

Introduction to Legal Perspectives for a Sustainable Circular Economy



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The paradigm shift towards a Sustainable Circular Economy (SCE) is at the core of the EU policy agenda, aiming at revolutionizing the whole economic productive model that characterizes our contemporary society. The main features of this new paradigm, which is intended to tackle the environmental (and indeed systemic) crisis that affects our age and jeopardizes our future, have been for some time at the heart of the debate, so that such features can be considered as already well known. In essence, SCE can be appreciated in its challenging the socio-economic ‘linear’ model of ‘take-make-dispose’—or, from a specular perspective, ‘buy-use-toss’—in favour of a new ‘circular’ one that lies on reuse, repair and recycle.

If properly understood, it should be considered neither in a reductive way as returning to (wise but minor) traditional good practices of recovery and savings, nor in an ideological way as indulging (provocative but antihistorical) degrowth temptations: in fact, the challenge is to reconcile an advanced and innovative economy, such as that of today’s global and digital market, with objectives of socio-environmental sustainability, so that the values already circulating in the market become a resource that feeds on itself, to the benefit of all. From this perspective, innovation is traditionally seen as bringing about greater entropy, with inevitable negative social and environmental repercussions, almost as if it were a necessary price to be paid for achieving progress. However, the novelty of this paradigm rests precisely on its discontinuity with previous models of progress, internalizing sustainability as its cardinal principle.

Such a radical change would have a major impact on current production and consumption patterns, which in turn would revolutionize not only the economy, but also society as a whole. In this sense, the lessons of modern philosophy remind us that we cannot rely exclusively on economic rationales and techno-science, in their

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fallacious promise of infinite progress, but we must look to humanity to fairly orient the evolution of society. In the context of SCE, this is expressed by the idea of the so-called 'human-centered' approach: that is, the endeavour to decouple economic growth from environmental degradation placing at the center the human needs, in terms of well-being of individuals as aware human beings that, as such, take care of the world they live in.

Accordingly, it should be exactly the mission of the legal order to be in charge of protecting and promoting individual needs and rights, according to human solidarity, in all socio-economic fields. Yet, the legal dimension of individuals is often underestimated in the SCE framework. It is true that many reforms have been enacted and many others are expected to come, as will be duly reported in this research: but most of this legislative intervention is mainly done with a mindset of adapting old legal solutions, which, in fact, have proven to be unsatisfactory in assuring proper answers and remedies against the interests of global economic forces. Then, the risk is not negligible for the system to remain incomplete without a clear set of rights, duties and prerogatives recognized to the benefit of people together representing the public community.

Therefore, it is decisive that the legal dimension of SCE, and so the regulation of the market and the society on which it impacts, is designed consistently with the same innovative human-centered approach, in order to achieve effectively the indicated objectives of progress. This means, first and foremost, not limiting oneself to uncritically assimilating schemes of economic convenience, but asking oneself how to shape the new model with a change of paradigm that should necessarily invest the existing legal order as well. This research intends to fill this 'legal gap' in the realization of SCE.

In this regard, the need for innovation also arises at the legal level. Actually, as said, the system cannot resort to old schemes if it wants to respond properly to new challenges, and this is all the more true for the ones deriving from such a paradigm shift. That is why this research intends to promote a general reconceptualization of existing legal configurations, exploring new perspectives to strengthen the role of 'human' individuals in the socio-economic system, so that they can become the point of reference in governing the transition to SCE.

In this sense, this research develops a profound rethinking of the role of market and institutional actors in our society, as well as those of individuals, understood primarily as persons in the holistic 'human' sense mentioned above, and not as mere 'economic' consumers. This requires not only a careful analysis of the state of the art and its relevant criticalities, but also the effort to formulate innovative proposals that try to break traditional barriers in order to avoid the repetition of long-standing faults. Such a constructive and innovative effort, at least as a genuine attempt, is the little ambition that moved this project.

Admittedly (and obviously), it would have been impossible to cover all the possible profiles and issues that concern the legal dimension of SCE, especially in light of the multifaceted condition of the individual as citizen-consumer-user in our contemporary society. Therefore, this research focuses on selected legal perspectives that are considered key in such context, due to their primarily commercial and

systemic relevance, which is mostly characterizes on a structural level an economic model that stands as a new paradigm (as SCE is supposed to be).

