jay Westerveld. In his publication, he denounced a common practice of the hotel business: the promotion of the reuse of towels. The author argued that while this practice was not wrong in itself, it was deceitful to claim that it was being done for environmental reasons. In fact, the real reason behind it was purely an economic one, as it allowed the hotels to cut their bills.<sup>2</sup>

Since the 1980s, the phenomenon of greenwashing has spread disproportionately. In fact, the rising focus on climate change has created a flourishing green market. Many firms want to seize this as an opportunity to improve their reputation and profits, but they often underestimate or choose to avoid the effort needed for a substantial green transition. This is when green fraudulent marketing comes into play: a short-term solution to reap the benefits from an eco-conscious appearance, without the investment needed to make an actual change.<sup>3</sup>

## 1.2. Types of greenwashing

In an attempt to better explain the concept, various scholars have sought to categorize different types of eco-washing.<sup>4</sup> On a macro level, one of the biggest distinctions is the one between “explicit” and “implicit” greenwashing, sometimes also referred to respectively as claim and executional greenwashing. Explicit greenwashing deceives the consumer by not providing him with the right kind of information. Instead, brown firms will utilize imprecise or ambiguous terms to describe their products and or even go as far as declaring outright false information. A recent investigation by the European Commission (EC) and member states’ consumer authorities searched for this type of greenwashing in various companies’ websites. The study concluded that in around half of the cases considered, the marketing claims were deceitful and there were grounds for an accusation under the Unfair Commercial Practices Directive (also known as UCPD).<sup>5</sup> On the other hand, implicit greenwashing is a more subtle form of fraud, as it attempts to manipulate the consumer

---

<sup>1</sup> Oxford English Dictionary, “Greenwashing, N. : Oxford English Dictionary,” Oxford English Dictionary, “Greenwashing,” June 2011, <https://www.oed.com/viewdictionaryentry/Entry/249122>.

<sup>2</sup> Sebastião Vieira de Freitas Netto et al., “Concepts and Forms of Greenwashing: A Systematic Review,” *Environmental Sciences Europe* 32, no. 1 (February 11, 2020), <https://doi.org/10.1186/s12302-020-0300-3>.

<sup>3</sup> Sergio Braga Junior et al., “Greenwashing Effect, Attitudes, and Beliefs in Green Consumption,” *RAUSP Management Journal* 54, no. 2 (April 8, 2019): 226–41, <https://doi.org/10.1108/rausp-08-2018-0070>.

<sup>4</sup> Sergio Braga Junior et al., “Greenwashing Effect, Attitudes, and Beliefs in Green Consumption,” *RAUSP Management Journal* 54, no. 2 (April 8, 2019): 226–41, <https://doi.org/10.1108/rausp-08-2018-0070>.

<sup>5</sup> European Commission, “Press Corner,” Press release “Screening of websites for ‘greenwashing’: half of green claims lack evidence,” January 28, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_269](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269).

by using natural imagery, colors, or habitats. Although this might seem less straightforward, research showed that this tactic has the power to sway incautious consumers.<sup>6</sup>

Furthermore, research carried out by Zhi Yang et al.<sup>7</sup> proposed a framework comprising six forms of green image washing. Firstly, it can be considered as a form of “selective disclosure” of information. This mechanism consists of two concurrent actions taken by a company: on one hand, the omission of data concerning its negative externalities on the environment; on the other the excessive broadcasting of any action considered beneficial for the environment.<sup>8</sup> Secondly, green make-up can also be linked to the sociological phenomenon of “decoupling”, namely when there is inconsistency between theory and practice. In the case of greenwashing, decoupling takes place when the un-sustainable implemented practices are not in line with the official sustainable policies.<sup>9</sup> Thirdly, another tactic of fraudulent green marketing is “attention deflection”: a company will make a grandiose but symbolic action to show its support to the environmental, in order to distract stakeholders from the general un-sustainability of the firm itself.<sup>10</sup> The fourth typology of greenwashing is “deceptive manipulation” and takes place when a firm’s dishonest communication leads it to immoral actions. The most emblematic case in this sense is Dieselgate, a fraud carried out by Volkswagen, which we will examine in the third chapter of this thesis. Following numerous unfounded declarations about Volkswagens’ sustainability, the company chose to manipulate its products to cover up its lies.<sup>11</sup> The fifth type of greenwashing has to do with the use of unreliable authorizations and labels. It takes place when the sustainability of a business is certified by authorities which cannot be considered unbiased.<sup>12</sup> Lastly, another form of greenwashing occurs when a company is involved in voluntary programs subsidized by the state. Without strict regulation, a firm might adhere to these without making any real changes, turning this participation into a white-washing action.<sup>13</sup>

Another pertinent categorization analyses the object which is being greenwashed: is it a specific product or service or is it the image of an organization as a whole? Concerning the former, the TerraChoice Group

---

<sup>6</sup> Sebastião Vieira de Freitas Netto et al., “Concepts and Forms of Greenwashing: A Systematic Review,” *Environmental Sciences Europe* 32, no. 1 (February 11, 2020), <https://doi.org/10.1186/s12302-020-0300-3>.

<sup>7</sup> Zhi Yang et al., “Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review,” *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507, <https://doi.org/10.3846/jbem.2020.13225>.

<sup>8</sup> Daniel Silva, “The Fight against Greenwashing in the European Union,” *UNIO – EU Law Journal* 7, no. 2 (December 31, 2021): 124–37, <https://doi.org/10.21814/unio.7.2.4029>.

<sup>9</sup> Sebastião Vieira de Freitas Netto et al., “Concepts and Forms of Greenwashing: A Systematic Review,” *Environmental Sciences Europe* 32, no. 1 (February 11, 2020), <https://doi.org/10.1186/s12302-020-0300-3>.

<sup>10</sup> Zhi Yang et al., “Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review,” *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507, <https://doi.org/10.3846/jbem.2020.13225>.

<sup>11</sup> Alfonso Siano et al., “‘More than Words’: Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal,” *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

<sup>12</sup> Zhi Yang et al., “Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review,” *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507, <https://doi.org/10.3846/jbem.2020.13225>.

<sup>13</sup> Zhi Yang et al., “Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review,” *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507, <https://doi.org/10.3846/jbem.2020.13225>.

outlined seven possible greenwashing sins: ‘*the sin of the hidden trade-off [...] sin of no proof [...] sin of vagueness [...] sin of worshipping false labels [...] sin of irrelevance [...] sin of lesser of two evils [...] sin of fibbing.*’<sup>14</sup> Instead, when the object of the greenwashing is the actual firm, five types of greenwashing have been proposed. The first type is “dirty business”: this takes place when a firm belonging to a polluting industry suddenly decides to promote green goods or services, which do not honestly depict its sector. The second tactic is “ad bluster”, which consists of the use of commercials to improve the company’s image. Thirdly, “political spin” is when firms manage to shape government regulation through pressure and lobbying. Furthermore, another type of greenwashing, referred to as ‘*It is the law, stupid!*’<sup>15</sup>, takes place when companies brag about taking certain sustainable actions which are required by the law. Lastly, “fuzzy reporting” happens when sustainability reports are constructed with the intent of promoting a false green image.<sup>16</sup>

### 1.3. Factors of greenwashing

As mentioned earlier, greenwashing is a complex and nuanced phenomenon and therefore the reasons behind its emergence are manifold. Rather than discussing its causes, it would be more relevant to consider the factors which can either deter or promote fraudulent green advertising. One of the most relevant frameworks lists four kinds of factors: ‘*non-market external, market external, organizational and individual.*’<sup>17</sup> These four levels can all be sub-divided into other categories.

Firstly, among non-market external factors, we can consider the top-down effect of regulations which tackle greenwashing, or lack thereof. Strict laws and efficient law enforcement could deter companies from greenwashing, for fear of facing lawsuits or penalties. However, as we will discuss in the next chapter, this does not always seem to be the case. Although the EU has been a pioneer in this field, its laws are still not specific enough to have a strong impact on greenwashing. Secondly, another top-down factor is the presence of governmental environmental policies. Taxing brown firms and incentivizing green firms could lead companies to greenwash, in order to avoid any consequence and reap possible benefits. This is especially the case when the criteria for defining oneself as sustainable are not precise and measurable and when, as stated above, the laws concerning greenwashing are limited.<sup>18</sup> Thirdly, the last non-market external factor concerns the bottom-up pressure from the media, non-governmental organizations, and activists. NGOs and environmental advocates can function as watchdogs of eco-washing, shedding light on dishonest advertising

---

<sup>14</sup> UL Solutions, “Sins of Greenwashing,” 2019, <https://www.ul.com/insights/sins-greenwashing>.

<sup>15</sup> Orlando E. Contreras-Pacheco and Cyrlene Claasen, “Fuzzy Reporting as a Way for a Company to Greenwash: Perspectives from the Colombian Reality,” *Problems and Perspectives in Management* 15, no. 2 (September 27, 2017): 525–35, [https://doi.org/10.21511/ppm.15\(si\).2017.06](https://doi.org/10.21511/ppm.15(si).2017.06).

<sup>16</sup> Orlando E. Contreras-Pacheco and Cyrlene Claasen, “Fuzzy Reporting as a Way for a Company to Greenwash: Perspectives from the Colombian Reality,” *Problems and Perspectives in Management* 15, no. 2 (September 27, 2017): 525–35, [https://doi.org/10.21511/ppm.15\(si\).2017.06](https://doi.org/10.21511/ppm.15(si).2017.06).

<sup>17</sup> Grzegorz Zych et al., “Concept, Developments, and Consequences of Greenwashing,” *EUROPEAN RESEARCH STUDIES JOURNAL* XXIV, no. Issue 4B (November 1, 2021): 914–22, <https://doi.org/10.35808/ersj/2779>

<sup>18</sup> Zhi Yang et al., “Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review,” *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507, <https://doi.org/10.3846/jbem.2020.13225>.

and spreading their message also through new media, especially social networks. The latter have increased the speed at which information can travel, guaranteeing the swift damage of a company's image as soon as a greenwashing scandal breaks out. At the same time, traditional media are also eager to discuss the topic, due to the rising interest in the environment of the general public.<sup>19</sup> As companies are more and more conscious that they are being closely watched, this can hinder their desire to put forward false sustainable claims. In some cases, this will prevent them from mentioning sustainability altogether: this is the phenomenon of green hushing, which will be tackled at the end of this chapter.<sup>20</sup>

Secondly, we can consider market external factors, i.e. the economic circumstances which lead firms to greenwash. These originate from different directions, but their result is always the same: sending a company on the wrong course. In first instance, the push towards greenness is coming from the bottom: consumers are becoming more conscious of the environmental impact of what they buy. For this reason, they are searching for sustainable products and creating a huge wave of consumer demand in this niche. Firms strive to grasp this new market opportunity and often choose to portray themselves as eco-friendly before taking any step to become sustainable.<sup>21</sup> In addition, as a result of the rising green consumer demand, there is a strong push by firms' stakeholders to invest in this market. Companies which appear to be sustainable are more likely to find new potential investors. Finally, competition among firms can be considered a horizontal driver of greenwashing. As a rising number of companies implement sustainable policies, those which are lagging behind might try to compensate with false green claims. This can appear as a quick fix to avoid losing environmentally conscious consumers.<sup>22</sup> However, in the long term, if the greenwashing is ever revealed, the damage to the companies' image will be inevitable.<sup>23</sup>

Thirdly, some internal organizational factors can also lead a firm to greenwash: *'firm characteristics, incentive structure and ethical climate, effectiveness of intra-firm communication, and organizational inertia.'*<sup>24</sup> For what concerns firm characteristics, we must consider that the size and type of firm can affect the possible gains and risks derived from greenwashing. For instance, the push towards sustainability is stronger for firms which sell commodities, and not services. In addition, larger companies are more likely to be scrutinized by the media in search of fraudulent practices. A company's incentive structure and ethical climate can also make greenwashing occurrences more or less likely to happen. On one hand, when workers are encouraged to achieve discretionary goals, they might be driven towards immoral conduct. Instead, if workers are aware that

---

<sup>19</sup> Magali A. Delmas and Vanessa Cuerel Burbano, "The Drivers of Greenwashing," *California Management Review* 54, no. 1 (October 1, 2011): 64–87, <https://doi.org/10.1525/cmr.2011.54.1.64>.

<sup>20</sup> Financial Times, "'Green Hushing' on the Rise as Companies Keep Climate Plans from Scrutiny," *Financial Times*, October 18, 2022, <https://www.ft.com/content/5fd513c3-e23f-4daa-817e-aa32cf6d18d4>.

<sup>21</sup> Sergio Braga Junior et al., "Greenwashing Effect, Attitudes, and Beliefs in Green Consumption," *RAUSP Management Journal* 54, no. 2 (April 8, 2019): 226–41, <https://doi.org/10.1108/rausp-08-2018-0070>.

<sup>22</sup> Magali A. Delmas and Vanessa Cuerel Burbano, "The Drivers of Greenwashing," *California Management Review* 54, no. 1 (October 1, 2011): 64–87, <https://doi.org/10.1525/cmr.2011.54.1.64>.

<sup>23</sup> Sergio Braga Junior et al., "Greenwashing Effect, Attitudes, and Beliefs in Green Consumption," *RAUSP Management Journal* 54, no. 2 (April 8, 2019): 226–41, <https://doi.org/10.1108/rausp-08-2018-0070>.

