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Case note: United States District Court Eastern District of New York, *Securities and Exchange Commission v. Gautam Adani and Sagar Adani* and United States District Court Eastern District of New York, *United States of America v. Gautam S. Adani, (and others)*

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I. Introduction

Gautam Adani and Sagar Adani, respectively founder and controlling shareholder and executive director of the Indian company Adani Green Energy Ltd (Adani Green) are accused by the US Securities and Exchange Commission (SEC) of having falsely asserted compliance with anti-bribery principles and laws in connection with a bond offering to investors in the US, while setting up a millionaire bribery scheme to obtain contracts that benefitted their company in India.[1] In relation to the same bribery scheme, the Adanis and some senior executives connected to them are accused by the U.S. Department of Justice of violation of the Foreign Corrupt Practice Act (FCPA), securities and wire fraud conspiracy and to obstruct justice.[2]

The bribery scheme allegedly put in place by the Adanis concerns a renewable energy project awarded by the Solar Energy Corporation of India (SECI) to Adani Green, the renewable energy arm of the Indian conglomerate 'Adani Group'. The latter is one of the most successful and controversial multinational group in the world.[3] The Group has been at the center of several governmental investigations for corruption allegations,[4] and the cases pending before the United States courts are yet rising new concerns about its governance.

[1] United States District Court Eastern District of New York, Securities and Exchange Commission (Plaintiff) against Gautam Adani and Sagar Adani (Defendants), Case 1:24-cv-08080, Document 1, Filed 11/20/24 ('SEC v. Gautam Adani and Sagar Adani'), paras. 43, 108.

[2] United States District Court Eastern District of New York, United States of America against Gautam S. Adani, Sagar R. Adani, Vneet S. Jaain, Ranjit Gupta, Cyril Cabanes, Saurabh Agarwal, Deepak Malhotra and Rupesh Agarwal (Defendants), Cr. No. 24-CR-433, Filed October 24, 2024 ('U.S. v. Gautam S. Adani and Others'). The SEC also filed civil Foreign Corrupt Practices Act (FCPA) charges against Cyril Cabanes, a former member of Azure Power's Board of Directors: see United States District Court Eastern District of New York, Securities and Exchange Commission (Plaintiff) against Cyril Sebastien Dominique Cabanes (Defendant), Civil Action No. 24-CV-8081, Document 1, Filed 11/20/2024 ('SEC v. Cyril S. D. Cabanes').

[3] See, Hindenburgh Research, 'Adani Group: How the World's 3rd Richest Man is Pulling the Largest Con in Corporate History', January 24. 2023, https://hindenburgresearch.com/adani/ ('Hindenburgh Research'). The Adani Group responded to the Hindenburgh Research, arguing the Report is 'merely an unwarranted attack' on its group as well as on "the independence, integrity and quality of Indian institutions, and the growth story and ambition of India". See, Adani Response, January 29, 2023, https://www.adani.com/-/media/Project/Adani/Invetsors/Adani-Response-to-hindenburg-January-29-2023.pdf ('Adani Response'), p. 3.

[4] *Ibid*.

The Adanis' cases are of interest not only because they are a representative example of the interplay between companies' business practices, good governance and sustainability; but also, because they unveil contradictions of the current 'sustainability race', whereby the development of affordable and clean energy and the fight against climate change may clash with other sustainable development aspects, notably good governance and the rule of law.[5]

This short circuit affects particularly the renewable energy sector, which is emerging as one of the crucial industries for energy transition, as well as one of the most bribery sensitive.[6] Indeed, the corruptive practices allegedly implemented by the Adanis' were instrumental to the creation of what has been labelled as one of "the largest global solar energy projects".[7]

The cases under discussion are also of interest because they may be affected by the Executive Order 'Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security', adopted by the U.S. President in February 2025. The Order aims to review policies governing the application of the Foreign Corrupt Practice Act (FCPA), with a view to attenuating harms to U.S. companies' capacity of gaining strategic business advantages. The Order may lead to the review of the proceedings involving the Adanis' (or even to their discontinuation) and, more broadly, impact on anti-bribery initiatives worldwide and sustainable development.[8]

Starting from the discussion of the Adanis' cases, the article will comment on all these aspects.