Such an oriented approach to economic reality can be found in the order of the single chapters. In figurative terms, it can be said that the book presents the different legal perspectives as a zoom-out: it starts from the main economic actors involved in the market system (i.e. corporate enterprises) and then it expands to the overall economic environment (considering the other relevant subjects, i.e. workers, competitors and consumers); furthermore, it looks more widely from a legal policy height at this set of economic relationships, firstly from a contextual constitutional framework, and then moving even beyond to the global international dimension.

According to this prevalence for a concrete approach, the book opens with a sociological analysis, which anticipates the legal investigation that follows and that constitutes the core of the research. This specific sociological perspective, carried out by Michele Marzulli (Chap. 1), aims to present the relevant framework by means of the analysis of its key concepts, issues and actors. In particular, it highlights the social complexity implied in the regulation of SCE, because of the multidimensional nature of such sustainable circular practices. In this sense, any policy initiative that places people at the centre (following the aforementioned ‘human-centred’ approach) must consider at least a sort of duplicity, i.e. the dialectic between the macro dimension (the global scenario) and the micro dimension (social action understood as individual action). These difficulties can explain—to some extent—why ‘green’ policies seem recently to be in crisis, but the same difficulties represent also the unavoidable starting point for formulating viable solutions, including for the present research.

Then, the proper legal analysis begins, starting as said from the profiles more specifically related to corporate enterprises. In this regard, due to the peculiarity of this sector, the analysis of EU law is substantially integrated by a specific national perspective where such harmonized rules are put into practice: in particular, for reasons of proximity, Italian company law will be used as a case study. However, this focus mirrors the intention to offer a more concrete example, without any self-referentiality, but rather having in mind how the national dimension represents the ultimate moment of appreciation of the very same EU level.

More precisely, different issues of corporate governance arise. Respectively, Anna Genovese (Chap. 2), deals with corporate sustainability reporting, as the new legal framework where corporate ESG information has been transformed, going beyond the mere financial dimension of investors and other corporate-related addresses. If mandatory reporting about sustainability is apparently meaningful for establishing a concrete transition towards SCE, such informational obligations are still to be verified in their effectiveness. In this sense, the analysis explores the admissibility and practicability of corporate liability for non-compliance with sustainability obligations, also in terms of management implications.

Furthermore, Andrea Caprara (Chap. 3) investigates the possible role of citizens as stakeholders actively engaged in corporate governance, bringing within business companies the societal interests that are relevantly fostered in SCE. In particular, and with the same concrete approach, the analysis focuses on the viable solutions

that could be developed in practice, considering the categories of admissible statutory clauses and also other atypical cases of involvement within the scope of managerial discretion. In this regard, it is underlined how the relevant profiles of legal protection should be based on the fundamental arrangement of an appropriate corporate organization, in which active involvement is integrated consistently with the proper management of the lucrative enterprise itself.

In addition, the theme of corporate governance in the new paradigm framework of SCE is tackled in terms of management duties by Francesca Bianconi (Chap. 4). Here the analysis pursues the idea of finding within the legal system possible instruments to govern the discretion of directors, and it claims for an extension of the general principle of proportionality to the business context as a relevant criterion for concretizing and reviewing directors' management choices. This innovative application is claimed to transform sustainability into a concretely enforceable and verifiable managerial duty, while maintaining the profit-making purpose typical of companies, in line with the inherent spirit of SCE.

Moving beyond corporate governance, Federica Pasquariello (Chap. 5) considers business companies not in their physiological status, but when facing insolvency or crisis. In this regard, the paradigm shift towards SCE spurs the research for possible models for 'regenerating' the value that persists in such companies. Following that human-centered approach that goes beyond a purely capitalist logic, the model of Workers' Buyout (WBO) stands out, by virtue of the significant role that workers can play not only for preserving business continuity, but also for the relevant spillovers to the benefit of the local community. Such a model of cooperative enterprise is then appreciated in its applicative profiles, including the possible means of support that appear necessary in practice.

Still looking at the commercial system, but from a larger market perspective, is the analysis carried out by (myself) Calabrese Bernardo (Chap. 6) about the so-called 'right to repair'. The actual possibility of repairing products by individuals as end-users is one of the pillars of SCE, and this is testified by an international movement that is pushing for this kind of regulation across the world. Not by chance, the EU legislator intervened very recently with a specific Directive on this point, which, however, other aspects aside, shows two main issues concerning intellectual property and servitization. Hence, the analysis tries to overcome these obstacles, not limiting to critical review, but also offering possible interpretative solutions within the enacted normative text in order to ensure effectiveness to repair as a building block of such a paradigm shift.

