FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

ENFORCING CONSUMER RIGHTS TO COMBAT GREENWASHING

REPORT

Contents

About this publication

Key findings

Human rights and the environment are intrinsically linked: a clean, healthy and sustainable environment is essential to the enjoyment of a range of human rights. Under international human rights treaties and the EU Charter of Fundamental Rights, governments have an obligation to protect, respect, promote and fulfil all human rights. This includes an obligation to prevent foreseeable harm to rights, such as that presented by climate change. There is growing recognition of these links in international soft law and in regional human rights frameworks.

The key messages on human rights and climate change of the Office of the United Nations High Commissioner for Human Rights highlight the human rights obligations of states and the responsibilities of other actors, including businesses, with respect to climate change-related agreements, policies and actions.

Protecting consumer rights and protecting the environment can align in several ways, since both aim to promote sustainable practices and responsible consumption by addressing green marketing, encouraging sustainable consumption and consumer education, and combating 'greenwashing'.

Greenwashing refers to the practice of conveying false or misleading information about the environmental friendliness of a company's products. It involves using deceptive advertising or marketing tactics to convince the public that the company's products, goals and policies are environmentally sound. It can be found in advertising, sponsorship and public messaging in the media, including on social media. Examples of greenwashing can range from simply changing the name or label of a product to make it seem more natural, even if it contains harmful chemicals, to launching elaborate and expensive campaigns that portray highly polluting companies as being eco-friendly.

In today's dynamic business landscape, companies are faced with growing demands from consumers, governments and investors to embrace sustainability and address climate change. Regrettably, however, some companies seek to capitalise on the increasing demand for environmentally friendly products and use greenwashing to project an image of social responsibility without actually changing their operational practices, thus diverting public attention from the negative impact these may have. Greenwashing therefore results in a range of potential harms to consumers as rights holders, by deceiving and disempowering them through encouraging economic choices that do not in fact advance sustainability goals.

Recognising the potential role of consumers in advancing responses to climate change has led the EU and national legislators to connect consumer and environmental protection in EU legislative and policy initiatives.

The European Green Deal emphasises the importance of empowering consumers to make informed decisions. The 2022 proposal on empowering consumers for the green transition, adopted in February 2024, aims to strengthen consumer rights, in particular by revising the unfair commercial practices directive (UCPD), in order to expressly address greenwashing practices. In addition, a 2023 proposal for a new green claims directive provides more specific rules on substantiation and communication of environmental claims.

The report examines legal frameworks in selected EU Member States (Austria, Belgium, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Poland and Portugal) to assess

whether they ensure consumers' access to accurate information about the environmental effects of products and services, and whether they hold companies accountable for making misleading green claims (greenwashing). This report presents examples of the application of existing legislation, where available, and points to shortcomings or inconsistencies in its implementation. In addition, the report identifies areas for improvement and proposes solutions to address the gaps in effective protection (see Chapter 3 on ways forward). The findings are relevant for EU and national policymakers, and also for enforcement bodies when implementing provisions targeting misleading environmental claims.

A human rights approach to environmental protection empowers consumers

Adopting a human rights approach to environmental protection and corporate climate accountability requires a focus on the obligations of governments and the responsibilities of large companies, and also on empowering consumers as rights holders. It can help promote sustainable consumption, as it encourages consumers to make choices that are good for both themselves and the environment. Tackling greenwashing is an example of an issue for which human rights, consumer rights and climate goals align.

Furthermore, consumer empowerment depends on access to information and effective access to justice to ensure the enforcement of rights. As demonstrated by the European Union Agency for Fundamental Rights (FRA)'s prior research on business and human rights, the presence of procedural obstacles frequently prevents individuals from asserting their rights against corporations, thereby rendering those rights ineffectual. A rights-based approach to environmental protection also aims to increase access to justice not only for individual victims but also for communities. This includes allowing non-governmental organisations (NGOs) to represent communities and protect the environment in the public interest. In July 2022, the United Nations General Assembly adopted a resolution declaring that everyone has the right to a healthy environment. Allowing NGOs to challenge greenwashing without having to prove individual harm is therefore consistent with emerging international law and acknowledges the right of communities to actively participate in shaping policies related to climate change.

Environmental protection – the advantages and limitations of consumer laws

Environmental protection can be improved through more effective protection of consumer rights. Incorporating sustainability into consumer protection policy can promote economic and social development and environmental goals.

Consumer protection laws can empower consumers to make informed decisions and hold businesses accountable for the negative environmental impacts that may result from misleading claims, but their potential may be hindered by lack of awareness and procedural obstacles.

The research suggests that consumer law is more effective than administrative environmental law in addressing greenwashing. This is because consumer law is specifically designed to protect consumers from deceptive advertising, whereas administrative environmental law focuses primarily on regulating environmental impact. Consumer law offers legal protection and advantageous procedural rules to consumers who

have been misled by greenwashing claims, and it can result in penalties for companies involved in such practices. In contrast, environmental law may not have the same extent of enforcement measures, and experts did not identify the legal possibility to tackle greenwashing through traditional environmental laws in most countries covered by the research. Furthermore, laws on access to environmental information are primarily directed towards public authorities and not corporations; therefore, their application is limited.

However, the study shows that the existing legal framework on consumer protection in several Member States addresses environmental harm only to a limited extent. Consumer protection laws should explicitly address the environmental impact of products and services in order to improve their effectiveness.

Adopting more precise legal frameworks to ensure uniform interpretation

The research found that relevant legislation applicable to greenwashing in Member States covered by this study is the result of the EU *acquis*, in particular relating to unfair commercial practices.

The broad definition of commercial practices under the UCPD has made it possible to address greenwashing practices in several Member States, prior to the existence of EU and national legislation explicitly providing definitions of environmental claims.

The research found significant discrepancies between Member States in the application of the provisions on unfair commercial practices to greenwashing, not only with respect to the interpretation of specific terms but also as regards the existence of initiatives to challenge greenwashing at all. In some of the Member States, civil society has initiated a significant number of legal actions, while in others few if any cases have been brought based on these provisions.

Moreover, different approaches have emerged as to how the responsibility for the potentially misleading communication is assigned: courts in some Member States require companies to provide evidence for all aspects of environmental claims, while others find that consumers have a responsibility to research information and seek alternative sources before claiming to have been deceived.

Experts consulted in this research claimed that it is necessary to have more precise legislation at the EU level expressly addressing greenwashing and to provide clear criteria to be met by companies when making any kind of green statement.

The new EU legislative initiatives relating to green claims aim to address these gaps, establishing explicit rules on the admissibility and substantiation of sustainable performance claims.

In addition, the research shows that these proposals have triggered more detailed and targeted legislation in Member States or have already been invoked in successful court litigation. Thus, initiatives at the EU level can drive legislative reforms in Member States and help strengthen laws against greenwashing, even before final adoption.

Ensuring effective enforcement of rights

The enforcement of consumer rights to combat greenwashing may be positively or negatively influenced by a variety of factors, such as dissuasiveness of sanctions, burden of proof and conditions for civil-society representation.

Dissuasive sanctions

Judicial and administrative sanctions can foster prevention, namely by serving as a deterrent against unlawful or abusive behaviour, and redress, namely by providing public and official recognition of the wrongdoing and conveying the message that justice is being served.

Sanctions, such as fines, can be an effective tool to combat greenwashing if they are sufficiently severe to be dissuasive. These can be either administrative fines or damages ordered by courts. Administrative fines are fixed by law, and according to experts are too small to have any significant dissuasive effect and effectively deter large corporations, to which they are typically directed, considering large corporations' substantial financial resources and potential costs of misleading marketing campaigns.

This issue has been addressed in targeted legislation adopted in some countries, where fines for greenwashing can amount to up to 80 % of the cost of the misleading promotional campaign.

The EU plans to introduce penalties for greenwashing in the proposed green claims directive, including fines, confiscation of revenues and temporary exclusion from public procurement (Article 17). The proposal highlights in recital 64 of the preamble that, 'when setting penalties and measures for infringements, the Member States should foresee that, based on the gravity of the infringement, the level of fines should effectively deprive the non-compliant trader from the economic benefit derived from using the misleading or unsubstantiated explicit environmental claim or non-compliant environmental labelling scheme, including in cases of repeated infringement'.

Rules on burden of proof and disclosure of information

The research finds that the rules concerning burden of proof can impose an excessive burden on consumers pursuing claims.

According to the UCPD, it is for national law to determine the rules regarding burden of proof, but courts and administrative authorities should have the power to request evidence from businesses to support their claims. In most EU Member States studied, the burden of proof usually rests on the company to prove that their information is correct and complete. However, in some Member States the burden of proof falls on the plaintiff if the lawsuit is based on the seller's contractual obligations. In all Member States, when damages are claimed, the consumer must prove a link between the unlawful act (such as misleading advertising) and the harm.

As regards disclosure, the corporate sustainability reporting directive (CSRD) introduced significant advancements in the regulations governing the disclosure of social and environmental information by companies. It remains to be seen how this directive will improve access to environmental information for evidence purposes.

Disclosure of information is closely linked to access to information. The EU and its 27 Member States are all parties to the Aarhus Convention, which explicitly guarantees the

right to access to environmental information held by public authorities. The findings of this research show, however, that in certain cases this access can be limited by law, for example on grounds relating to protected data, pending legal proceedings, intellectual property rights violations and public security. In addition, third-party information of commercial value may be withheld if it could harm a company's competitive position. Experts consulted for this research expressed concern that these exceptions are sometimes applied too broadly, blocking access to information, contrary to the spirit and purpose of the Aarhus Convention. Furthermore, the review process for challenging these denials is sometimes ineffective and slow, while the relevance of the information may diminish over time.

Enhancing cohesion of the supervisory system

National authorities in individual countries are responsible for the enforcement of EU consumer protection laws. According to the UCPD, a Member State can decide whether these provisions will be enforced through judicial or administrative proceedings, and whether prior use of other avenues, such as codes of conduct, should be required. The current proliferation of regulations at the national and EU levels, while helpful, makes the legal landscape more complex and fragmented, rendering it potentially less effective or even counterproductive.

The research findings and the experts consulted for this study point to the fragmentation of the current supervisory system regarding issues such as misleading commercial practices or access to environmental information. In addition to instances of shared competence by administrative and judicial bodies, a number of experts highlighted the existence of multiple national authorities responsible for overseeing various consumer rights. This may lead to confusion among consumers about the respective competencies of supervisory bodies.

Furthermore, in some Member States the authorities can refuse to take any action when an alleged infringement is reported, and in some Member States consumers cannot appeal their decisions.

Representative action and procedural rights of civil society organisations

Consumer and environmental protection associations play an important role in empowering rights holders and protecting environmental interests. They do this by promoting transparency and accuracy in environmental marketing, advocating for stronger consumer protection laws, filing complaints on behalf of consumers or in the public interest and raising awareness among consumers. Furthermore, civil-society organisations bring expert knowledge about environmental issues, which judges may not possess, especially in cases where companies use scientific terms to promote their products.

The 2020 representative actions directive (RAD) allows consumers in the EU to protect their collective interests through legal action brought by representative 'qualified entities'. The RAD distinguishes between domestic and cross-border representative actions, with different criteria for each, and Member States have more flexibility in setting criteria for qualified entities in domestic actions.

The research confirms that the legal standing of NGOs in litigation relating to consumer and environmental rights varies across Member States, which can make judicial procedures

against multinational corporations more difficult.

In some Member States, NGOs are allowed to sue even if their rights or legal interests are not affected by the acts or omissions in question, while in other Member States legal action brought by an NGO based on its statutory objectives, such as environmental protection, may be considered inadmissible in litigation based on consumer rights, owing to lack of legal standing for such claims.

Environmental organisations are often barred from pursuing legal action in consumer affairs, where legal standing is reserved for qualified consumer organisations. Furthermore, in certain Member States, only nationally recognised NGOs have legal standing to file a legal action, even though the defendant may be a multinational corporation and the alleged environmental concerns span multiple countries and have been raised throughout the EU.

Significance of awareness-raising

Consumers who are aware of greenwashing practices are more likely to make informed decisions and avoid products that are not environmentally friendly. This can lead to declines in sales and customer loyalty for companies that engage in greenwashing practices. In addition, consumers can alert market surveillance authorities and amplify the impact of awareness-raising campaigns, and also initiate litigation.

However, complaints and the decisions of administrative bodies are often not published, further hindering transparency and educational effect in this regard.

The research finds that raising awareness of greenwashing practices is primarily carried out by civil society organisations who often face significant resource constraints.

Raising awareness among consumers is essential to combat greenwashing practices and ensure that companies are held accountable for their environmental claims. In addition, Member States' obligation to promote human rights includes ensuring that people are aware of their rights. Raising awareness is therefore another way to protect consumers and the environment through a human rights approach to climate protection.

Introduction

Human rights and the environment are intrinsically linked: a clean, healthy andsustainable environment is essential to the enjoyment of human rights. International human rights law imposes on governments the obligation to protect rights affected by climate change, such as the rights to life, health, water and a healthy environment. These legal obligations should inform and underpin the commitment towards a green transition.