II. The Adanis' Cases before U.S. Courts

A. United States District Court Eastern District of New York, *Securities and Exchange Commission v. Gautam Adani and Sagar Adani*

The SEC accuses Gautam Adani and Sagar Adani of fraud, for having "positioned [the Indian company] Adani Green to investors and the public as a leader … in principles of

[5] United Nations General Assembly. 2015. Transforming Our World: The 2030 Agenda for Sustain-able Development (UN Doc A/RES70/1) (UNGA 'Transforming our World'), Goals 7, 13 and 16, and paras. 9, 35.

[6] C. Gennalioli, M. Tavoni, Clean or dirty energy: evidence of corruption in the renewable energy sector, *LSE Research Online*, March 2016, https://eprints.lse.ac.uk/65173/7/Public%20Choice%202016.pdf; F. Moliterni, Analysis of Public Subsidies to the Solar Energy Sector: Corruption and the Role of Institutions, *Society and Sustainability Series*, Editor: Stefano Pareglio, Fondazione ENI Enrico Mattei, Nota di lavoro 33.2017 (16 June 2017), https://feem-media.s3.eu-central-1.amazonaws.com/wp-content/uploads/NDL2017-033.pdf; K. Rahman, Anti-corruption in the renewable energy sector, *U4 Helpdesk Answer 2020:21*, CMI U4 Anti-Corruption Research Centre (16 October 2020), https://www.u4.no/publications/anti-corruption-in-the-renewable-energy-sector.pdf.

[7] U.S. v. Gautam S. Adani and Others (n 2), para. 44; SEC v. Gautam Adani and Sagar Adani (n. 1), para. 56.

[8] The White House, Presidential Actions, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security* (February 10, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/. As to the previous U.S. Strategy on Countering Corruption, see U.S. Department of State, U.S. Strategy on Countering Corruption. Implementation Plane, https://www.state.gov/wp-content/uploads/2023/09/U.S.-Strategy-on-Countering-Corruption-Implementation-Plan-9.5.2023-FINAL.pdf.

good corporate governance [and anty-bribery]",[9] while implementing a complex and high value bribery scheme to induce Indian state governments' officials to enter into contracts with Adani Green to develop a large solar power plant project in India.

The bribery scheme allegedly put in place by the two defendants is connected to a 2019 request for selection (RfS) made by SECI to realize India's most ambitious solar power project. With the RfS, SECI sought bids from solar power developers for the construction of a plant (or plants) of 3 GW of power capacity. In exchange for that construction(s), SECI would contract to purchase up to 12 GW of solar power capacity from developer(s). Adani Green and the Mauritius incorporated company Azure,[10] which together won the RfS, agreed to build manufacturing plant(s) to produce solar components with 3 GW capacity (2 GW capacity to Adani Green and 1 GW capacity to Azure); in exchange for SECI's commitment to buy 12 GWs of solar power capacity (8 GW from Adani Green and 4 GW from Azure).[11] SECI's purchasing of 12 GW solar power capacity from Adani Green and Azure, however, depended on SECI's capacity to enter into power supply agreements with Indian states' energy companies at prices consistent with those envisaged in the agreement with Adani Green and Azure.[12] However, when SECI attempted to contract with Indian state governments to sell energy at prices consistent with the amounts to be paid to Adani Green and Azure, the Indian state governments refused, on the ground that the price was too high, far above market rates. As a result, SECI could not conclude power purchase agreements with Adani Green and with Azure for the purchase of power generating capacity.[13]

SEC claims that, to circumvent these obstacles, Gautam Adani and Sagar Adani incentivized Indian state government officials through bribes.[14] Following pressure and promises to pay or payment of bribes to Indian state governments, Gautam Adani and Sagar Adani were able to obtain that some Indian state energy companies enter into power supply agreements with SECI to buy energy at above market rates and, in turn, that SECI contract for the purchase of power generating capacity from Adani Green and Azure at the agreed price.[15]

SEC further argues that, while implementing the bribery scheme to persuade Indian state governments to enter into power supply agreements with SECI, Gautam Adani and Sagar Adani authorized the offering and selling of corporate bonds (Notes) of Adani Green in the US market, based on a deceptive portrayal of Adani Green's corporate governance.[16] In particular, the defendants suggested to potential investors that "a core tenet of Adani

[9] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 2.