<sup>24</sup> Magali A. Delmas and Vanessa Cuerel Burbano, "The Drivers of Greenwashing," *California Management Review* 54, no. 1 (October 1, 2011): 64–87, <https://doi.org/10.1525/cmr.2011.54.1.64>.



their workplace sticks to a strict code of ethics and frowns upon any level of deception towards their customers, the chances of greenwashing happening decrease. Another possible cause of greenwashing can be a companies' resistance to innovation. This especially takes place in long-standing firms, whose members might object to the introduction of more sustainable practices. Sometimes, the head of a firm might proclaim eco-conscious intentions for the future, while many others are opposed to this change. This can result in greenwashing. On this note, another similar instance is that of internal communication issues: Without close cooperation between the departments concerned with advertising and those concerned with production, the risk of committing unintentional greenwashing is around the corner.<sup>25</sup>

Lastly, there are also some individual factors which can prompt greenwashing. This is because the conduct of the CEO and other members of a firm will likely affect the company's strategy. In particular, we must consider personal psychological tendencies, for instance '*narrow decision framing, hyperbolic intertemporal discounting, and optimistic bias*.'<sup>26</sup> The former, also known as narrow bracketing, leads to decision-making processes which fail to observe the wider context: For example, the head of the firm might decide to put forth green claims, without considering the effort needed to back them. The second tendency relies on the human desire for instant gratification, as opposed to long-term gratification. The last consists in a misjudgment of the probability of events, leading the individual to always expect the best-case scenario and exclude the worst-case scenario. For instance, a CEO might only consider the possible gains of greenwashing and ignore the potential negative legal consequences and image damage. Furthermore, we must consider that the incisiveness of these behaviors is aggravated by lack of precise instructions and rules, which is exactly the case for greenwashing regulations, that are still quite vague and rarely enforced. Therefore, the lack of regulations is both a direct driver of greenwashing, as seen earlier, and an indirect driver of greenwashing, as it magnifies the power of individual tendencies.

## 1.4. Effects of greenwashing

Greenwashing is a very serious phenomenon with many consequences on different entities. Ironically, the actor which faces most of the repercussions is the greenwashing firm itself.<sup>27</sup> However, in the short term, the company could reap some benefits from its fraudulent actions. For instance, it might acquire a new market share and new consumers, and therefore increment its profit.<sup>28</sup> Nonetheless, in the long run, these effects will likely be reversed, and the firm will have to face the consequences of its actions. Firstly, from a financial standpoint, the business is likely to suffer some losses if its greenwashing is ever exposed. Green consumers

---

<sup>25</sup> Magali A. Delmas and Vanessa Cuerel Burbano, "The Drivers of Greenwashing," *California Management Review* 54, no. 1 (October 1, 2011): 64–87, <https://doi.org/10.1525/cm.2011.54.1.64>.

<sup>26</sup> Magali A. Delmas and Vanessa Cuerel Burbano, "The Drivers of Greenwashing," *California Management Review* 54, no. 1 (October 1, 2011): 64–87, <https://doi.org/10.1525/cm.2011.54.1.64>.

<sup>27</sup> Grzegorz Zych et al., "Concept, Developments, and Consequences of Greenwashing," *EUROPEAN RESEARCH STUDIES JOURNAL* XXIV, no. Issue 4B (November 1, 2021): 914–22, <https://doi.org/10.35808/ersj/2779>.

<sup>28</sup> Zhi Yang et al., "Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review," *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507, <https://doi.org/10.3846/jbem.2020.13225>.

will likely become skeptical about the product or about the brand itself and this will lead to a decrease in sales. On the other hand, greenwashing can also damage investors' confidence in sustainable products, which could in turn slow down the development of the green market and make it difficult for greenwashing culprits to be able to finance their operations. Secondly, a greenwashing firm could face serious legal consequences. Thirdly, workers inside the firm could lose confidence in the firm and decide to boycott it from within or leave it.

We must also consider that greenwashing does not just affect brown firms: consequences could also be faced by truly ethical firms. In fact, greenwashing induces green skepticism in consumers and erodes the market for green products. As consumers find it difficult to distinguish between green and greenwashing firms, they might decide to stop buying green products altogether, in fear of being deceived. This has a negative effect on society, as it would halt the green transition which is indispensable.<sup>29</sup>

## 1.5. Related phenomena

There are a couple of phenomena related to greenwashing. "Greenhushing", for one, is more or less its opposite. In fact, while "greenwashers" magnify inconsistent claims, "greenhushers" prefer to stay silent on their environmental performance. Why is that? There can be several reasons. One underrated reason concerns politics: some firms might decide to keep their green objectives to themselves as to not encounter political hostility. In fact, even though on a global level there is a general agreement on the importance of moving to more sustainable practices, this might not be the case at a local level. For instance, in Texas there is a strong opposition to certain sustainable decisions, which are accused to be damaging the fossil fuel industry. In this kind of political climate, manifesting one's sustainability might not be considered a smart choice. Another possible explanation is the fear of facing allegations or lawsuits. Lastly, sometimes this silence is a way to protest the unclear measures used to evaluate sustainability.<sup>30</sup>

Another phenomenon is that of "blue washing", which refers to social rather than environmental issues. However, some researchers do not make a distinction between green and blue washing.

# Chapter 2 - How is greenwashing regulated?

## 2.1. European Union law

### 2.1.1. Introduction

---

<sup>29</sup> Caroline Correa, Sergio Junior, and Dirceu Silva, "The Social Control Exerted by Advertising: A Study on the Perception of Greenwashing in Green Products at Retail," *British Journal of Education, Society & Behavioural Science* 19, no. 2 (January 10, 2017): 1–9, <https://doi.org/10.9734/bjesbs/2017/29819>.

<sup>30</sup> Financial Times, "'Green Hushing' on the Rise as Companies Keep Climate Plans from Scrutiny," *Financial Times*, October 18, 2022, <https://www.ft.com/content/5fd513c3-e23f-4daa-817e-aa32cf6d18d4>.

In the European Union, the year 2015 marked a turning point for environmental sustainability, as two crucial commitments were taken. In September, the UN Agenda 2030 comprising 17 sustainable development goals was endorsed by all United Nations member states.<sup>31</sup> A few months later, the Paris Climate Agreement was adopted by all parties of the United Nations Framework Convention on Climate Change, including the EU. This was a remarkable decision, as it became the first global climate agreement enforceable by law.<sup>32</sup>

Another important milestone took place in March 2018, when an Action Plan for Sustainable Finance was launched by the EC, with the guidance of a High-Level Expert Group. The project set out to gradually create a link between financial decisions and sustainable objectives. It proposed 10 steps to achieve 3 environmental goals: re-directing investments towards the green sector, including environmental concerns into risk management and encouraging honesty and a long-term approach to finance.<sup>33</sup>

Two months later, a Resolution on Sustainable Finance was proposed by the European Parliament (EP), establishing a guideline for a transition to green finance. At the end of 2019, the European Green Deal was published. It consisted in several legislative acts with two clear goals: To reach ‘at least 55% less net greenhouse gas emissions by 2030, compared to 1990 levels’<sup>34</sup> and to turn the EU into ‘the first climate-neutral continent by 2050.’<sup>35</sup>

The EU’s ambitious goals of becoming climate neutral depend on its ability to steer financial investments in the direction of sustainability. In fact, according to an assessment by the European Commission, more than 250 billion euro will be needed on a yearly basis, to reach the environmental goals which expire in 2030. The contribution of numerous private and public funds is crucial to this end.<sup>36</sup>

Driving funding towards the green sector means boosting investor confidence and this in turn requires creating a valid legal structure which can guide investor decisions and enhance transparency.<sup>37</sup>

---

<sup>31</sup> United Nations, “The Sustainable Development Agenda,” United Nations, 2022, <https://www.un.org/sustainabledevelopment/development-agenda/>.

<sup>32</sup> European Commission, “Climate Negotiations,” European Commission - Climate Action, accessed February 7, 2023, [https://climate.ec.europa.eu/eu-action/international-action-climate-change/climate-negotiations\\_en#paris-agreement](https://climate.ec.europa.eu/eu-action/international-action-climate-change/climate-negotiations_en#paris-agreement).

<sup>33</sup> European Commission, “Renewed Sustainable Finance Strategy and Implementation of the Action Plan on Financing Sustainable Growth,” European Commission - Finance, accessed February 7, 2023, [https://finance.ec.europa.eu/publications/renewed-sustainable-finance-strategy-and-implementation-action-plan-financing-sustainable-growth\\_en](https://finance.ec.europa.eu/publications/renewed-sustainable-finance-strategy-and-implementation-action-plan-financing-sustainable-growth_en).

<sup>34</sup> European Commission, “A European Green Deal,” European Commission, accessed February 7, 2023, [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en).

<sup>35</sup> European Commission, “A European Green Deal,” European Commission, accessed February 7, 2023, [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en).

<sup>36</sup> Catherine Malecki, “The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment,” SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>37</sup> Chris van Oostrum, “Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852,” *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

Several legal developments have emerged from this overriding goal. The most important are the Taxonomy Regulation (Regulation (EU) 2020/852), including its delegated acts;<sup>38</sup> Regulation (EU) 2019/2088, also known as Sustainable Finance Disclosure Regulation (or SFDR); Directive 2014/95/EU, namely Non-Financial Reporting Directive (or NFRD); Directive (EU) 2022/2464, i.e. the Corporate Sustainability Reporting Directive (CSRD).

### 2.1.2. Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088)

The Sustainable Finance Disclosure Regulation (SFDR) marks a turning point in the legal fight against greenwashing. In fact, the main goal of this regulation is to create a congruous framework to foster transparency, especially in green investments.<sup>39</sup> It urges financial actors to disclose sustainability-related information and in this way, it also holds them accountable for making more environmentally conscious decisions. In fact, the secondary objective of Regulation (EU) 2019/2088 is to encourage the inclusion of environmental considerations in investment decisions. These include sustainability risks and adverse sustainability impacts. Although the name could lead us to believe they are interchangeable, they are in fact opposed concepts: the former are ESG circumstances which could have a negative effect on financial returns; the latter are negative repercussions that investments could have on the environment. To that end, we can refer to sustainability's *'double materiality'*.<sup>40</sup>

A merit of this regulation is that it puts forth some crucial definitions, such as that of "sustainable investment". To be considered sustainable, an investment must satisfy three prerequisites. Firstly, it must support one environmental or social goal among those listed in the SFDR. Secondly, it must not substantially undermine any of the other mentioned goals. Thirdly, the investor must adhere to good management procedures.<sup>41</sup>

Another relevant definition is that of sustainability factors, which consist in *'environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery'*.<sup>42</sup>

---

<sup>38</sup> Complementary Climate Delegated Act (Commission Delegated Regulation (EU) 2022/1214); Disclosure Delegated Act (Commission Delegated Regulation (EU) 2021/2178); Climate Delegated Act (Commission Delegated Regulation (EU) 2021/2139)

European Commission, "Taxonomy Regulation," European Commission - Finance, accessed February 7, 2023, [https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation_en).

<sup>39</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>40</sup> European Parliament and Council of the European Union, "Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on Sustainability- Related Disclosures in the Financial Services Sector" (2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2088&qid=1674750456435>.

<sup>41</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

<sup>42</sup> European Parliament and Council of the European Union, "Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on Sustainability- Related Disclosures in the Financial Services Sector" (2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2088&qid=1674750456435>.

This legislation addresses both financial market participants and financial advisers. The former includes financial actors, such as asset managers, who administer their clients' funds through investments. The latter are individuals or companies who offer recommendations on investments or insurance. In some cases, an actor might be considered as part of both categories. As the legislation puts forth slightly different requests for the members of these two groups, to decide which demands apply to it, it will be necessary take into consideration activity that is being examined.<sup>43</sup>

Despite the fact that the SFDR requires some compulsory disclosure from all financial actors, supplementary disclosures are demanded from those claiming to have green investments.<sup>44</sup>

In February 2021, the European Supervisory Authorities communicated the regulatory technical standards necessary for the enforcement of the SFDR. The RTS established specific guidelines on the correct way to communicate information concerning the sustainability of investments. For instance, they incorporated the indicators for adverse sustainability impacts (PAIIs). The entry into force of the first part of the act took place in March 2021, while the second became effective in July 2022.<sup>45</sup>

### 2.1.3. From NFRD to CSRD

The Non-Financial Reporting Directive (NFRD) or Directive 2014/95/EU, is an instrument aimed at increasing transparency in the financial sector, in order to provide stakeholders with the information needed to assess a company's environmental conduct.<sup>46</sup> This Directive demands the disclosure of non-financial information from firms with certain characteristics: In particular, the scope of NFRD concerns EU businesses with over five hundred employees and a yearly balance of over 20 million euros.<sup>47</sup> These companies are required to provide an account of their practices relating to different issues such as '*Environmental protection, Social responsibility and treatment of employees, Respect for human rights, Anti-corruption and bribery, Diversity on company boards.*'<sup>48</sup> Despite this being a useful step towards transparency, it is now considered

---

<sup>43</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

<sup>44</sup> Bloomberg, "The Relationships between SFDR, NFRD and EU Taxonomy," Bloomberg, March 31, 2021, <https://www.bloomberg.com/professional/blog/the-relationships-between-sfdr-nfrd-and-eu-taxonomy/>.

<sup>45</sup> Forum per la Finanza Sostenibile, "EU Taxonomy and Other Regulations on Sustainable Finance: Implications and Outlook for Financial Players 2," *Forum per La Finanza Sostenibile*, September 9, 2021, [https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE_ENG_WEB.pdf).

<sup>46</sup> European Commission, "Corporate Sustainability Reporting," European Commission - Finance, 2023, [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en).

<sup>47</sup> Bloomberg, "The Relationships between SFDR, NFRD and EU Taxonomy," Bloomberg, March 31, 2021, <https://www.bloomberg.com/professional/blog/the-relationships-between-sfdr-nfrd-and-eu-taxonomy/>.

