

Chapter 1

The first legal sources of regulation of the matter

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1. The Brundtland Report and the first concept of sustainable development

The notion of sustainable development was introduced for the first time by the Brundtland Report (also known as Our Common Future), published in 1987 by the World Commission on Environment and Development (WCED). According to this Report, sustainable development is defined as development capable of ensuring “the satisfaction of the needs of the present generation without compromising the possibility of future generations to realize their own” (WCED, 1987).

In this first meaning, sustainable development is linked to environmental protection, according to a principle that has been taken up again in the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992.

Sustainable development has, therefore, consolidated itself as a principle of international law, and it has contributed to the evolution of international environmental law through the conclusion of regional agreements and global treaties. Among these, as it will be analyzed below, the Paris Agreement (COP21) of 2015 is the first universal and legally binding agreement on a global action plan, which garnered the adhesion of 195 countries.

Also in 2015, the United Nations adopted the 2030 Agenda, which defines 17

objectives (Sustainable Development Goals – SDGs), divided into 169 Targets, to be achieved by 2030¹.

As aforementioned, in 1987, the World Commission on Environment and Development (WCED), which had been set up in 1983, published a report entitled “Our common future”. The document came to be known as the “Brundtland Report”² after the Commission’s chairwoman, Gro Harlem Brundtland, who was asked to create a global agenda for change. It developed guiding principles for sustainable development as it is generally understood today.

The Brundtland Report stated that critical global environmental problems were primarily the result of the enormous poverty of the South and the non-sustainable patterns of consumption and production in the North. It called for a strategy that united development and the environment – described by the now-common term “sustainable development”.

The purpose was not simple: as stated by the Author “What the General Assembly asked for also seemed to be unrealistic and much too ambitious. At the same time, it was a clear demonstration of the widespread feeling of frustration and inadequacy in the international community about our own ability to address the vital global issues and deal effectively with them”.

And also, “The present decade has been marked by a retreat from social concerns. Scientists bring to our attention urgent but complex problems bearing on our very survival: a warming globe, threats to the Earth’s ozone layer, deserts consuming agricultural land”.

In this perspective, there is not just an environment issue, because it does not exist as a sphere separate from human actions, ambitions, and needs.

“The word ‘development’ has also been narrowed by some into a very limited focus, along the lines of ‘what poor nations should do to become richer’, and thus again is automatically dismissed by many in the international arena as being a concern of specialists, of those involved in questions of ‘development assistance’. But the ‘environment’ is where we all live; and ‘development’ is what we all do in attempting to improve our lot within that abode. The two are inseparable”³.

¹ The concept of sustainability extends beyond its environmental connotations and encompasses economic and social dimensions, as articulated through the framework of the 5 Ps, namely: people, planet, prosperity, peace, and partnership (P. DE GIOIA CARABELLESE, M. LEMBO, *Servizi di investimento e sostenibilità ESG alla luce della disciplina dell’Unione europea. Una disamina della legislazione italiana dal Regno Unito*, in *Vita Notarile*, 2/2023, 474).

² UN Report of the World Commission on Environment and Development – Our Common Future, 1987, *passim*.

³ As regards to the concept of Sustainable Development the report says that “Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits – not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make way for a new era of economic growth. The Commission believes that widespread

To date, the concept of sustainability is still a key element of the economic reflection, alongside the concept of competitiveness on which the European Union's action has been focused in the most recent period: the European Commission warns that “The EU must ensure its sustainable prosperity and competitiveness, while preserving its unique social market economy, succeeding in the twin transition, and safeguarding its sovereignty, economic security and global influence. As Mario Draghi has warned, if Europe accepts a managed and gradual economic decline, it is condemning itself to a ‘slow agony’”⁴.

poverty is no longer inevitable. Poverty is not only an evil in itself, but sustainable development requires meeting the basic needs of all and extending to all the opportunity to fulfil their aspirations for a better life. A world in which poverty is endemic will always be prone to ecological and other catastrophes. Meeting essential needs requires not only a new era of economic growth for nations in which the majority are poor, but an assurance that those poor get their fair share of the resources required to sustain that growth. Such equity would be aided by political systems that secure effective citizen participation in decision making and by greater democracy in international decision making. Sustainable global development requires that those who are more affluent adopt life-styles within the planet's ecological means – in their use of energy, for example. Further, rapidly growing populations can increase the pressure on resources and slow any rise in living standards; thus, sustainable development can only be pursued if population size and growth are in harmony with the changing productive potential of the ecosystem. Yet in the end, sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs. We do not pretend that the process is easy or straightforward. Painful choices have to be made. Thus, in the final analysis, sustainable development must rest on political will”.