This research explores the intersection of consumer and environmental protection in national laws, with a particular focus on access to reliable information about the sustainability of products and services and addressing greenwashing.

The purpose of the report is to inform EU policymaking, support enforcement efforts and highlight emerging risks related to greenwashing. It provides insights, examples and guidance to support the effective regulation of misleading environmental claims and to protect consumer rights. The findings of the report are relevant for EU and national policymakers, and also enforcement bodies responsible for implementing relevant legislation.

In particular, this report examines the relevant legal framework in 10 EU Member States (Austria, Belgium, Bulgaria, Denmark, France, Germany, Italy, the Netherlands Poland and Portugal) to determine whether they adequately protect consumers' access to reliable information about the environmental impact of products and services and hold companies liable for misleading green claims / greenwashing. The report provides positive examples and examples of shortcomings or inconsistencies in the implementation of existing EU legislation, identifies areas in need of improvement and offers solutions for closing existing gaps.

Human rights implications of 'greenwashing'

In July 2022, the United Nations General Assembly adopted a resolution recognising the right to a clean, healthy and sustainable environment as a human right and noting that the right to a clean, healthy and sustainable environment is related to other rights and existing international law. The resolution calls on '[s]tates, international organisations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all'.

To promote an understanding of the relationship between the environment and the protection of human rights, the Council of Europe published its Manual on Human Rights and the Environment, highlighting principles emerging from the case-law of the European Court of Human Rights and the conclusions and decisions of the European Committee of Social Rights.

The pressing need to tackle climate change has led to the introduction of several new legislative measures by the EU. A number of these initiatives are focused on consumer rights, with growing recognition of the role of consumers themselves in changing their consumption habits and making more sustainable choices. But demanding sustainable and ethical behaviour from businesses cannot be left solely to consumers or civil society.

According to the Office of the United Nations High Commissioner for Human

Rights(OHCHR)'s Applying a human rights-based approach to climate change negotiations, policies and measures, a human rights-based approach can be used to guide policies and measures on climate change mitigation and adaptation:

A human rights-based approach is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze obligations, inequalities and vulnerabilities and to redress discriminatory practices and unjust distributions of power that impede progress and undercut human rights.

Taking a human rights approach to environmental protection and corporate climate accountability means focusing on the obligations of governments and the responsibilities of large companies, rather than on choices of individual consumers. It also implies empowering the consumer as a rights holder. This approach aims to prevent the worst impacts of climate change on a large scale and prioritises the protection of rights holders and affected communities.

Tackling misleading environmental claims – 'greenwashing' – aligns with Article 38 of the Charter of Fundamental Rights of the European Union (the Charter), which provides that the EU shall ensure a high level of consumer protection, as it aims to ensure that environmental claims are reliable, comparable and verifiable. It also aligns with the goal of maintaining a high level of environmental protection in accordance with Article 37 of the Charter. Furthermore, combating greenwashing will help advance fair competition among businesses in promoting their environmental friendliness, which ultimately protects their freedom to conduct business as guaranteed be Article 16 of the Charter.

A human rights-based approach to corporate climate accountability is rooted in the concept of **human rights due diligence** defined in the UN Guiding Principles on Business and Human Rights (UNGPs), which affirm that business enterprises have a responsibility to respect human rights, should be accountable for their impacts on the climate and should participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights.

OHCHR highlights the importance of incorporating human rights principles into corporate climate accountability efforts in its Frequently Asked Questions on Human Rights and Climate Change : The corporate responsibility to respect human rights requires that business enterprises take a human rights-based approach to climate action, drawing upon the human rights principles of participation, non-discrimination, transparency, accountability and empowerment.

In this context, the EU put forward a proposal for a directive on corporate sustainability due diligence (CSDDD) to advance sustainable and responsible corporate conduct, and to ensure that human rights and environmental concerns are embedded in companies' operations and governance. The core elements of this duty include identifying, terminating, preventing, mitigating and accounting for negative human rights and environmental impacts in the company's own operations, in those of their subsidiaries and in their value chains. That includes accountability not only for their actions, but also for ensuring accurate, transparent and ethical communication practices.

Communication plays an essential role in prompting a collective response to climate change, as stressed by the Intergovernmental Panel on Climate Change and others (e.g. Depoux et al.). The primary objective of communication is to raise awareness, foster agency and participation among individuals and **ultimately empower rights holders to make**

proactive and informed decisions. Such objective of communication is connected to the state obligation to promote human rights, since, without such awareness, rights holders cannot claim their rights. To achieve this, therefore, it is imperative to safeguard individuals' right to access to the information needed (Article 11 of the Charter).

Greenwashing refers to the practice of conveying false or misleading information about the environmental friendliness of a company's products. It involves using deceptive advertising or marketing tactics to convince the public that the company's products, goals and policies are environmentally sound. It can be found in advertising, sponsorship and public messaging in the media, including on social media. Examples of greenwashing can range from simply changing the name or label of a product to make it seem more natural, even if it contains harmful chemicals, to launching elaborate and expensive campaigns that portray highly polluting companies as committed to being eco-friendly [1] .

The phenomenon of greenwashing or misleading environmental communication emerges as a significant impediment to achieving decarbonisation goals (a strategic reduction of human-induced CO_2 emissions to combat the severe impacts of climate change) and undermines consumers' autonomy and their empowerment as rights holders. Greenwashing diminishes consumers' ability to make informed and meaningful choices that advance their own economic and sustainability goals. Finally, such misinformation not only undermines efforts to protect the environment, but also undermines the efforts of companies genuinely committed to sustainability [2] .

Consumer protection laws can help ensure that businesses are held accountable for misleading consumers with false or exaggerated environmental claims. Legislative frameworks play a substantial role in addressing the issue, with the EU increasingly linking consumer and environmental protection.

In this context, it is also important to ensure effective access to justice in order to enforce the relevant laws (Article 47 of the Charter). As demonstrated by the European Union Agency for Fundamental Rights (FRA)'s prior research on business and human rights, the presence of procedural obstacles frequently impedes individuals from asserting their rights against corporations, thereby rendering their rights ineffectual.

Human rights-based approaches to environmental protection and environmental justice aim to increase access to justice not only for individual victims but also for communities. This includes enabling and empowering non-governmental organisations (NGOs) to represent communities and protect the environment in the public interest. Allowing NGOs to challenge greenwashing without having to prove individual harm is therefore consistent with international human rights law and acknowledges the right of communities to actively participate in shaping policies related to climate change, as they are the ones most affected.

FRA activity - Ongoing FRA project: ensuring the right to environmental protection

Launched in 2023, this project seeks to identify the most immediate and significant impacts on social and fundamental rights of the EU's green transition and relevant implementing legislation in light of climate change and the UN 2030 Agenda for Sustainable Development promise to leave no one behind.
In 2024, FRA will map the key legal and policy provisions of the Green Deal that ensure a just transition and that link to the European Pillar of Social Rights. It will identify fundamental rights risks for different groups in vulnerable living conditions and localities. FRA will cooperate and consult closely with relevant stakeholders, including the European Commission, the European Environment Agency, the Council of Europe as well as other international organisations and civil society to identify the most urgent research questions and areas of concern.
Based on the initial research, the project will develop in-depth case studies in selected EU Member States to assess the implementation of relevant EU regulations, directives and policies accompanying the Green Deal in national law and policies from a fundamental rights perspective.

Legal and policy background

EU law on consumer and environmental protection

The Charter guarantees a high level of consumer protection and the principle of environmental protection. Article 38 of the Charter states that 'Union policies shall ensure a high level of consumer protection.' Article 37 of the Charter states that 'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.'

Legal corner - Article 37 of the Charter

Article 37 CFR has been the subject of extensive study analysing its legal significance, enforcement and potential influence on the relationship between environmental protection and fundamental rights within EU law.
While Article 37 does not establish an individually justiciable right to environmental protection, it plays a role in influencing the interpretation and application of EU law and the Charter provisions guaranteeing individual rights. While Article 37 has rarely been invoked by the Court of Justice of the European Union, some have argued that it could contribute to the integration of environmental rights and duties, potentially providing the foundation for an emerging fundamental right to a sustainable environment. In the meantime, the application and interpretation of Article 37 continue to evolve within the context of EU law and environmental principles.
Sources:
Morgera, E. and Marin-Duran, G., 'Commentary to Article 37 – environmental protection', in Peers, S., Hervey, T., Kenner, J. and Ward, A. (eds), *Commentary on the EU Charter of Fundamental Rights*, 2nd edition, Bloomsbury Publishing, London, 2021.
Scotford, E., 'Environmental rights and principles: investigating Article 37 of the EU Charter of Fundamental Rights', in Bogojevic, S. and Rayfuse, R. (eds), *Environmental Rights in Europe and Beyond*, Bloomsbury Publishing, London, 2018.

The Treaty on the Functioning of the European Union (TFEU) includes provisions relating to consumer protection, such as Article 169, which allows the EU to adopt measures to protect the health, safety and economic interests of consumers.

The TFEU also enables the EU to adopt measures to protect and improve the environment, combat climate change, promote sustainable development and protect fundamental rights. Article 191 outlines the objectives of EU policy on the environment, which include preserving, protecting and improving the quality of the environment, protecting human health and promoting measures at the international level to deal with regional or worldwide

environmental problems.

Furthermore, Article 11 TFEU requires the EU to integrate environmental protection requirements into its policies and activities and to promote measures at the international level to deal with regional or worldwide environmental problems.

Also relevant – although it is soft law – is the European Pillar of Social Rights, which includes principles such as the right to fair working conditions, the right to social protection and inclusion and the right to consumer protection.

Recent EU developments addressing greenwashing

Misinformation about the environmental impact of products has a potentially significant impact on human health, environmental protection and consumer rights. It can have an impact on corporate sustainability by leading to a loss of trust among consumers and stakeholders, which can ultimately harm a company's reputation and cause financial losses. It can also make it difficult for consumers to identify and support sustainable businesses, which can ultimately harm the environment. Furthermore, it undermines consumers' ability to make choices that advance their economic and sustainability goals, and potentially disempowers them as rights holders.

A total of 94 % of Europeans say that protecting the environment is important to them personally, and 68 % agree that their consumption habits adversely affect the environment in Europe and globally (Special Eurobarometer 501).

In the European Green Deal, the Commission made a commitment to ensure that consumers can make more informed choices and can actively participate in the ecological transition. In particular, the European Green Deal aims to address false environmental claims by providing consumers with trustworthy, comparable and verifiable information, enabling them to make sustainable decisions and thereby reducing the risk of greenwashing. The priority of addressing greenwashing was further emphasised in both the new circular economy action plan and the new consumer agenda. The recently implemented Green Deal industrial plan emphasises the importance of allowing consumers to make decisions based on transparent and reliable information about the sustainability, durability and carbon footprint of products. It also highlights that market transparency is a tool that promotes the adoption of technologically and environmentally superior net-zero products.

The coordinated screening of websites for 'greenwashing' ('sweep') that was carried out by the Commission and Consumer Protection Cooperation Network authorities in 2020 to detect misleading environmental claims confirmed the prevalence of vague, exaggerated, false or deceptive green claims. It confirmed the need to strengthen the rules to facilitate enforcement in this area. A 2020 Commission study on environmental claims in the EU assessed 150 environmental claims and found that a sizeable share (53.3 %) provide vague, misleading or unfounded information on products' environmental characteristics across the EU and in a wide range of product groups (both in advertising and on the product).

To address this problem, the EU has proposed various legal initiatives aiming to ensure that environmental labels and claims are credible and trustworthy, allowing consumers to make informed purchasing decisions and boosting the competitiveness of businesses that strive to increase the environmental sustainability of their products and activities.

Empowering consumers to make informed decisions is a fundamental part of the European

Green Deal. In 2020, the adoption of the new consumer agenda to strengthen consumer resilience for sustainable recovery stressed the need to empower consumers 'to make informed choices and play an active role in the green and digital transition'.

In 2022, the Commission put forth a proposal for a directive on empoweringconsumers for the green transitionthat aims to bolster consumer rights in order to facilitate informed choices and actively contribute to the shift towards a climate-neutral society. The proposal amends the unfair commercial practices directive (UCPD) and the consumer rights directive to empower consumers for the green transition through better protection against unfair commercial practices and better information. The proposal includes additional specific rules on environmental claims and the prohibition of misleading advertising. It includes a tool to prevent greenwashing and related unfair commercial practices, and new regulations on the evidence that businesses must provide to back up their environmental claims. Along with promoting more sustainable consumption and enabling consumers to make informed decisions, it also aims to stop unfair business practices that might have gone unnoticed in the past. The proposal was adopted in February 2024.

To further combat greenwashing and misleading advertisements, on 22 March 2023 the Commission adopted a proposal for a directive on substantiation and communication of explicit environmental claims, known as the green claims directive. It aims to create the first detailed set of EU rules for substantiating voluntary green claims and regulate the use of environmental claims in marketing communications in the EU. The directive includes rules for companies making environmental claims, including an obligation to be supported by scientific evidence, such as a 'product environmental footprint' framework that tracks environmental impacts across 16 categories, including air pollution and climate change. The proposed directive would apply to almost all businesses operating in the EU, with the exception of microenterprises (which have fewer than 10 employees and an annual turnover of less than EUR 2 million), and would apply to all products and services sold in the EU.