[10] Azure is a limited company formed under the laws of Mauritius, majority-owned by two Canadian pension funds, that produces and sells solar power in India. Azure's common stock was publicly traded on the New York Stock Exchange until it was delisted in November 2023, qualifying Azure as an 'U.S. Issuer' according to FCPA, title 15, United States Code, Section 78dd-1(a). See, SEC v. Gautam Adani and Sagar Adani (n. 1), para. 21; U.S. v. Gautam S. Adani and Others (n. 2), para. 4.

[11] SEC v. Gautam Adani and Sagar Adani (n. 1), paras. 47-56.

[12] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 60.

[13] SEC v. Gautam Adani and Sagar Adani (n. 1), paras. 62-63.

[14] SEC v. Gautam Adani and Sagar Adani (n. 1), paras. 64-86.

[15] SEC v. Gautam Adani and Sagar Adani (n. 1), paras. 64-86 and 87-88.

[16] SEC v. Gautam Adani and Sagar Adani (n. 1), paras. 89-90.

Green and its Board was preventing bribery and corruption", giving them "comfort that none of Adani Green's executives or directors were then involved in a corrupt bribery scheme".[17] Adani Green highlighted to potential investors its commitment to environmental, social and governance (ESG) aspects, as well as to the Principles of the United Nations Global Compact, including Principle 10 on anti-bribery;[18] and detailed policies and procedures adopted to implement those principles.[19] With this information the defendants sought to differentiate Adani Green from other potential investments or issuers in developing countries – that might be susceptible to corruption and bribery issues – and to specifically appeal to investors who prioritize ESG principles or ESG-related investments.[20]

According to SEC, the false statements concerning Adani Green's 'good governance', made in connection with the offer and sale of Notes to investors in the United States, violate the antifraud provisions of US federal securities laws, deceiving investors.[21]

B. United States District Court Eastern District of New York, *United States of America v. Gautam S. Adani, (and others)*

The very same facts and bribery-scheme described in the case *SEC v. Gautam Adani and Sagar Adani* are at the basis of criminal charges filed by the U.S. Department of Justice (DOJ) against Gautam S. Adani and Sagar R. Adani, and other senior executives connected to them before the United States District Court Eastern District of New York in October 2024.[22]

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[17] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 114. It is true that Adani Green informed investors of several 'risk factors' associated with the corporate bonds, including the circumstance that "our employees might take actions that could expose us to liability under anti-bribery laws"; however according to SEC the statement "was materially misleading because it falsely suggested that no bribery scheme was then ongoing and failed to disclose the existing bribery scheme led by Adani Green's most prominent leaders, Gautam Adani and Sagar Adani" (para. 104).

[18] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 109.

[19] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 111. Adani Green's Subscription Agreement for the corporate bonds also stated 'that neither Adani Green nor the Adani Group (nor any of their directors, officers, or employees) were engaged or would engage in bribery, and suggesting to investors the false and misleading impression that both Adani Green and Adani Group had effective anti-bribery programs' (para. 119).

[20] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 37.

[21] Specifically, the SEC argues that Gautam Adani and Sagar Adani each violated: Section 17(a) of the Securities Act of 1933, which makes it unlawful to "employ any device, scheme, or artifice to defraud" (1), to "obtain money or property by means of [any] untrue statements … or any omission" (2), or to "engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser" (3) (see, SEC v. Gautam Adani and Sagar Adani (n. 1), paras. 142-144); Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, which outlaw the "use or employ[ement], in connection with the purchase or sale of any security… [of] any manipulative or deceptive device or contrivance"; Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, which outlaw the 'use or employ[ement], in connection with the purchase or sale of any security… [of] any manipulative or deceptive device or contrivance' (see, SEC v. Gautam Adani and Sagar Adani (n 1), paras. 145-147). Each defendant is further accused of having aided and abetted Adani Green's violations of Securities Act Section 17(a)(2), Exchange Act Section 10(b), and Rule 10b-5(b) thereunder (see, SEC v. Gautam Adani and Sagar Adani (n 1), paras. 148-155).

