



# Maritime Safety and Security Law Journal

2024

*Issue 14 - 15*

# The Impact of Regulation (EU) 2023/2631 on the Blue Economy and on the Aim of Preserving Oceans and Marine Biodiversity

*Pietro CAPPABIANCA\**

## **Abstract**

Climate change has forced governments to take actions in order to preserve, among other things, marine biodiversity, whose survival is threatened by pollution and human activities. The so-called blue economy – which represents a peculiar form of green economy – covers a broad group of activities related to oceans and seas which must be carried out in a sustainable and healthy way. In this economy, a main role is played by blue bonds, a form of thematic bond, where the issuers commit themselves to use the capital raised to support investments in blue economies and projects that pursue United Nations Sustainable Development Goal 14. One of the main features necessary to pursue that aim is the transparency of the information the issuer discloses to the investors. The new Regulation (EU) 2023/2631 certainly provides useful tools to foster transparency in green (and blue) economies in terms of information to be disclosed in order to tackle greenwashing risks, but, at the same time, it presents features that could be better specified and improved and that could better pursue that aim if harmonized on a European level.

**Keywords:** greenwashing, biodiversity, blue bonds, blue economy, sustainability

**First published online:** 29 November 2024

## 1. Sustainability as a Paradigm for Current and Future Legislation

The growing visible impacts of climate change are compelling governments and businesses worldwide to reconsider their legislative frameworks and business strategies.

\* PhD candidate in People, Companies and Markets law at University of Naples “Federico II”, email: [pietro.cappabianca@unina.it](mailto:pietro.cappabianca@unina.it).



This shift increasingly emphasizes the importance of ESG (Environmental, Social, and Governance) factors, indicating that actions must align not only with profitability but also, as addressed in this article, with environmental sustainability. Such policy change is a direct consequence of scientific warnings about the environmental degradation caused by the massive exploitation of natural resources without a long-term perspective. In this context, it is important to recall that in 2015, the United Nations adopted the 2030 Agenda and Sustainable Development Goals (SDGs), with the aim of achieving these targets by 2030<sup>1</sup>.

Under Agenda 2030, economic activities must foster investments and capital to support environmental-friendly activities<sup>2</sup> and to facilitate the transition toward a new way of approaching economic activities in general, which includes green goals aimed at pursuing a long-term strategy to preserve the Earth and its resources for future generations. Generally, such concerns had a huge impact that pushed policy-makers and authorities to revise company and financial law, imposing a switch from a shareholderism paradigm to one of stakeholderism<sup>3</sup>, meaning that undertakings and, more generally, all market operators must compulsorily pursue certain objectives that do not coincide with pure profit<sup>4</sup>.

This can also be deduced, for instance, from the proposal of a Corporate Sustainability Due Diligence Directive (CSDDD) –expected to be enacted within the year – which aims to include the sustainability factor in corporate governance because companies are not taking the negative impact on human rights and the environment sufficiently

---

1 UNGA, ‘Transforming our world: The 2030 agenda for Sustainable development’ (21 October 2015) UN Doc A/RES/70/1 (Agenda 2030). The UN Agenda for 2030 is an ambitious action program for people, planet and prosperity which provides 17 Sustainable Development Goals (SDGs) that are part of a larger program consisting of 169 targets to achieve in environmental, social and economic domains by 2030. See also Nick Feinstein, ‘Learning from past mistakes: future regulation to prevent greenwashing’ (2013) *Boston College Environmental Affairs Law Review* 229, 231.

2 Chengbo Fu., Lei Lu, Mansoor Pirabi, ‘Advancing green finance: a review of climate change and decarbonization’ (2024) *Digital Economy and Sustainable Development* 1-2.

3 Eugenio Barcellona, ‘La sustainable corporate governance nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c.d. stakeholderism’ (2022) *I Rivista delle società* 1.

4 Stefano A. Cerrato., ‘Appunti per una via italiana all’ESG. L’impresa costituzionalmente solidale (anche alla luce dei nuovi artt. 9 e 41, comma 3, Cost.)’ (2022) *I Analisi giuridica dell’economia* 63, 67.



into account and, at the same time, they do not always have an appropriate governance, administration and auditing system able to contain such damages<sup>5</sup>.

From a broader point of view, the European Union positioned itself as one of the leading organizations in the world in terms of the 'green transition', starting with the European Green Deal which embodies strategic and programmatic objectives to pursue in order to create a "modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use"<sup>6</sup>.

The European Green Deal marks the most substantial change in perspective in the EU legal framework since the original conception of public neutrality towards economic freedom was replaced by a new programmatic and legislative plan that placed sustainability and environment protection at the centre of future legislation, in cooperation with the Member States<sup>7</sup>.

Sustainability has emerged as a core focus for European institutions and has been designated as a central framework guiding forthcoming legislative reforms. However, despite its relevance, it is impossible to find a unique definition in the current framework. Sustainability is a generic word with a wide range of possible meanings<sup>8</sup> and, given its flexibility, can refer to diverse decision-making fields. This flexibility, however, hides a double set of implications. On the one hand, if used correctly, it can really contribute to create a renewed vision of the environment and its use for human purposes. Conversely, the lack of a universal definition—and consequently a uniform scope of

---

5 Dionigi Scano, Gabriele Racugno, 'Il dovere di diligenza delle imprese ai fini della sostenibilità: verso un Green Deal europeo' (2022) 4 *Rivista delle società* 726-727.

6 Communication from the Commission to the European parliament, the European council, the council, the European economic and social committee and the committee of the regions, The European Green Deal, 11st December 2019 COM (2019) 640.

7 Mario Iannella, 'L'European Green Deal e la tutela costituzionale dell'ambiente' (2022) *federalismi.it*, 171, 173.

8 Raffaele Lener, Paola Lucantoni, 'Sostenibilità ESG e attività bancaria' (2023) 1 *Banca borsa titoli di credito* 6.



application—leaves room for an interpretation of the principle<sup>9</sup> that is then shaped by the unique cultural contexts of each enforcing State<sup>10</sup>. However, despite those circumstances, sustainability has gained its position as a fundamental tool of legislation in many different countries, including EU Member States' internal legislative frameworks. Indeed, more than 90% of the global economy has developed net-zero commitments<sup>11</sup>.