This proposal complements the above proposal on empowering consumers for the green transition by providing more specific rules on environmental claims, in addition to a general prohibition of misleading advertising.

According to the explanatory memorandum to the green claims directive, the proposal is designed to act as a safety net for all sectors in which environmental claims or labels are unregulated at the EU level. While the revised UCPD covers all voluntary business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product, the scope of this proposal covers the substantiation and communication of voluntary environmental claims. In the same way, the abovementioned proposal on empowering consumers for the green transition deals with sustainability labels that cover environmental or social aspects or both. This green claims directive would be limited to environmental labels only.

Both proposals define greenwashing or an 'environmental claim' as any message or representation that is not mandatory under EU law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive impact or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time.

The consumer protection cooperation regulation lays down a cooperation framework to

allow national authorities in the European Economic Area to jointly address breaches of consumer rules when the trader and the consumer are established in different countries. While green statements made by a company could influence consumers across borders, evidence of the implementation of this cooperation framework did not emerge in this research.

Finally, the representative actions directive (RAD), adopted in 2020, aims to ensure protection of consumers' collective interests. The directive sets minimum requirements with respect to collective actions on a wide range of topics. It is principle-based, with a fair margin of discretion regarding implementation left to the Member States. The RAD should have been transposed by all EU Member States by December 2022, and entered into force in June 2023. By January 2023, however, the Commission announced that only three Member States had properly transposed the RAD into their national legislation on time.

EU commitment to international instruments

The EU's commitment to the sustainable development goals (SDGs) aligns with its commitments to sustainability, including to environmental and consumer protection. The SDGs include SDG 12, which aims to ensure sustainable consumption and production patterns. The first EU voluntary review on the implementation of the 2030 agenda confirmed how the Commission's policy priorities such as the European Green Deal contribute to the global and domestic transformations required to achieve the SDGs.

The Aarhus Convention (1998) is a treaty adopted under the aegis of the United Nations Economic Commission for Europe. It covers access to information, public participation in decision-making and access to justice in environmental matters. It links environmental rights and human rights and acknowledges that sustainable development can be achieved only with the involvement of all stakeholders, including consumers. It also guarantees the right to receive environmental information held by public authorities, which can help consumers make informed environmental choices. In addition, the convention establishes that every person has the right to live in an environment adequate for their health and well-being, which includes protection from environmental harm caused by consumer products.

The convention provides that each state party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner that enables consumers to make informed environmental choices (see Section 1.5).

The United Nations Human Rights Council in 2011 unanimously endorsed the UN guiding principles on business and human right (UNGPs). They provide guidance for states and companies with respect to human rights. The UNGPs rest on three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights and access to remedy for victims of business-related abuses. While the UNGPs do not directly refer to the environment, they imply its protection owing to the environmental dimensions of certain human rights, as noted by the United Nations Environment Programme and OHCHR.

The EU has committed itself to promoting and implementing the UNGPs in various strategies and pieces of legislation. In 2011, the EU adopted a communication on a renewed EU strategy for corporate social responsibility and has since taken stock of its efforts to implement the UNGPs such as in the 2019 Commission staff working document Corporate social responsibility, responsible business conduct, and business and human rights – Overview of progress.

The OECD guidelines for multinational enterprises on responsible business conduct are soft law that cover key areas of business responsibility, including consumer and environmental interests. In 2023, these OECD guidelines were updated to respond to urgent social, environmental and technological priorities facing societies and businesses. While they do not have the binding legal force of treaties or laws, they represent a global standard for responsible business conduct, providing a framework for multinational enterprises to operate in a socially and environmentally responsible manner, and can help to build trust and confidence among consumers, investors and other stakeholders.

The environment features prominently in the OECD guidelines, with one chapter dedicated to enterprises' environmental performance. The guidelines recommend that multinational enterprises align with internationally agreed goals on climate change, biodiversity and pollution, and include due diligence expectations on the environment. The guidelines also emphasise the importance of sound environmental management as an important part of sustainable development, seen as both a business responsibility and a business opportunity.

The National Contact Points (NCPs) receive complaints about alleged breaches of the guidelines. An NCP does not have judicial or enforcement powers but provides a platform to mediate between parties involved. Complaints can be brought by anyone who can demonstrate a credible interest in the subject matter [3].

Due diligence and reporting

The EU's proposal for a directive on corporate sustainability due diligence (CSDDD) is also relevant for consumers and environmental information. The directive aims to foster sustainable and responsible corporate behaviour throughout global value chains by requiring companies to establish due diligence procedures to address adverse impacts. Due diligence entails a duty to identify, prevent, terminate, mitigate and account for adverse human rights and environmental impacts. The directive aims to assist companies in meeting the growing demand from consumers for ethical and environmentally sustainable products and help consumers to obtain information about the products they buy and the companies they support.

In January 2023, the corporate sustainability reporting directive (CSRD) came into effect, bringing about significant advancements in the regulations governing the disclosure of social and environmental information by companies. It will replace the non-financial reporting directive, which remains in force until companies are required to apply the new rules of the CSRD. It expands the scope of reporting requirements to a wider group of large companies. It also aims to ensure that investors and other stakeholders have access to the necessary information to evaluate the impact of companies on society and the environment, while also enabling investors to assess financial risks and opportunities arising from climate change and other sustainability concerns. The initial implementation of these new regulations will be required for the 2024 financial year.

Methodology

This research was carried out between July and December 2022 by FRA's multidisciplinary research network (Franet) and involved desk research and a limited number of consultations with experts conducted by Franet in 10 Member States: Austria, Belgium, Bulgaria, Denmark,

France, Germany, Italy, the Netherlands, Poland and Portugal. Franet contractors conducted four to six consultations per country, in the form of structured phone or online interviews. The national experts consulted included representatives of environmental and consumer protection NGOs and governmental bodies, experts in litigation and representatives of business. Franet contractors aimed to consult at least one expert per category in each Member State. The Member States covered by the research were selected taking into account the anticipated presence of pertinent case-law, input from preliminary discussions with different stakeholders and geographical diversity. Additional consultations with civil society and relevant EU institutions, including the European Commission and the European Environment Agency, were undertaken by FRA in 2023.

The results do not purport to provide an exhaustive account of a given situation in a Member State, but should instead be read as selected insights and case studies that help to highlight common challenges encountered by consumers when seeking remedies for misleading environmental claims.

This report presents a broad overview of national legislation and examples of relevant case-law. It draws on detailed national studies on this topic, which are published on FRA's website. As this report is published only online, hyperlinks are used instead of detailed references in footnotes where possible.

Structure

Chapter 1 outlines findings relating to national implementation by administrative and judicial bodies of the available legal tools in the context of green claims / greenwashing and access to information about the environmental impact of products. Chapter 2 analyses the procedural requirements for collective consumer claims and their relevance for enforcing consumer rights in environmental contexts. Chapter 3 provides suggestions on ways forward to improve the protection of environment-related consumer rights.

1. Consumers' right to reliable information and environmental impact

Greenwashing, or misleading environmental communication, presents a significant impediment to achieving decarbonisation and sustainability goals and undermines consumers' ability to make informed choices, diminishing their empowerment as rights holders. Misinformation not only undercuts efforts to protect the environment, but also obstructs the progress made by companies genuinely committed to sustainability.

Many companies operating in the EU published environmental information concerning their activity on a voluntary basis long before such reporting become an obligation, for example in their annual reports. Many did this to promote a positive image of the company and demonstrate their corporate social responsibility engagements. Such an image has increasingly become a source of competitive advantage due to consumers' growing awareness and scrutiny of environmental impact.

The information disclosed or promoted by a company can relate to environmental characteristics of a product or its environmental impact or, more broadly, to the company's commitments in the field of sustainability. This information can take different forms: advertising, public statements or through the creation of or subscription to a broad range of labels.

False or misleading information, and also information that does not comply with environmental information obligations, is potentially harmful to consumers, companies and investors and hampers their ability to make 'greener decisions'. Effective tools are necessary to ensure access to information and to challenge and punish companies providing such misleading information.

Consumers' access to reliable information on products (or services), such as information relating to environmental impact, is protected primarily by monitoring the fairness of commercial practices, including advertising, as well as through different kinds of certifications, or through obligations related to disclosure of information.

This chapter compares research findings in selected Member States relating to the existing legal framework to enforce consumer rights in the context of green claims and access to information about the environmental impact of products. Sections 1.1 and 1.2 focus on rules on misleading commercial practices, and carbon neutrality claims in particular. Section 1.3 looks at the effectiveness of binding and non-binding regulations on advertising and Section 1.4 provides examples of efforts to introduce reliable environmental labels. Section 1.5 compares findings relating to potential use of the Aarhus Convention by consumers. While not directly related to greenwashing, the relevant provisions of the convention allow the claimants to obtain environmental information held by public authorities, which in specific situations may relate to products or services. Section 1.6 briefly mentions the relevance of due diligence and reporting obligations.

1.1 Combating greenwashing as a misleading commercial practice

Definitions

According to the Commission's UCPD guidance, the expressions **'environmental claims' and 'green claims'** refer to the practice of suggesting or otherwise creating the impression (in a commercial communication, e.g. marketing or advertising) that a good or a service has a positive impact or no impact on the environment or is less damaging to the environment than competing goods or services. This may be due to its composition, how it has been manufactured, how it can be disposed of or the reduction in energy or pollution expected from its use.
When such claims are not true or cannot be verified, the practice is called **greenwashing**.
Greenwashing in the context of business-to-consumer relations can relate to all forms of business-to-consumer commercial practices concerning the environmental attributes of products. This can include all types of statements, information, symbols, logos, graphics and brand names, and their interplay with colours, on packaging and labelling, in advertising, in all media (including websites) and made by any organisation, if it qualifies as a 'trader' and engages in commercial practices towards consumers.

In several Member States, the prohibition of misleading commercial practices has proven to be a valuable legal measure for consumer or environmental protection organisations to rely on to combat greenwashing practices. This section provides examples of its application in practice.

The prohibition of unfair commercial practices is covered by legislation against unfair competition and is part of the EU *acquis*. The unfair commercial practices directive (UCPD) distinguishes between two categories of commercial practice that are **unfair** if they cause the average consumer to make a purchasing decision that they would not have made otherwise: **misleading commercial practices** (by action or omission) and **aggressive commercial practices**.

According to the UCPD, business-to-consumer commercial practices cover 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'.

The UCPD aims to enhance consumer trust and facilitate cross-border trade for businesses. It effectively governs and regulates any unfair commercial practices that transpire prior to, during and after business-to-consumer transactions. By enforcing the EU regulations on unfair commercial practices, national authorities and courts can effectively curtail a wide range of unjust business behaviours. These encompass providing consumers with misleading information and employing forceful marketing tactics aiming to manipulate consumers' decision-making processes.

In December 2021, the European Commission adopted a new Commission notice on the interpretation and application of the UCPD ('UCPD guidance'). It explains key concepts and rules and includes practical examples to facilitate enforcement for national authorities.

1.1.1. Applying rules on misleading practices in cases of greenwashing

Initially, the UCPD did not provide specific rules on environmental claims. However, in September 2023, the Council and the European Parliament reached a provisional agreement on the proposal for a directive on empowering consumers for the green transition through better protection against unfair commercial practices [4] . In January 2024, the European Parliament adopted the proposal meaning explicit rules on environmental claims could be included in the UCPD. The proposal intends to prohibit environmental claims 'if they are not supported by clear, objective and verifiable commitments and targets given by the trader'

and supporting such claims 'by an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets'. The Council of the European Union adopted the directive on 20 February 2024.

However, the broad definition of commercial practices makes it possible to cover greenwashing, even before EU and national legislators explicitly referred to environmental claims, as confirmed by the 2021 UCPD guidance issued by the Commission.

The general rules on misleading practices can be applied to greenwashing practices when they negatively affect consumers, using a case-by-case assessment. But neither the directive nor its Annex I (the blacklist) contains any specific rules that would explicitly declare such practices to be unfair in all situations.

According to the UCPD guidance, the application of the UCPD to environmental claims can be summarised as follows.

Based on Articles 6 and 7 UCPD, green claims must be truthful, not contain false information and be presented in a clear, specific, accurate and unambiguous manner, so that consumers are not misled.

Under Article 12 UCPD, traders must have the evidence to support their claims and be ready to provide it to competent enforcement authorities in an comprehensible way if the claim is challenged.

Furthermore, Annex I to the UCPD contains a list of unfair practices that are prohibited in all cases. Several points of Annex I relate to specific claims or the use of relevant certifications, labels and codes of conduct for marketing purposes.

The general clause of Article 5(2) UCPD provides for the possibility of assessing unfair commercial practices. It functions as an additional 'safety net' to capture any unfair practice that is not caught by other provisions of the UCPD (i.e. that is not misleading, aggressive or listed in Annex I). It prohibits commercial practices that are contrary to the requirements of professional diligence if they are likely to materially distort the economic behaviour of the average consumer.

