



•ALERT•

Greenwashing and Climate Change Drive Litigation

The increased focus on sustainability policies and climate also drives climate claims and, more broadly, green claims. Firstly, in recent years the Italian Antitrust Authority turned on the lights to the phenomenon of **greenwashing**, i.e., the use of misleading green marketing campaigns, and considered greenwashing as an «unfair commercial practice» many times. **Climate change disputes are growing** as well. These disputes are started against states or companies charged with different arguments for their failure to act or for their contribution to pollution and the rise in global temperature. It is a consistent trend in the United States, and it is taking place among other countries as well. According to the Climate change litigation database of Columbia University, climate change disputes filed in the USA are over 1,600, as opposed to 450 in the rest of the world. «Beyond the United States, for example, the phenomenon is spread even in Australia and New Zealand where a common law tradition adds to an environmental and social awareness» **Gian Paolo Coppola**, partner at LCA Studio Legale, observed. The Law Firm examined the climate change litigation phenomenon in a large chapter of its report *Law & Sustainability* published over the past weeks.

Climate litigation started against states. As of today, this is still the most common trend and it is arriving in Italy as well. In November 2020, Italy has already been fined by the European Court of Justice in a case (C-644/18) brought by the European Commission for the exceeding of limit values provided by EU laws on air quality. After a one-year delay due to the pandemic, a lawsuit brought by a group of associations, comities and citizens asking the Italian government to decrease emissions should be filed before the Court of first instance in Rome by the summer (likely, in June). This initiative follows the example of disputes already filed against Holland, which was ordered to decrease pollutant emissions by the International Court of Justice in The Hague, and against France which was found liable for its failure to act against global warming by the Paris administrative court.



Simultaneously, **climate lawsuits are starting against companies.** «I expect an increase in the number of complaints related to companies' sustainability performance and the one related to sustainability reports» Coppola said. In Italy, «liability actions brought by minority shareholders that do not agree with directors or majority shareholders' decisions could come to light» Coppola added. «These disputes are of very high reputational risk» **Marco Imperiale**, innovation officer at LCA, observed. So much that, «it is likely that a big chunk of disputes will be redirected towards alternative dispute resolution tools» he added. As proven by the growing numbers of the environmental mediation project started by the Milan Chamber of Arbitration in December 2015, litigants like ADR. So far, the Milan Chamber of Arbitration handled 50 mediation cases, 10 of which during 2020: with a 20% increase from 2019. These cases are environmental conflicts of a wide range of situations, «we registered an increase of disputes between private citizens and companies against public administrations for damages caused by abnormal climate conditions» Stefano Azzali, General Manager of the Milan Chamber of Arbitration, said.

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