[22] Other defendants are: Vneet S. Jaain, Ranjit Gupta, Cyril Cabanes, Saurabh Agarwal, Deepak Malhotra and Rupesh Agarwal.

In this case, allegations mainly concern criminal offences for violation of the Foreign Corrupt Practice Act (FCPA), which prohibits companies -whose stock is publicly traded in the United States- and individuals associated with those companies, from paying bribes to foreign officials in order to secure business in foreign countries. In a nutshell, the DOJ claims that, between 2020 and 2024, senior executives of a U.S. issuer company (Azure) and of the issuer's largest shareholder, a Canadian institutional investor (*Caisse de dépôt et placement du Québec*), participated - together with the Adanis' - in a scheme to bribe Indian government officials to ensure the execution of lucrative solar energy supply contracts in violation of FCPA, Title 15, USC, Section 78dd-1 and 3.[23]
Although the DOJ recognizes that Gautam Adani and Sagar Adani personally intervened in the bribery-scheme, these two are not accused of any violations of the FCPA. The reason is that under the FCPA only 'officers' and 'directors' of an U.S. 'issuer', and 'persons' involved in the bribery-scheme while in the territory of the United States, can be prosecuted.[24] Therefore, DOJ's allegations against Gautam Adani and Sagar Adani exclusively relate to conspirations to misrepresent Adani Green's anti-bribery practices to US investors and to international financial institutions, and to conceal from those same investors and institutions their bribery of Indian government officials.[25]
The DOJ further argues that senior executives of Azure and of *Caisse de dépôt et placement du Québec* conspired to obstruct the U.S. government's investigations into the bribery scheme.[26] In particular, they agreed to "suppress documents, conceal information and provide false information to the United States government",[27] "create the false appearance of transparency and good governance" by "mak[ing] certain selective disclosures in connection with the internal investigation and the Government Investigations [...] to create the appearance that the co-conspirators were reporting misconduct rather than perpetrating misconduct".[28]

III. Some comments on good governance and sustainability in light of the Adanis' Cases

Good governance and, ultimately, sustainable development are primarily duties of States in the exercise of their sovereign powers, but corporations and individuals may also play a role, as their actions and omissions may have an impact on the (in)capacity of States to advance them.[29] The Adanis' cases are a representative example of the link existing

[23] U.S. v. Gautam S. Adani and Others (n. 4), paras. 1, 42-72.
[24] The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1.
[25] U.S. v. Gautam S. Adani and Others (n 4), paras. 79-101; 106-116; 127-133.
[26] *Ibid*., paras. 73-78.
[27] *Ibid*., para 75, 77.
[28] *Ibid*., para. 76.
[29] For example, according to the '2015 Business for the Rule of Law Framework' (UN Global Compact), by adopting responsible business practices and ensuring the respect of human rights and good governance, companies may contribute to strengthen the rule of law, serving as a complement to governmental action. See, UN Global Compact, Business for the Rule of Law Framework. 2015. https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2Frule_of_law%2FB4ROL_Framework.pdf; S. Faccio, The EU Sustainable Corporate Governance Initiative and the Rule of Law, in L. Antoniolli, C. Ruzza (Eds.), *The Rule of Law in the EU: Challenges, Actors and Strategies*, Cham, CH: Springer, 2024, 305-319, p. 306. The impact of multinationals

between good governance and sustainable development and the positive and negative impacts companies may have on both.