One of the most visible examples can be found in the reform of the Italian Constitution<sup>12</sup> enacted in 2022 when Article 41 was modified in order to include sustainability in the principles regarding scientific research and economic development<sup>13</sup>. Specifically, this article states that private economic initiative shall be free but it cannot be carried out by jeopardizing the environment, security, freedom and human dignity. Furthermore, the second paragraph of the article stresses that the legal framework must determine programs and necessary controls in order to coordinate and drive public and private activity towards social and environmental purposes. Consequently, it should be noted that environmental protection, in relation to the sustainability paradigm of economic activities, shapes and further clarifies the fundamental right of economic initiative as recognized by the Italian Constitution. This systematic shift is observable from a long-term perspective: henceforth, businesses will need to adopt a forward-looking approach, reshaping their strategies to account for the interests of future generations. In order to protect such interest, the Constitutional Court has the power to control the legal framework and to declare as unconstitutional all those acts that are not compliant

---

9 Sustainability is identified as a principle, for instance, in the Italian legal framework after the Constitutional reform occurred in 2022. See Camilla Buzzacchi, 'Attività economiche e ambiente nel primis (o mantra?) della «sostenibilità»' (2023) 4 *Rivista AIC* 207. For a broader analysis and historical reconstruction of the sustainability concept see Irma S. Russell, 'The Sustainability Principle in Sustainable Energy' (2008) 44 *Tulsa Law Review* 121.

10 James R. May, "Sustainability constitutionalism" (2018) 86 *UMKC Law Review* 855, 856.

11 Accelerating global companies towards net zero by 2050, Accenture Global Report 2022.

12 Constitutional law, 11th of February 2022, n. 1.

13 See Giovanni Capo, 'Libertà di iniziativa economica, responsabilità sociale e sostenibilità dell'impresa: appunti a margine della riforma dell'art. 41 della Costituzione' (2023) 1 *Giustizia Civile* 81 ff; Marcello Cecchetti, 'Virtù e limiti della modifica degli articoli 9 e 41 della Costituzione' (2022) 1, 127 <[www.cortisupremeasalute.it](http://www.cortisupremeasalute.it)> accessed 8 March 2024.



with the environmental sustainability paradigm<sup>14</sup>.

Moreover, sustainability had already been mentioned in the Italian legislative framework in the legislative decree 152/2006 (the so-called “Environmental Code”) where it was stated that the Government was in charge of updating the “national strategy for sustainable development” at least every three years through the insurance of divergence between economic growth and environmental impact<sup>15</sup>, showing how this paradigm has gained a growing relevance in policy making. Similarly, the French Minister of Justice presented a constitutional reform project with the intent of inserting environmental and biodiversity protection into the first article of the Constitution, an initiative that is currently suspended due to the lack of political agreement between the left and right wings of the Chambers<sup>16</sup>. Italy and France represent two of many examples of how sustainable development has turned into a value which finds protection in the regulatory framework.

As already mentioned, on a European level, over the last decade, the strategy enacted by legislators – with a growing attention to topics such as climate change and respect of human rights – has contributed to an enhancement of the Treaty of Lisbon’s dispositions which correlate the economic growth of the European continent to the achievement of a minimum set of social objectives in order to pursue what Article 13 TEU defines as “social market economy”<sup>17</sup>. The European Union chose to adopt an or-

---

14 For a broader analysis of such article and its reform see Guido Alpa, ‘Note sulla riforma della costituzione per la tutela dell’ambiente e degli animali’ (2022) 2 *Contratto e impresa* 361; Giuseppe Fauceglia, ‘L’iniziativa economica privata nella cultura politica cattolica: dal corporativismo alla Costituzione’ (2022) 4 *Giurisprudenza commerciale* 587; Pierpaolo M. Sanfilippo, ‘Tutela dell’ambiente e “assetti adeguati” dell’impresa: compliance, autonomia ed enforcement’ (2022) 6 *Rivista di diritto civile* 993.

15 Shaira Thobani, ‘Pratiche commerciali scorrette e sostenibilità: alla ricerca di un significato’ (2022) 3 *Persona e mercato* 423, 424.

16 *Projet de loi constitutionnelle complétant l’article 1er de la Constitution et relatif à la préservation de l’environnement* (6 July 2021) JUSX2036137L <[www.legifrance.gouv.fr/dossierlegislatif/jorfdole000043022845/](http://www.legifrance.gouv.fr/dossierlegislatif/jorfdole000043022845/)> accessed 9 March 2024; for the opinion by *Conseille Constitutionnelle* on such project see *Avis sur un projet de loi constitutionnelle complétant l’article 1er de la Constitution et relatif à la préservation de l’environnement* (14 January 2021) JUSX2036137L/Verte-1.

17 Enrico Caterini, ‘Sustainability and civil law’ (2018) 2 *The Italian Law Journal* 289, 295.



ganic and progressive approach<sup>18</sup> aiming for a systematic reform to be enforced over the next years with a broad range of stakeholders involved, including companies and financial markets. One of the most crucial steps taken by the legislator was the attempt to give a precise definition of what can, and cannot, be considered sustainable in order to guarantee the transparency of the information disclosed by companies and by financial market operators to the public of stakeholders and investors.

Presently, the main risk to be tackled when dealing with green investments and activities is related to products' labelling practices. In other words, given the global persuasion of the market as a useful tool to pursue sustainability objectives (so-called "green economy"), misleading practices could be carried out in order to persuade investors to finance projects labelled as "sustainable" where, instead, sustainability and eco-friendly characteristics are a mere façade, bound to crumble if further investigated. As for financial products and economic activities (and consequently for blue bonds too, as will be broadly analysed in the following paragraph), Regulation (EU) 2020/852 (Taxonomy Regulation) – which integrates and modifies Regulation (EU) 2019/2088 (SFDR) – defines the juridical base to provide investors and stakeholders with clear, transparent and uniform conditions to encourage capital flow into sustainable projects and, by so doing, to mitigate the risk of misleading labelling for sustainable products<sup>19</sup>.

One of the most relevant and effective tools in this field is to be found in so-called "green bonds", or "blue bonds" when applied to projects concerning seas and oceans pursuant to Sustainable Development Goal 14 as defined by the United Nations<sup>20</sup>. When issuing green bonds, the issuer makes a commitment to use all the proceeds gained through the bond to finance (or refinance) projects that have a positive impact from an

---

18 Anna Genovese, 'La "sustainable corporate governance" delle società quotate. Note introduttive' (2022) 1 *Corporate governance* 97, 112.

19 Chris Van Oostrum, 'Sustainability through transparency and definitions. A few thoughts on Regulation (EU) 2019/2088 and Regulation (EU) 2020/852' (2021) 1 *European Company Law Journal* 15, 16.