<sup>48</sup> Bloomberg, "The Relationships between SFDR, NFRD and EU Taxonomy," Bloomberg, March 31, 2021, <https://www.bloomberg.com/professional/blog/the-relationships-between-sfdr-nfrd-and-eu-taxonomy/>.

insufficient. In fact, although some optional guidelines are provided, this legislation does not establish the correct modalities for disclosure, leaving it up to each firm.<sup>49</sup>

In its place, the Corporate Sustainability Reporting Directive (CSRD) or Directive (EU) 2022/2464 was adopted. It demands regular disclosure on the same topics as the NFRD. However, it proposes important variations on the scope of its application and on the modalities required for the disclosure. In fact, the CSRD is directed at listed and un-listed EU-based firms with more than 250 employees, listed small and medium size enterprises (except micro-firms), non-European undertakings which are listed on European markets, and EU based branches of non-European firms.<sup>50</sup> With this adjustment, around 50 thousand new companies will have to report on their environmental practices.<sup>51</sup>

With respect to the method of disclosure, the CSRD demands to follow the compulsory environmental standards of the European Union, supplied by the European Financial Reporting Advisory Group.<sup>52</sup>

#### 2.1.4. The Taxonomy Regulation (Regulation (EU) 2020/852)

The focus of the Taxonomy Regulation (Regulation (EU) 2020/852) is to establish a legal definition of what can be recognized as an environmentally sustainable activity. Hence, the Taxonomy serves as a classification tool: it simplifies the comparison between various green assets and distinguishes undertakings that are genuinely sustainable from those that are not.<sup>53</sup> This level of transparency is considered essential to prevent greenwashing and, consequently, to boost sustainable investments. It is an essential instrument for reaching, by 2030, the environmental goals set out in the Green Deal.<sup>54</sup> Among other things, the definitions incorporated in European Taxonomy are also fundamental for a proper implementation of other legislative acts, such as the SFDR or the CSRD.<sup>55</sup>

Art. 5 of the Taxonomy determines its 6 environmental goals: *'climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and*

---

<sup>49</sup> Bloomberg, "The Relationships between SFDR, NFRD and EU Taxonomy," Bloomberg, March 31, 2021, <https://www.bloomberg.com/professional/blog/the-relationships-between-sfdr-nfrd-and-eu-taxonomy/>.

<sup>50</sup> Forum per la Finanza Sostenibile, "EU Taxonomy and Other Regulations on Sustainable Finance: Implications and Outlook for Financial Players 2," *Forum per La Finanza Sostenibile*, September 9, 2021, [https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE_ENG_WEB.pdf).

<sup>51</sup> European Commission, "Corporate Sustainability Reporting," European Commission - Finance, 2023, [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en).

<sup>52</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>53</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>54</sup> Grzegorz Zych et al., "Concept, Developments, and Consequences of Greenwashing," *EUROPEAN RESEARCH STUDIES JOURNAL* XXIV, no. Issue 4B (November 1, 2021): 914–22, <https://doi.org/10.35808/ersj/2779>.

<sup>55</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

*ecosystems*.<sup>56</sup> To qualify as sustainable, an economic activity must meet four conditions, featured in Art. 3 of the Taxonomy. Firstly, it must offer a meaningful contribution to one of the six aforementioned goals. This is possible for 3 kinds of enterprises: those that presently produce a low level of emissions; transitional ones, which support the evolution towards a carbon neutral world; enabling ones, which support other activities in reducing their emissions<sup>57</sup>. Secondly, a sustainable activity must not considerably undermine any of the other aims.<sup>58</sup> Thirdly, the activity's mode of operation must conform to the basic safeguards mentioned in Art. 13, concerning the fair treatment of employees and the respect for unalienable rights.<sup>59</sup> Lastly, the economic activity must adhere to precise technical screening criteria (TSC) that determine what is intended by substantial contribution to or substantial harm to each of the objectives.

As regards the TSCs, the ones concerning the first 2 objectives – climate change adaptation and mitigation - have already been defined in the Climate Delegated Act (Delegated Regulation (EU) 2021/2139).<sup>60</sup> They have been determined on the basis of the work of the technical expert group (TEG), which started in July 2018. In addition, in its report of June 2019, the TEG also laid out a list of 7 sectors and 72 activities which are to be taken into consideration in the Taxonomy.<sup>61</sup>

With the termination of the TEG's mandate in September 2020, a Platform on Sustainable Finance was set up. This is a consultative entity which has been prescribed by Art. 20 of the TR. Its principal function is to guide the European Commission in the implementation of the Taxonomy.<sup>62</sup> In addition, the platform will also oversee expanding the technical screening criteria and reviewing them with regularity to ensure they are up to date.<sup>63</sup>

Art. 5 to 8 represent another meaningful segment of the Taxonomy, as they establish a duty of disclosure. Art. 5 and 6 refer to environmentally sustainable investments or financial products that promote environmentally

---

<sup>56</sup> Grzegorz Zych et al., "Concept, Developments, and Consequences of Greenwashing," *EUROPEAN RESEARCH STUDIES JOURNAL* XXIV, no. Issue 4B (November 1, 2021): 914–22, <https://doi.org/10.35808/ersj/2779>.

<sup>57</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>58</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

<sup>59</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>60</sup> European Commission and Directorate-General for Financial Stability, Financial Services and Capital Markets Union, "Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 Supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by Establishing the Technical Screening Criteria for Determining the Conditions under Which an Economic Activity Qualifies as Contributing Substantially to Climate Change Mitigation or Climate Change Adaptation and for Determining Whether That Economic Activity Causes No Significant Harm to Any of the Other Environmental Objectives," Europa.eu § (2021), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R2139>.

<sup>61</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>62</sup> European Commission, "Platform on Sustainable Finance," European Commission - Finance, accessed February 10, 2023, [https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance_en).

<sup>63</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

sustainable characteristics, under Art. 8 and 9 of SFDR. These undertakings are required to disclose the environmental goal to which they contribute, the percentage of investments which qualify as environmentally sustainable (according to Art. 3 of the TR) and to specify the percentage of those investments which consists of enabling or transitional activities.<sup>64</sup> Art. 7 refers to enterprises which are not subject to the aforementioned articles of SFDR, as they do not claim environmental characteristics or endorse a sustainable investment objective. In this case, their disclosure will be published alongside a statement which explains that the investments comprised in the financial product do not consider the European criteria for sustainable economic activities.<sup>65</sup> Lastly, Art. 8 concerns financial and non-financial undertakings which are in the scope of NFRD and CSRD. These entities are demanded to publish data regarding some key performance indicators (KPIs), namely the percentage of net turnover and of capital and operating expenditure which are associated to environmentally sustainable activities.<sup>66</sup>

The Taxonomy has had a gradual implementation. The disclosures regarding the objectives of climate change adaptation and mitigation have become compulsory at the start of last year (2022). On the other hand, those that relate to the other four environmental aims are expected to take place from the start of 2023.<sup>67</sup>

In conclusion, the Taxonomy appears to be a ground-breaking piece of legislation, which is able to integrate and complete previous regulations. Nonetheless, this author believes that it would be appropriate to push for further developments of this regulation. In particular, the current Taxonomy's focus on environmental sustainability should be supplemented by social and governance sustainability, to complete the framework of ESG factors.<sup>68</sup>

## 2.2. Italian legislation

### 2.2.1. Introduction

Notwithstanding the greater completeness of the European framework, some legal instruments to counteract greenwashing can also be found in the Italian normative context. Otherwise, it would not have been possible for the Court of Gorizia to have pronounced the first Italian verdict for greenwashing in the *Alcantara versus Miko case*. In July 2021, Alcantara, an Italian textile company, filed an appeal against its competitor Miko,

---

<sup>64</sup> Catherine Malecki, "The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment," SSRN (Rochester, NY, October 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).

<sup>65</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

<sup>66</sup> Forum per la Finanza Sostenibile, "EU Taxonomy and Other Regulations on Sustainable Finance: Implications and Outlook for Financial Players 2," *Forum per La Finanza Sostenibile*, September 9, 2021, [https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE_ENG_WEB.pdf).

<sup>67</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.

<sup>68</sup> Chris van Oostrum, "Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852," *European Company Law* 18, no. 1 (February 1, 2021): 15–21, <https://doi.org/10.54648/eucl2021003>.



claiming unfair competition. This allegation was based on the fact that the latter promoted itself and its product *Dinamica* as innovative and environmentally sustainable, without backing any of those claims. On the 25<sup>th</sup> of November 2021, the judge's ruling confirmed that Miko's advertising campaign could constitute an unfair competitive advantage. The description of its product as environmentally conscious was false or at best exaggerated. Consequently, the judge ordered the defendant to block all kinds of fraudulent publicity through any channel.<sup>69</sup> In addition, Miko was forced to publish the injunction on its website and to keep it there for at least 2 months, causing it obvious reputational damage.<sup>70</sup> This case is important because it represents the first time that greenwashing has been handled by an ordinary court and not by competition authorities. It shows how it is possible – though not easy - to contrast fraudulent green marketing, despite the absence of custom-made legislation. In the following paragraphs, we will analyze the Italian legal instruments available at present and which can serve this purpose.

### 2.2.2. The Italian Constitution

In contrasting phenomena which harm the environment, an unexpected helping hand comes from the Italian Constitution. In the first place, Art. 2 and Art. 3 outline the existence of a set of rights of the individual, in the role of consumer.<sup>71</sup> In addition, some recent adjustments, made through Constitutional Law n.1 of 2022, have explicitly included the environment in the scope of the constitutional Charter.<sup>72</sup> In particular, additions were made to Art. 9 and Art. 41. The former originally affirmed that the Republic protects the Italian landscape as well as the historical and artistic patrimony. The Constitutional law added a third clause, establishing an environmentalist principle by stating that the Republic will likewise '*safeguard the environment, biodiversity and ecosystems, also in the interest of future generations.*'<sup>73</sup> The innovation is especially meaningful, as Art. 9 is part of the first 12 articles of the Constitution, which serve as constitutional principles. Furthermore, Art. 41 asserts the freedom of economic activity and the limitations which the State is allowed to apply to that freedom. In fact, it should not undermine human security, freedom, and dignity. For this reason, the law can regulate the supervision necessary to direct economic initiative in favor of social objectives. The recent amendment to Art. 41 included the environment and health among the things that should not be damaged by economic freedom. Moreover, it also added environmental objectives to the direction that economic activity should have.<sup>74</sup> These legislative developments are striking, as judges are constrained to interpret all laws in conformity with the Constitution and first and foremost according to the guiding principles. For this reason,

---

<sup>69</sup> Elisa Simionato, "Alcantara-Miko: è Condanna al Greenwashing," *Ius in itinere*, December 23, 2021, <https://www.iusinitinere.it/alcantara-miko-e-condanna-al-greenwashing-40906>.

<sup>70</sup> Ed Garsten, "Alcantara Wins Major Court Battle against Greenwashing," *Forbes*, December 8, 2021, <https://www.forbes.com/sites/edgarsten/2021/12/08/alcantara-wins-major-court-battle-against-greenwashing/amp/>.

<sup>71</sup> "Art. 2-3, Constitution of the Italian Republic" (1948), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:costituzione>.

<sup>72</sup> "Constitutional Law N.1 of 2022" (2022), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge.costituzionale:2022-02-11;1!vig=2023-02-12>.

<sup>73</sup> "The Constitution of the Italian Republic (English)," accessed February 13, 2023, [https://www.quirinale.it/allegati\\_statici/costituzione/costituzione\\_inglese.pdf](https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf).

<sup>74</sup> "Art. 2, clause 2, Constitutional Law N.1 of 2022" (2022), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge.costituzionale:2022-02-11;1!vig=2023-02-12>.

the inclusion of the protection of the environment among these principles has enormous practical implications, as well as an important symbolic value.

### 2.2.3. The Consumer Code (Legislative Decree 206/2005)

Another weapon against greenwashing can be found in the Consumer Code (Legislative Decree 206/2005). Part 2, Title III, Chapter II of the consumer code forbids unfair commercial practices, which consist of all unethical conducts aimed at distorting the consumers' behavior in relation to the product. Unfair commercial practices can be classified in two categories: deceitful commercial practices or aggressive commercial practices.<sup>75</sup> The former is tackled by Art. 21 to 23, under which we can also position the phenomenon of greenwashing. In general, deceitful commercial practices take place when an undertaking promotes incorrect information to its consumers. However, this can also happen in a more subtle manner, when true information is provided in a misleading way, to fraudulently steer consumers' decisions in a certain direction. Another category of deceitful commercial practice, illustrated by Art. 22, is the omission of information. This is because every actor who sells a product or service is bound by law to offer its consumer all the relevant information necessary to make an informed expenditure decision. Art. 23 spells out all the specific behaviors which must be considered deceitful no matter what.

Art. 27 defines the consequences that stem from carrying out unfair commercial practices. First of all, the safeguard against unfair commercial practices is of binary nature, as the repercussions can be both administrative and/or jurisdictional. Different authorities oversee each field. The Italian Anti-Trust Authority punishes unfair practices through administrative sanctions, while the ordinary court decides on the civil safeguard of the injured parties.<sup>76</sup> The Italian Competition Authority has some decisional powers, such as forbidding the continuation of the unfair practice or ordering the publication of the injunction, as well as giving fines ranging from 5 thousand to 5 million euros.<sup>77</sup> However, decisions taken by the Anti-Trust can be challenged before the competent administrative judge.<sup>78</sup>

### 2.2.4. The Civil Code

Greenwashing can also be considered as a form of unfair competition. The latter is illustrated in Art. 2598 of the Italian Civil Code.<sup>79</sup> The first two clauses relate respectively to the confusion of names or symbols with the competitors' and the diffusion of injurious information about the competitor, and are not pertinent to the

---

<sup>75</sup> "Art. 20-27, Legislative Decree N. 206 of 2005 (Consumer Code)," [www.normattiva.it](http://www.normattiva.it) § (2007), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206>.

<sup>76</sup> "Art. 20-27, Legislative Decree N. 206 of 2005 (Consumer Code)," [www.normattiva.it](http://www.normattiva.it) § (2007), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206>.

<sup>77</sup> Forum per la Finanza Sostenibile, "Greenwashing and Sustainable Finance: The Risks of Greenwashing and Possible Resources to Counteract It," *Forum per La Finanza Sostenibile*, November 8, 2022, [https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing_ENG_WEB.pdf).

<sup>78</sup> "Art. 20-27, Legislative Decree N. 206 of 2005 (Consumer Code)," [www.normattiva.it](http://www.normattiva.it) § (2007), <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206>.