On the one hand, the Adanis' cases show how private investors may significantly contribute to the achievement of green transition, thanks to the investment in technology and capitals, that public entities alone could not afford.[30] On the other, the ongoing proceedings make clear how companies' irresponsible business practices may negatively affect local communities and consumers. The energy purchasing agreements above market-prices concluded between SECI and Indian state energy companies in consequence of Adanis' corruptive practices, not only led consumers living in India to pay more than they should have for basic services,[31] but they also undermined transparency and accountability of domestic institutions.[32] The cases thus unveil some contradictions in the current 'sustainability race', whereby the development of affordable and clean energy and the fight against climate change clash with other sustainable development aspects, notably good governance and the rule of law.[33] This is particularly true for the renewable energy sector, where stimulus programmes and tax benefits to sustain renewable energy technology investments and increasing attention to ESG aspects have spread risks of frauds and corruption.[34]

The Adanis' cases further reveal strengths and weaknesses of international (soft law) initiatives on corporate social responsibility, in particular the United Nations Global Compact.[35] The UN Global Compact is of particular interest for the cases at hand, as Adani Green joined the initiative in 2019 and is still listed, together with other three companies of the Adani Group, among the 'Participants' in the UN Global Compact website.[36]

(investors)' actions and omissions on the capacity of States to protect and promote human rights and advance good governance may be significant when such companies operate in the field of essential services, such as water and sewage services, or in sensitive industries, such as gambling. See, for example, *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, ICSID Case No. ARB/07/26; *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/14/32.

[30] In line with the 2030 Agenda, the project implemented by Adani Green and Azure aimed to "promote investment in energy infrastructure and clean energy technology", "expand infrastructure and upgrade technology for supplying modern and sustainable energy services" and encourage "multi-stakeholder partnerships". See, UNGA 'Transforming our World' (n. 5), Goal 7.3: 7.a, 7.b and para. 17.17.

[31] *Ibid*., Goals 7.1, 11.1 and paras. 7 and 27.

[32] *Ibid*., Goal 16: 16.5; 16.6; 16.a.

[33] United Nations General Assembly. 2015. Transforming Our World: The 2030 Agenda for Sustainable Development (UN Doc A/RES70/1) (UNGA, 'Transforming our World'), Goals 7, 13 and 16, and paras. 9, 35.

[34] For example, in 2020, the Indonesian G20 Presidency put forward the topic of mitigating corruption risks in the renewable energy sector through the Anti-Corruption Working Group of the G20 to "highlight the potential of corruption risks in the sector, and actions to mitigate them, as well as good practices from member countries". See, Background Note on Mitigating Corruption Risks in Renewable Energy (as a reference document for G20 ACWG), https://g7g20-documents.org/fileadmin/G7G20documents/2022/G20/Indonesia/Leaders/2%20Leaders%27%20Annex/Background%20Note%20on%20Mitigating%20Corruption%20Risks%20in%20Renewable%20Energy11112022.pdf.

[35] United Nations Global Compact <https://unglobalcompact.org>.

[36] SEC v. Gautam Adani and Sagar Adani (n 1), paras. 43 and 109. See also, United Nations Global Compact, Our Participants, https://unglobalcompact.org/what-is-gc/participants/search?search%5Bkeywords%5D=adani&button=&search%5Bsortfield%5D=&search%5Bsortdirection%5D=asc&search%5Bperpage%5D=10.

The UN Global Compact invites companies to design their strategies, policies and procedure along ten principles, to meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. The ten principles are inspired by the content of some international legal instruments, such as: the Universal Declaration of Human Rights, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption (UNCAC).[37] Adherence to the UN Global Compact is voluntary and often a question of reputation for companies that want to be perceived by investors and consumers 'committed' to core good governance values.[38] This is also the case of Adani Green.[39]

Being a soft law initiative, the UN Global Compact does not provide for sanctions in case companies fail to align with the principles, but only a delisting procedure.[40] Delisting can occur when a company's behavior compromises the integrity and the reputation of the initiative, for example when "[...] the participant provide[s] false or misleading information in the application form", or when "egregious or systematic abuse of the Ten Principles is admitted by an authorized company representative or there is a finding of guilt in a court of law".[41] All companies that are no longer part of the initiative are given the status of delisted and it is reflected as such on the UN Global Compact website. Delisting for integrity is then reviewed on a case-by-case basis and re-application by a delisted company is generally recommended after a minimum of three years, in order to provide the company sufficient time to address issues of concern.[42]

The current listing of Adani Green within the UN Global Compact may be short-lived if corruption allegations are confirmed in ongoing proceedings. However, it may be questioned whether delisting is a sufficient 'sanction' in light of such massive bribery scheme and (ab)use of the UN Global Compact.