Turning to national legislation, laws implementing the directive contain corresponding wording. Environmental claims are therefore not explicitly mentioned in the legislation, but rather in relevant interpretative guidance issued by public authorities.

For example, the Belgian Code of Economic Law defines what 'misleading commercial practices' are in Article VI.97. To clarify the application of this provision, the Federal Public Service Economy ('FPS Economy') published guidelines on environmental claims in May 2022. Within the FPS Economy, the Consumer Protection Service is responsible for legislation regarding unfair commercial practice, together with FPS Public Health and regional governments.

According to the Polish Act on Counteracting Unfair Market Practices, a market practice is unfair if it is contrary to accepted principles of morality and materially misleads or is likely to mislead the behaviour of the average consumer before, during or after the conclusion of a contract.

Under French Consumer Code Article L121-2°(b) and (e), two elements of the definition of misleading commercial practices were deemed relevant to practitioners in the context of environmental claims. They include, inter alia, claims about the essential characteristics of

the good or service and the scope of the advertiser's commitments. This interpretation was confirmed by the new Climate and Resilience Law of 2021, which **explicitly refers to the environmental impact** of a product or service as being among its essential characteristics.

In addition, in 2014 the French National Consumer Council published its Practical Guide on Environmental Claims for Professionals and Consumers.

The Danish Consumer Ombudsman distinguishes between general and concrete statements. General statements are positive statements about a company or product, for example 'green', 'climate friendly', 'environmentally friendly' or 'sustainable'. The position of the Danish Consumer Ombudsman in its Quick Guide on Environmental Claims is that such free-standing, general statements will be interpreted by the consumer literally. Companies must be able to support such statements through a life cycle analysis of the product conducted by independent experts that demonstrates that the product generally has a significantly smaller impact on the climate or the environment than equivalent products.

In Austria, according to the Federal Act against Unfair Competition, displaying a label, quality mark or equivalent without having obtained the necessary authorisation is regarded as misleading, in compliance with point 2 of Annex I to the UCPD.

1.1.2. Enforcement

According to the UCPD, each Member State has the discretion to decide whether these provisions will be enforced through judicial or administrative proceedings, and whether the courts or administrative authorities should be able to require prior use of other methods to address complaints, such as codes of conduct.

Under Article 11 UCPD, Member States must give courts or administrative authorities the power to act in cases of unfair commercial practices – even without proof of actual loss or damage or of intention or negligence on the part of the trader – which can include:

- ordering the cessation of such practices or initiating legal proceedings to stop them (an injunction);
- prohibiting practices that have not yet occurred.

In Member States covered by this study, the provisions relating to misleading commercial practices are primarily enforced through administrative or civil procedures, while some provide for both. France is one of the few countries worldwide to criminalise greenwashing.

Despite similar definitions of misleading commercial practices, and the Commission's UCPD guidance, significant discrepancies have been observed between Member States in the application of these provisions to combat greenwashing. While a considerable number of cases have been instituted by civil society and obtained successful results in France and Germany, there are no cases based on these provisions in Bulgaria or Portugal and very few in other countries.

Experts involved in the research have differing opinions about the effectiveness of administrative or judicial proceedings in cases of greenwashing, especially when the law provides both options. In general, administrative proceedings are more appropriate where speed and flexibility are crucial, whereas judicial proceedings are better suited to cases where strong legal protection, enforcement and transparency are key. Court proceedings may also provide better publicity and the added benefit of establishing a legal precedent,

which could be valuable for strategic litigation by civil-society organisations (CSOs). In several countries where both public and private options are available, examples show that CSOs start their legal battle against big corporations with administrative authorities, and then continue with judicial proceedings.

The UCPD requires Member States to ensure that adequate and effective means exist to combat unfair practices, and that penalties are effective, proportionate and dissuasive. Important differences exist between sanctions under different regimes. For example, fines can be an effective tool to combat greenwashing if they are sufficiently high to be dissuasive. In the context of greenwashing, these can be either administrative fines or damages ordered by courts.

The EU also plans to introduce penalties against greenwashing, including fines, confiscation of revenues and temporary exclusion from public procurement. The green claims directive proposal highlights in the preamble to recital 64 that, 'when setting penalties and measures for infringements, the Member States should foresee that, based on the gravity of the infringement, the level of fines should effectively deprive the non-compliant trader from the economic benefit derived from using the misleading or unsubstantiated explicit environmental claim or non-compliant environmental labelling scheme, including in cases of repeated infringements'.

The efficiency of a legal avenue is strongly influenced by the procedural position of the claimant. In Poland, the Office of Competition and Consumer Protection (UOKiK) initiates proceedings *ex officio* and the reporting entity is not considered a party to the proceedings and cannot take any legal measures if they are not satisfied with the actions taken. The Danish Consumer Ombudsman also is not obligated to address every complaint, and its decisions cannot be challenged. However, it can issue injunctions if negotiations with the company are unsuccessful, which can be reviewed by a court.

While it is for national law to establish rules regarding the burden of proof, the directive recommends enabling courts and administrative authorities to require traders to produce evidence as to the accuracy of factual claims they have made. In countries covered by this study, the burden of proof that a given market practice does not constitute an unfair practice usually rests on the company carrying out that practice.

In some countries, where the civil lawsuit is based in principle on the contractual obligations of the seller, the burden of proof lies with the plaintiff. This is the case in Belgium.

In France, the environmental claims can be challenged through administrative, civil or criminal proceedings. Taking the administrative avenue, private individuals, professionals or recognised (either through the accreditation (*agrément*) granted or through specific recognition in an order) consumer protection associations can report an infringement, including online, of consumer law to the Directorate-General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF).

France is one of the few countries worldwide to have criminalised greenwashing, and it further increased criminal sanctions in its 2021 Climate and Resilience Law. Fines can now amount to 80 % of the cost of the false promotional campaign. In cases of misleading commercial practices, the choice between civil and criminal legal action lies with the plaintiff. Private individuals or recognised consumer protection associations can lodge a criminal complaint, and they can also act as civil parties in criminal proceedings to claim compensation. Consumers can also file a complaint in civil courts to obtain an injunction to stop the wrongdoing or to seek compensation for any harm suffered.

Several cases in France based on prohibition of misleading commercial practices showed that these provisions can be successfully used to combat greenwashing (see Box below).

France: decisions illustrating the broad understanding of misleading practice

Monsanto
Monsanto was punished for its advertising presenting the pesticide 'Roundup' as environmentally friendly, clean, effective, safe (e.g. a TV advertisement showing a dog rolling on the grass) and biodegradable, and also for putting this information on the packaging along with a logo of a bird. In October 2008, the Court of Appeal found that these claims were likely to mislead consumers and make them less cautious about the product's substantial qualities, such as the biodegradability of its active substance, glyphosate, which proved to be toxic for small animals and aquatic organisms. Monsanto and some of its directors were fined EUR 15 000 and ordered to pay damages to two associations that initiated civil action within criminal proceedings (*Eau & Rivières de Bretagne* and *Consommation Logement Cadre de Vie* - CLCV) and to partially publish the decision. The Court of Cassation dismissed the application for judicial review (*).
Hyundai
In March 2018, Hyundai was ordered by the Tribunal de Grande Instance de Paris (**) to pay damages to the Association France Nature Environnement for a misleading commercial practice consisting of advertisement that showed cars in natural spaces where public traffic is prohibited under Articles L362-1 to L362-4 of the Environmental Code. The tribunal found that this marketing strategy could mislead consumers about the use of the vehicles and may encourage behaviour harmful to the environment. Hyundai had already removed the disputed advertising after receiving a request from the organisation.
Sources:
(*) France, Court of Cassation (Cour de cassation), , 6 October 2009, upholding the judgment of the Lyon Court of Appeal, (Cour d'appel de Lyon), 1012/07, 29 October 2008.
(**) France, High Court of Paris (Tribunal de Grande instance de Paris), 17/06330, 13 March 2018.

Since the adoption of the Climate and Resilience Law, the number of cases in France against misleading commercial practices related to environmental claims have been increasing (see Box below).

France: examples of pending cases under the Climate and Resilience Law

The associations Consommation Logement Cadre de Vie (CLCV) and CCFD-Terre Solidaire filed a complaint with the court in October 2021, alleging misleading commercial practices against Nespresso (for claiming to use '100 % recyclable capsules' and '100 % carbon neutral coffee') and Volvic (for claiming to be '100 % recyclable', '100 % recycled' and 'carbon neutral'). According to CLCV, the '100 % recycled' claim seems to have been subsequently removed from the packaging which might suggest that a lawsuit can influence corporate behaviour even before the court ruling (*).
In June 2022, Zero Waste France filed a criminal complaint against Adidas and New Balance accusing them of misleading consumers with their claims about the environmental impact of their products and their environmental commitments. The organisation refers to Adidas's 'Made to be remade', 'End Plastic Waste' and 'FutureCraft.Footprint' sneaker slogans and to New Balance's 'green leaf' standard, which claims that, for products bearing this standard, 50 % or more of the materials are from environment-friendly sources (**).
Sources:
(*) CLCV (2022), 'Green marketing and consumer protection', ('Le marketing vert et la protection des consommateurs'), July 2022, p. 8.
(**) Zero Waste France (2022), 'On your marks, get set, attack: zero waste france files a complaint against adidas and new balance for greenwashing', ('A vos marques, prêts, attaquez: Zéro Waste France porte plainte contre Adidas et New Balance pour greenwashing'), 22 June 2022.

In Poland, the law provides for administrative proceedings to enforce prohibition of infringing collective consumer rights and civil proceedings to enforce prohibition of unfair market practices.

The Competition and Consumer Protection Act protects collective consumer interests. It prohibits practices that infringe the law or offend morality, – in particular, breaches of the

obligation to provide consumers with correct, truthful and complete information which includes unfair market practices. It is enforced in administrative proceedings by the president of the Office of Competition and Consumer Protection (UOKiK). UOKiK initiates proceedings *ex officio* and the reporting entity is not considered a party to the proceedings and cannot take any legal measures if they are not satisfied with the actions taken.

There are very few instances in which this provision has been used in environmental cases (see Box below)

Poland: proceedings before UOKiK

In March 2021, the ClientEarth Poland Foundation notified the President of UOKiK that the use of the name 'eco-pea coal' (a), along with packaging and website information suggesting that the product is environmentally friendly, violates consumer rights. The foundation provided evidence showing that consumers are influenced by misleading marketing from the coal industry, and also a scientific analysis proving that eco-pea coal is harmful to health. However, the President of UOKiK declined to take action, stating that the use of the name is legal according to a relevant legal act (since repealed). In June 2023, the Minister of Climate and Environment changed the legal name of 'eco-pea coal' to 'pea plus'.
In 2022, the Frank Bold Foundation took legal action against two energy companies for spreading false information about energy prices. The companies claimed that the price increase was due to EU emissions trading system carbon prices, but failed to mention their own high carbon costs resulting from their refusal to reduce CO2 emissions. Clients received this information via post, emails and company websites. Initially, the President of UOKiK dismissed the case, stating that the companies' actions were of a political nature and not a commercial practice that could affect consumers' decisions (b)(*). Subsequently, however, the president changed their stance and requested the companies' response in view of potential proceedings, due to concerns that information provided to consumers was untrue and could have a potential impact on their decisions (**).
Note:
(a) Pea coal, which is a small anthracite coal, is utilised in boilers for domestic heating purposes. 'Eco-pea coal' was a brand name used for retail sales of pea coal, and in 2018 it was categorised as a higher-quality coal under a regulation defining quality standards for coal. However, the implementation of this regulation is currently on hold, rendering the 'eco' prefix solely a trade name without any assurance of meeting environmental standards.
(b) Significantly, the notification originally addressed to UOKiK by the Foundation was related to a suspected breach of collective consumer interests, not unfair market practices, which are regulated in another act.
Sources:
(*) President of UOKiK answer of 25 February 2022, DAR-4.60.137.2022.
(**) President of UOKiK answer of 18 March 2022, DAR-4.60.184.2022.

In cases of unfair market practices, which are prohibited in Poland by its Act on Counteracting Unfair Market Practices, a lawsuit can be brought before a civil court, including by the ombudsman, the Financial Ombudsman, a district consumer ombudsman and consumer protection organisations.

Poland: judicial proceedings against 'eco-pea coal'

An example of the application of this provision in practice is the case filed by the ClientEarth Poland Foundation against a company that sells non-ecological coal fuel under the misleading name of 'eco-pea coal'. The foundation has called on the company to stop this unfair market practice and its misleading promotional activities that suggest that burning coal is environmentally friendly. This case is a continuation of previous action taken by the foundation, which included an information campaign and an administrative complaint to UOKiK (see also previous box). The case is still pending.

In Austria, according to the Federal Act against Unfair Competition, a claim for injunction can be initiated by any entrepreneur who produces or sells similar goods or services (a competitor), by associations that represent the interests of affected entrepreneurs and by

institutions such as the Federal Chamber of Labour, the Federal Economic Chamber, the Austrian Trade Union Federation and the consumer organisation Verein für Konsumenteninformation.