20 Agenda 2030 (n 1) Sustainable Development Goal 14 aims to "conserve and sustainably use the oceans, seas and marine resources for sustainable development".



environmental or social point of view<sup>21</sup>. Introducing rules for green investments is now a widespread trend and, prospectively, such rules should be characterized by global harmonization concerning the classification rules for green investments<sup>22</sup> in order to make them fully effective, even when it comes to green (and blue) bond issuance and making it easier for investors to identify bonds whose proceeds are aligned or will, in the least, contribute to pursuing environmental objectives.

A further step was taken by the European Union with Regulation (EU) 2023/2631 which follows the path of harmonizing classification rules for bonds aimed at financing sustainable investments (the so-called European Green Bond Standard, EGBS) and introduces an optional disclosure framework for bonds designated as environmentally sustainable and for sustainability-linked bonds. This act accelerates the transition towards a climate-neutral, sustainable, energy and resource-efficient ecosystem and, at the same time, guarantees the competitiveness of the European economy in a perspective of co-existence with citizen well-being<sup>23</sup>. The form of the act used by European Union – a Regulation and not a Directive – demonstrates the need for harmonization<sup>24</sup> in terms of quality requirements for European green bonds because it avoids diverging national requirements that could derive from the transposition of a directive and it assures that said conditions are directly applicable to bond issuers and, by so doing, it is possible to increase the European market efficiency and to avoid greenwashing (even with the help of optional sustainability disclosure templates<sup>25</sup>). With this background in

---

21 Gregor Vultur, Aaron Maltais, Kristina Forsbacka, 'Sustainability-linked bonds – their potential to promote issuers' transition to net-zero emissions and future research directions' (2024) 1 *Journal of Sustainable Finance & Investments* 116, 118.

22 As it is sustained by the Network for Greening the Financial System (NGFS), whose purpose is to strengthen the global response required to pursue the aims of the Paris Agreement. See NGFS 'NGFS occasional papers, Central Banking and supervision in the biosphere: an agenda for action on biodiversity loss, financial risk and system stability' (2022) <[www.ngfs.net/sites/default/files/medias/documents/central\\_banking\\_and\\_supervision\\_in\\_the\\_biosphere.pdf](http://www.ngfs.net/sites/default/files/medias/documents/central_banking_and_supervision_in_the_biosphere.pdf)> accessed 11 March 2024.

23 Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (2023) OJ L, 2023/2631, recital 1.

24 Highlighted, among others, by Claudia Marasco, 'Il mercato dei green bond alla prova della disciplina europea' (2022) 4 *Rivista trimestrale di diritto dell'economia* 327, 340.

25 Regulation (EU) 2023/2631 (n 23) recital 8.





mind, it is now possible to analyse possible issues related to blue economy and the role of blue bonds when it comes to financing or refinancing projects aimed at pursuing, exclusively or in part, United Nations Sustainable Development Goal (SDG) 14 on the conservation and the sustainable use of oceans, seas and marine resources.

## 2. Blue Economy and Blue Bonds to Finance Sea and Marine Biodiversity Conservation Projects

Pollution and climate change have a direct effect on landscapes but also, in an equally direct way, on every aspect of the economy, including the marine economy. It is estimated that addressing the degradation of the seas and oceans is going to cost the US \$174 billion per year<sup>26</sup>.

In 2015, the United Nations adopted the 2030 Agenda for Sustainable Development which calls urgently for action by all countries to cooperate in a global partnership to tackle climate change and preserve oceans, seas and forests by establishing seventeen sustainable development goals (SDG). More specifically, SDG 12 and 14 deal with global responsible consumption and production, as well as with the preservation of life below water. The latter includes actions to be taken in order to combat, among other things, ocean acidification and over-fishing, two of the main dangers for the ecosystem's health. However, the implementation of this objective turned out to be more difficult than expected especially considering that, from a general point of view, projects pursuing sustainability goals had to deal with the "green finance gap"<sup>27</sup> or, in other words, a systemic lack of financial resources to fund such initiatives. The lack of sufficient resources invested in the sustainable transition by Governments was also highlighted by the UN Global Sustainable Development Report which warned about the vulnerabilities to which many countries were – and will be – exposed in case of crisis.

---

<sup>26</sup> Despina F. Johansen, Rolf A. Vestvik 'The cost of saving our ocean – estimating the funding gap of sustainable development goal 14' (2020) 112 *Maritime Policy* 1.

<sup>27</sup> Danilo Liberati, Giuseppe Marinelli 'Everything you always wanted to know about green bonds (but were afraid to ask)' (2021) 654 *Questioni di Economia e Finanza*, Occasional papers 1, 5.



As for the oceans and seas' sustainability and protection, the report found that the continuing threats to marine biodiversity – such as overfishing and pollution – have not been sufficiently addressed, and it stresses how preserving food security and life under the sea requires the investment of greater financial resources<sup>28</sup>. Marine preservation projects on such a large scale require private-public cooperation to cover implementation-related costs. Marine environment preservation tends to necessarily have a public dimension since many projects dealing with sea and oceans must receive a previous governmental authorization, based on the legal framework of each country. As a consequence, such projects are entirely financed from public sources. That is one of the main setbacks of a completely publicly funded project<sup>29</sup> because one must take into account both limits to public spending (especially in countries which enacted spending review policies due to financial crises) and the reliance on political sensitivity on environmental issues. At the same time, however, private initiatives aimed at advancing sustainable finance in the marine sector, while among the most effective tools for raising capital for marine projects, require adjustments to enhance investor appeal. Specifically, the primary factors limiting the effectiveness of marine conservation projects include a lack of transparency in funding allocation and insufficient coordination among various initiatives and private interventions. Finally, there was insufficient follow-up activity to verify the projects' outcomes in order to understand the long-term impact and sustainability of such projects<sup>30</sup>.

Hence, at least in the past year, capital raised or invested in combatting sea and ocean pollution (together with its negative consequences) were absolutely insufficient and, consequently, implementing SDG 14 had become difficult and risky. Hence, academics have observed that ocean governance needs a pool of diversified financial mechanisms

---

28 United Nations, 'Time of Crisis, Time of Change. Science for Accelerating Transformations to Sustainable Development – Global Sustainable Development Report' (2023) 17.

29 Adrian E. Laufer, Michael D. Jones, 'Who pays for marine conservation? Processes and narratives that influence marine funding' (2021) 203 *Ocean and Coastal Management* 1.

30 Robert Blasiak and others, 'Towards greater transparency and coherence in funding for sustainable marine fisheries and healthy oceans' (2019) 107 *Marine Policy* 1, 2.



with cooperation from private capital for implementation<sup>31</sup>, including the so-called blue bonds. This concept has existed for many years and, exactly like green bonds, refers to debt instruments aimed at raising capital to finance projects with positive outcomes in terms of environment, economy and climate. However, despite its potential, it never attracted adequate attention from institutional and private investors<sup>32</sup>.