[37] Another relevant treaty is the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

[38] For example, according to: S, Schaltegger, J. Hörisch, In search of the dominant rationale in sustainability management: legitimacy-or profit-seeking?, *Journal of Business Ethics*, 145 (2), 2017, pp. 259-276 and J. Y. Lai, A. Hamilton, For whom do NGOs speak? Accountability and legitimacy in pursuit of just environmental impact assessment, *Environmental Impact Assessment Review*, 82, 2020, 106374, the search for social legitimacy is the dominant logic behind corporate sustainability strategies. Some research further confirms that the adoption of the UN Global Compact has a significant positive impact on sales growth and profitability, see: G. Orzes, A. M. Moretto, M. Moro, M. Rossi, M. Sartor, F. Caniato, G. Nassimbeni, The impact of the United Nations global compact on firm performance: A longitudinal analysis, *International Journal of Production Economics*, 227, 2020, 107664.

[39] SEC v. Gautam Adani and Sagar Adani (n. 1), para. 109.

[40] UN Global Compact, Delisting and Rejoining Policy, https://ungc-communications-assets.s3.amazonaws.com/docs/publications/Delisting%20and%20Rejoining%20Policy_March%202024.pdf. As accountability mechanism, the UN Global Compact requires participating companies to produce an annual communication on progress (COP) that details their work to embed the ten principles into their strategies and operations. Companies that fail to report or to meet the criteria over time may be removed from the initiative (i.e. delisted), https://unglobalcompact.org/participation/report.

[41] *Ibid*., p. 3.

[42] *Ibid*., p. 5.

The lack of accountability when corporate performance does not match rhetoric is a long-standing weakness of the UN Global Compact.[43] For example, according to a study of 2021:

a significant number of [multinational companies caught up in human rights violations] are signatories to several high-ranking global sustainability institutions such as the UN Global Compact and the CSR/Sustainability Committee. Ironically, all these MNCs claim compliance with human rights policies and disclose their explicit commitment to business ethics in their annual reports, despite our data showing poor compliance with these policies in practice.[44]

Against this growing criticism, some States and regional organization (*i.e.* the EU) adopted *ad hoc* laws with the aim of committing companies to the achievement of sustainable development.[45] For example, the EU Directive 2024/1760 on Corporate Sustainability Due Diligence (DCSDD) provides for obligations, sanctions and a civil liability regime upon companies, with a view to making them accountable for adverse impacts of their actions on human rights and the environment along the value chain.[46] Although the DCSDD does not consider adverse impact on 'good governance' *per se*, the Directive recognizes the link existing between human rights and the environment, and governance aspects; and recommends that companies consider corruption and bribery 'when carrying out human rights and environmental due diligence, in a manner that is consistent with the UN Convention against Corruption.'[47]

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[43] S. Ullah, K. Adams, D. Adams, R. Attah-Boakye, Multinational corporations and human rights violations in emerging economies: Does commitment to social and environmental responsibility matter?, *Journal of Environmental Management*, 280, 2021, 111689 pp. 1-13, at 6; M. Macellari, A. Yuriev, F. Testa, O. Boiral, Exploring Bluewashing Practices of Alleged Sustainability Leaders through a Counter-Accounting Analysis, *Environmental Impact Assessment Review*, 86, 2021, 106489; S. Schembera, Implementing Corporate Social Responsibility: Empirical Insights on the Impact of the UN Global Compact on Its Business Participants, *Business & Society*, 57(5), 2018, pp. 783-825; O. F. Williams, The UN Global Compact: the challenge and the promise, 14 *Business Ethics Quarterly*, 2004, pp. 755-774.

[44] Ullah and others (n. 43), at 6. Further, Macellari and others (n. 43), observe that: "[c]orporate disclosure counter-accounting reveals that more than 80% of the significant negative events related to LEAD companies [companies considered to be sustainability leaders] were not reported or were only partially reported in their sustainability reports. Contrary to researchers' initial expectations, the length of the sustainability reports was not positively associated with their completeness or transparency".