In Belgium, environmental claims are regulated through the provisions on misleading and unfair practices under the Belgian Code of Economic Law. These provisions can be enforced through administrative or civil avenues, and also alternative dispute resolution. The Economic Inspectorate, a division of FPS Economy, investigates misleading commercial practices, including those related to greenwashing claims, in administrative proceedings. According to the FPS Economy annual report, in 2021 the Economic Inspectorate received nine reports of greenwashing and carried out 29 inspections, which resulted in 16 warnings being issued to businesses, all of which were voluntarily complied with. Experts consider that consumers are not yet very aware of the possibility of complaining to FPS Economy with regard to environmental claims [5] .

Consumers in Belgium can pursue alternative dispute resolution (mediation, conciliation, etc.). They are advised to submit a complaint to the Belgian Consumer Mediation Service before taking legal action. The ombudsman services are free, but consumers must first try to reach a settlement with the company. However, the institution does not typically receive complaints related to greenwashing or environmental practices [6] .

Civil lawsuits can be brought by consumers in cases of claims based on non-conformity of a product with its description or advertisement. The advantage of such lawsuits is that the consumer must prove only that the product was defective, thereby reversing the burden of proof.

The limited number of court decisions in Belgium regarding greenwashing could be attributed to the existence of other avenues, such as administrative avenues, mediation and through competence of self-regulatory bodies [7] .

In addition, Belgian courts appear to place emphasis on the legal requirement that for an advertisement to be deemed misleading it must have the ability to deceive the average consumer.

Consequently, even if a claim is not entirely accurate, Belgian courts may determine that it does not constitute a misleading commercial practice if the level of inaccuracy is too minor to influence the consumer's ultimate transactional decision.

This approach can be illustrated by two cases before Belgian courts (see Box below).

Cases alleging greenwashing before Belgian courts

In the case of *Werner & Mertz 'Froggy'* v *Ecover* (*), it was claimed that a soap bottle was made with 50 % plastic recycled from the ocean, when the actual percentage was less than 50 % and the plastic was sourced from ocean beaches. The Court of Appeal of Brussels concluded that the advertisement was not misleading, as the average consumer would interpret the environmental claims in a general sense rather than literally. Therefore, the consumer's economic behaviour would not have been affected if the claims had been accurately stated.
In *Ferrero* v *Delhaize* (**), Ferrero accused the supermarket chain Delhaize of misleading environmental (and nutritional) claims in its 'free from palm oil' campaign. Delhaize claimed that its palm oil-free spread was healthier and better for the environment than an equivalent product containing palm oil.
Ferrero won the case and the court ordered Delhaize to stop saying that 'no palm oil' is healthier and more sustainable. The ruling was not about Delhaize's palm oil-free claims themselves, which featured on packaging, but about its marketing campaign that implied that its product was healthier and more environmentally friendly because it contained no palm oil. Ferrero argued that this campaign damaged its Nutella brand, which was displayed next to Delhaize's Choco spread in the supermarket.
The Brussels Court of Appeal determined that Delhaize's environmental claims were unverified and subjective and ordered the cessation of the advertising campaign, under a penalty fine of EUR 25 000 per new broadcast.
Sources:
(*) Belgium, Brussels Court of Appeal, Werner & Mertz 'Froggy' v Ecover, 28 June 2019.
(**) Belgium, Brussels Court of Appeal, Affaire Ferrero, 2 June 2017.

According to the European Consumer Centre Belgium and the Belgian Consumer Ombuds Service, consumer groups in Belgium criticise the pursuit of private damages for misleading commercial practices as an ineffective way to prompt more sustainable behaviour from companies owing to the time and financial resources required, evidentiary hurdles and small potential gains for consumers [8] . They believe that administrative enforcement or government regulation would be more effective to address greenwashing [9] .

In Germany, misleading claims about a product, including its environmental impact, are regulated under the Act against Unfair Competition [10] . The act allows individuals to seek injunctive relief for unfair trade practices or to seek compensation for harm caused by unfair business practices.

A 2018 study commissioned by the Federal Ministry for Economic Affairs and Energy concluded that the existing norms protecting consumers and fair competition are flexible enough to cover new business models and practices. The Federation of German Consumer Organisations argues that 'Case-law already recognises that missing information relating to environmental statements can be considered material information and therefore misleading by omission.'

Case-law: Germany

'Environmental Angel' (*Umweltengel*)
The groundbreaking 'Environmental Angel' decision by the Federal Court of Justice (*) in 1988 marked the first time that environmental claims in advertising were addressed by that court. In this case, a seller had displayed the 'Blue Angel' ('Blauer Engel') environmental seal, which includes the words 'environmentally friendly' and which is awarded to qualifying products according to guidelines set out by a multi-stakeholder jury. However, the seller failed to specify which specific aspect of environmental friendliness the label referred to. The court decided that environmental labels must be evaluated according to strict criteria. Like health claims, environmental labels are particularly suited to speak to consumers' emotions. Environmental labels therefore carry an increased risk of misleading consumers. Not only must the conditions for awarding the label be met, but the producer must also indicate when a product is only 'environmentally friendly' in certain regards, in case when a label covers multiple dimensions of sustainability.
Consumer expectations in the absence of an existing label
In 2007, the Hanseatic Higher Regional Court (**) examined a case involving the distribution of a hydraulic lubricant marketed as 'rapidly biologically degradable' ('*schnell biologisch abbaubar*'). The product did not use an existing label for the relevant product class (e.g. the 'Environmental Angel'), nor did the product meet the requirements such label establishes for this particular product class. The court nevertheless determined that the claim was misleading to the average consumer because of the lack of additional explanation. The defendant should have disclosed that the tests underlying the claim did not correspond to those usually applied for awarding widely used environmental labels.
Sources:
(*) Federal Court of Justice, Judgement of 20 October 1988 (I ZR 219/87)
(**) Hanseatic Higher Regional Court, Judgment of 2 May 2007 (5 U 85/06)

Environmental claims are monitored by various organisations, including environmental organisations, as well as the Centre for Protection against Unfair Competition, an independent self-regulatory institution established by German business. The publicly funded consumer protection organisations, along with competitors in the same sector [11], also take on misleading green claims by businesses.

With respect to recycled products and sustainable packaging, the case-law in Germany reveals that consumers will assume that a product or its packaging is composed entirely of recycled materials unless the contrary is stated explicitly. General claims about sustainable packaging may therefore deceive consumers [12].

In Bulgaria, the potential application of the Consumer Protection Act in environmental cases could not be confirmed as no such cases have so far been brought before the Commission for Consumer Protection (under administrative procedure) or before the courts under general rules of civil law.

Experts from Bulgaria point to the need for greater awareness of greenwashing and state that consumer rights associations should educate consumers on how to identify greenwashing:

> *I do not know why but the Bulgarian consumer does not seem to care that much about the so-called greenwashing. I have not heard of any signals from consumers concerning greenwashing practices and I can imagine there are many such cases. Probably the reason is that the consumers are not aware of greenwashing.*
>
> Representative of the Commission for Consumer Protection, Bulgaria

The Danish Marketing Practices Act outlaws aggressive or misleading marketing. The Danish Consumer Ombudsman is responsible for ensuring compliance with the act and can consider cases on its own initiative or based on complaints, both by consumers and by companies. The ombudsman is not obligated to address every complaint, and its decisions

cannot be challenged. It can issue injunctions if negotiations with the company are unsuccessful, which can be reviewed by a court.

The Consumer Ombudsman and anyone with a legal interest (including business and consumer organisations) may initiate court proceedings for prohibitions, injunctions or compensation. The prohibitions can be directed at various involved parties, such as the company selling the product or the advertising agency running the marketing campaign.

Case-law: Denmark

In 2011, the Danish Maritime and Commercial High Court prohibited a company from using statements that claimed that their plastic products were more environmentally friendly than metal or glass products. The company had already removed the statements and destroyed brochures, but the prohibition still applied to future actions. The court found that the company lacked evidence for its claims and that the statements were misleading because they did not specify that they applied only to certain stages of the product's life cycle and disregarded the potential for metal reuse.
The court emphasised the importance of clear, true, specific and not misleading claims to prevent unfair competition and stated that companies must provide evidence from an unbiased expert to support their claims.
Source: Denmark, Danish Maritime and Commercial High Court, H-9-10 judgment of 30 December 2011.

In 2014, the Danish Consumer Ombudsman issued guidancefor companies promoting their products as environmentally friendly on application of the Marketing Practices Act, further clarified in a quick guide published in 2021. The guidance states that companies must provide factual information supported by studies from independent experts.

According to the Danish Consumer Ombudsman, the requirements of the Danish Marketing Practices Act are sufficient to ensure that companies provide accurate information. However, the absence of judicial and administrative case-law on the application of the Marketing Practices Act to green marketing has been noted.

Danish Consumer Ombudsman's perspective on companies' obligations

In 2009, a petrol company in Denmark advertised a petrol product on TV by showing a car covered in grass. After refuelling with the product, the car drove away leaving a trail of flowers, accompanied by the slogan '5 % less CO_2. Same price – better for the environment.' The Danish Consumer Ombudsman ruled that if an environmental benefit cannot be proven through a proper life cycle analysis, it should not be used in marketing. In this case, the company was unable to provide evidence of such a benefit, making their marketing misleading (*).
In 2010, the Danish Consumer Ombudsman ruled on a case involving an airline that advertised its propeller aircraft as being more environmentally friendly than standard jet aircraft. The airline used a study by the Danish Energy Agency to support its claims, but it failed to mention that trains emitted even less CO_2. The advertisement was considered misleading because it omitted important information and used visuals to imply that flying with that airline had no negative environmental impact (**).
In another decision, from August 2022, the Danish Consumer Ombudsman ruled that a company cannot label a plastic product as 'recycled plastic' if it is less than 55 % recycled plastic. This label would mislead the average consumer into thinking the product is made mostly or entirely from recycled plastic (***).
Sources:
(*) Denmark, Danish Consumer Ombudsman, decision of 30 June 2009.
(**) Denmark, Danish Consumer Ombudsman, decision of 22 September 2010.
(***) Denmark, Danish Consumer Ombudsman, decision of 29 August 2022.

In Italy, the provisions concerning unfair commercial practices included in the Codice del Consumo set out the main complaint instrument. The Italian Competition Authority (Autorita' Garante della Concorrenza e del Mercato (AGCM)) is responsible for enforcing the

law. The AGCM can stop unfair commercial practices, impose fines and suspend business activity for up to 30 days for repeated non-compliance. An appeal against decisions taken by the AGCM can be lodged with the competent administrative court, without prejudice to the jurisdiction of the ordinary judge in matters of unfair competition pursuant to Article 2598 of the Civil Code. Numerous cases have been filed against companies for misleading environmental information, with administrative proceedings initiated by the AGCM *ex officio* or by NGOs, consumer associations and other stakeholders.

Italy: Cases before the Italian Competition Authority and courts

In 2019, the AGCM fined Eni EUR 5 million for misleading consumers by promoting its product as 'green diesel' and emphasising the product's renewable component in advertisements. The authority stated that the product's environmental claims were not well-founded and that its ability to reduce harmful emissions was not confirmed (*). Eni's appeal to the Regional Administrative Court was rejected in 2021.
In a judgment of 2017, the Council of State upheld a fine imposed on San Benedetto by the AGCM for unfair business practices in its advertising of mineral water. The company claimed to have reduced harmful emissions from polyethylene terephthalate (PET) bottle production, but it did not provide enough evidence to support this claim. The court stated that the burden of proving the legitimacy of the environmental claims is on the company, and the principle of professional diligence requires that the company communicates only information backed by precise, reliable and verifiable scientific evidence (**).
In 2022, MyTaxi Italia was fined EUR 400 000 by the AGCM for misleadingly using the name 'Clean air fee' to indicate a fee for taxi rides through the 'FreeNow' application. The fee was intended to offset emissions generated by the intermediary service, but only a part of the proceeds would be allocated to environmental improvement activities. The company's environmental claim was misleading (***).
Alcantara S.p.A. vs Miko S.r.l. was the first Italian case between competitor companies related to 'greenwashing'. Alcantara, a manufacturer of a micro-fibre product used in the automotive sector, requested an interim order to prevent its competitor from continuing its 'green advertising'. This advertising included statements such as 'environmentally friendly', 'natural choice', '100% recyclable', and 'reduction of carbon footprint'. In 2021, the Court of Gorizia found these statements to be generic, false and unverifiable and thus misleading. It ordered that these should be immediately removed. It also ordered Miko to publish the decision on its website. The court specifically addressed the unfair competitive advantages gained through greenwashing, given today's increased awareness of environmental issues (****).
Sources:
(*) Italy, AGCM, decision of 20 December 2019.
(**) Italy, Council of State, Section VI, judgment of 27 April 2017 (n. 1960).
(***) Italy, AGCM, decision of 5 July 2022.
(****) Italy, Court of Gorizia, (Tribunale Ordinario di Gorizia), judgment of 25 November 2021 (712/2021).

In the Netherlands, the Unfair Trade Practices Act (contained in Book 6 of the Civil Code) allows consumers to take legal action against businesses before civil courts.