Over the years, however, this framework has facilitated the spread of the “blue economy” concept, which now plays a central role in advancing ocean and sea conservation and sustainable fishing objectives, as highlighted in United Nations Sustainable Development Goals 12 and 14. Nevertheless, these goals remain among the least attractive and visible for market-driven companies, thereby limiting capital flow and hindering progress toward achieving these targets by 2030<sup>33</sup>.

According to the World Bank, defining the “blue economy” requires focusing on the economic production and it includes projects that “protect our oceans for economic growth, improved livelihoods, jobs and secure healthy ocean ecosystems for future generations”<sup>34</sup>. At the same time, additional potential of blue economies has been identified in their contributions to climate mitigation, renewable energy, and carbon storage within coastal ecosystems<sup>35</sup>.

One of the most emblematic cases of blue economy development is represented

---

31 U. Rashid Sumaila and others, ‘Financing a sustainable ocean economy’ (2021) 12 *Nature communications* 1, 2. See also Melissa Bos, Robert L. Pressey, Nathalie Stoeckl, ‘Marine conservation finance: the need for and scope of an emerging field’ (2015) 114 *Ocean & Coastal Management* 116.

32 Paul Hunt, Aaron Franklin, Carlos Ardila, ‘Out of the blue (July 2019) IFLR Capital Markets Blue Bonds <[www.lw.com/admin/upload/SiteAttachments/Latham%20-%20IFLR%20-%20Out%20of%20the%20Blue%20-%20Reprint.pdf](http://www.lw.com/admin/upload/SiteAttachments/Latham%20-%20IFLR%20-%20Out%20of%20the%20Blue%20-%20Reprint.pdf)> accessed 12 March 2024.

33 Pieter Bosnans, Frederic de Mariz, ‘The Blue Bond Market: A Catalyst for Oceans and Water Financing’ (2023) 184 *Journal of Risk and Financial Management* 1, 2.

34 The World Bank, ‘Board Approves over \$20 Million for Seychelles’ Sustainable Fisheries and Marine Resources Conservation, press release 2018/027/AFR <[www.worldbank.org/en/news/press-release/2017/09/29/board-approves-over-20-million-for-seychelles-sustainable-fisheries-and-marine-resources-conservation](http://www.worldbank.org/en/news/press-release/2017/09/29/board-approves-over-20-million-for-seychelles-sustainable-fisheries-and-marine-resources-conservation)> accessed 19 March 2024.

35 For a review of all the definitions of blue economy in the scientific literature see Liam Saddington, ‘Geopolitical imaginaries in climate and ocean governance: Seychelles and the Blue Economy’ (2023) 139 *Geoforum* 1, 2.



by so-called ‘Seychelles Blue Bonds’ when, for the first time, a country whose economy revolves mainly around sea, tourism and fishing activities decided to use financial instruments in order to sustainably use ocean resources to preserve the environment without forgetting to meet the needs of the population. How essential this new vision was considered to be by the President of Seychelles can be deduced by the institution of the Blue Economy Government Department and by the establishment of the James Michael Blue Economy Research Institute<sup>36</sup>. The case of the Seychelles islands provides a useful example of how blue economy is gaining its position as one of the main areas of intervention to tackle global warming. As a matter of fact, marine ecosystems are essential to reach the Paris Agreement goals which require, among other things, the objective of cutting greenhouse emissions by 21% in blue economy fields<sup>37</sup>.

Given this context, and to fully leverage the potential of this financial instrument, the scientific literature has advocated for aligning blue bonds with widely recognized standards and principles<sup>38</sup> as prescribed, for instance, in the United Nations’ Sustainable Blue Economy Finance Principles<sup>39</sup> and the Green Bond Principles provided by the International Capital Markets Association (ICMA)<sup>40</sup>. The UN and ICMA addressed different sides of the same problem. The United Nations provided general principles that aim to inspire the legal frameworks of adhering States and to constitute keystones for market operators (such as banks and investors). Among the fourteen principles listed, the “impact” principle is noteworthy, meaning that only projects actively pursuing social, environmental, and economic benefits for oceans, rather than merely avoiding harm, should be financed. Additionally, a commitment to “transparency” is required,

---

36 *ibid*, 3.

37 Ove Hoegh-Guldberg and others, ‘The Ocean as a Solution for Climate Change: Five Opportunities for Action’ (2019) <[www.oceanpanel.org/climate](http://www.oceanpanel.org/climate)> accessed 16 March 2024.

38 Benjamin S. Thompson, ‘Blue bonds for marine conservation and sustainable ocean economy: Status, trends, and insights from green bonds’ (2022) 144 *Marine Policy* 1, 2.

39 United Nations Environment Programme, ‘The sustainable Blue Economy Finance Principles’ (2018) <[www.unepfi.org/blue-finance/the-principles/](http://www.unepfi.org/blue-finance/the-principles/)> accessed 18 March 2024.

40 International Capital Markets Association, Green Bond Principles: voluntary process guidelines for issuing green bonds (June 2021) <[www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Green-Bond-Principles\\_June-2022-280622.pdf](http://www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Green-Bond-Principles_June-2022-280622.pdf)> accessed 23 March 2024.



ensuring that information about investments and their impacts is publicly accessible while respecting confidentiality.

From a different perspective, but with full alignment, ICMA provided a voluntary guideline for green bond issuers that is inspired by a transparency purpose in order to attract investors. Green (as well as blue) bond issuance documents must precisely indicate three items of information. Firstly, they should indicate the use of proceeds, describing the projects in which capital will be invested; secondly, careful attention should be given to the evaluation criteria for selecting projects eligible for financing. Finally, the report provides possible criteria to be applied to correctly manage the proceeds and highlights the relevance of correct final reporting activity to be renewed annually until full allocation and, in case of material developments, on a timely basis.

Despite these challenges, which are under examination by authorities worldwide, the issuance of green and blue bonds continues to grow, driven by a shift in perspective affecting all sectors of the economy. This expansion necessitates addressing one of the primary risks associated with green initiatives: greenwashing. Addressing this problem means tackling the risk of discouraging capital flows in environmentally-oriented projects and restoring faith in the positive impact that finance in general has on tackling climate change and pollution.