The market is also the framework of the analysis by Francesco Deana (Chap. 7) about the role of consumers in the paradigm transition towards SCE. This chapter focuses on the relevant empowerment of consumers who, by means of their informed decisions, can implement sustainable practices. However, in a reality affected by information overload and complexity, consumer education becomes decisive for supporting an effective decision-making power that can shape the market. Moreover, consumer awareness about sustainability becomes the lens through which understanding new business obligations, like in terms of product longevity and

repairability, so to redefine the relevant market relationships (including the respective responsibilities) in light of the public policy objectives characterizing SCE.

In a complementary and too often neglected perspective then comes the analysis by Elisabetta Bergamini (Chap. 8) about private international law. In particular, this chapter assesses the adequacy of conflict-of-law and jurisdiction rules applicable to ‘circular’ transactions in the EU market. In this sense, the increasing selling from consumers to consumers in the context of online intermediary platforms raises new challenges that should be appropriately tackled in order to promote economic practices that are fundamental for SCE. Along this line, special attention is given also to alternative dispute resolution systems, as usually offered by the same platforms, reviewing their effectiveness for consumer protection and the possible innovative solutions that could be envisaged within the EU legal *acquis*.

Following the zoom-out metaphor as described above, the research then moves to more systemic aspects that frame the paradigm shift towards SCE. This further level of analysis is opened by Alessia-Ottavia Cozzi (Chap. 9), whose research investigates the constitutional foundations of circular economy and sustainability in general. Comparing the EU and national levels (using again Italy as a case study), this chapter explains how possible different approaches lead to not-so-distant solutions: actually, either if respect for the environment is internalized in the constitutional economic model or if it is posed as an external limit, the contradiction is only apparent, by virtue of the strong integration that forms the relevant environmental policy in the interconnection between the two institutional levels concerned.

The EU system is the starting point for Claudia Candemmo (Chap. 10) in extending the research beyond this horizon. In particular, this chapter explores the global landscape for the promotion of models equivalent to SCE, looking at other meaningful continental and international experiences. In this sense, the role of the EU as a frontrunner is appreciated in a wider context where also other important actors are pushing in the same direction, giving rise to a truly global effort that, political contingencies aside, is trying to drive such a paradigm change.

A global approach is also shared by Sara Dal Monico (Chap. 11) in dealing again with the figure of consumers, but from an international law perspective. In particular, this chapter tries to reshape the notion of ‘sustainable’ consumers around the funding principles of SCE in order to foster such a paradigm shift. Following the aforementioned human-centered approach, the analysis offers an innovative conceptualization of consumer rights as human rights: this legal possibility is investigated especially about a right of access to information, considered as the backbone of consumers’ power of choice and, consequently, as one of the most important instruments for achieving globally—as global is nowadays the economy—environmental protection and sustainability in the market.

Finally, the international dimension is further explored by Sara De Vido (Chap. 12), who challenges some critical prejudices that affect the existing model and, to some extent, also the same new paradigm. In particular, this chapter highlights how a real change can be achieved only if ‘human nature’ is intended in a better and superior dimension, embracing the whole of nature itself with all its living creatures. In legal terms, this founding role of the environment for a proper SCE is

transposed in the innovative construction of the environment itself not as a mere resource, but as an autonomous legal entity, enjoying special rights that could be opposed against unsustainable economic interests.

This last perspective allows the present research to come full circle, matching in a certain sense the first sociological perspective on the human-centered approach. Such an approach, if more profoundly understood, demonstrates how a sensible model of SCE must imply an overcoming of the static convictions that have characterized the excesses of the past. And this proves true also for the legal dimension, as the present research has tried to address.

This brings to a conclusive consideration: this project certainly does not have the ambition to solve every legal issue related to SCE, but nevertheless wants to stimulate the relevant debate and offer its contribution to support—and in its own small way suggest improvements to—a necessary change of paradigm, whose urgency seems to be reinforced by increasing political turmoil and, above all, by a systemic environmental crisis that unfortunately shows no sign of abating.

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