The burden of proof falls on the business to prove that its information is correct and complete. The consumer must provide a link between the unlawful act (misleading advertising or misleading labelling) and the damage.

The Netherlands: consumer obligation to verify misleading claims

In January 2019, the Pigs in Need Foundation (Stichting Varkens in Nood) and the Rights of Animals Foundation (Stichting Dierenrecht) filed a lawsuit before the Hague District Court against the foundation Meat.nl for its promotion of pork consumption as sustainable. Meat.nl explained that it merely claimed that its farmers operated sustainably.
The court rejected the claim. It emphasised that consumers should be aware that advertisers have their own interests and may not be neutral. Consumers should be aware of Meat.nl's interest in improving the image of farmers and exaggerating product benefits, including its environmental impact. Therefore, consumers should not blindly trust the information provided by farmers. According to the court, the average consumer is responsible for investigating information and seeking alternative sources to make their own decisions.
Source: Netherlands, District Court of The Hague, judgment of 30 January 2019 (C/09/550422/HA ZA 18-354).

Consumers and consumer associations can also report unfair trade practices, such as misleading advertising and improper use of labels, to the Netherlands' Authority for Consumers and Markets. If consumers want to seek damages, they need to initiate separate legal proceedings before the court.

In 2022, the Authority for Consumers and Markets issued a mandatory guideline on of sustainability claims for businesses. This requires businesses to clearly state the sustainability benefits of their products, provide evidence and ensure that claims and labelling are helpful to consumers.

In Portugal, the Directorate-General for Consumer Affairs (DGC) is responsible for overseeing investigations under the Unfair Commercial Practices Act. Furthermore, if an environmental claim is found to be misleading or to omit information, it is considered an economic offence under theLegal Framework for Economic Offences .Anyone with a legitimate interest can file a complaint to the appropriate administrative authority, including competing professionals and consumer associations. The burden of proof is always on the trader, and the DGC has access to information about complaints related to misleading advertising entered in the complaints book, required for all suppliers and service providers who engage with the public. A digital platform is also available for reporting complaints (Complaints Book Law).

Information about the claims and complaints examined by the DGC is not publicly available. In December 2022, the DGC confirmed in an interview that several investigations were ongoing. The Portuguese Association for Consumer Protection (Associaçáo Portugesa para a Defesa do Consumidor (DECO)) identified three cases of greenwashing and reported them to the DGC.

Greenwashing cases in Portugal submitted by DECO

DECO made three accusations against Ryanair, Renault and 'The Good Bottle'. Ryanair claimed to have the lowest carbon emissions of any airline in Europe, but a report from the European Federation for Transport and Environment showed that it is among the EU's top 10 carbon emitters.
Renault falsely claimed in an advertisement that electric vehicles produce no pollution and therefore do not have to pay road tolls.
'The Good Bottle' was marketed as 100 % biodegradable, but the producer website stated that the biodegradability rate was only 74 % after 45 days and 90 % within 12 months, depending on the environmental conditions.
The outcomes of these cases are not publicly available. According to DECO, Ryanair had not responded to the accusation by December 2022. The Renault advertisement was suspended by the advertising self-regulation body. 'The Good Bottle' was cleared by the DGC, which found no evidence of an administrative offence regarding the advertising since the bottle was never available for purchase by consumers.
Source: Portugal, DECO, written response, 7 December 2022.

1.2. Carbon-neutral and carbon 'offsetting' claims

Definitions

Carbon neutrality means having a balance between emitting carbon and absorbing carbon from the atmosphere in carbon sinks (e.g. soil, forest).
Carbon offsetting is a process that involves reducing greenhouse gas emissions from the atmosphere to compensate for emissions that cannot be reduced directly by an individual or a company. This can be done through investment in renewable energy, energy efficiency or other clean, low-carbon technologies. The EU's emissions trading systemis an example of a carbon-offsetting system.
Achieving carbon neutrality by 2050 is crucial to prevent global warming exceeding 1.5 °C, with warming above this level considered unsafe by the Intergovernmental Panel on Climate Change and as outlined in the Paris Agreement, signed by the EU and 195 countries.

An example of highly debated green claims emerged in the use of the term 'carbon-neutral' in product or service advertisements. Climate change has already had serious and irreversible human rights impacts, and these impacts are likely only to intensify in the future. Not only has the spread of unregulated company publicity involving 'net-zero' or 'climate-neutral' claims inhibited climate action, but most carbon-offsetting projects are located in so-called risk countries, where the protection of human rights is already precarious.

Consequently, the use of carbon offsets to attain carbon neutrality is under heightened global scrutiny, and there is growing scepticism surrounding their implementation. In February 2023, a group of 37 environmental organisations sent a joint letter to the European Parliament and the Council of the European Union requesting a ban on all climate neutrality claims such as 'carbon-neutral' and 'CO_2-neutral'. They referred, inter alia, to a recent report by Carbon Market Watch, which exposed the deceptive nature of net-zero and carbon neutrality targets set by some of the world's largest companies. In that report 12 companies were assessed who claimed to be carbon neutral. However, their offset efforts accounted for only 3 % of their total emissions on average. In March 2023, 80 NGOs signed another letter urging the EU to reject carbon offsets, following an investigation by Die Zeit, The Guardian and the NGO SourceMaterial. This investigation revealed significant flaws in the voluntary carbon-offset market. A group of academic researchers evaluated 29 projects and determined that over 90 % of the credits issued by those projects held no value. The ongoing debate and advocacy by NGOs point to a complex and evolving landscape regarding the use of carbon offsets in the EU's climate goals.

However, some experts consulted maintain that a total ban on carbon offsetting could be counterproductive and instead call for more effective regulation of carbon neutrality and a requirement for science-based emission reductions, while keeping carbon offsetting as a last resort. This was recommend by the updated OECD guidelines for multinational enterprises on responsible business conduct.

On 19 September 2023, the Parliament and the Council reached a provisional agreement on the proposal for empowering consumers for the green transition. It includes a ban on carbon and climate neutrality claims, based on emissions-offsetting schemes, that a product has a neutral, reduced or positive impact on the environment. The text agreed and adopted by the Parliament in January 2024 states that 'such claims should only be allowed when they are based on the actual lifecycle impact of the product in question, and not based on the offsetting of greenhouse gas emissions outside the product's value chain, as the former and the latter are not equivalent'.

It follows from findings of this research that 'carbon neutrality' or 'carbon offsetting' claims are currently only rarely forbidden in national regulations, and most prohibitions provide for exceptions.

Among the countries covered by the study, only France (through Article L229-68 of the Environmental Code) prohibits advertisements claiming that a product or service is carbon-neutral or using similar language. However, broad exceptions exist for situations in which the advertiser (1) provides the public with a report on the product's or service's direct and indirect greenhouse gas emissions, (2) details the process of avoiding, reducing and offsetting emissions and (3) follows specific minimum standards for offsetting residual emissions.

Decree No 2022-539 relating to carbon offsetting and claims of carbon neutrality in advertising entered into force in January 2023. It aims to prevent greenwashing and regulates the use of carbon neutrality claims for products and services when advertised in various media. It obliges advertisers to produce a report on the greenhouse gas emissions of the product or service concerned, covering its entire life cycle.

Promising practice: using the 'carbon neutrality' argument in communications

The French Agency for the Environment and Energy Management (Agence de l'environnement et de la maîtrise de l'énergie) published an expert opinion explaining why 'neutrality' arguments can be misleading and expose organisations to the risk of controversy, 'why they do not make it possible to distinguish between real approaches and those that are greenwashing' and 'ultimately how they prevent the spotlight from being shone on actors who are sincere and genuinely committed to the climate'.

Interestingly, even before this provision was adopted in France, 'carbon neutral' claims had been challenged in court for misleading marketing practices, as in the lawsuit against TotalEnergies. In this case, the plaintiffs referred to the Commission's proposal on empowering consumers for the green transition to support their argument, even though it had not yet been adopted. This example highlights the potential impact of EU policy on the interpretation of existing legal provisions.

Lawsuits against the French oil company TotalEnergies in France and Germany

In France, a lawsuit for misleading commercial practices was filed in March 2022 by Greenpeace France, Friends of the Earth France and Notre Affaire à Tous, supported by ClientEarth.
NGOs have challenged claims made by TotalEnergies about its commitment to carbon neutrality by 2050 and its role in the energy transition. They argued that the company's advertising campaign falsely portrays it as taking action on the climate crisis, thus misleading consumers. The lawsuit also criticises the promotion of gas and biofuel as environmentally friendly options by TotalEnergies. TotalEnergies has been promoting its questionable carbon neutrality claims through various media such as billboards, press outlets, its website, advertisements in service stations, television and social media platforms.
In Germany, in April 2023, Deutsche Umwelthilfe won a lawsuit against TotalEnergies over 'climate-neutral' heating oil claims. Deutsche Umwelthilfe criticised the ambiguously presented measures to achieve supposed climate neutrality and criticised the use of emission credits from a forest protection project in Peru to offset CO_2 emissions. The Düsseldorf Regional Court ruled that claims made by TotalEnergies on climate neutrality were misleading. The court also prohibited further advertising of its heating oil as 'CO_2 compensated'.
Source: Germany, Düsseldorf Regional Court, judgment of 5 April 2023.

In Germany, environmental claims can relate to both the product and the production process. In Germany, certain claims regarding '**climate neutrality**' have been classified by the courts as misleading or omitting material information. They have been classified as misleading when consumers would understand such claims to mean that emissions would be fully compensated [13] . They have been classified as omitting material information when it was not clear to what extent climate neutrality was achieved through real reductions in the company's production rather than through the purchase of CO_2 certificates, for example [14] .

However, the exact boundaries of permissible claims are not clearly defined as the fact patterns underlying claims pertaining to climate neutrality are product specific and are not subject to review by the Federal Court of Justice. This can lead to different outcomes in lower courts, which can make such claims riskier for businesses [15] and may also lower the value of the information for the consumer. In addition, in response to the changing legal landscape, companies have begun to introduce more nuanced claims, such as 'climate neutralised', when relying on CO_2 compensation mechanisms.

Discrepancies observed in the use and interpretation of these provisions across various Member States further emphasise the necessity of implementing a targeted and coherent approach to addressing greenwashing at the EU level.

Germany: 'Climate-neutral' versus 'climate reduced'

In a case related to garbage bags, the Higher Regional Court of Schleswig (*) decided in June 2022 that, unlike the claim 'environmentally friendly', the claim 'climate-neutral' contains an unequivocal statement. The claim of climate neutrality was printed on the product and was accompanied by a visible reference suggesting that the product supports 'gold standard certified' climate protection projects. According to the court, consumers could understand this claim to mean only that the product has a neutral CO_2 balance, not that CO_2 emissions are avoided altogether in the production process. The court found that the product advertisement was not misleading, as the product packaging provided a website link to the company's compensation program. This aligns with a case of August 2021 decided by the Higher Regional Court of Hamm (**) in which the claim 'climate reduced' was found to be of such generality that it remained completely open whether the claim related to the production, packaging or distribution and under which standard the climate reduction was achieved.
In July 2023, the Düsseldorf Higher Regional Court has ruled (***) on two appeal cases submitted by the Centre for the Protection against Unfair Competition (Wettbewerbszentrale). The cases related to two products claiming to be 'climate-neutral': a jam and a fruit jelly. They endorsed the previous approach of other appeal courts that the average consumer understands climate neutrality as the process of offsetting the carbon emissions of a product. The court emphasised that advertisers have a responsibility to disclose how they achieve climate neutrality so that consumers can make informed choices. The jam manufacturer failed to provide enough information, while the fruit jelly manufacturer provided additional information through a QR code and website link, which was deemed sufficient. The fruit jelly case is pending appeal at the Federal Court of Justice.
Sources:
(*) Schleswig-Holstein Higher Regional Court, judgement of 30 June 2022 (6 U 46/21).
(**) Higher Regional Court of Hamm, judgment of 19 August 2021 (4 U 57/21).
(***) Düsseldorf Higher Regional Court, judgments of July 6, 2023, (I-20 U 72/22 and I-20 U 152/22).

In other Member States, authorities and courts are increasingly faced with carbon neutrality claims, which are currently dealt with under rules on misleading commercial practices. The divergent decisions of domestic bodies and the complexity of this issue point to the need for more targeted legislation and precise, science-based rules.