### 3. Transparency in Data Disclosure: the Impact of Current Legislation in Blue-Financial Activities (Preventing the Risk of Greenwashing)

The current economic landscape reflects a trend of valuing the commitment to participate in global initiatives aimed at achieving net-zero targets. This involves conducting activities sustainably to combat climate change and actively improving carbon footprints. Sustainability has become a central paradigm and a fundamental component of legislation in many countries worldwide, particularly within the European Union<sup>41</sup>. These

---

<sup>41</sup> The misuse of such term is mentioned by Keith H. Hirokawa, 'Saving Sustainability' (2015-2016) 5 Albany Law School Research Paper 261.



commitments, by companies and market operators, have gained increasing relevance for stakeholders, investors and consumers but, despite having a positive influence on the behaviour of companies, can lead to a misuse of sustainability and environmentally friendly commitments, or in other words, to a phenomenon defined as greenwashing<sup>42</sup>.

Greenwashing is defined as “the practice of gaining an unfair competition advantage by marketing a financial product as environmentally friendly when in fact basic environmental standards have not been met”<sup>43</sup>. By so doing, companies aim to increase “their market share of the lucrative ethical consumer sector”<sup>44</sup>. After all, greenwashing-related dangers for economy and consumers were also acknowledged by the European Securities and Markets Authority (ESMA) and were directly related to the growing demand for sustainable financial products and the complexity of the legal framework developed throughout recent years by the European Union<sup>45</sup>. In its report, ESMA found that greenwashing can be identified across four key points: the role played by a market actor in greenwashing (e.g., trigger, spreader or receiver); the types of misleading claims made; the content of the claims that make them misleading; the communication channels<sup>46</sup>. These circumstances necessitated a precise taxonomy<sup>47</sup> and a clear regulatory framework to mitigate the risk of market operators exploiting green claims purely for profit, leveraging social and institutional awareness of environmental issues. The establishment of ESG criteria (Environmental, Social, and Governance) has, in turn, made

---

42 Nicola Brutti, ‘Le regole dell’informazione ambientale, tra pubblico e privato’ (2022) 3 *Diritto dell’informazione e dell’informatica* 617, 634.

43 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, recital 11. Some authors defined greenwashing as a specific variant of «whitewashing» where corporations try to cover up their wrongdoings through a biased presentation of data using false statements. See Elizabeth K. Coppolecchia, ‘The Greenwashing Deluge: Who Will Rise Above the Waters of Deceptive Advertising?’ (2010) 4 *University of Miami Law Review* 1353, 1354.

44 Ellis Jones, ‘Socially Responsible Market’ (2015) *The Wiley-Blackwell Encyclopedia of Consumption and consumer studies*.

45 Andrea Gasperini, ‘Da ESMA priorità chiare per la finanza sostenibile’ (2023) 1 *Amministrazione & Finanza* 49, 50.

46 ESMA, Progress report on greenwashing – Response to the European Commission’s request for input on “greenwashing risks and the supervision of sustainable finance policies (31 May 2023) ESMA30-1668416927-2498 <[www.esma.europa.eu/sites/default/files/2023-06/ESMA30-1668416927-2498\\_Progress\\_Report\\_ESMA\\_response\\_to\\_COM\\_RfI\\_on\\_greenwashing\\_risks.pdf](http://www.esma.europa.eu/sites/default/files/2023-06/ESMA30-1668416927-2498_Progress_Report_ESMA_response_to_COM_RfI_on_greenwashing_risks.pdf)> accessed 7 March 2024, p. 17.

47 Virginia E. Harper Ho, ‘Modernizing ESG disclosure’ (2022) 1 *University of Illinois Law Review* 277, 313.



sustainability a critical element in long-term financial strategies<sup>48</sup>. Moreover, it seems that pursuing environmental and social objectives requires greater transparency to inspire the legal framework to ensure the trustworthiness of companies and, by so doing, fostering private or public capital flow into eco-friendly projects.

In recent years, the European Union – which acted as a pioneer on the global market – enacted a significant renewal of financial markets and the duties of companies towards stakeholders to guarantee transparency and accuracy of the information disclosed. The inevitability of such a step was also recognized by Christine Lagarde, President of the European Central Bank (ECB), in 2021 when she affirmed that the existing fragmentation between Member States’ financial markets risked constraining the potential of investments. Only by promoting the implementation of sustainable finance would the European financial system be able to experience transformative effects, leading to the creation of a Green European Capital Markets Union<sup>49</sup>. The EU chose an organic and progressive approach<sup>50</sup> by establishing a global and systematic reform to be enacted with a multiple-step strategy over the next years. Notably, there are two legislative acts that specifically deal with providing a precise framework to correctly and transparently identify sustainable investment. Regulation (EU) 2019/2088 (Sustainable Finance Disclosure Regulation, SFDR) gives a uniform classification system to assess the environmental sustainability of economic activities<sup>51</sup>. This objective is reached by

---

48 Alan R. Palmiter, ‘Capitalism, heal thyself’ (2022) 2-3 *Rivista delle società*, 293 where the Author states that ‘Companies that infuse real ESG into their operations — not the fake stuff that the financial markets are getting better and better at ferreting out — attract money from the big investment firms engaged in ESG investing’. In the scientific literature, for an analysis of greenwashing in the fashion marketing see Astrid Sailer, Harald Wilfing, Eva Straus, ‘Greenwashing and Bluewashing in Black Friday-Related Sustainable Fashion Marketing on Instagram’ (2022) 14 *Sustainability* 1.

49 Christine Lagarde, ‘Towards a green capital markets for Europe’, (speech by Christine Lagarde, President of the ECB, at the European Commission high-level conference on the proposal for a Corporate Sustainability Reporting Directive, 6 May 2021) <[www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210506-4ec98730ee.en.html](http://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210506-4ec98730ee.en.html)> accessed 9 March 2024.

50 Anna Genovese, ‘La “sustainable corporate governance” nelle società quotate. Note introduttive’ (2022) 1 *Corporate Governance* 97, 99.

51 Chris Van Oostrum (n 19) 16.



providing a definition of ‘sustainable investment’ in article 2<sup>52</sup> and, at the same time, by obliging financial markets participants to disclose sustainability-related parameters in pre-contractual disclosures<sup>53</sup>.

In contrast, the so-called Taxonomy Regulation<sup>54</sup> integrated and modified the SFDR and contributed to establishing uniform and clear conditions to encourage capital flow into sustainable projects in need of financial support<sup>55</sup>. Four criteria to be met by economic activities in order to be considered sustainable are established and six environmental objectives to which the abovementioned activities can positively contribute are provided. Interestingly, Article 17 of this Regulation incorporates the ‘do no significant harm’ (DNSH) principle by defining what constitutes significant harm to the six objectives outlined. This provides a framework for evaluating the sustainability of certain financial activities<sup>56</sup>.