⁴ See the 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 – *A Competitiveness Compass for the EU*, Brussels, 29.1.2025, COM(2025) 30 final. The basis of this Communication is the document *The future of European competitiveness Part A | A competitiveness strategy for Europe* and *Part B | In-depth analysis and recommendations*, September 2024, also known as the Draghi Report, which was in turn preceded by the Report di E. LETTA, *Much more than a Market, Speed, security, solidarity, Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens*, April 2024. In the aforementioned report, Mario Draghi emphasised the need for Europe to create a regulatory framework which facilitates competitiveness and resilience, drawing attention to burden and compliance costs created by the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), and in the Competitive Compass for the EU, the Commission confirmed the proposal for a first ‘Simplification Omnibus package’ (Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements which includes a simplification in the fields of sustainable finance reporting, sustainability due diligence and taxonomy, Brussels, 26.2.2025, COM(2025) 80 final, 2025/0044 (COD) – Omnibus I – and Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, Brussels, 26.2.2025, COM(2025) 81 final, 2025/0045 (COD) – Omnibus II).

2. The notion of sustainable development

As stated above, the concept of sustainable development was identified in 1983 by the UN Brundtland Report at chapter II: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains two key concepts within it:

- the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.

Thus, the goals of economic and social development must be defined in terms of sustainability in all countries – developed or developing, market-oriented or centrally planned. Interpretations will vary, but they must share certain general features and must flow from a consensus on the basic concept of sustainable development and on a broad strategic framework for achieving it.

Development involves a progressive transformation of economy and society. A development path that is sustainable in a physical sense could theoretically be pursued even in a rigid social and political setting. But physical sustainability cannot be secured unless development policies pay attention to such considerations as changes in access to resources and in the distribution of costs and benefits. Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation”.

Ultimately, “the sustainability of development is intimately linked to the dynamics of population growth. The issue, however, is not simply one of global population size. A child born in a country where levels of material and energy use are high places a greater burden on the Earth’s resources than a child born in a poorer country. A similar argument applies within countries. Nonetheless, sustainable development can be pursued more easily when population size is stabilized at a level consistent with the productive capacity of the ecosystem”.

In conclusion, “in its broadest sense, the strategy for sustainable development aims to promote harmony among human beings and between humanity and nature. In the specific context of the development and environment crises of the 1980s, which current national and international political and economic institutions have not and perhaps cannot overcome, the pursuit of sustainable development requires: a political system that secures effective citizen participation in decision making, an economic system that is able to generate surpluses and technical knowledge on a self-reliant and sustained basis, a social system that provides for solutions for the tensions arising from disharmonious development, a production system that respects the obligation to preserve the ecological base for development, a technological system that can search continuously for new solutions, an international system that fosters sustainable patterns of trade and finance, and an administrative system that is flexible and has the capacity for self-correction.

These requirements are more in the nature of goals that should underlie national and international action on development. What matters is the sincerity with which these goals are pursued and the effectiveness with which departures from them are corrected”.

In 1989, the report was debated in the UN General Assembly, which decided to organize a UN Conference on Environment and Development.

As highlighted by several authors⁵, the concept of sustainability declined by the first agreements remained too “undefined” to allow for the development of a regulatory paradigm capable of guiding policy makers in implementing concrete actions. Nor the economic analysis was helpful, which for a long time did not clearly identify the notion of sustainability except in the context of the opposition (referring only to the use of environmental resources), between ‘orthodox’ economists, on the one hand, and critics of linear economic growth, on the other⁶. Since the Brundtland Commission, however, there has been a growing consensus among economists that the notion of sustainable development is compatible with the classical economic paradigm. An Author⁷, for example, believes that it is possible to incorporate the concept of sustainability without forcing it into the paradigm of traditional finance if one recognizes, respectively, the function of store of value of money and of capital (which makes finance the ideal tool through which also meet the needs of future generations) and the serving nature of finance with respect to the real economy and the related production processes, which in most cases can be framed in a medium-long time horizon.

In this way, the classical paradigm can integrate a model of economic growth based on a dynamic and long-term vision, which takes into account the interests of both current and future generations and recognizes the interdependence between the economic, environmental and social dimensions (the so-called three E: environment, economy and equity⁸).

Over time, awareness has grown that the integration of environmental and social considerations into economic processes cannot disregard the governance of public and private decision-makers, since if companies ‘continue to deal with the problems of climate change solely as a social responsibility rather than a business prob-

⁵ Among the others we can mention S. CAMPBELL, *Green cities, growing cities, just cities? Urban planning and contradictions of sustainable development*, in *Journal of American Planning Association*, 62(3), 1996, 296-312; T. BEATLEY, K. MANNING, *The ecology of place: planning for environment, economy and community*, Washington DC, 1998; R. BERKE, M.M. CONROY, *Are we planning for sustainable development? An evaluation of 30 comprehensive plans*, in *Journal of American Planning Association*, 2000, 66.