Carbon neutrality claims

Italy: Ferrarelle – Impatto Zero
In 2012, the Italian Competition Authority AGCM deemed Ferrarelle's advertising campaign for its bottled mineral water as misleading. The campaign highlighted Ferrarelle's temporary membership of an environmental project as offsetting CO_2 emissions from its bottle production (*).
Danish dairy company Arla
The Danish dairy company Arla marketed some of its foods as being 'CO_2-neutral', claiming to offset its emissions through carbon credits purchased from deforestation projects in Brazil and Indonesia. The Margarine Association complained that this was greenwashing and violated the Marketing Practices Act. In 2021, Arla was cleared of violating the law by the Danish Veterinary and Food Administration. However, consumer groups and environmental organisations have appealed the decision, claiming that Arla's marketing campaign was misleading. In a majority decision , the Danish Environment and Food Board of Appeal dismissed the appeal as inadmissible (**).
Austrian Airlines
In 2023, Austrian Airlines advertised a CO_2-neutral flight to Venice, claiming that the money from an additional ticket fee would be used to purchase sustainable aviation fuel made from plant oil. However, the consumer organisation Verein für Konsumenteninformation argued that CO_2-neutral flights are not currently possible. The case was brought to the regional court in Korneuburg which ruled in June 2023 that the advertising was misleading. It ordered Austrian Airlines to stop the advertising and publish the judgment on its homepage (***).
Sources:
(*) Italy, AGCM, decision PS/7235, 8 February 2012.
(**) Denmark, Danish Environment and Food Appeals Board, decision of 23 May 2023 (21/14127).
(***) Austria, Regional Court Korneuburg, judgment of 29 June 2023 (29 Cg 62/22).

1.3. Combating greenwashing through advertising regulations

Under EU law, the misleading and comparative advertising directive seeks to protect traders against misleading advertising from other businesses (i.e. business to business), which is equivalent to an unfair commercial practice. It also defines the conditions under which comparative advertising is authorised.

According to the directive, advertisements that mislead, or may mislead, the people who receive them are forbidden, as they can affect the economic behaviour of consumers and traders or may be detrimental to a competitor.

EU Member States must ensure that those persons or organisations with a legitimate interest may initiate judicial or administrative action against illicit advertising in order to:

- cease illicit advertising, even where there is no proof of actual loss or damage or of intention or negligence on the part of the advertiser;
- prohibit illicit advertising that has not yet been published.

The audiovisual media services directive prohibits commercial communication that encourages behaviour grossly prejudicial to the protection of the environment. Advertising that promotes the use of environmentally hazardous products, such as single-use plastics or goods that contribute to deforestation, is an example of illegal communication.

The environmental laws in most Member States covered by this study do not include provisions against greenwashing, except in France and to some extent in Poland. While France introduced an express prohibition of greenwashing in its 2021 Climate Law, few Member States covered by this study have targeted avenues to challenge misleading environmental claims in advertisements other than through consumer laws.

In some Member States, there are non-binding rules relating to advertising, most often established by business itself, and 'enforced' through non-judicial dispute resolution. However, the perceived lack of impartiality of such bodies leads to divergent and less strict decisions regarding greenwashing, while the biggest weakness of this avenue is the lack of legal enforcement.

This section provides examples of the application of both administrative/judicial and self-regulatory avenues for addressing misleading environmental advertising and evaluates the effectiveness of such measures.

1.3.1. Judicial and administrative measures

In Poland, Article 80 of the Environmental Protection Act forbids advertising or other promotion of goods or services that promotes a consumption model contrary to the principles of environmental protection and sustainable development. This includes content that uses images of wildlife to promote products and services negatively affecting the environment. The terms 'advertising' and 'promotion' are understood broadly; however, since only 'goods and services' are mentioned explicitly, social and political campaigns fall outside the law's scope, as long as they do not intend to advertise a specific product. An example that would not be covered by Article 80 is social campaigns created by non-eco-friendly companies (such as those producing plastic bottles and not taking care of waste) to promote recycling, falsely presenting the company as eco-conscious, although not marketing a specific product.

The Environmental Protection Act provides for administrative and civil enforcement. Social

organisations and other associations can ask competent administrative authorities to take measures to stop advertising that violates the rules described in Article 80. A civil claim to a court to enforce Article 80 is available only for environmental organisations. They can challenge the producer, the advertising agency and the entity publishing the advertisement [16] and request the cessation of promotion, but they cannot claim damages. Consequently, as organisations do not have to prove damage or show legal interest in the proceedings, this mechanism serves as an *actio popularis*.

While the prohibition stemming from Article 80 of the Environmental Protection Act appears to be broad enough to cover most greenwashing practices, it is rarely used in practice. By November 2022 there seemed to be only three cases in which environmental organisations brought a claim to enforce the prohibition and only one of these was successful.

Poland: application of the Environmental Protection Act to an advertisement using images of wildlife

An example of prohibited advertisement under Article 80 of the Environmental Protection Act is the use of images of wildlife to promote products and services negatively affecting the natural environment. Wildlife is understood as referring to both inanimate and animate nature. Objects must be pictured in the environment in which they occur in nature. However, not every use of the images of wildlife is prohibited – only those that promote products and services that negatively affect the natural environment. The Court of Appeal in Warsaw ruled in a case where an environmental organisation sued a beer producer for using an image of wildlife in their advertisement. The court stated that it is not enough that the image is used, nor is it enough that a product has any impact on environment (as nowadays every product has some environmental impact). The impact has to be more severe – the model of consumption should destroy or degrade the environment and lead to an imbalance (*).
In another case, an environmental organisation brought a claim against a bank that used an image of a bison in their advertisement. The Court of Appeal in Warsaw was of the opinion that even though the bank's logo is not a real image of wilderness, it is covered by Article 80. This is because in the public perception the image constitutes an element of wilderness, even if its representation is made through a pictogram. However, the court found that the plaintiff had not proved that the image in question promotes a consumption model that is contrary to the principles of environmental protection and sustainable consumption, or that the products, services and banking activities bearing the defendant's logo have a destructive, damaging effect on the environment (**).
Sources:
(*)Poland, Appellate Court of Warsaw (*Sąd Apelacyjny* w *Warszawie*) VI ACa 621/09, 8 December 2009.
(**)Poland, Appellate Court of Warsaw (*Sąd Apelacyjny* w *Warszawie*) VI ACa 666/09, 10 January 2010.

In Portugal, a misleading environmental claim can be considered misleading advertising and an unfair commercial practice according to Article 11 of Advertising Code and constitutes an administrative offence. While this provision applies only to advertising directed at commercial professionals in their relationships with other professionals, it can indirectly protect consumers since it prohibits all advertising that infringes on consumer rights. The Consumer Institute (Instituto do Consumo) – an institute linked to the Portuguese Directorate-General for Consumer Affairs (DGC) – is responsible for monitoring compliance with the law and investigating complaints. The burden of proof lies with the advertiser to demonstrate the accuracy of the information in their advertisements.

In October 2021, the DGC released a 'Guide on Environmental Claims in Commercial Communication' to help professionals promote transparency and empower consumers to make eco-conscious choices. The Civil Institute for the Self-Regulation of Advertising also published a self-regulation code of conduct.

The 2021 Climate and Resilience Law in France introduced into its Environmental Code

restrictions on advertising for products and services that have a significant negative impact on the climate. This includes a ban on advertising for fossil fuels as of August 2022, with the specific fuels to be determined by government regulation. In addition, starting in January 2028, advertising for new passenger cars that emit more than 123 grams of carbon dioxide per kilometre will also be prohibited [17].

1.3.2. Non-binding self-regulatory codes

In all Member States voluntary, self-regulatory codes of conduct exist to regulate advertising, including advertising related to environmental and ecological issues. However, this avenue is limited because decisions are not legally binding and lack enforcement.

While they can help improve the implementation of ethics rules within the profession by publicly exposing wrongdoers, several examples of such decisions have been criticised for being unduly lenient in permitting greenwashing.

In Poland, advertising is regulated in the Advertising Code of Ethics issued by the Advertising Council, an independent organisation that established and oversees a self-regulatory system for advertising. It consists of advertising branch associations as regular members and companies as supporting members. The code provides guidelines for advertising that includes environmental information. Such advertising should not undermine public trust, take advantage of the audience's lack of knowledge or deceive consumers about the product or actions of the advertiser. Environmental information must be relevant to the product and claims such as 'environmentally friendly' should be accurate. Information about the product's environmental impact, and accessible methods for reducing waste if harmful substances are present, should be provided. In March 2023, the code was extended and new provisions on environmental advertising added, as a result of the Green Project (see Box below).

Promising practice: Poland – promoting ethical communication in environmental advertising

An example of a promising practice, launched by the Polish Advertising Council in 2021, is the Green Project – an initiative to promote ethical communication and advertising in terms of environmental responsibility and sustainable development, including preventing greenwashing. Furthermore, the council adopted a position paper calling for an end to the excessive and arbitrary use of the terms 'ecological', 'environmentally friendly' and 'eco'.

Complaints can be submitted to the Advertising Ethics Committee by natural and legal persons and other entities and associations without legal personalityThe committee can recommend amending the advertisement or discontinuing it. Appeals can be made to the Appeal Panel.

Poland: complaints before the Advertising Council

One of the complaints concerned an advertisement by Orlen, a Polish fuel company. The advertisement described its fuel as pro-ecological and reducing smog. The committee determined that the advertisement did not provide enough clear and documented information, violating Advertising Code rules. However, the opinion did not suggest discontinuing or altering the advertisement (*).
Another case dealt with complaints against PGE Polska Grupa Energetyczna, which advertised its pro-ecological character despite, as the plaintiffs claimed, being the owner of the biggest Polish lignite mines (Turów and Bełchatów), the biggest producer of coal energy in Poland and the biggest single emitter of CO_2 in Europe. However, the committee found that the advertiser created a positive, pro-environmental image in an acceptable manner or that the advertiser clearly explained its plans for achieving the goals stated in the advertisement, and dismissed all complaints. These decisions seem not to have taken into account Article 35 of the Advertising Code, according to which advertising referring to specific products or activities may not unjustifiably extend the environmental advertising effect to all of the advertiser's activities (**).
There were also a few complaints about the advertising of 'eco-pea coal' before the Advertising Council (see Section 1.1.2 for administrative and civil proceedings), but no breach of the Advertising Code was found in using it as a statutory brand name. In some resolutions, the Advertising Council found a violation of the Advertising Code in using the terms 'ecological pea' or 'ecological fuel'. Later, the Advertising Council issued an opinion calling for the discontinuation of the name 'eco-pea' (***).
Sources:
(*) Poland, Advertising Ethics Committee, 23 March 2022 (ZO/023/22o).
(**)Poland, Advertising Ethics Committee, 9 March 2022 (ZO/019/22u).
(***) Poland, Advertising Ethics Committee, 23 June 2021 (ZO/062/21o).

Similarly, in France, individuals, associations or businesses can lodge a complaint with the Jury of Ethical Advertising (Jury de Déontologie Publicitaire (JDP)) alleging that an advertisement violates the ethical rules of the advertising sector, including self-regulatory rules as outlined in the codes of the Professional Advertising Regulatory Authority (ARPP). However, only courts or the administrative bodies can address violations of legal provisions. Challenges based in particular on the ARPP recommendation on sustainable development can be an effective means of promoting positive changes in corporate conduct.

Below are examples of successful complaints. However, several opinions issued by the JDP were criticised by researchers for being unduly lenient in permitting greenwashing.

France: complaints before the JDP

In 2022, the JDP concluded that EasyJet's claim that it 'compensate[s] for all greenhouse gas emissions from fuel usage' could mislead the public and downplay the environmental impact of using airline services. This, and other claims of the company, violated the recommendation on sustainable development and ethical rules (veracity and proportionality requirements), potentially removing consumer inhibitions and encouraging excessive air travel despite its negative environmental effects (*).
In another case, of 2020, the JDP criticised an advertisement by Orano, a nuclear fuel cycle company, for portraying nuclear energy as environmentally friendly. The JDP emphasised that any advertisement promoting nuclear energy should leave no room for ambiguity as to its environmental impact (**).
Sources:
(*) France, JDP, EASYJET – 798/21, 4 January 2022.
(**) France, JDP, opinions of 29 April 2020 regarding the recycling of nuclear fuel and greenhouse gas emissions, Opinion 634/20 and Opinion 625/20. See also the Greenpeace France, press release, 'Déchets "recyclés", nucléaire vertueux pour le climat: le Jury de Déontologie Publicitaire épingle les publicités mensongères d'Orano', 4 May 2020.

Opinions of the JDP are made public and can be challenged within 15 days following receipt of the opinion, before the Advertising Ethics Reviewer (Réviseur de la déontologie publicitaire), which is nominated by the majority of the ARPP board of directors.

In Belgium, the most notable voluntary initiative in the advertising sector is the Code of Environmental Claims, established by the advertising industry. It applies to any advertisements that make claims about the environmental impact of a product or service during its life cycle, including the packaging. The Jury for Ethical Practice in Commercials (JEP) oversees the code's implementation. It is a self-regulatory body consisting of equal representation from civil society and advertising industry. The JEP can offer advice to the industry on request and handle complaints. If a company does not comply with its decisions, the JEP can request the suspension of an advertisement from the relevant media even though its decisions are not legally binding. Any individual, organisation or public authority acting in the interest of consumers or the advertising industry can submit a complaint to the JEP. A jury of 10 members reviews a decision on appeal, excluding those who were involved in the initial case. Complainants need not prove any harm or damage. However, voluntary initiatives such as the JEP have been criticised for being biased in favour of the companies that create them and lacking real sanctions [18].