Generally speaking, economic activities should not be classified as ‘environmentally sustainable’ if they cause more harm to the environment than the benefits, they bring<sup>57</sup>. More specifically, article 8 of the Taxonomy Regulation sets forth that certain financial and non-financial undertakings shall disclose, in their non-financial statement infor-

---

52 Namely, article 2 par. 17 sets forth ‘sustainable investment’ means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labor relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.

53 For instance, pursuant to article 6, financial markets operators shall disclose information about the manner in which sustainability risks are integrated into their investment decisions.

54 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomy Regulation).

55 Andrea Quaranta, ‘Il mio nome è Bond: Green Bond. Non è tutto green ciò che luccica’ (2021) 12 *Ambiente & Sviluppo* 874, 875.

56 ESMA, ‘Do no significant harm’ definitions and criteria across the EU Sustainable Finance Framework’ (22 November 2023) <[www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2281\\_Note\\_DNSH\\_definitions\\_and\\_criteria\\_across\\_the\\_EU\\_Sustainable\\_Finance\\_framework.pdf](http://www.esma.europa.eu/sites/default/files/2023-11/ESMA30-379-2281_Note_DNSH_definitions_and_criteria_across_the_EU_Sustainable_Finance_framework.pdf)> accessed 10 March 2024.

57 Taxonomy Regulation (n 54) recital 40.





mation, how their activities are associated with environmentally-friendly projects and to what extent. The structural requisites of such information are explained by the Disclosure Delegated Act<sup>58</sup> where, for instance, it is said that non-financial undertakings shall disclose said information by presenting them in a tabular form with the templates set out in the Annex II of the Delegated Regulation. Finally, the dangerous consequences of green labelling are assessed by Directive (EU) 2022/2464 (Corporate Sustainability Report Directive, CSRD) that poses a due diligence obligation on undertakings and market operators, requesting them to disclose six specific environmental factors (among which, for instance, climate change mitigation, water and marine resources, pollution and biodiversity and ecosystems)<sup>59</sup> and imposing them to prevent greenwashing phenomena in three stages of the investment process: pre-contractual, post-investment stage and ongoing reporting and, finally, when it comes to handling complaints.

This brief state of the art of European legislation allows us to find a common base of the current European legislator's perspective on the strategy for tackling greenwashing and imposing a new ethical approach on the behaviour of companies in markets. Greenwashing is an issue that needed to be assessed in the blue economy field<sup>60</sup>. Projects aimed at advancing United Nations SDG 14 may risk becoming mere façades, lacking genuine sustainability. In the medium to long term, such projects may fail to contribute meaningfully to the adaptation and alignment of economic activities toward the restoration and recovery of seas and oceans, as well as the development of new paradigms for the sustainable use of marine resources in support of ocean-based industries. In

---

58 Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation, OJ L 443, 10.12.2021.

59 Veerle Colaert, 'The changing nature of financial regulation: sustainable finance as a new EU policy objective' (2022) 59 *Common Market Law Review* 1669, 1683.

60 Sahil Narwal and others, 'Sustainable blue economy: Opportunities and challenges' (2024) 49 *Journal of Biosciences* 12,13; Endang Sungkawati, 'Opportunities and Challenges: Adopting "Blue-Green Economy" Terms to Achieve SDGs' (2024) 2 *Revenue Journal: Management and Entrepreneurship* 1.



other words, the relevance of sustainability for stakeholders and consumers<sup>61</sup> should not be used merely as a tool to enhance companies' reputations or improve financial performance for purely lucrative aims. This is why the European Union has strongly advocated for high standards of transparency in data disclosure for both financial and non-financial undertakings, employing a step-by-step approach that considers the time needed to adapt industrial plans and strategies, particularly for small and medium-sized enterprises. In this legal framework, the new Regulation (EU) 2023/2631, which will be broadly discussed in the following paragraph, finds its place in this ambitious fight against climate change.

#### 4. The Impact of Regulation (EU) 2023/2631 on Data Transparency And Disclosure for Green and Blue Bond Issuers

The key elements for a sustainable ocean economy were found to be generating, investing, aligning and accounting for financial capital. However, at the same time, enhancing capital flow must not be considered the only objective in ocean finance<sup>62</sup>. An efficient strategy that can concretely guarantee the sustainability of investments must consider national and international financial instruments issued by governments and non-governmental organizations. Private and public undertakings must treat them on the one hand, as instruments to generate and to fund conservation and restoration policies and, on the other hand, to provide an 'attractiveness' for private and public investors with monetary returns from the investments themselves<sup>63</sup>.

Attracting investors has proven to be the most challenging objective, as it necessitates the establishment of universal transparency standards for data disclosure to stake-

---

61 It was estimated that 94% of Europeans developed a personal interest in the protection of the environment. See European Commission, 'Special Eurobarometer 468. Attitudes of European Citizens towards the Environment' (2017) <[https://data.europa.eu/data/datasets/s2156\\_88\\_1\\_468\\_eng?locale=en](https://data.europa.eu/data/datasets/s2156_88_1_468_eng?locale=en)> accessed 15<sup>th</sup> of March 2024.

62 Melissa Walsh, 'Ocean Finance: Definitions and Actions, Pacific Ocean Finance Program' (2018) p. 2 <[www.icriforum.org/wp-content/uploads/2019/12/Ocean\\_Finance\\_Definition\\_Paper\\_Walsh\\_June\\_2018\\_1\\_.pdf](http://www.icriforum.org/wp-content/uploads/2019/12/Ocean_Finance_Definition_Paper_Walsh_June_2018_1_.pdf)> accessed 10 March 2024.

63 U. Rashid Sumaila (n 31) 2.



holders. Labelling a product as ‘green’, ‘eco’ or ‘sustainable’ has consequences for the market preferences of stakeholders and it represents a way to channel capital flows. Given this, it is essential that information regarding these products and their sustainability is clear, transparent, and non-misleading. Incomplete or inaccurate data disclosure has been shown to result in significant consequences, including civil lawsuits and, more critically, reputational damage for companies<sup>64</sup>.

As demonstrated in the previous paragraph, the primary aim of European legislation in sustainable finance is to establish uniform disclosure standards for issuers of financial products. This seeks to protect stakeholders from misleading communications, support the achievement of established sustainability objectives, and promote the transition to a climate-neutral economy. On this path, a major role is played by Regulation (EU) 2023/2631 of the European Parliament and Council on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds (hereafter, ‘The Regulation’), which recently came into force within European legislation<sup>65</sup> and will apply as of 21st of December 2024, pursuant to Article 72 of the Regulation itself.