⁶ F. TIMPANO, M. FEDELI, *La finanza per lo sviluppo sostenibile: un'analisi dello stato dell'arte*, in *Economia italiana*, 02/2019, 121.

⁷ A. SOPPE, *Sustainable Corporate Finance*, in *Journal of Business Ethics*, 53/2004, 213-224.

⁸ J.C.V. PEZZEY, M.A. TOMAN, ‘Sustainability and its Economic Interpretations’, in R.D. SIMPSON, M.A. TOMAN e R.U. AYRES (eds.), *Scarcity and Growth: Natural Resources and the Environment in the New Millennium*, Washington D.C., 2005, 121-141.

lem will only incur great risks’⁹ (according to Porter, quoted in Scattola, 2010). This led to the recognition of the interdependence between sustainable development and ESG factors.

3. Transforming our world: the 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development¹⁰, adopted by all United Nations Member States in 2015, aims to provide a shared blueprint for peace and prosperity for people and the planet, now and in the future. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries – developed and developing – in a global partnership¹¹. They recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.

Among the aforementioned goals we can read the 17th, related to revitalizing the Global Partnership for sustainable development, so as to “Enhance the Global Partnership for Sustainable Development, complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the Sustainable Development Goals in all countries, in particular developing countries” in order to “encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships¹²”.

⁹ E. SCATTOLA, *Sostenibilità e sviluppo sostenibile*, available at https://mpira.ub.uni-muenchen.de/37201/1/2010_Scattola_Sostenibilit_e_sviluppo_sostenibile_Evoluzione_del_concetto.pdf, 15.2.2020, which quoted Porter.

¹⁰ Resolution adopted by the General Assembly on 25 September 2015 – Transforming our world: the 2030 Agenda for Sustainable Development.

¹¹ Please refer to the table below.

¹² Resolution adopted by the General Assembly on 25 September 2015 – Transforming our world: the 2030 Agenda for Sustainable Development, 27.

Sustainable Development Goals

- Goal 1. End poverty in all its forms everywhere
- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3. Ensure healthy lives and promote well-being for all at all ages
- Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5. Achieve gender equality and empower all women and girls
- Goal 6. Ensure availability and sustainable management of water and sanitation for all
- Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all
- Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all
- Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
- Goal 10. Reduce inequality within and among countries
- Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable
- Goal 12. Ensure sustainable consumption and production patterns
- Goal 13. Take urgent action to combat climate change and its impacts*
- Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development
- Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss
- Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
- Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development

* Acknowledging that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change.

4. The communication from the Commission – A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development¹³

The Communication of the European Commission responded to the invitation from the European Council “to prepare a proposal for a long-term strategy dovetailing policies for economically, socially and ecologically sustainable development to be presented to the European Council in June 2001”.

Recognizing that the EU’s sustainable development strategy should include an environmental dimension, it was decided in the European context that in the long term, economic growth, social cohesion and environmental protection should go hand in hand.

In order to achieve a sustainable development, the Commission proposes that the strategy should focus on a small number of problems which pose severe or irreversible threats to the future well-being of European society.

The main threats are indicated in the emission of greenhouse gases which cause global warming and climate change; in the severe threats to public health, posed by new antibiotic-resistant strains of some diseases; in poverty and social exclusion; in low birth rates and the resultant ageing of the population; in the loss of biodiversity in Europe; lastly, in the transport congestion, which mainly affects urban areas.

The Commission is aware that all policies must have sustainable development as their core concern, and that forthcoming reviews of Common Policies must look at how they can contribute more positively to sustainable development. In particular, the Commission gives priority in its policy and legislative proposals to market-based approaches that provide price incentives, whenever these are likely to achieve social and environmental objectives in a flexible and cost-effective way.

5. The European Green Deal¹⁴

In order to respond to the challenges represented by climate change and global warming, which are an existential threat to Europe and the entire world, in 2019

¹³ Brussels, 15.5.2001 COM(2001)264 final.

¹⁴ 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, Brussels, 11.12.2019 COM(2019) 640 final. This represents “a novel growth strategy aimed at transforming the Union into a just, prosperous society equipped with a modern, efficient, and competitive economy that will no longer produce greenhouse gas emissions starting from 2050 (net zero)”. (cf. recital 2 of the Italian Delegated Regulation 2021/1257).