<sup>79</sup> "Art. 2598, Royal Decree N.262 of 1942 (Civil Code)" (1942), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262>.

greenwashing phenomenon. On the other hand, the third clause of Art. 2598 asserts that unfair competition also takes place when someone employs means which do not conform to the principles of professional fairness and which could potentially damage someone else's business. In this case, we can also include the practice of deceitful advertising, characteristic of greenwashing. If this conduct is carried out, it can be condemned on the basis of two forms of legislation, depending on who is the injured party. If the deceitful advertising damages a competitor, the business can be punished on the basis of Art. 2599-2600 of the Civil Code;<sup>80</sup> if it harms the consumer, it will be sentenced according to the Legislative Decree 145/2007, which will be analyzed in the next paragraph.<sup>81</sup> In the first case, once the unfair competition is confirmed, Art. 2599 establishes that it will have to cease and determines that its negative effects will have to be cancelled through the appropriate procedures.<sup>82</sup> Additionally, in accordance with Art. 2600 of the Civil Code, if the unfair competition was carried out with intent or gross negligence, the defendant will have to compensate damages, following the dispositions of Art. 2042 of the Civil Code. In this case, the publication of the sentence can be ordered.<sup>83</sup>

### 2.2.5. Legislative Decree 145/2007

The discipline of misleading advertising was first introduced by the Legislative Decree 74/1992, implementing Directive 84/450/EEC.<sup>84</sup> After several legislative developments, this subject has been inserted into the Legislative Decree 145/2007, which transposes Art. 14 of Directive 2005/29/EC. This legislative act defines misleading advertising as a promotional message which could potentially misguide the consumer, compromise his economic behaviour, and therefore potentially damage a competitor. To determine the deceitfulness, one must establish the presence of the so-called anchoring effect on the consumer. This takes place when he is so captured by a particular characteristic of the product, which is highlighted in the advertising, that he is led to not investigate the other traits of the product, which would have allowed him to have a full picture of what he was buying.<sup>85</sup>

### 2.2.6. Legislative Decree 254/2016

---

<sup>80</sup> "Art. 2598-2600, Royal Decree N.262 of 1942 (Civil Code)" (1942), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16:262>.

<sup>81</sup> "Legislative Decree N.145 of 2007," [www.normattiva.it § \(2007\)](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007-08-02:145), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007-08-02:145>.

<sup>82</sup> "Art. 2599, Royal Decree N.262 of 1942 (Civil Code)" (1942), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16:262>.

<sup>83</sup> "Art. 2600, Royal Decree N.262 of 1942 (Civil Code)" (1942), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16:262>.

<sup>84</sup> "Legislative Decree N.74 of 1992" (1992), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1992-01-25:74>.

<sup>85</sup> Francesca Palazzini, "Greenwashing Nelle Comunicazioni Pubblicitarie E La Rilevanza Come Atto Di Concorrenza Sleale," *Rivista Giuridica Dell'ambiente*, no. 4 (2021): 927–46, <https://doi.org/10.1400/288340>.

The NFRD, analyzed in the section concerning EU legislation, was implemented in Italy on the 30<sup>th</sup> of December 2016, through Legislative Decree 254.<sup>86</sup> This act is the first in Italy to establish the need to incorporate a non-financial report alongside regular financial statements. In fact, before the transposition of the NFRD, undertakings would only publish non-financial information on a voluntary basis. Despite this, many large businesses had been doing so for a long time, by posting the information online through so-called sustainability reports. Therefore, Legislative Decree 254/2016 strikes us as a tool to establish a harmonized method of disclosure.

Art.1 establishes several definitions that are useful for a clear comprehension of this act.

Art. 2 defines the actors to which the duty of non-financial disclosure applies. In general, it concerns public interest entities, such as undertakings on the Italian and EU markets, banks or insurance businesses who hire at least 500 people. In addition, to be subject to the Legislative Decree, they must qualify for certain financial parameters. In their latest financial statement, they must either have total assets higher than 20 million euros or total net revenues higher than 40 million euros.<sup>87</sup>

Art. 3 Legislative Decree 254/2016 outlines the areas that must be covered by the report, namely the sustainability, social, human rights, personnel, and anti-bribery aspects of the business.<sup>88</sup> This article sets out minimum mandatory data which must be included. In addition, it establishes that the report should be published on an annual basis and each new version should compare data from the previous year to current data. Each undertaking can decide whether to disclose this information alongside other regular disclosures or in a designated document.

Art. 4 states that businesses which produce untrue statements are subject to sanction by the Italian Companies and Exchange Commission (CONSOB).<sup>89</sup>

Art. 6 outlines some exceptional cases where public interest entities outlined in Art. 2 are exempted from preparing a non-financial report.

---

<sup>86</sup> "Legislative Decree N.254 of 2016," [www.normattiva.it § \(2016\)](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2016-12-30:254!vig=2023-02-12), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2016-12-30:254!vig=2023-02-12>.

<sup>87</sup> Maria Assunta Baldini, Giovanni Bronzetti, and Graziella Sicoli, "Non-Financial Information: From Voluntary to Compulsory Compliance. The State of the Art in Italian Context," in *Nuove Frontiere Del Reporting Aziendale : La Comunicazione Agli Stakeholders Tra Vincoli Normativi E Attese Informative* (Milano: Franco Angeli, 2018), 757–72, <http://digital.casalini.it/9788891786876>.

<sup>88</sup> Rossella Leopizzi, Stefano Coronella, and Simone Pizzi, "Il D.LGS. 254/2016 Sull'informativa Non-Finanziaria: Prime Evidenze in Italia Sul 'Prima' E Sul 'Dopo,'" in *Nuove Frontiere Del Reporting Aziendale : La Comunicazione Agli Stakeholders Tra Vincoli Normativi E Attese Informative* (Milano: Franco Angeli, 2018), 862–77, <http://digital.casalini.it/9788891786876>.

<sup>89</sup> Forum per la Finanza Sostenibile, "Greenwashing and Sustainable Finance: The Risks of Greenwashing and Possible Resources to Counteract It," *Forum per La Finanza Sostenibile*, November 8, 2022, [https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing_ENG_WEB.pdf).

Art. 7 expresses the possibility for voluntary disclosures. In fact, Legislative Decree 254/2016 extends the applicability of the NFRD by encouraging the publication of non-financial reports even by companies for which it is not compulsory. Firms might choose to do so, with the aim of improving their reputation.

Art. 8 describes the administrative sanctions that stem from a wrong execution of a non-financial report. On one hand, those who fail to publish a non-financial report will have to pay fines between 20 and 100 thousand euros. On the other hand, those who fill out non-financial reporting incorrectly will have to disburse an even greater sum, between 50 and 150 thousand euros.

The increase in non-financial reporting is essential to foster transparency, which is the strongest weapon against greenwashing. In addition, the monetary sanctions that derive from non-compliance to this act will hopefully push undertakings towards compliance. Although a greater application of this decree is desirable, it is certainly a first important step in the right direction.

### 2.2.7. The Consolidated law on finance

The Consolidated Law on Finance (TUF) provides that CONSOB can enforce sanctions of an administrative nature in cases of offenses related to the SFDR. As of January 2023, Regulatory Technical Standards have been implemented, providing the Italian Companies and Exchange Commission with further instruments for action.<sup>90</sup>

### 2.2.8. Code of Self-discipline in Advertising

Last but not least, another non-legal tool can be conducive in halting greenwashing in Italy: The Code of Self-Discipline in Advertising. The first version of this Code was published in 1966<sup>91</sup> and since then has been updated 67 times by its publisher, the *Istituto di Autodisciplina Pubblicitaria* (IAP). This document is not strictly a source of law but rather the expression of an autonomous entity. However, in practice, the majority of the operators of the advertising sector adhere to the IAP and for this reason, the Code applies, directly or indirectly, to the most of publicity on the Italian market. In addition, the instructions contained in it are the expression of professional and commercial ethics, and for this reason represent useful parameters to evaluate correctness.<sup>92</sup>

Art. 12 of the Code is dedicated to the safeguard of the environment and implicitly touches upon the theme of greenwashing. Firstly, the article states that any commercial communication which promotes environmental sustainability must rest on true, relevant, and scientifically correct data. In addition, the advertising must

---

<sup>90</sup> Forum per la Finanza Sostenibile, “Greenwashing and Sustainable Finance: The Risks of Greenwashing and Possible Resources to Counteract It,” *Forum per La Finanza Sostenibile*, November 8, 2022, [https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing_ENG_WEB.pdf).

<sup>91</sup> Istituto di Autodisciplina Pubblicitaria, “Storia,” IAP, accessed February 14, 2023, <https://www.iap.it/conoscere-iap/storia/>.

<sup>92</sup> Francesca Palazzini, “Greenwashing Nelle Comunicazioni Pubblicitarie E La Rilevanza Come Atto Di Concorrenza Sleale,” *Rivista Giuridica Dell’ambiente*, no. 4 (2021): 927–46, <https://doi.org/10.1400/288340>.

clarify which part of the product or service being sold is associated with environmental benefits.<sup>93</sup> The violation of the norms contained in the code is subject to sanctions by the jury of the IAP and by the Anti-Trust authority and can entail inhibitory provisions or monetary penalties.<sup>94</sup>

---

<sup>93</sup> Istituto di Autodisciplina Pubblicitaria (IAP), “Codice Dell’Autodisciplina Pubblicitaria (68esima Edizione),” IAP, February 9, 2021, <https://www.iap.it/wp-content/uploads/2022/08/Codice-68a-edizione-9-febbraio-2021-modifica-art.-43.pdf>.

<sup>94</sup> Elisa Simionato, “Alcantara-Miko: è Condanna al Greenwashing,” *Ius in itinere*, December 23, 2021, <https://www.iusinitinere.it/alcantara-miko-e-condanna-al-greenwashing-40906>.

# Chapter 3 - The Volkswagen case study

## 3.1. *Dieseldate*: the facts

The Volkswagen (VW) scandal is undoubtedly the flagship for greenwashing and has caused great uproar. *Dieseldate* consisted in the revelation that the German car company had found a way to cheat during compulsory vehicle homologation testing. In fact, it had equipped many of its diesel cars with a software which made their emissions result lower than they actually were.<sup>95</sup> It all started at the beginning of 2014, with research carried out by the International Council on Clean Transportation (ICCT), an independent institution which supports environmental bodies by executing scientific studies.<sup>96</sup> The objective of the inquiry was the fuel-efficiency of diesel cars.<sup>97</sup> To investigate this, the ICCT examined 3 types of VW vehicles and found substantial inconsistencies between the amount of pollutants emitted during test drives and in regular driving conditions. These findings were transmitted to the Environmental Protection Agency (EPA), which began to investigate the case in May. Further testing was carried out by the University of West Virginia, which demonstrated that the cars under scrutiny emitted around 40 percent more nitrogen oxides than allowed by law. Initially, VW tried to shield itself by affirming that some technical problem must have been responsible for these values. In December, it recalled a large number of cars and renovated their emission-tracking software. However, this did not prevent the *Dieseldate* scandal from breaking out. In September, the EPA ascertained and disclosed the existence of a deceptive device in many Volkswagen cars, which recognized when the vehicle was being assessed and reduced its emissions for the duration of the test. On the 18<sup>th</sup> of September, VW confessed to installing the device.<sup>98</sup> The CEO, Martin Winterkorn, affirmed he was oblivious to the facts, apologized and decided to quit. VW was accused by the EPA of breaching the Clean Air Act.<sup>99</sup> Subsequent investigations confirmed the presence of the deceptive programme in 11 million diesel vehicles, produced between 2009 and 2015. Among these, around 500 thousand had been sold in the US. The impact of this scandal was felt by a wide range of stakeholders. For this reason, *Dieseldate* generated countless legal proceedings, concerning different branches of law, such as criminal, civil, or environmental law. Even though the first lawsuits started in the US, they quickly spread worldwide. They will be analysed in the following sections.

---

<sup>95</sup> Francesca Bertelli, "Dealing with the Dieseldate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>96</sup> Alfonso Siano et al., "'More than Words': Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal," *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

<sup>97</sup> Francesca Bertelli, "Dealing with the Dieseldate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>98</sup> Alfonso Siano et al., "'More than Words': Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal," *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

<sup>99</sup> Francesca Bertelli, "Dealing with the Dieseldate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

Furthermore, as well as bearing the cost of multiple legal actions, VW also had to face some other disastrous economic consequences: because of the scandal, its stock fell by more than 20% in one day in the German market and this resulted as the most serious crash since 2008.<sup>100</sup>

However, the losses undergone by the German company are partially counterbalanced by some important gains for society as a whole. In fact, the Volkswagen scandal shed a light on the phenomenon of greenwashing and provided consumers with a hint of scepticism towards companies that market themselves as sustainable. It also urged governments to hold companies accountable for their unsustainable actions.<sup>101</sup>

### 3.2. *Dieseltgate* in the US

In the United States, the *Dieseltgate* scandal generated a multitude of legal actions, which soon turned into economic repercussions for the company. Several branches of the US Department of Justice (DOJ) were involved in the investigations. The criminal actions carried out Volkswagen were investigated by the FBI and the Criminal Division of the DOJ. On the other hand, civil proceedings were brought before the Court by the Environment and Natural Resources Division of the DOJ, which acted on the claims of the Environmental Protection Agency. Finally, violations of the Federal Trade Act, resulting from the introduction into the US of cars which did not adhere to American law, were examined by the United States Customs and Border Protection.

This substantial joint effort by several districts of the DOJ allowed for a swift and effective resolution of the controversy by way of three settlements.

Around the end of 2016, the ‘*2.0-liter partial settlement*’<sup>102</sup> was authorized by the section of the US Federal Court which has jurisdiction over the North of California. The following year, the same court endorsed two more settlements, concerning cars with 3.0L motors. A series of relevant actions stemmed from this agreement and VW was forced to rectify its’ deceitful actions in a variety of ways.

First of all, for what concerns civil consequences, Volkswagen was charged to pay nearly one and a half billion dollars for breaching the Clean Air Act.

In addition, a series of warranty rights were granted to consumers, who were given a vast range of options to make up for the deceit. In fact, buyers of Volkswagen cars were allowed to access a website that gave them the option to choose between returning their vehicle, having it updated or obtaining a free cancellation of their

---

<sup>100</sup> Alfonso Siano et al., “More than Words’: Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal,” *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

<sup>101</sup> Francesca Bertelli, “Dealing with the Dieseltgate Scandal in the US and EU,” *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>102</sup> Francesca Bertelli, “Dealing with the Dieseltgate Scandal in the US and EU,” *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.



lease. VW was required to get rid of at least 85% of the vehicles equipped with the defeat device, either by buying them back or by renovating them so that they would adhere to legal emission standards.