The Regulation intends to pursue the objective set forth in a previous communication by the European Commission<sup>66</sup>, thus underlining the necessity to establish a common framework for environmentally sustainable bonds and to identify a common definition of ‘environmentally sustainable activity’ and, consequently, to increase invest-

---

<sup>64</sup> See the *Volkswagen case*. The scandal (commonly known as ‘Dieselgate’) began in 2014 when the International Council on Clean Transportation, in its own report, showed a discrepancy between the results of lab tests carried out by the car-making company and the results of road tests. Volkswagen voluntarily disclosed the installation of a ‘defeat device’ on cars that allowed the cars themselves to find out when they were under test in order to emit less CO<sub>2</sub> than normal. The effects of such scandal ended in a company’s stock crash on financial market by 40%. See Alfonso Siano, Agostino Vollero, Francesca Conte, Sara Amabile, “More than words”: Expanding the taxonomy of greenwashing after the Volkswagen scandal’ (2017) 71 *Journal of Business Research* 27.

<sup>65</sup> Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds.

<sup>66</sup> Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, ‘Sustainable Europe Investment Plan. European Green Deal Investment Plan’ (14 January 2020) COM/2020/21.



ment opportunities on the European financial market. Moreover, it was stressed that diverging rules on the disclosure of information, transparency and accountability led to make an overcomplication for investors to identify, trust and compare environmentally sustainable bonds with respect to their environmental objectives and to use their potentialities for the business models of undertakings<sup>67</sup>. This certainly includes blue bonds as thematic bonds to finance projects related to oceans, seas and sustainable fishing.

Such Regulation also represents a further step in the enactment of the climate road-map adopted by the European Central Bank (ECB) to incorporate climate change in its monetary policy framework<sup>68</sup> and it contributes to completing the set of rules provided by the Taxonomy Regulation. Indeed, the Regulation represents a necessary step in laying down a set of harmonized rules for bonds that wish to use the designation 'European Green Bond' (EuGB).

Such rules will provide clarity and a proper function for the European and international markets where bonds will be traded, avoiding the uncertainty deriving from different national legislations<sup>69</sup>. This represents a compelling argument in favour of adopting such a framework through a Regulation and not through a Directive. A Directive could not have ensured the necessary harmonization between Member States' legislations but, above all, would have exposed the European market to the risk of erroneous or incomplete transposition of the Directive, with all the consequences thereof, especially in terms of delaying the positive externalities of a harmonized bond market for financing sustainability-related projects. At the same time, the choice of a Regulation seems to be perfectly compliant to the subsidiarity and proportionality principles, as set forth in Article 5 of the Treaty on European Union (TEU).

More specifically, according to the abovementioned Article 5 par. 3, the subsidiarity principle requires that the European Union can only act in areas that do not fall in its

---

<sup>67</sup> *ibid*, recital 5.

<sup>68</sup> European Central Bank, 'Climate and nature plan 2024-2025 at a glance' <[www.ecb.europa.eu/ecb/climate/our-climate-and-nature-plan/html/index.en.html](http://www.ecb.europa.eu/ecb/climate/our-climate-and-nature-plan/html/index.en.html)> accessed 15 March 2024.

<sup>69</sup> Regulation (EU) 2023/2631 (n 65) recital 56.



exclusive competence “if and in so far as the objectives of the proposed action cannot be sufficiently achieved by Member States”. The provision seems to revolve around a restrictive interpretation, meaning that the European legislator limits the intervention of the Institutions by binding it to two conditions: Member States must not be able to reach the objectives of the actions proposed by the EU alone and, at the same time, a joint action could better achieve said objectives<sup>70</sup>. Article 5 par. 4, instead, codifies the proportionality principle, according to which “the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”.

From a goal-oriented perspective, if the European Union’s aim is to ensure an adequate cash flow to green and sustainable initiatives through financial instruments, it is appropriate to select a legislative act that does not require transposition and avoids the risk of divergent national laws. Such divergence could create confusion among market operators and, consequently, undermine the Union’s institutional objectives. An action by the Member States would not have provided the same strength as a European initiative because it would have bound the green market regulation to the discretion of single governments and, financially speaking, this would have furtherly weakened the possibilities to reach the goals provided by the European Green Deal.

Regarding the principle of proportionality, in light of the urgent environmental context, it appears that the European Union has not overstepped its scope of action, as the Regulation merely establishes standard rules for the classification of green bonds. The Regulation seems to be inspired by a broad and global approach regulating the entire life cycle of green bond with a full set of rules going from the pre-issuance to the post-issuance review phase. Namely, article 10 of the Regulation (opening the second chapter concerning “transparency and external review requirements”), sets forth rules regarding the green bonds factsheet and pre-issuance review. Issuers that intend to use the definition “Green Bonds” must complete a factsheet in compliance with rules provided by Annex I and then ensure that said factsheet has been subject to a pre-issuance

---

<sup>70</sup> Girolamo Strozzi, Roberto Mastroianni, ‘Diritto dell’Unione Europea – Parte Istituzionale’ (2016) G. Giappichelli Editore, Torino, 79.



review by an external expert.

Among others requirements, the information to be disclosed according to the Annex I deals with the environmental strategy and rationale and the intended allocation of bond proceeds. More specifically, there must be a description pertaining to how bonds will concretely contribute to the wider environmental strategy of the issuer, including the environmental objectives set forth in Article 9 of the Taxonomy Regulation. As for the intended allocation of bond proceeds, the issue appears to be more complex and it appears to be an attempt to balance opposite interests. On one side, issuers must provide buyers with information concerning allocation to taxonomy-aligned economic activities and to those activities that, on the contrary, are not aligned with technical screening criteria. On the other side, however, confidentiality agreements, competitive considerations, or a large number of underlying qualifying projects and similar considerations, could be a reasonable cause to limit the amount of data disclosed.

Such a statement could raise doubts about the wording. The Annex is aimed to give indications about data disclosure for green and blue bond issuers and, although it is not completely uncommon to set limits to such disclosures in order to protect issuers' competitiveness on financial markets, the wording of the exception seems to be excessively generic and dangerously open to interpretation that could result in an easy way to circumvent the law itself and, consequently resulting in a failure in pursuing sustainable finance objectives. Green and blue finance represent a strategic sector for environmental protection and the creation of a circular economy. Therefore, a higher level of specification for data disclosure exceptions should have been adopted.

To complete the regulatory process and ensure transparency and comparability of bonds on the market, Article 11 mandates that issuers prepare a "European Green Bond allocation report" every 12 months until the proceeds from green (or blue) bonds are fully allocated, using the template provided by the Regulation. In that way, it will be possible to provide a uniform set of information to market operators and, finally, an external review about such report shall be obtained after the full allocation of the proceeds of the European Green Bond.