European Union presented the European Green Deal, as a tool capable of transforming the EU into a modern, resource-efficient and competitive economy, with no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use, also capable of protecting, conserving and enhancing in a just and inclusive way, the EU's natural capital, protecting the health of citizens from environment-related risks and impacts.

The Green Deal is also intended as an integral part of the Commission's strategy to implement the United Nation's 2030 Agenda and the sustainable development goals. In order to transform the EU's economy in a sustainable economy, there is a need to rethink policies for clean energy supply across the economy, industry, production and consumption, large-scale infrastructure, transport, food and agriculture, construction, taxation and social benefits. To achieve these aims, it is essential to increase the value given to protecting and restoring natural ecosystems, to the sustainable use of resources and to improving human health. The EU is committed to increasing its climate ambition for 2030 and 2050; supplying clean, affordable and secure energy; mobilising industry for a clean and circular economy; building and renovating in an energy and resource efficient way; accelerating the shift to sustainable and smart mobility; preserving and restoring ecosystems and biodiversity; pursuing green finance and investment and ensuring a just transition; greening national budgets and sending the right price signals; mobilising research and fostering innovation; activating education and training.

The European Union is well aware that sustainability actions and policies may require a higher cost in general terms. For this, he prepares a sort of oath not to harm: "Based on public consultations, on the identification of the environmental, social and economic impacts, and on analyses of how SMEs are affected and innovation fostered or hindered, impact assessments contribute to making efficient policy choices at minimum costs, in line with the objectives of the Green Deal".

In this frame, the 30th November 2022 the Commission proposed new EU-wide rules on packaging, to tackle this constantly growing source of waste and of consumer frustration. On average, each European generates almost 180 kg of packaging waste per year. Packaging is one of the main users of virgin materials as 40% of plastics and 50% of paper used in the EU is destined for packaging. Without action, the EU would see a further 19% increase in packaging waste by 2030, and for plastic packaging waste even a 46% increase.

The new rules aim to stop this trend. For consumers, they will ensure reusable packaging options, get rid of unnecessary packaging, limit overpackaging, and provide clear labels to support correct recycling. For the industry, they will create new business opportunities, especially for smaller companies, decrease the need for virgin materials, boosting Europe's recycling capacity as well as making Europe less dependent on primary resources and external suppliers. They will put the packaging sector on track for climate neutrality by 2050.

The Commission also brings clarity to consumers and industry on biobased, compostable and biodegradable plastics: setting out for which applications such

plastics are truly environmentally beneficial and how they should be designed, disposed of and recycled¹⁵.

The proposed revision of the EU legislation on Packaging and Packaging Waste has three main objectives.

1. First, to prevent the generation of packaging waste: reduce it in quantity, restrict unnecessary packaging and promote reusable and refillable packaging solutions.
2. Second, to boost high quality ('closed loop') recycling: make all packaging on the EU market recyclable in an economically viable way by 2030.
3. And finally, to reduce the need for primary natural resources and create a well-functioning market for secondary raw materials, increasing the use of recycled plastics in packaging through mandatory targets.

The headline target is to reduce packaging waste by 15% by 2040 per Member State per capita, compared to 2018. This would lead to an overall waste reduction in the EU of some 37% compared to a scenario without changing the legislation. It will happen through both reuse and recycling.

To foster reuse or refill of packaging, which has declined steeply in the last 20 years, companies will have to offer a certain percentage of their products to consumers in reusable or refillable packaging, for example takeaway drinks and meals or e-commerce deliveries. There will also be some standardisation of packaging formats and clear labelling of reusable packaging.

To address clearly unnecessary packaging, certain forms of packaging will be banned, for example single-use packaging for food and beverages when consumed inside restaurants and cafes, single-use packaging for fruits and vegetables, miniature shampoo bottles and other miniature packaging in hotels.

Many measures aim to make packaging fully recyclable by 2030. This includes setting design criteria for packaging; creating mandatory deposit return systems for plastic bottles and aluminium cans; and making it clear which very limited types of packaging must be compostable so that consumers can throw these to biowaste.

There will also be mandatory rates of recycled content that producers have to include in new plastic packaging. This will help turn recycled plastic into a valuable raw material – as already shown by the example of PET bottles in the context of the Single-Use Plastics Directive.

The proposal will clear up confusion on which packaging belongs to which recycling bin. Every piece of packaging will carry a label showing what the packaging is made of and in which waste stream it should go. Waste collection containers will carry the same labels. The same symbols will be used everywhere in the EU.

¹⁵ Brussels, 30.11.2022 COM(2022) 677 final 2022/0396 (COD).