Furthermore, the damage caused to the environment had to be addressed through the establishment of designated investments. Initially, a first settlement forced VW to disburse around 3 billion dollars of funding to two environmental trusts. This figure was subsequently supplemented by approximately another 200 million dollars. The purpose of these investments was to subsidize activities which could decrease pollutant emissions of existing vehicles. In addition, a further 2 billion dollars were devoted to the development of Zero Emission Vehicles and their required charging stations.

To avoid the recurrence of *Dieseldate*, the underlying structure of VW and its *modus operandi* was adjusted. Therefore, high level managers, among whom the CEO of the company, were substituted. An executive commission, in charge of certifying the adherence to the Clean Air Act, was set up. A specific procedure was established to encourage and facilitate the communication of potential irregularities in products. In addition, employees were systematically interrogated to ascertain conformity to environmental standards.

At the same time, another agreement was signed between VW and the Federal Trade Commission. The latter accused the car company of using greenwashing ads to target eco-conscious consumers, and Volkswagen accepted to repair 14 billion dollars in damages to make up for these fraudulent commercial practices.

Regarding individual consumer claims, the majority were brought together in class actions, to ensure greater efficiency. VW was forced to pay a sum which ranged from 12 to 44 thousand dollars, on the basis of traveled mileage and year of production of the consumers' car.

Two class actions were also brought forth by the firm's investors, who asserted that Volkswagen had committed a security fraud. While one was dismissed, the other is still awaiting judgement in front of the court.

In conclusion, *Dieseldate* had a huge legal impact on Volkswagen in the US. The settlements accepted by the company allowed for a strong safeguard of consumer rights. In addition, environmental rights were also protected by virtue of the establishment of environmental funds. The crisis also shed a light on the efficiency of the US legal system. This is likely linked to the functional collective redress procedures available in the US and to the high-level coordination of the various branches of the DOJ. Unfortunately, as we will see in the next chapter, these same qualities do not characterize the EU legal system, and this had led to a more chaotic and fragmented management of the Volkswagen case in Europe.<sup>103</sup>

---

<sup>103</sup> Francesca Bertelli, "Dealing with the Dieseldate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

### 3.3. *Dieseldgate* in the EU

Even though the American legal proceedings on the *Dieseldgate* case have undoubtedly received more media coverage, the uncoordinated sequence of legal events in Europe is also interesting to investigate. In fact, the fraud conducted by Volkswagen reached well into the EU: Investigations have shown that the culprit device had also been installed in around 8 million cars sold in the European Union.<sup>104</sup>

A couple of months after the outbreak of *Dieseldgate*, the EP published a Resolution which denounced the actions of Volkswagen and required the company to collaborate with the entities which were carrying out inquiries.

In 2016, a European Action Plan was instituted, by means of an arrangement between the car company and the EU Commissioner for Justice, Consumer Protection and Gender Equality. This was articulated into three pillars - namely information, withdrawal, and renovation - which had to follow the directives of the German Motor Authority Transport Authority (KBA). The aim was to readjust the vehicles so that they would adhere to the law.

In addition, Volkswagen endorsed a Trust-Building Measure, by means of which it pledged to cooperate in the resolution of any issue that might arise pertaining to the fuel efficiency of the vehicles, successive to the eradication of the defeat device.<sup>105</sup>

In December 2020, a memorable decision by the European Court of Justice (ECJ) declared that defeat devices are illegal, and it is therefore forbidden to equip vehicles with this kind of software.<sup>106</sup>

Besides the initial case concerning the defeat device, Volkswagen was also involved in another set of cases, concerning the software update that had taken place after the outbreak of the scandal. This renovation had been approved by the KBA, which considered this new technology legal. As a result, it had been incorporated not only in Volkswagen cars, but also in vehicles of other companies such as Mercedes and BMW. This in turn sparked beginning of another set of lawsuits before 3 Austrian courts: the Austrian Supreme Court, Eisenstadt Regional Court and Klagenfurt Regional Court. They maintained that some clarifications were necessary before carrying out the preliminary ruling, so they proceeded to consult the ECJ.<sup>107</sup>

The initial question that had to be determined was the legality of the technical update. With this new feature, Volkswagen cars would adhere to the level of NOx emissions allowed by EU law exclusively when the

---

<sup>104</sup> European Consumer Organization (BEUC), "Seven Years of Dieseldgate: A Never-Ending Story," *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieseldgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieseldgate_7th_report.pdf).

<sup>105</sup> Francesca Bertelli, "Dealing with the Dieseldgate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>106</sup> European Consumer Organization (BEUC), "Seven Years of Dieseldgate: A Never-Ending Story," *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieseldgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieseldgate_7th_report.pdf).

<sup>107</sup> André Janssen, "The Dieseldgate Saga: The next Round," *Journal of European Consumer and Market Law* 11, no. 5 (November 1, 2022): 169–72, <https://kluwerlawonline.com/journalarticle/Journal+of+European+Consumer+and+Market+Law/11.5/EuCML2022028>.

external temperature was between 15°C and 33°C degrees and the altitude was under one thousand meters.<sup>108</sup> When it was above or below this “thermal window”, the apparatus which filters pollutant emissions would decrease its performance or stop working altogether. According to the producer, this characteristic was designed to preserve the engine and, in contrast with the previous device, was not devised solely for lab tests. However, on the 14 of July 2022, the ECJ ruled that the so-called thermal window is an illegal device which breaches Regulation (EC) N. 715/2007. The need to safeguard the motor is not a sufficient excuse, as the current technology generally offers solutions that do not entail turning off emission filters at specific temperatures. In addition, it is quite frequent in Europe to reach temperatures which diverge from those tolerated by the thermal window. This means that the filters of pollutant emissions would be turned off during the majority of the year. Due to the high occurrence of this event, it would be inaccurate to consider the thermal window device as an exception to the rule.

Secondly, another issue was brought before the ECJ, this time concerning consumer warranty rights under Directive 1999/44/EC. In fact, this document states that when a product is non-conforming to the required standards, the buyers are allowed to request the producer to fix or substitute it. In some cases, the consumer can also ask for a suitable price reduction or the annulation of the contract. The latter is not possible if the anomaly of the product is considered trivial. Therefore, the Court was faced with two controversies: Can a vehicle equipped with a “thermal window” device be considered as conforming to the law? And if not, should the vehicle’s’ irregularity be considered minor or major? The ECJ answered by stating that the presence of the aforementioned device certainly entails non-conformity to the standards, as similar vehicles are bound to have a higher quality. Secondly, the ECJ did not consider the presence of the defeat device as a minor inconvenience and therefore consumers had to be allowed to cancel their contracts.<sup>109</sup>

The decisions of the ECJ are likely to have a strong impact on national proceedings, allowing Courts of member states to qualify both defeat devices as illegal and to therefore recognize consumer rights. Nonetheless, at the moment, in the EU, the German proceeding is the only legal action against Volkswagen which has already been concluded successfully. In fact, even though various courts across Europe have endorsed consumer accusations, Volkswagen has consistently appealed their rulings, perhaps in the attempt to postpone legal action and prescribe the proceedings.<sup>110</sup>

Following what is known as ‘*the largest industrial fraud in modern history*,’<sup>111</sup> the EU’s inability to impose adequate sanctions appears outrageous. The limited results that have been obtained up to now reveal the total

---

<sup>108</sup> European Consumer Organization (BEUC), “Seven Years of Dieselgate: A Never-Ending Story,” *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieselgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieselgate_7th_report.pdf).

<sup>109</sup> André Janssen, “The Dieselgate Saga: The next Round,” *Journal of European Consumer and Market Law* 11, no. 5 (November 1, 2022): 169–72, <https://kluwerlawonline.com/journalarticle/Journal+of+European+Consumer+and+Market+Law/11.5/EuCML2022028>.

<sup>110</sup> European Consumer Organization (BEUC), “Seven Years of Dieselgate: A Never-Ending Story,” *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieselgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieselgate_7th_report.pdf).

<sup>111</sup> European Consumer Organization (BEUC), “Seven Years of Dieselgate: A Never-Ending Story,” *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieselgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieselgate_7th_report.pdf).

absence of coordinated Consumer Law in the EU. This impedes the coordinated defense of EU consumer rights, subjecting them to an uneven treatment, based on the jurisdiction of their country.

Another problematic aspect of legal proceedings against Volkswagen in the EU is the complete disregard for the environmental harm caused by the company. In fact, while the US obliged Volkswagen to invest a large sum in environmental trust funds and in the development of clean technology, no similar step was taken in the EU. For now, the company has paid no price to mitigate its harmful actions.<sup>112</sup>

### 3.4. *Dieseltgate* in Italy

As seen earlier, in general, the European legal approach to *Dieseltgate* appears to be less effective than the US one, also due to the fragmentary nature of European law. Nonetheless, compared to the legal instruments available in some of the EU member states, the Italian legal framework seems to be equipped with a discreet number of remedies to tackle greenwashing.

In Italy, legal actions against VW took two parallel paths and included both administrative and civil proceedings. In 2016, the *Autorità Garante della Concorrenza e del Mercato* (AGCM), which is the Italian competition authority, paved the way with the first public ruling on this case in the EU. The AGCM regarded the presence of the deceit device as an unfair commercial practice, following Paragraph 2 of Art. 20 of the Consumer Code. This, in combination with the advertising carried out by Volkswagen, which marketed the company as sustainable, could result in a possible distortion of consumer behavior. For this reason, the AGCM required VW AG and its Italian distributor a 5,000,000 euro amend – the maximum amount provided by Art. 27 of the Consumer Code. This appears to be a small figure for a company whose annual revenue surpassed 200 billion euros in 2015.<sup>113</sup> Nonetheless, Volkswagen later disputed this choice and appealed to the *Tribunale Amministrativo Regionale* (TAR) of Lazio. The objection was rejected, as the Court affirmed that VW had breached its duty to offer precise information to consumers. Consequently, Volkswagen questioned the first instance decision and filed an appeal. The *Consiglio di Stato*, which is the Italian supreme administrative court, was entrusted with the determination of the legitimacy of the TAR's decision.<sup>114</sup> However, the Court temporarily suspended its judgement and required the transmission of the acts to the ECJ, for the resolution of preliminary questions.<sup>115</sup> These issues, regarding the implementation of the *ne bis in idem* rule, should be clarified by the ECJ during the present year (2023).<sup>116</sup>

---

<sup>112</sup> Francesca Bertelli, "Dealing with the Dieseltgate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>113</sup> Francesca Bertelli, "Dealing with the Dieseltgate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>114</sup> Sara Gobbato, "Dieseltgate: The Italian Chapter," *European Competition and Regulatory Law Review (CoRe)* 5, no. 4 (2021): 407–10, <https://heinonline.org/HOL/P?h=hein.journals/core5&i=441>.

<sup>115</sup> Order N.68/2022 (Council of State, January 7, 2022).

<sup>116</sup> European Consumer Organization (BEUC), "Seven Years of Dieseltgate: A Never-Ending Story," *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieseltgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieseltgate_7th_report.pdf).

For what concerns civil proceedings, we can distinguish between those of collective and individual nature. The most important proceeding was collective and it was presented before the Civil Court of Venice by *Altroconsumo* in 2016, as a result of the AGCM ruling. The plaintiffs demanded the recognition of the unfair commercial practices carried out by Volkswagen. By virtue of this, *Altroconsumo* called for a payment of non-contractual damages, according to Art. 2043 of the Civil Code. The Court was expected to take into consideration damages of economic and non-economic nature. The former had to be equal to fifteen percent of the cost of the car, while the latter stemmed from the crime of fraud in trade, according to Art. 515 of the Criminal Code, and from the breach of consumer rights.

At the start of July 2021, the Court of Venice pronounced its decision and endorsed the class action. It estimated that around 63 thousand Italians had bought Volkswagen vehicles between August 2009 and September 2015 and were therefore eligible to participate in the legal action. Previous rulings advised this Court in considering the defeat device as an illegal tool aimed at altering emissions, allowing the unfair commercial practice to be certified. The recognition of this violation therefore generated consequences according to Art. 2043 of the Civil Code, which enforces the duty to pay a compensation to whoever causes unjust damages to someone else. The Court's ruling imposed both economic and non-economic damages. The first related to the violation of consumer's rights to making expenditure decisions free of unjust conditioning, according to Art. 2 of the Consumer Code.<sup>117</sup> This is because the judge deliberated that the consumers' judgement was swayed by Volkswagen's greenwashing, carried out through dishonest advertising and through the rigging of the vehicles. Therefore, if the consumers had been provided with truthful information, they might have made different purchasing decisions, opting for a car at a lower price or with a lower level of emissions.<sup>118</sup> Following Art. 1226 of the Civil Code, the compensation was determined by considering the price at which the cars were initially sold, which ranged between 10 and 30 thousand euros. Fifteen percent of the median value of the cars was taken into consideration, granting consumers 3 thousand euros of economic damages. In addition, 300 euros were summed to this value to repay the moral damages resulting from the fraud offence. By contrast, the judge disregarded potential non-economic damages deriving from the breach of consumer rights related to health and the environment, to avoid excessive payments.<sup>119</sup> In any case, Volkswagen has decided to appeal the first instance ruling. For this reason, any kind of compensation will have to attend the second instance decision. The proceeding has started in February of 2022 and the next hearing should take place in May 2023.<sup>120</sup>

---

<sup>117</sup> Sara Gobbato, "Dieselgate: The Italian Chapter," *European Competition and Regulatory Law Review (CoRe)* 5, no. 4 (2021): 407–10, <https://heinonline.org/HOL/P?h=hein.journals/core5&i=441>.

<sup>118</sup> Francesca Bertelli, "Dealing with the Dieselgate Scandal in the US and EU," *Italian Law Journal* 7, no. 2 (2021): 619–46, <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.

<sup>119</sup> Sara Gobbato, "Dieselgate: The Italian Chapter," *European Competition and Regulatory Law Review (CoRe)* 5, no. 4 (2021): 407–10, <https://heinonline.org/HOL/P?h=hein.journals/core5&i=441>.

<sup>120</sup> Altroconsumo, "Class Action Dieselgate: In Corso L'appello," Altroconsumo, November 27, 2022, <https://www.altroconsumo.it/auto-e-moto/automobili/news/altroconsumo-contro-volkswagen>.