[45] For example, Loi no. 2017-399 du 27.3.2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, in Journal officiel électronique authentifié n° 0074 du 28.3.2017, https://www.legifrance.gouv.fr/down- load/pdf?id=9aawcYcwvkntYs2UUCMWL4iX_erjixoTD_Jy3AVXRFk=; Directive (EU) 2024/1760 of the European Parliament and the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (DCSDD).

[46] *Ibid*. The Directive knew a setback at the beginning of 2025, with the adoption of the EU 'Omnibus I' package and the Protect USA Act of 2025. The former postpones by one year the transposition deadline of the CSDDD and its first phase of application (covering largest companies), the second is a United States legislative proposal that seeks to limit the application of the CSDDD to US entities. If enacted the Protect USA Act would prohibit 'entity integral to the national interests of the United States' to comply with any foreign sustainability due diligence regulation, including the DCSDD, and any enforcement action by the EU or its member states for non-compliance with the CSDDD.

[47] *Ibid*., Whereas 36. As opposed to the Proposal elaborated by European Parliament in 2021 - which engaged companies to carry out effective due diligence with respect to potential or actual adverse impacts on human rights, the environment, and good governance -, the DCSDD does not consider good governance. The DCSDD mentions

To promote good governance in international business, many States also adopted anti-bribery legislation[48] and adhered to international treaties.[49] Among these is the United States.

The U.S. FCPA is a pioneering and successful example for efficient good governance and, since its enactment in 1977, it has served as an impetus for worldwide changes in attitudes toward corruption in business transactions.[50] The FCPA stimulated the adoption of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and of many domestic anti-bribery legislations.[51] The enforcement actions under the FCPA have increased steadily over the years making the United States a champion in anti-bribery commitment.[52]

In 2023, the United States also adopted the Foreign Extorsion Prevention Act (FEPA) that focuses on the demand side of foreign bribery and extends DOJ's jurisdictions to foreign officials once they deal with US individuals or entities.[53] With the adoption of the FEPA, the U.S. implemented its obligations under international conventions, including the United Nations Convention Against Corruption[54] and the OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 2021,[55] confirming its leading role in the field.

good governance only in relation to possible future reforms of the directive (article 36(d)). See: Report with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), 11.2.2021 (A9-0018/2021); Faccio (n 32), pp. 313-315.

[48] The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq.

[49] For example, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD/LEGAL/0293), adopted on 21/11/1997 (46 State parties); the General Assembly Resolution 58/4 of 31 October 2003 adopting the United Nations Convention Against Corruption (191 State Parties).

[50] Jose W. Alvarez, 'A Comparative Analysis of Domestic and International Legislation on Combating International Bribery and Corruption', 38(4) American University International Law Review (2023) 819-881, 844.

[51] *Ibid*.

[52] The OECD commended the United States for having "investigated and prosecuted [under the FCPA] the most foreign bribery cases among the Parties to the Anti-Bribery Convention". See, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States, October 2010, p. 11. Similarly in 2020 and 2022, the OECD observed that "the level of FCPA enforcement against both natural and legal persons reflect the United States' continued strong commitment to fighting foreign bribery". See, Implementing the OECD Anti-Bribery Convention, Phase 4 Report: United States, October 2020, pp. 11-12; Phase 4 Two-Year Follow-Up Report: United States, October 2022, pp. 3-4. For a comprehensive analysis of the FCPA's successes and failures, see M. Koehler, 'Has the FCPA Been Successful in Achieving Its Objectives?', University of Illinois Law Review (2019), pp. 1267-1320, the author observes that there are several plausible ways to measure the FCPA's success, "ranging from 'hard' enforcement metrics to 'soft' enforcement metrics to 'modeling' metrics… Some of these forms of success suggest that the FCPA is not being successful in achieving its objectives, whereas others suggest that it is being successful. For the reasons highlighted above, this Article concludes that it is inconclusive whether the FCPA, upon its 40th anniversary, has been successful in achieving its objectives" (p. 1319).

[53] S.2347 - Foreign Extortion Prevention Act 118th Congress (2023-2024).

[54] United Nations Convention Against Corruption (n. 49), art. 16(2).

[55] Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (OECD/LEGAL/0378), adopted on 26/11/2009, amended on 26/11/2021, art. XII.

