Abstract: The purpose of the article is to raise interest for using sustainability criteria as a means to promote and safeguard sustainability for traded products and their production. The focus is put on how sustainability criteria can be efficiently used in legal constructions. Practical examples from the biofuel sector are provided.

Keywords: Sustainability Criteria, Biofuels, Environmental Law

1. Introduction

How can we efficiently promote and safeguard sustainability for traded products and their production? [1] Different means or their combinations can be used for this purpose, such as eco-labels [2], environmentally friendly standards [3], sustainability criteria, spreading relevant information to involved actors and originating further scientific investigations.

2. Why Should Sustainability Criteria be Chosen?

Simply put, sustainability criteria are “requirements on sustainability that have to be fulfilled for the certification of a product or production process” [4]. Using them is an emerging international practice, which purpose is to promote and safeguard the desired quality of products and their production methods. Sustainability criteria can be of technical, economic, social and environmental character. So far sustainability criteria have been dominantly used in voluntary sustainability standards that have been initiated by private, non-governmental actors at different levels; coffee, cotton and forest industries are prominent examples here. The development of binding EU regulations for transport biofuels, with reference to mandatory sustainability criteria for this type of a product [5], has urged discussions of using sustainability criteria in a legal context. These aspects have been chosen on the basis of the existing scientific literature and tested on empirical material. Without taking these aspects into account, it is difficult for a legal framework with sustainability criteria to be efficient and achieve its aims.

3. How Should Sustainability Criteria be Used in Law?

There are certain aspects that, according to my research, answer for how sustainability criteria should be used and incorporated in legal frameworks. The main focus lies on the aspects that are relevant and important for sustainability criteria to function appropriately in a legal context. These aspects have been chosen on the basis of the existing scientific literature and tested on empirical material. Without taking these aspects into account, it is difficult for a legal framework with sustainability criteria to be efficient and achieve its aims.
The final aspect of including sustainability criteria in a legal framework is that compatibility of the proposed sustainability criteria with the already existing laws and regulations at the international, regional and national levels should be checked. It is easy to write about this aspect, but in practice this compatibility is not easy to be achieved. Contradictions with the already existing regulations can be difficult to resolve, especially if we talk about the rules of the World Trade Organization (WTO), which dominate in the international trading system. Compatibility with other bi- and multilateral regulations is also important.

The suggested list of the aspects relevant for the use of sustainability criteria in legal frameworks can evidently be modified and expanded. It can also be treated as a ground for more elaborated theoretical discussions about the notion of sustainability criteria from the judicial perspective. Among the issues that require further investigation is how sustainability criteria should be included in a legal framework together with other elements that ensure their practical implementation.

4. Why Including Sustainability Criteria in a Legal Context?

After going through the presented material, a question can arise, why it is needed to use sustainability criteria in legal frameworks. Indeed, there are a lot of voluntary sustainability standards with sustainability criteria that would fulfill approximately the same function. The answer to this question can be that a binding legal context creates more order in the branch, where sustainability criteria are used; it has the potential to establish a more profound and scientifically grounded environmental protection; it offers more effective control and assessment measures; it provides more secure opportunities for long future planning; as well as it promotes and safeguards investments. On the other hand, sustainability criteria in legal frameworks are less flexible to technological and market changes, and it can be a costly alternative. All these arguments should be considered, when the most appropriate form of using sustainability criteria is being chosen.

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References


[4] In comparison to traditional technical criteria that can be used to identify and specify the quality of a product, basing on the set of its physical parameters, sustainability standards provide detailed specifications, setting environmental and social characteristics for the production process itself, with clear reference to the main pillars of sustainable development [Daviron, B., Vagneron, I., *From Commodity to De-commoditisation and Back Again: Discussing the Role of Sustainability Standards for Agricultural Products* (2011), p. 91, in *Development Policy Review*, January 2011, vol. 29, issue 1, pp. 91-113].