### 3.5. *Dieseltgate* – a new type of greenwashing

As we have noted earlier, the *Dieseltgate* scandal is probably one of the most prominent cases of greenwashing. Upon a close look, it is different from many other greenwashing cases. Some scholars argue that this one represents a whole new type of greenwashing.

#### 3.5.1. *Dieseltgate* as deceptive manipulation

The discipline of corporate social responsibility is based on the belief that firms should commit to social and environmental causes. However, often, Corporate Social Responsibility (CSR) has limited itself to the inflated communication of any supposedly philanthropic action, with the sole objective of improving a company's image. Time after time, large discrepancies have been found between an enterprise's claims and its' actions, thus leading to accusations of greenwashing. According to the CSR studies, this phenomenon takes place when there is distance '*between symbolic and substantive actions.*'<sup>121</sup> This approach has concentrated mainly on two forms of greenwashing, "attention deflection" and "decoupling".

However, sometimes, greenwashing does not solely concern lying. The Communicative Constitution of Organization (CCO) approach outlines a novel form of greenwashing, namely "deceptive manipulation". This view draws from the linguistic approach to social sciences, which claims that language is a tool which participates in the production of the truth. According to the CCO perspective, CSR communications are a constitutive force for businesses and not merely a way to describe the *status quo*. The main pillars of CSR are the internal and external documents which serve as representations of the company. As there is often a gap between a firm's appearance and the truth, these can affect the business in two ways. In the best-case scenario, this discrepancy will be an incentive towards the implementation of social and environmental concerns among the firm's practices. However, in most cases, the company will prefer to sweep the dust under the rug by committing immoral or illegal actions to cover its false claims. In this case, greenwashing goes from being just "green make-up" to "deceptive manipulation".<sup>122</sup>

A comprehensive study carried out by Alfonso Siano et al<sup>123</sup> evaluated the *Dieseltgate* scandal, to test whether it could be considered a case of deceptive manipulation. This research gathers qualitative and quantitative information from several different sources: 3 CSR reports published by Volkswagen between 2012 and 2014, over 1000 titles of American newspapers and conversations with executives of the company. The variation of these sources was useful to establish Volkswagen's image both from the inside and the outside of the company.

---

<sup>121</sup> Alfonso Siano et al., "More than Words': Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal," *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

<sup>122</sup> Alfonso Siano et al., "More than Words': Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal," *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

<sup>123</sup> Alfonso Siano et al., "More than Words': Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal," *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>

The first part of the research was the content analysis of CSR statements. This phase was essential to investigate what image the company wanted to project outwardly. The reports comprehended a wide range of environmental promises, which increased over the course of time. They also laid out the firms' intention to lead the way with respect to environmental commitments, especially relating to the decrease of carbon dioxide emissions.

The next step consisted in interviewing 8 managers located in 3 different continents. The purpose of this exercise was to identify the attitude towards sustainability within the company. Was its' green image being projected inside, as well as outside? According to the interviews, the answer to this question was affirmative. The respondents affirmed that there was a general knowledge of Volkswagen's sustainability practices and CSR reports. In addition, high-level administrators believed the company excelled in its green conduct, especially if compared to other car companies. The majority of the staff gave great importance to the theme of sustainability and took part in CSR initiatives.

Lastly, the researchers carried out an inquiry of the titles of American newspapers concerning the scandal, published in the month successive to its outbreak. The findings showed a prevalence of terms related to corporate fraud, which were detected around 500 times. This showed that the media's perception of the central element of Volkswagen's greenwashing was the intentional deception and manipulation of consumers.

The combination of this three-step analysis has produced interesting results. It has confirmed the presence of the company's purposeful green representation to its stakeholders and its employees. However, constructing a sustainable appearance does not necessarily lead to establishing a sustainable business. In this case, the pressure deriving from the company's green portrayal did not function as an incentive to aim high. Instead, it fostered an immoral and illegal conduct, which led to the scandal. In addition, the media, who are generally said to have a monitoring role, seem to have grasped the manipulative nature of the *Dieseldate*, in which Volkswagen did not limit itself to exaggerated or false claims, but degenerated in the deceptive alteration of vehicles. Therefore, these findings seem to confirm the CCO viewpoint, characterizing the scandal as the epitome of an unexplored form of greenwashing: "deceptive manipulation". This phenomenon takes place when the gap between a firm's' declarations and the reality is filled with irresponsible behavior, attempting to dissimulate the lies.<sup>124</sup>

### 3.5.2. *Dieseldate* as high-tech greenwashing

From a distance, the *Dieseldate* scandal might appear similar to many other cases of greenwashing involving prominent car companies. However, there is one aspect in which this case differs completely from others: the employment of technology as a tool to carry out greenwashing. In fact, in this case, the deceit was carried out

---

<sup>124</sup> Alfonso Siano et al., "More than Words': Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal," *Journal of Business Research* 71 (February 2017): 27–37, <https://doi.org/10.1016/j.jbusres.2016.11.002>.

with the support of an ingenious program. This classifies *Dieseltgate* as belonging to a brand-new form of greenwashing: technological greenwashing.

The dilemma of discrepancies between the testing results & the real-world performance of a product is often at the heart of greenwashing scandals. For instance, a commonplace accusation concerns the evaluation fuel-efficiency. Many complaints have been raised regarding the overestimation by environmental entities of the number of kilometers than a car can travel with a given quantity of fuel.

Specifically, Ford has faced two important class actions in the US, claiming that it had distorted the real fuel efficiency of two models of hybrid cars, namely Fusion and C-Max SE. Apparently, the publicity praised these two models for their 47-mpg fuel efficiency, employing the data presented by the EPA. However, as stated by the accusers, the EPA's evaluation was not meant to describe the real-world performance of the cars, but rather to test the maximum fuel mileage in optimal conditions. This is because the EPA's exams are carried out in a laboratory, at a controlled speed and with the aid of an expert driver, so they are obviously not relevant to normal driving conditions. In fact, the consumers discovered that the cars at issue achieved 39 and 37 miles-per-gallon at best. Therefore, the way in which the cars were advertised was misleading because it deliberately included the assessment of the EPA to brag about the supposed characteristics of the cars, while leaving out important details. Ford completely omitted the specific context in which the tests were carried out, inducing the consumer to believe that it was indeed the performance of the car in normal driving conditions.

Other similar accusations were made against Hyundai and Kia cars, claiming that the procedure of the assessment itself was inadequate and did not adhere to the criteria imposed by the environmental regulator.

All these cases, including *Dieseltgate*, concern vehicles which turned out to be more polluting than what was advertised by their producers. As a result, the environment was harmed, and consumer trust was lost. However, in the Volkswagen case, the most disturbing part is how consumers were deceived. In this case, greenwashing did not limit itself to making environmental statements which could not be backed by facts. Instead, technology was used to deceive the consumer into believing the company's' lies. For this reason, *Dieseltgate* is an example of technological greenwashing.

There is another relevant case of technological greenwashing, which took place around the same time as *Dieseltgate*. In 2015, a class action started in Los Angeles against Ford. The latter had asserted that a Fusion Hybrid update would allow it to function better and increase its fuel-efficiency. Suspicious of this new feature, the main litigant of this legal action, Dave DeLuca, decided to test the car himself. According to him, the only variation which could be observed concerned the numbers on the monitor. However, in practice, the fuel-efficiency of the car stayed the same and the visible numbers were therefore fabricated. In addition, he also tested the non-hybrid version of the same car, discovering that the numbers shown on the monitor were correct.



Turning back to the *Dieseldate*, in this case more than ever the greenwashing was deeply rooted in technology. In fact, a high-tech program was hidden in the depths of the car where no one could perceive its actions. This software could perceive when the vehicle was being assessed and therefore trigger the limitation of emission only in that instance. When the car went back to regular driving conditions, the reduction of emissions was turned off. This is likely to be one of the first of a long series of cases involving technological greenwashing.<sup>125</sup>

### 3.6. How can legislation keep up with greenwashing?

The *Dieseldate* case proves two points. First, greenwashing is an ever-changing phenomenon and therefore legislators should take this into account and make sure that laws keep pace with its evolution. Second, the legislation on greenwashing in the EU and Italy still has plenty of room for improvement. The good news is that some legal developments are already taking place.

In its *Work Programme 2023* the European Commission has disclosed the intention to update the Consumer Protection Cooperation Regulation (Regulation (EU) 2017/2394). The amendments should increase the tools in the hands of the Consumer Protection Cooperation Network to tackle breaches that take place on European scale.

Another fundamental development is the Directive on Representative Actions for the Protection of the Collective Interests of Consumers, commonly known as RAD (Directive (EU) 2020/1828), granting the possibility for representative actions at EU level. This act should have been translated into Member States' national law by December 2022, although not all nations managed to comply with this due date. It must be noted that the directive leaves a wide margin of decision-making up to the national legislators, which will be responsible for making the right choices. The most important aspect pertains to the cost of legal proceedings, which should not become an insurmountable obstacle or a deterrent. To avoid this, the RAD contemplates various solutions, among which '*public funding, structural support for qualified entities, and limitation of the applicable court or administrative fees.*'<sup>126</sup> A further issue concerns the incompatibility between Private International Law and class actions. The aforementioned directive permits certain designated entities to take collective actions to a court that differs from the one to which they would belong. However, it does not specify how this could create a conflict with Private International Law. Up to now, international collective actions in the EU have always taken place in the litigant's court.

---

<sup>125</sup> Eric L. Lane, "Volkswagen and the High-Tech Greenwash," *European Journal of Risk Regulation* 7, no. 1 (March 2016): 32–34, <https://doi.org/10.1017/s1867299x00005341>.

<sup>126</sup> European Consumer Organization (BEUC), "Seven Years of Dieseldate: A Never-Ending Story," *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieseldate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieseldate_7th_report.pdf).

Of course, these two developments are not specifically aimed at greenwashing, but rather at consumer protection in general. However, the increasing proliferation of greenwashing leads this author to believe that they could represent a useful tool to counteract this phenomenon.<sup>127</sup>

---

<sup>127</sup> European Consumer Organization (BEUC), “Seven Years of Dieselgate: A Never-Ending Story,” *BEUC*, December 12, 2022, [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieselgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieselgate_7th_report.pdf).

# Conclusion

While the frequency of extreme weather phenomena is increasing, the same goes for the awareness about the anthropogenic nature of global warming. The need to embrace environmental sustainability is gaining momentum across civil society, businesses, and governments throughout the world. For the most part and at an increasing pace, individuals are doing their part by reconsidering their spending habits and decreasing their carbon footprint, businesses are rethinking their operations in order to provide greener products and services, and governments are enacting policies and legislation that encourages a more sustainable society. The magnitude of the task requires a joint effort by all actors.

However, one obstacle is getting in the way of this positive dynamic in favor of environmental sustainability: greenwashing. As we have seen in this thesis, greenwashing is the deceitful promotion of goods and services as environmentally friendly. It is a plague to society because it not only deceives consumers and investors but also triggers a lack of trust towards green products. Hence, it is fundamental to find effective ways to prevent this phenomenon.

As we have established in paragraph 1.3., one of the factors which can most effectively deter greenwashing is the presence of adequate laws. For this reason, this thesis aims at exploring which legislation can apply to greenwashing in the EU and Italian context.

The first chapter opens with an attempt at defining the term “greenwashing” and follows by illustrating the different manifestations of this phenomenon. It considers factors which can inhibit or encourage greenwashing and then examines the multitude of repercussions it can have. It closes by considering some adjacent phenomena.

In the second chapter, the normative framework of greenwashing is laid out. In particular, the first section focuses on the EU context, while the second considers the Italian one.

The third chapter describes real-life application of these norms by narrating one of the best-known cases of greenwashing: the Volkswagen scandal, also known as *Dieseldgate*. Paragraph 3.1 outlines the background to the case and the course of events which led to it. The next 3 paragraphs carry out a comparative analysis of the *Dieseldgate* case in 3 different contexts: the US, the EU and Italy. This juxtaposition serves the purpose of highlighting the voids present in the EU and Italian laws which tackle greenwashing. In fact, *Dieseldgate* illustrates a greater ability at punishing greenwashing in the US. Following this section, an analysis of the peculiar nature of this greenwashing case is carried out. In fact, *Dieseldgate* appears dissimilar to other kinds of greenwashing and has been categorized as “high-tech greenwashing” or “deceptive manipulation”. The detailed study of this phenomenon allows us to acknowledge its complexity and everchanging nature. Drawing from this observation, the last paragraph of this chapter proposes how legislation could be changed – or how it is already developing – in order to keep up with this phenomenon.

Having established the tremendous impact that greenwashing can have on our environment and our society, this research has focused on one of the most effective tools to prevent this phenomenon, namely an effective legal framework. However, as seen in paragraph 1.3, many other elements come into play in the greenwashing game. These range from external non-economic factors, such as governmental policies, to economic, organizational, or psychological factors. For this reason, further studies should examine these aspects in order to provide a comprehensive view on all the ways in which we can stop greenwashing.

# Riassunto in italiano

## Normativa greenwashing in UE e in Italia: Il caso *Dieseldate*

Questa tesi esplora l'attualissimo fenomeno del greenwashing, approfondendo le normative che lo regolano e analizzando uno dei più celebri esempi di questo fenomeno: il caso *Dieseldate*. La tesi è suddivisa in tre capitoli, che sono a loro volta divisi in più paragrafi.