At the beginning of 2025, however, the U.S. policy on countering corruption seems to have changed, following the adoption of the Executive Order 'Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security'.[56]
The Executive Order starts from the assumption that "overexpansive and unpredictable FCPA enforcement against American citizens and businesses … *for routine business practices in other nations* (emphasis added)" actively harms U.S. companies' capacity of gaining strategic business advantages - for example, in critical minerals, deep-water ports, or other key infrastructure or assets - and undermines American economic competitiveness and national security.[57] The Order thus seeks to reform the strategy behind the enforcement of FCPA and to this end requests the Attorney General to pause its application for a period of 180 days.
During this period, the Attorney General shall *review guidelines and policies* governing investigations and enforcement actions under the FCPA, with a view of prioritizing American interests, American economic competitiveness and the efficient use of Federal law enforcement resources.[58] The Attorney General is further required to *cease* initiation of any new FCPA investigations or enforcement actions; and, in light of the new priorities set by the Presidential Act, *review* existing FCPA investigations or enforcement actions and determine whether *remedial measures* with respect to inappropriate past FCPA investigations and enforcement actions are warranted.[59]
With specific reference to the Adanis' cases, the Executive Order may lead to the review of the proceedings and even to their discontinuation. For example, the circumstances that the cases relate to a corruptive scheme put in place outside the U.S. (although with effect in the U.S. market and to the detriment of U.S. investors) and that they mostly involve Indian citizens may well direct the Attorney General to give up the proceedings for "(in)efficient use of Federal law enforcement resources". In addition, the 180-day review period may give to the Adanis "an opportunity for advocacy with the government" and the conclusion of an out of court agreement, thus avoiding the negative publicity that may derive from the proceedings, as well as the risk of delisting from the U.N. Global Compact.[60]
Concerns about the risk that the FCPA imposes excessive burdens on companies and undermine their competitiveness already emerged in the past;[61] however, such concerns

[56] The White House, Presidential Actions, 'Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security' (February 10, 2025), https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/. As to the previous U.S. Strategy on Countering Corruption, see U.S. Department of State, U.S. Strategy on Countering Corruption. Implementation Plane, https://www.state.gov/wp-content/uploads/2023/09/U.S.-Strategy-on-Countering-Corruption-Implementation-Plan-9.5.2023-FINAL.pdf.
[57] *Ibid*., Sec. 1.
[58] *Ibid*., Sec. 2(a).
[59] *Ibid*., Sec. 2(a)(i)-(ii); 2(d).
[60] K. Clark, B. F. Quigley, and B. Moore, Takeaways from the Pause on Foreign Corrupt Practices Act Enforcement, *Harward Law School Forum on Corporate Governance* (February 24, 2025), https://corpgov.law.harvard.edu/2025/02/24/takeaways-from-the-pause-on-foreign-corrupt-practices-act-enforcement/.
[61] Alvarez (n. 50), p. 826; Koehler (n. 50), pp. 1309-1310. For example, a report elaborated in 1980 by the Secretary of Commerce and the U.S. Trade Representative warned the Congress that, "[t]he [FCPA] is identified

never put into discussion the validity of the legislation, nor suspended its implementation.[62] The 2025 Executive Order represents a significant u-turn and as such it may have an unpredictable impact, not only on ongoing proceedings, including those involving the Adanis', but also on anti-bribery initiatives worldwide and, ultimately, on the achievement of sustainable development. As the strategy of the U.S. government towards anti-bribery shapes business practices of major multinational companies in the world (all incorporated in the U.S.),[63] there is a risk that more relaxed enforcement of FCPA increases bribery and corruption, creating space for human rights abuse and environmental externalities in global supply

by businessmen and attorneys as one of the most significant export disincentives … [T]he Act inhibits exporting because of uncertainty within the business community about the meaning and application of some of its key provisions … Uncertainty about the meaning of key provisions of the FCPA and how it will be applied is having a negative effect on U.S. exports".

[62] Alvarez (n. 50), pp. 826-829.

[63] A. Murphy and M. Schifrin (eds.), The Global 2000 2024, *Forbes*, 6 June 2024, https://www.forbes.com/lists/global2000/.