Finally, the framework is completed by the provision of the external reviews of European Green Bonds. This discipline seems to be aligned with the Green Bonds Principles issued in 2021 by the International Capital Market Association (ICMA)<sup>71</sup> but with broader attention dedicated to the skills required to apply as an external reviewer. This was a necessary choice to strengthen the fight against greenwashing through public control on the market.

## 5. De Jure Condendo Perspectives on Blue Markets

The brief description of the key provisions of the Regulation allows reflection on its impact on the future of the green (and blue) bond market. The Regulation sets a high level of transparency when it comes to data disclosure related to said bonds given the central role, they can play in tackling climate change by funding projects related to sea and oceans preservation and sustainable use. In other words, the Regulation acknowledges that preserving ecosystems and protecting them from degradation is an ambitious aim that cannot be pursued in absence of transparency and an adequate monitoring phase. That certainly provides a strong tool to correctly allocate funds making sure that stakeholders can be kept safe from mislabelling practices and misleading information about sustainability-related projects.

However, according to a certain part of the scientific literature<sup>72</sup>, the Regulation could raise some issues when it comes to its enforcement since it would not perfectly contribute to giving a certain legal framework for market operators because it would not completely and correctly define its scope of application and, at the same time, it would favour well-defined and pre-existing structures while not adequately fostering the use and the spread of innovative financial products. Furthermore, a potential complication may arise from the mandatory external review for green bond issuers, which could pose a barrier to market access for small projects. A preferable approach might have been to establish a threshold above which an external review would be required.

---

71 ICMA, 'Green Bond Principles. Voluntary Process Guidelines for Issuing Green Bonds' 2021 <[www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Green-Bond-Principles-June-2022-060623.pdf](http://www.icmagroup.org/assets/documents/Sustainable-finance/2022-updates/Green-Bond-Principles-June-2022-060623.pdf)> accessed 22 March 2024.

72 Francesco M. Stocco, 'Bond e cartolarizzazioni green. Opportunità e limiti per il mercato italiano tra regolamentazione e vigilanza' (DB, 22 January 2024) <[www.dirittobancario.it/art/bond-e-cartolarizzazioni-green/](http://www.dirittobancario.it/art/bond-e-cartolarizzazioni-green/)> accessed 22 March 2024.



This is certainly a valid opinion but it could be too radical and it would risk weakening the Regulation's environmental rationale. Moreover, to better support small projects (defined by a quantitative threshold), the Regulation could have introduced a simplified mechanism for obtaining an impartial review, thereby ensuring transparent and accurate data disclosure.

Despite these challenges, which could be addressed in a future revision, it can be concluded that the Regulation marks a significant step forward in the ambitious pursuit of transparency within a sustainable economy, including the blue economy. It enables adequate and increasing capital flows to promote an ocean-driven economy grounded in sustainability, with the long-term goal of preserving seas and oceans. Only nurturing conditions for a transparent market, with a strong enforcement activity by the competent Authorities, will ensure protection against greenwashing practices and thus concretely contribute to reversing the negative effects of climate change.

## 6. Conclusion

The analysis carried out above seems to show an essential step taken by the European legislator towards the sustainable finance objectives set out in the previous years. One cannot simply take for granted the willingness of markets operators to invest their capital in projects aimed to foster ecological transition initiatives. Reaching the goal of completely using the potentialities of finance to tackle climate change requires a consideration of "the existence of economic motives of investors"<sup>73</sup>.

The abovementioned Regulation assesses and deals with the concerns of financial markets operators. More specifically, in the context of the blue economy and economic activities centered on marine resources, one of the primary causes of underfunding for projects aimed at achieving SDG 14 has been identified as a lack of transparency in capital management and allocation, coupled with the need for a comprehensive long-term

---

73 Muhamed Ibric, Emira Kozarevic, Admir Mešković, 'The Rise of Green Bonds: Global Context and European Insights' (2024) 1 Journal of Economics, Law and Society 57.





ocean governance strategy<sup>74</sup>. The report issued by the United Nations also emphasized that initiatives aimed at achieving SDG 14 have been insufficient and lack the necessary capital to support their development. This shortfall has been (and remains) largely due to insufficient transparency, which prevents investors from making informed decisions.

The entry into force of Regulation 2023/2631 (EuGB) represented the occasion to dwell on the paradigm of transparency in the sustainable finance field. In the current context—where legislators are urgently addressing climate change to prevent irreversible impacts—the EuGB Regulation represents a natural progression from the Taxonomy Regulation. This framework aims to create a ‘safe environment’ for investors, providing sufficient data to make informed decisions on capital allocation while minimizing, if not entirely eliminating, the risks associated with greenwashing.

The rationale beyond the EuGB Regulation is to foster the issuing of green (and blue) bonds on the market in order to finance eco-friendly, energetically efficient and responsible uses of natural resources. At the same time, however, the Regulation balances the interest of financial market operators to operate in a context based on clear, transparent and harmonized rules, which represents the focal point and the main strength of the new Regulation. After all, the European Central Bank (ECB), in its opinion<sup>75</sup> on the EuGB Regulation, clearly affirmed that a harmonized and coherent background for the entire European Union positively contributes to the ecological transition by assuring data transparency and comparability in order to reinforce the credibility of such bonds among stakeholders.

Focusing specifically on the blue economy and economic activities related to marine resource utilization, it has been emphasized that this sector—while undoubtedly vital to the European economy—is also a significant source of pollution<sup>76</sup>. There may be

---

74 U. Rashid Sumaila (n 31) 7.

75 Official Journal of the European Union, C 27 (19 of January 2022) par. 1.4, 4 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2022:027:FULL>> accessed 29 August 2024.

76 Massimo Arnone, Tiziana Crovella, ‘Sustainable Finance for Marine Development: A Critical Analysis of Green Bonds in the National Recovery and Resilience Plan’ in Mario La Torre and Sabrina Leo (eds) *Contemporary Issues in Sustainable Finance. Banks, Instruments and the Role of Women* (Palgrave Macmillan, 2024) 181.



some benefit from a renewed faith of investors in eco-friendly projects financed through green and blue bonds thanks to higher standards of transparency.

Regarding the content of the Regulation, the points discussed above are preliminary given that the Regulation will only take effect on December 21, 2024. Nonetheless, it is reasonable to assert that this legislative act will contribute to the expansion of the European green bonds market, notwithstanding certain aspects that, as noted previously, may benefit from further refinement based on an analysis of its practical implementation, which will require time following its applicability.