### I. Definire il greenwashing

Il primo capitolo approfondisce il significato del termine "greenwashing", che si presenta come un fenomeno complesso e interdisciplinare. Una possibile definizione è stata proposta dal Oxford English Dictionary, che lo considera come la creazione o propagazione di un'immagine ambientalista fuorviante e senza fondamenta. Il termine ha avuto origine a metà degli anni Ottanta ed è stato utilizzato per la prima volta dal ricercatore Jay Westerveld in un suo testo per connotare una pratica comunemente utilizzata da alcuni alberghi. Infatti, spesso gli hotel incoraggiavano i loro ospiti a riutilizzare gli asciugamani prima di metterli a lavare e sostenevano che questa fosse una scelta amica dell'ambiente. Tuttavia, secondo Westerveld, la verità era un'altra: più che un risparmio ambientale, questa pratica comportava un risparmio economico per gli albergatori, diminuendo il consumo di acqua dell'hotel. Il termine "greenwashing" - e il fenomeno associato ad esso - hanno assunto con il tempo maggiore rilevanza nella nostra società. Infatti, la crescente attenzione all'ambiente porta i consumatori ad avere un occhio di riguardo per le attività che si professano sostenibili. Tuttavia, non è tutto oro quel che luccica: spesso queste aziende, anziché avere un reale interesse per la tutela ambientale, cercano solamente di incrementare i loro guadagni. Le pratiche più diffuse sono quelle meramente simboliche e prive di un reale contributo per l'ambiente, anche per via dello sforzo e del costo minore che comportano. I consumatori green, ignari, diventano così facili prede per le aziende che vogliono lucrare su una sostenibilità di facciata. Quando avviene questo, possiamo parlare di greenwashing.

È importante considerare che non esiste una sola tipologia di ambientalismo di facciata. Una distinzione rilevante è quella tra greenwashing esplicito ed implicito. Nel primo caso, l'azienda fornisce informazioni fuorvianti o false al consumatore. Nel secondo caso, l'inganno è più sottile: anziché dichiarare il falso, la pubblicità si appella al subconscio del consumatore, utilizzando immagini e colori associati all'ambiente per manipolarlo. Un altro aspetto da considerare è l'oggetto del greenwashing. Talvolta si tratta di uno specifico prodotto o servizio, che viene venduto come sostenibile. Altre volte, il greenwashing avviene su ampia scala e tenta di dipingere di verde un'azienda intera.

Una volta analizzate le categorie del greenwashing, possiamo studiarne le cause, o meglio i fattori che possono fermare o incoraggiare questo fenomeno. Una delle più rilevanti suddivisioni distingue tra elementi esterni ed interni. I primi possono a loro volta essere suddivisi tra fattori economici e non economici. Questi ultimi comprendono le normative sul greenwashing, le politiche ambientali dei governi e la pressione dei media,

delle ONG e degli attivisti per l'ambiente. Invece, i fattori esterni di natura economica includono la domanda di prodotti sostenibili che viene dai consumatori, la spinta "green" degli investitori e la concorrenza tra aziende dello stesso settore. Per quanto riguarda i fattori interni del greenwashing, possiamo distinguere tra quelli organizzativi e quelli individuali. Un'ampia gamma di fattori organizzativi interni possono incentivare il greenwashing. Ad esempio, la dimensione e le caratteristiche di un'azienda possono influenzare il rischio correlato ad azioni greenwashing, rendendo queste pratiche più o meno convenienti. Inoltre, la struttura di incentivi e l'etica aziendale possono incentivare o disincentivare il greenwashing. Un altro fattore può essere lo scetticismo verso il cambiamento. Per quanto riguarda i fattori organizzativi individuali, dobbiamo considerare che esistono alcuni fattori psicologici che possono portare un individuo, come un CEO, a commettere degli errori. A volte il problema può essere l'incapacità di contestualizzare le situazioni; altre volte può riguardare la necessità di avere gratificazioni istantanee; in ultimo, può esistere un bias che non permette di valutare realisticamente la probabilità degli eventi.

La tesi prosegue analizzando gli effetti, principalmente negativi, del greenwashing. Paradossalmente, sono proprio le aziende che praticano greenwashing a rischiare le maggiori conseguenze. Se da una parte nell'immediato l'impresa potrebbe ottenere del profitto e una nuova fetta di mercato grazie a questa pratica, lo stesso non vale nel lungo termine. Infatti, con il passare del tempo, il rischio di essere smascherati aumenta. Qualora dovesse succedere, la ditta subirà un gran numero di effetti negativi. In primo luogo, patirà dei gravi danni reputazionali, che si ripercuoteranno su tutti gli attori che si interfacciano con l'azienda. In primis, i consumatori si sentiranno ingannati e probabilmente decideranno di spendere altrove, causando una diminuzione delle vendite. Lo stesso vale per gli investitori, che potrebbero perdere la fiducia nel settore "green" e decidere di investire altrove. In terzo luogo, la scoperta di una pratica così immorale potrebbe danneggiare l'ambiente lavorativo interno all'azienda, portando ad una mancanza di fiducia anche da parte dei dipendenti. Ma oltre a tutti i problemi legati alla mancanza di fiducia, ce n'è uno ancora più grande, che potrebbe o dovrebbe disincentivare queste pratiche in generale: le conseguenze legali. Infatti, in presenza di un quadro legislativo adeguato, l'ambientalismo di facciata dovrebbe portare ad importanti ripercussioni, obbligando l'azienda colpevole a riparare i danni arrecati. In pratica però, come analizzeremo più avanti, i paesi non sono sempre dotati di normativa a tal fine adeguata.

## II. Come è regolamentato il greenwashing?

Il secondo capitolo di questa tesi si concentra sulla normativa applicabile al fenomeno del greenwashing. In principio, viene esplorato il contesto Europeo. Dal 2015 in poi, l'Unione Europea ha preso diversi impegni inerenti alla mitigazione del cambiamento climatico. Il primo traguardo importante ha avuto luogo nel 2015, con l'Accordo di Parigi sul Clima, che è diventato il primo accordo globale sul clima con forza di legge. In seguito, nel 2019, con il Green Deal, l'Unione Europea si è ripromessa di perseguire due fondamentali obiettivi: la riduzione del 55% delle emissioni di gas serra entro 2030 e il conseguimento delle emissioni nette zero entro il 2050. Per raggiungere questi obiettivi ambiziosi, sarà necessario investire oltre 250 miliardi

di euro in attività sostenibili, da qui al 2030. Poiché ciò comporta il coinvolgimento di una moltitudine di investitori - pubblici e privati - è necessario aumentare la loro fiducia nel settore green. A tal fine, occorre ottenere una maggiore trasparenza nel settore finanziario: a questo proposito, si segnalano alcuni importanti sviluppi legislativi. Tra questi, i più rilevanti sono la Tassonomia Europea (composta dal Regolamento (UE) 2020/852 e dai suoi atti delegati), il Regolamento (UE) 2019/2088 relativo all'Informativa sulla Sostenibilità nel settore dei Servizi Finanziari e il superamento della Direttiva 2014/95/EU sulla Comunicazione di Informazioni di Carattere Non-finanziario con la Direttiva 2022/2464 sulla Rendicontazione Societaria di Sostenibilità.

Il capitolo prosegue trattando la normativa italiana sul greenwashing. In Italia mancano norme specificamente pensate per affrontare il greenwashing, fatta eccezione per il Decreto Legislativo n. 254 del 2016, che ha recepito la Direttiva 2014/95/EU. Al netto di tale carenza, esiste un'ampia gamma di strumenti applicabili al fenomeno. In primis, gli Articoli 2 e 3 della Costituzione della Repubblica Italiana delineano implicitamente l'esistenza di una serie di diritti del cittadino in quanto consumatore. Inoltre, la recente legge costituzionale n.1 del 2022 ha inserito esplicitamente la tutela dell'ambiente nel testo degli articoli 9 e 41. Un'altra arma contro il greenwashing è il Codice del Consumo, che determina l'illegalità delle pratiche commerciali scorrette e, in particolare, ingannevoli, tra cui può figurare il greenwashing. Anche il Codice civile può tutelare dal greenwashing, attraverso l'utilizzo degli Artt. 2598-2600, che regolano la concorrenza sleale. Un ulteriore strumento utile è il Decreto Legislativo n.145 del 2007, che regola la disciplina della pubblicità ingannevole. In ultimo, abbiamo uno strumento non avente forza di legge, ma che ha comunque delle importanti implicazioni pratiche: il Codice di Autodisciplina Pubblicitaria, aggiornato regolarmente dall'Istituto di Autodisciplina Pubblicitaria. Quest'ultimo è un ente autonomo, al quale però aderiscono la maggior parte degli operatori nel settore pubblicitario. Per questo, la maggior parte degli enti è tenuto a seguirlo, nonostante non abbia valore di legge. L'articolo 12 di questo codice è dedicato alla salvaguardia dell'ambiente e accenna al tema del greenwashing.

### III. Il caso Dieselgate

Il terzo capitolo, suddiviso in cinque parti, approfondisce il caso *Dieselgate*, considerato una delle più rilevanti truffe dell'epoca moderna. La prima parte illustra il contesto e gli avvenimenti che hanno riguardato il caso. Tutto ebbe inizio nel 2014, a seguito di uno studio portato avanti dall'*International Council on Clean Transportation* (ICCT), che intendeva misurare il livello di emissioni inquinanti prodotte dalle macchine diesel. L'ICCT ha esaminato tre modelli di macchine Volkswagen (VW) ed i risultati hanno evidenziato una differenza sostanziale tra le emissioni prodotte durante i test di laboratorio e quelle prodotte in condizioni di guida normali. Questa informazione è stata successivamente trasmessa alla *Environmental Protection Agency* (EPA), che ha aperto un'indagine contro VW.

Inizialmente, VW ha tentato di difendersi affermando che i risultati riscontrati dipendevano da un problema tecnico. La compagnia automobilistica ha iniziato a richiamare i suoi veicoli a diesel e si è ripromessa di aggiornare il loro software. Tuttavia, questo non è bastato ad evitare lo scoppio di Dieselgate. A settembre, l'EPA ha pubblicato i risultati dei suoi studi, affermando che VW aveva fornito i suoi modelli a diesel di un cosiddetto *Defeat Device*. Si trattava di un programma pensato appositamente per diminuire le emissioni del veicolo solo durante i test necessari per l'omologazione delle auto. In questo modo, le auto potevano risultare meno inquinanti di quanto non fossero realmente, ingannando autorità e consumatori. Le indagini hanno successivamente rivelato la presenza di questo software su 11 milioni di macchine prodotte tra il 2009 e il 2015.

Il paragrafo successivo si concentra sui risvolti legali della vicenda negli Stati Uniti, ovvero il luogo dove è scoppiato inizialmente lo scandalo. Il sistema legale americano ha dimostrato una grande capacità di sanzionare il comportamento fraudolento di Volkswagen. La compagnia ha dovuto firmare una serie di accordi, impegnandosi a rimediare al danno economico e ambientale con una serie di provvedimenti. In primis, le è stato imposto un pagamento di un miliardo e mezzo di dollari per aver violato il *Clean Air Act*. In secondo luogo, un'ampia gamma di diritti è stata concessa ai loro acquirenti, che hanno potuto scegliere se rendere il veicolo, farlo aggiornare o ottenere l'annullamento gratuito del contratto di leasing. Inoltre, Volkswagen è stata costretta a investire una somma cospicua in fondi fiduciari ambientali e in tecnologia a zero emissioni. Per evitare il ripetersi di Dieselgate, la struttura organizzativa dell'azienda è stata smantellata e riorganizzata e i vertici sono stati rimossi.

Il capitolo prosegue trattando il caso Dieselgate nel contesto Europeo. A differenza di quanto avvenuto negli Stati Uniti, in Europa sono mancati gli strumenti adeguati ad affrontare questo scandalo, sia a livello di Unione Europea che a livello degli stati membri. Nonostante la Corte di Giustizia dell'Unione Europea si sia pronunciata a dicembre 2020, dichiarando che i *defeat device* sono illegali, ad oggi un solo processo in Europa, avvenuto in Germania, si è concluso ottenendo qualche risultato. In tutti gli altri casi, VW ha sistematicamente utilizzato il ricorso in appello, rallentando l'iter processuale. Inoltre, in alcuni procedimenti nazionali, i giudici competenti hanno dovuto chiedere chiarimenti alla Corte di Giustizia dell'Unione Europea su come procedere. La reazione Europea a Dieselgate dimostra quindi una mancanza di coordinazione tra gli stati membri, che rischia di portare ad un trattamento discriminatorio dei consumatori, basato sul loro luogo di provenienza. Inoltre, l'UE non è riuscita a dare il giusto peso al danno ambientale causato da VW. Infatti, in UE la compagnia non è stata costretta a rimediare ai danni ambientali attraverso investimenti mirati.

Per quanto riguarda il caso Dieselgate in Italia, quest'ultimo viene descritto nel paragrafo a seguire. In Italia i processi contro Volkswagen hanno viaggiato su due binari paralleli: quello amministrativo e quello civile. Nel 2016 l'Autorità Garante della Concorrenza e del Mercato (AGCM) ha considerato la presenza del *defeat device* come una pratica commerciale scorretta e ha imposto un'ammenda di 5 milioni di euro. VW ha contestato questa decisione, ricorrendo al Tribunale Amministrativo Regionale (TAR) del Lazio, che ha confermato la



pronuncia dell'AGCM. A questo punto, VW ha proposto ricorso contro il verdetto del TAR, rivolgendosi al Consiglio di Stato. Quest'ultimo ha effettuato un rinvio pregiudiziale alla Corte di Giustizia dell'Unione Europea, della quale si attende risposta entro la fine del 2023, per poter proseguire con il processo. Per quanto riguarda i procedimenti civili, invece, il più rilevante è un processo collettivo iniziato dalla associazione dei consumatori *Altroconsumo*, che nel 2016 ha portato Volkswagen davanti al giudice civile di Venezia, invocando il riconoscimento delle pratiche commerciali di VW come scorrette e, di conseguenza, il pagamento di danni non-contrattuali. Il Tribunale di Venezia ha riconosciuto gran parte delle richieste di *Altroconsumo*, garantendo ai consumatori 3 mila euro di danni economici e 300 euro di danni morali. Tuttavia, anche in questo caso VW ha ricorso in appello. Il secondo grado di giudizio è iniziato a febbraio 2022 e la prossima udienza è attesa a maggio 2023.

Successivamente, il capitolo spiega perché il greenwashing di VW si differenzia da molti casi simili. Anzitutto, in questo caso, il fenomeno è caratterizzato da una componente fortemente tecnologica. Inoltre, secondo alcuni studi, questo esempio appartiene alla categoria della *deceptive manipulation*, una forma di greenwashing nella quale alla menzogna seguono azioni immorali o illegali per insabbiare quest'ultima.

Nell'ultima sezione del capitolo ci si interroga sugli sviluppi normativi, che in parte hanno già avuto luogo, necessari per assicurare che la legge rimanga al passo con questo fenomeno in continua evoluzione.

# Bibliography

- Altroconsumo. “Class Action Dieselgate: In Corso L’appello.” Altroconsumo, November 27, 2022. <https://www.altroconsumo.it/auto-e-moto/automobili/news/altroconsumo-contro-volkswagen>.
- Art. 2-3, Constitution of the Italian Republic (1948). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:costituzione>.
- Art. 20-27, Legislative Decree n. 206 of 2005 (Consumer Code), [www.normattiva.it](http://www.normattiva.it) § (2007). <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-09-06;206>.
- Baldini, Maria Assunta, Giovanni Bronzetti, and Graziella Sicoli. “Non-Financial Information: From Voluntary to Compulsory Compliance. The State of the Art in Italian Context.” In *Nuove Frontiere Del Reporting Aziendale : La Comunicazione Agli Stakeholders Tra Vincoli Normativi E Attese Informative*, 757–72. Milano: Franco Angeli, 2018. <http://digital.casalini.it/9788891786876>.
- Bertelli, Francesca. “Dealing with the Dieselgate Scandal in the US and EU.” *Italian Law Journal* 7, no. 2 (2021): 619–46. <https://heinonline.org/HOL/P?h=hein.journals/italj7&i=639>.
- Blome, Constantin, Kai Foerstl, and Martin C. Schleper. “Antecedents of Green Supplier Championing and Greenwashing: An Empirical Study on Leadership and Ethical Incentives.” *Journal of Cleaner Production* 152 (May 2017): 339–50. <https://doi.org/10.1016/j.jclepro.2017.03.052>.
- Bloomberg. “The Relationships between SFDR, NFRD and EU Taxonomy.” Bloomberg, March 31, 2021. <https://www.bloomberg.com/professional/blog/the-relationships-between-sfdr-nfrd-and-eu-taxonomy/>.
- Braga Junior, Sergio, Marta Pagán Martínez, Caroline Miranda Correa, Rosamaria Cox Moura-Leite, and Dirceu Da Silva. “Greenwashing Effect, Attitudes, and Beliefs in Green Consumption.” *RAUSP Management Journal* 54, no. 2 (April 8, 2019): 226–41. <https://doi.org/10.1108/rausp-08-2018-0070>.
- Constitutional Law n.1 of 2022 (2022). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge.costituzionale:2022-02-11;1!vig=2023-02-12>.
- Correa, Caroline, Sergio Junior, and Dirceu Silva. “The Social Control Exerted by Advertising: A Study on the Perception of Greenwashing in Green Products at Retail.” *British Journal of Education, Society & Behavioural Science* 19, no. 2 (January 10, 2017): 1–9. <https://doi.org/10.9734/bjesbs/2017/29819>.
- Delmas, Magali A., and Vanessa Cuerel Burbano. “The Drivers of Greenwashing.” *California Management Review* 54, no. 1 (October 1, 2011): 64–87. <https://doi.org/10.1525/cmr.2011.54.1.64>.
- E. Contreras-Pacheco, Orlando, and Cyrlene Claasen. “Fuzzy Reporting as a Way for a Company to

Greenwash: Perspectives from the Colombian Reality.” *Problems and Perspectives in Management* 15, no. 2 (September 27, 2017): 525–35. [https://doi.org/10.21511/ppm.15\(si\).2017.06](https://doi.org/10.21511/ppm.15(si).2017.06).

European Central Bank. “Guide on Climate-Related and Environmental Risks.” *European Central Bank*, November 25, 2020.

<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202011finalguideonclimate-relatedandenvironmentalrisks~58213f6564.en.pdf?1f98c498cb869019ab89194a118b9db4>.

European Commission. “A European Green Deal.” European Commission. Accessed February 7, 2023. [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en).

European Commission. “Climate Negotiations.” European Commission - Climate Action. Accessed February 7, 2023. [https://climate.ec.europa.eu/eu-action/international-action-climate-change/climate-negotiations\\_en#paris-agreement](https://climate.ec.europa.eu/eu-action/international-action-climate-change/climate-negotiations_en#paris-agreement).

European Commission. “Corporate Sustainability Reporting.” European Commission - Finance, 2023. [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en).

European Commission. “Platform on Sustainable Finance.” European Commission - Finance. Accessed February 10, 2023. [https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance_en).

European Commission. “Press Corner.” Press release “Screening of websites for ‘greenwashing’: half of green claims lack evidence,” January 28, 2021. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_269](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269).

European Commission. “Renewed Sustainable Finance Strategy and Implementation of the Action Plan on Financing Sustainable Growth.” European Commission - Finance. Accessed February 7, 2023. [https://finance.ec.europa.eu/publications/renewed-sustainable-finance-strategy-and-implementation-action-plan-financing-sustainable-growth\\_en](https://finance.ec.europa.eu/publications/renewed-sustainable-finance-strategy-and-implementation-action-plan-financing-sustainable-growth_en).

European Commission. “Taxonomy Regulation.” European Commission - Finance. Accessed February 7, 2023. [https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation\\_en](https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/taxonomy-regulation_en).

European Commission, and Directorate-General for Financial Stability, Financial Services and Capital Markets Union. Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for

determining whether that economic activity causes no significant harm to any of the other environmental objectives, Europa.eu § (2021). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R2139>.

European Consumer Organization (BEUC). “Seven Years of Dieselgate: A Never-Ending Story.” *BEUC*, December 12, 2022. [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130\\_Dieselgate\\_7th\\_report.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2022-130_Dieselgate_7th_report.pdf).

European Parliament, and Council of the European Union. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (2019). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2088&qid=1674750456435>.

Financial Times. “‘Green Hushing’ on the Rise as Companies Keep Climate Plans from Scrutiny.” *Financial Times*, October 18, 2022. <https://www.ft.com/content/5fd513c3-e23f-4daa-817e-aa32cf6d18d4>.

Forum per la Finanza Sostenibile. “EU Taxonomy and Other Regulations on Sustainable Finance: Implications and Outlook for Financial Players 2.” *Forum per La Finanza Sostenibile*, September 9, 2021. [https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2021/09/Tassonomia-UE_ENG_WEB.pdf).

Forum per la Finanza Sostenibile. “Greenwashing and Sustainable Finance: The Risks of Greenwashing and Possible Resources to Counteract It.” *Forum per La Finanza Sostenibile*, November 8, 2022. [https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing\\_ENG\\_WEB.pdf](https://finanzasostenibile.it/wp-content/uploads/2022/11/Greenwashing_ENG_WEB.pdf).

Freitas Netto, Sebastião Vieira de, Marcos Felipe Falcão Sobral, Ana Regina Bezerra Ribeiro, and Gleibson Robert da Luz Soares. “Concepts and Forms of Greenwashing: A Systematic Review.” *Environmental Sciences Europe* 32, no. 1 (February 11, 2020). <https://doi.org/10.1186/s12302-020-0300-3>.

Garsten, Ed. “Alcantara Wins Major Court Battle against Greenwashing.” *Forbes*, December 8, 2021. <https://www.forbes.com/sites/edgarsten/2021/12/08/alcantara-wins-major-court-battle-against-greenwashing/amp/>.

Gobbato, Sara. “Dieselgate: The Italian Chapter.” *European Competition and Regulatory Law Review (CoRe)* 5, no. 4 (2021): 407–10. <https://heinonline.org/HOL/P?h=hein.journals/core5&i=441>.

Istituto di Autodisciplina Pubblicitaria. “Storia.” IAP. Accessed February 14, 2023. <https://www.iap.it/conoscere-iap/storia/>.

Istituto di Autodisciplina Pubblicitaria (IAP). “Codice Dell’Autodisciplina Pubblicitaria (68esima Edizione).” IAP, February 9, 2021. <https://www.iap.it/wp-content/uploads/2022/08/Codice-68a-edizione-9-febbraio-2021-modifica-art.-43.pdf>.

- Janssen, André. “The Dieseltgate Saga: The next Round.” *Journal of European Consumer and Market Law* 11, no. 5 (November 1, 2022): 169–72.  
<https://kluwerlawonline.com/journalarticle/Journal+of+European+Consumer+and+Market+Law/11.5/EuCML2022028>.
- Kim, Eun-Hee, and Thomas P. Lyon. “Greenwash vs. Brownwash: Exaggeration and Undue Modesty in Corporate Sustainability Disclosure.” *Organization Science* 26, no. 3 (June 2015): 705–23.  
<https://doi.org/10.1287/orsc.2014.0949>.
- Landini, Sara, Joseph Allan MacDougald, Marisa Maraffino, Adolfo Paolini, Giorgio Pedrazzi, Gabriella Perotti, Giovanni Posio, et al. *The Dieseltgate: A Legal Perspective*. Edited by Marco Frigessi di Rattalma. 1st ed. Cham, Switzerland: Springer International Publishing, 2017.  
<https://doi.org/10.1007/978-3-319-48323-8>.
- Lane, Eric L. “Volkswagen and the High-Tech Greenwash.” *European Journal of Risk Regulation* 7, no. 1 (March 2016): 32–34. <https://doi.org/10.1017/s1867299x00005341>.
- Legislative Decree n.58 of 1998 (Consolidated Law on Finance) (1998). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-02-24;58>.
- Legislative Decree n.74 of 1992 (1992). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1992-01-25;74>.
- Legislative Decree n.145 of 2007, [www.normattiva.it](http://www.normattiva.it) § (2007). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007-08-02;145>.
- Legislative Decree n.254 of 2016, [www.normattiva.it](http://www.normattiva.it) § (2016). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2016-12-30;254!vig=2023-02-12>.
- Leopizzi, Rossella, Stefano Coronella, and Simone Pizzi. “Il D.LGS. 254/2016 Sull’informative Non-Finanziaria: Prime Evidenze in Italia Sul ‘Prima’ E Sul ‘Dopo.’” In *Nuove Frontiere Del Reporting Aziendale : La Comunicazione Agli Stakeholders Tra Vincoli Normativi E Attese Informative*, 862–77. Milano: Franco Angeli, 2018. <http://digital.casalini.it/9788891786876>.
- Malecki, Catherine. “The EU Taxonomy Regulation: Giving a Good Name to Sustainable Investment.” SSRN. Rochester, NY, October 2, 2021.  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4235527](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4235527).
- Oostrum, Chris van. “Sustainability through Transparency and Definitions: A Few Thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852.” *European Company Law* 18, no. 1 (February 1, 2021): 15–21. <https://doi.org/10.54648/eucl2021003>.

Order N.68/2022 (Council of State January 7, 2022).

Oxford English Dictionary. “Greenwashing, N. : Oxford English Dictionary.” Oxford English Dictionary, “Greenwashing,” June 2011. <https://www.oed.com/viewdictionaryentry/Entry/249122>.

Palazzini, Francesca. “Greenwashing Nelle Comunicazioni Pubblicitarie E La Rilevanza Come Atto Di Concorrenza Sleale.” *Rivista Giuridica Dell’ambiente*, no. 4 (2021): 927–46. <https://doi.org/10.1400/288340>.

Pizzetti, Marta, Lucia Gatti, and Peter Seele. “Firms Talk, Suppliers Walk: Analyzing the Locus of Greenwashing in the Blame Game and Introducing ‘Vicarious Greenwashing.’” *Journal of Business Ethics* 170, no. 1 (December 23, 2019): 21–38. <https://doi.org/10.1007/s10551-019-04406-2>.

Royal decree n.262 of 1942 (Civil Code) (1942). <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1942-03-16;262>.

Siano, Alfonso, Agostino Vollero, Francesca Conte, and Sara Amabile. “‘More than Words’: Expanding the Taxonomy of Greenwashing after the Volkswagen Scandal.” *Journal of Business Research* 71 (February 2017): 27–37. <https://doi.org/10.1016/j.jbusres.2016.11.002>.

Silva, Daniel. “The Fight against Greenwashing in the European Union.” *UNIO – EU Law Journal* 7, no. 2 (December 31, 2021): 124–37. <https://doi.org/10.21814/unio.7.2.4029>.

Simionato, Elisa. “Alcantara-Miko: è Condanna al Greenwashing.” *Ius in itinere*, December 23, 2021. <https://www.iusinitinere.it/alcantara-miko-e-condanna-al-greenwashing-40906>.

The Constitution of the Italian Republic (English). Accessed February 13, 2023. [https://www.quirinale.it/allegati\\_statici/costituzione/costituzione\\_inglese.pdf](https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf).

UL Solutions. “Sins of Greenwashing,” 2019. <https://www.ul.com/insights/sins-greenwashing>.

United Nations. “The Sustainable Development Agenda.” United Nations, 2022. <https://www.un.org/sustainabledevelopment/development-agenda/>.

Yang, Zhi, Thi Thu Huong Nguyen, Hoang Nam Nguyen, Thi Thuy Nga Nguyen, and Thi Thanh Cao. “Greenwashing Behaviours: Causes, Taxonomy and Consequences Based on a Systematic Literature Review.” *Journal of Business Economics and Management* 21, no. 5 (September 28, 2020): 1486–1507. <https://doi.org/10.3846/jbem.2020.13225>.

Zachariadis, Theodoros. “After ‘Dieselgate’: Regulations or Economic Incentives for a Successful Environmental Policy?” *Atmospheric Environment* 138 (August 2016): 1–3. <https://doi.org/10.1016/j.atmosenv.2016.04.045>.

Zhang, Michael, Glyn Atwal, and Maya Kaiser. "Corporate Social Irresponsibility and Stakeholder Ecosystems: The Case of Volkswagen Dieselgate Scandal." *Strategic Change* 30, no. 1 (January 2021): 79–85. <https://doi.org/10.1002/jsc.2391>.

Zych, Grzegorz, Borys Budka, Marzena Czarnecka, Grzegorz Kinelski, and Magdalena Wojcik-Jurkiewicz. "Concept, Developments, and Consequences of Greenwashing." *EUROPEAN RESEARCH STUDIES JOURNAL* XXIV, no. Issue 4B (November 1, 2021): 914–22. <https://doi.org/10.35808/ersj/2779>.