Belgium: complaints before the JEP

The decisions of the JEP are publicly available. The JEP's approach differs from that of the Belgian courts. The JEP requires advertisers to prove the accuracy and truthfulness of their claims, while in courts the burden of proof is usually on the plaintiff unless specified by the law.
The advertising campaign by Gas.be, which featured a green and blue logo and claimed that gas is environmentally friendly, was criticised for misleading consumers about the sustainability of fossil fuels. The JEP recommended that the wording of the advertisement should be changed or removed. However, it did not find the visual elements problematic (*).
Ferrero faced criticism for using the terms 'natural' and promoting a healthy lifestyle in its description of Nutella, a hazelnut cocoa spread, while also including palm oil in its ingredients. The JEP initially ruled that the packaging should exclude the term 'respectful of the environment' and that the claim 'naturally extracted from the fruits of the oil palm' should exclude 'naturally'. However, on appeal the decision was revised. The term 'respectful of the environment' was deemed accurate as it referred to the production process rather than the product's impact on the environment. The removal of the word 'naturally' was upheld (**).
An association brought a complaint against Shell for its claims of making existing fuels cleaner and more efficient. The JEP held that, because the advertisement in a magazine was not promoting specific products, it was of an informative nature without absolute or misleading assertions or representations (***).
Sources:
(*) Belgium, JEP, Gas.be, 8 June 2021.
(**) Belgium, JEP, Ferrero, 5 September 2013.
(***) Belgium, JEP, Shell, 27 January 2010.

In Italy, to challenge a green claim, a citizen, a consumer protection association or a company can report the case to the Institute of Advertising Self-Discipline (Istituto dell'Autodisciplina Pubblicitaria (IAP)). The IAP is an Italian association established to protect the public, consumers and businesses. It is a self-regulatory system for the entire advertising sector.

Article 12 of the Self-Discipline Code states that marketing communication about environmental benefits of a product or activity must be truthful, relevant, specific and supported by scientific evidence.

Italian Institute of Advertising Self-Discipline

In 2021, the IAP determined that the advertisement for 'Freshly Cosmetics' violated the Self-Discipline Code by highlighting the company's sustainability and qualities such as 'natural', 'vegan' and 'sustainable' without providing any evidence to support these claims. Moreover, the use of the term 'sustainable' did not specify how the environmental benefit was achieved, making it a generic and inadmissible claim.
Source: Italy, IAP, Injunction n. 50/21 of 2 December 2021.

Any person claiming to be harmed by a commercial communication that is contrary to the Self-Discipline Code may submit a written complaint to the IAP's so-called Giurì. Giurì members are university professors in relevant fields of law (e.g. commercial law, private law, economic law) and may not exercise their professional activity in the field of commercial communications to ensure their independence and impartiality when taking decisions. Giurì may order termination of an advertisement. In cases of non-compliance, the IAP announces the non-compliance in the press. Its decisions are public.

In the Netherlands, consumers may turn to the Advertising Code Committee (Reclame Code Commissie (RCC)) with a complaint based on the self-regulatory Code for Environmental Advertising and the general part of the Dutch Advertising Code. These codes help ensure that advertisements do not make misleading or unsubstantiated environmental claims. The burden of proof lies with the advertiser. The RCC provides recommendations, and, while there are no sanctions for failure to comply, the procedure can result in advertisements being banned from media platforms. Parties may appeal to the Board of Appeal of the Advertising Code Foundation.

The Netherlands: examples of cases before the RCC

Arla, a producer of organic dairy products, claimed in its advertisements that its products are climate-neutral. In 2022, the Board of Appeal found the advertisements to be misleading, because the claim 'climate-neutral' was not immediately recognisable to the average consumer as a reference to a certified climate-neutral quality label obtained by the company, and could be interpreted as a self-standing claim (*).
KLM claimed that its emissions could be offset by travellers, making their flights climate-neutral. KLM's advertisement claimed that travellers can compensate for their emissions, resulting in CO_2-zero emissions. Plaintiffs argued that the terms 'CO_2 neutral', 'CO_2ZERO' and 'Compensation of CO_2 emissions' may be interpreted by the average consumer as reducing net emissions and that flying has no negative impact on the climate. The Advertising Code Committee found that KLM could not prove this claim and misled its customers. As a result, the committee recommended in 2022 that KLM stop this advertising. KLM adjusted one of its statements to clarify that consumers can 'reduce' their impact instead of 'neutralise' it (**). (See also the judicial proceedings against KLM)
In a complaint against an advertisement campaign by Royal Dutch Shell that included 'Make the difference. Drive CO2 neutral' and claimed that drivers could compensate the effects of the use of fossil fuels, the Advertising Code Committee found in 2021 that the advertisements were misleading and ordered their discontinuation. The committee noted that the statements were too absolute in terms of guaranteeing a result that is not certain. The company had not demonstrated its claim that CO_2 emissions from driving did not have any negative impact on the environment (***).
Sources:
(*) Netherlands, RCC, 06 July 2022, 2021/00472 – CVB.
(**) Netherlands, RCC, 8 April 2022, 2021/00553.
(***) Netherlands, RCC, 27 August 2021, 2021/00190.

In Bulgaria, the National Ethical Standards for Advertising and Commercial Communication were established in 2009 by the National Council for Self-regulation and updated in 2020 to include more detailed section on environmental statements. These standards are mandatory for members of the council , and a committee has been created to handle complaints and ensure compliance. Interestingly, no complaints related to environmental

issues have been received since the inclusion of the environmental considerations.

In Germany, the Centre for Protection against Unfair Competition is the largest and most influential self-regulatory institution operating nationwide to enforce the law against unfair competition. It also promotes companies' own responsibilities.

1.4. Labels and certification

Ecolabels provide information to consumers about the environmental performance or attributes of a product or service through a label or logo. They can help consumers make informed choices and encourage producers to improve their environmental standards, thereby empowering the consumers as rights holders and supporting environmental sustainability objectives.

This section considers national examples that illustrate approaches to the certification criteria and monitoring of ecolabels.

Member States implement several EU sustainability-related labels, such as energy labelling and ecodesign. The market surveillance authorities are usually responsible for monitoring and enforcement. For example, the European regulation on energy labelling was introduced to provide consumers with information about the energy consumption and resources used by certain products, allowing them to compare different options on the market. The ecodesign directive sets ecological requirements for energy-related products, aiming to reduce energy consumption and greenhouse gas emissions. The proposal for a new ecodesign for sustainable products regulation, which is part of the European Green Deal initiative, expands the scope of the directive to cover all products and includes additional requirements such as durability, reparability and environmental footprints.

The EU Ecolabel is a scheme created in 1992 that promotes environmentally friendly goods and services. The EU Ecolabel is awarded to products or services that have a reduced environmental impact throughout their life cycle. It helps consumers recognise more environmentally friendly products or services. It is recognised by all EU Member States and by Iceland, Liechtenstein and Norway. It uses standardised processes and scientific evidence to determine which products have a lower environmental impact than comparable products. The label, featuring a flower and 12 blue stars, aims to help consumers identify these products.

The Eco-Management and Audit Scheme (EMAS) and the International Organization for Standardization standards, particularly ISO 14001 and ISO 14024, play significant roles in the context of ecolabels. EMAS is a premium environmental management tool developed by the EU that helps organisations optimise their internal processes, achieve legal compliance, reduce environmental impacts and use resources more efficiently. EMAS-registered organisations can use their environmental statements and the official EMAS logo to signal their commitment to environmental performance, backed by real data. However, as the registration is strictly related to the activity of an organisation, the EMAS logo must not be used on products or their packaging to avoid misleading customers.

While EMAS focuses on the environmental management of organisations, the EU Ecolabel focuses on the environmental impact of products or services. Both schemes are complementary and aim to promote environmental sustainability, but they target different aspects of the production and consumption process.

In addition, there is a growing number of private labels that indicate the environmental impact of everyday products. Some criticisms of ecolabels include the risk of greenwashing when private, unregulated ecolabels are utilised. In addition, concerns may arise regarding potential redundancy if multiple ecolabels certify the same attributes; the high costs of certification, which may be a hindrance for smaller producers; and the challenge of effectively substantiating a positive impact.

Several countries endeavour to regulate and monitor these labels to protect consumers or issue more reliable governmental certifications.

The Austrian Ecolabel (Umweltzeichen) is given to products and services that meet strict standards for environmental protection and quality. An ecolabel guideline is drawn up by an expert committee chaired by the Association for Consumer Information (Verein für Konsumenteninformation) on the proposal of the Environmental Label Advisory Board, an advisory body to the Minister of the Environment. These guidelines are reviewed every 4 years and consider the product's entire life cycle. The Association for Consumer Information (acting on behalf of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology) conducts inspections on products to ensure that the Austrian Ecolabel is being used correctly. According to the ministry, the majority of label users apply it correctly; however, market monitoring is still seen as crucial to maintaining its credibility. The governmental website Label-Kompass includes information on quality labels for sustainable products. In addition, the Consumer Information Association examines and questions environmental advertisements on the Greenwashing-Check website.

The Ministry of Environment and Water in Bulgaria is responsible for granting the EU Ecolabel, but it has awarded very few licences compared with other EU Member States. Various public authorities have also implemented certification programmes to recognise environmentally responsible businesses, such as an annual competition for an ecolabel for sustainable buildings organised by Sofia Municipality. However, compliance with the criteria after the award is not monitored.

Promising practice: Bulgaria – providing more complete information on small packaging

Some Bulgarian companies use QR codes on small packages to give consumers more information about the environmental impact of products. However, the information is not verified by any official rules or procedures.
Source: Consultation with a representative of a large food corporation in Bulgaria.

The Danish Ministry of Environment actively informs citizens on environment issues through different initiatives and communication channels, including two voluntary type I ecolabel third-party certification schemes. Ecolabeling Denmark offers labels such as EU-Blomsten (the EU Ecolabel) and Svanemærket (the Nordic Swan Ecolabel) to companies that meet specific environmental requirements. Ecolabeling Denmark is part of Danish Standards (Dansk Standard). It is a commercial fund, but it has signed a performance contract with the Danish Environmental Protection Agency concerning the EU and Nordic ecolabels.

Svanemærket is a Nordic label and EU-Blomsten is an EU label. The main difference lies in their market coverage, with more product groups eligible for Svanemærket than EU-Blomsten. Companies can apply for a label to Ecolabelling Denmark if they meet all the specific requirements for their product group, outlined in a 'criteria document' for EU-Blomsten and Svanemærket, respectively.Companies pay a fee when applying for the labels

and also when renewing, changing and using the licence.

The requirements for eco-labelled products vary depending on the type of product at issue. Manufacturers must meet the regularly evaluated requirements to keep using the label. Failure to comply may result in losing the licence. In extreme cases, they may report a company to the police. According to a 2021 report from Ecolabelling Denmark, only minor violations of labelling criteria were found during its inspections.

The trust attached to a label can be illustrated by a 2022 decision of the Danish Consumer Ombudsman, which confirmed that a company can use the phrase 'a more environmentally friendly choice of floor paint' because the products have been certified by EU-Blomsten, the indoor climate certification scheme (Indeklimamærket), the Forest Stewardship Council (FSC) certification and Svanemærket.

In Germany, several federal ministries have introduced sustainability initiatives emphasising different aspects of sustainability and employing different strategies, from consumer education and information to supply chain due diligence through verifiable labels.

- 'Blue Angel', a voluntary environmental label awarded based on product group-specific environmental criteria, introduced in 1978 and owned by the Federal Ministry of the Environment.
- 'Green Button', created by the Federal Ministry for Economic Cooperation and Development in 2019 for the textile sector, and revised as 'Green Button 2.0' in 2022. The Green Button has set out demanding criteria for existing textile labels and recognises the labels that meet these criteria. The Green Button is the first registered certification mark and includes measures to protect human and labour rights as well as the environment. Consumer organisations believe that this government-accredited label can enhance trust and transparency regarding sustainability aspects. However, they also point out that simply adding another label to an already crowded field will not help consumers in determining which labels can be trusted.
- The German Council for Sustainable Development introduced the 'Sustainable Shopping Cart' in 2003. This platform offers guidance on sustainable consumption and provides independent information on labels and product marking. The Ministry of Justice and Consumer Protection supports the platform label-online.de, which includes a wide range of labels, from regional labels to quality marks.
- In 2021, the government updated its platform siegelklarheit.de ('label clarity'), funded by the Federal Ministry for Economic Cooperation and Development and managed by the German Agency for International Cooperation GmbH. This platform assists consumers in understanding sustainability labels and provides assessments based on methodology designed by the government together with experts, civil society and the private sector. The assessment criteria are decided by the federal government. Negative results are not published on the Siegelklarheit website, as the labels undergo the evaluation on a voluntary basis; only the ratings 'very good choice' or 'good choice' are awarded.
- Finally, the Federal Environmental Agency provides a 'consumer platform' that gives guidance on environmentally conscious consumption.

In Germany, a 2019 study estimated that there are around 9 670 institutions offering environmental and nutrition advice. The consumer protection organisations provide

information on their websites and in person through a network of information centres. As 'independent, largely publicly funded, non-profit organisations', they are seen as credible and trustworthy. The Federation of German Consumer Organisations website provides educational materials on sustainability matters. The magazine ÖKO-TEST, partly publicly funded, focuses on harmful substances in consumer products and also tests for durability and repairability. The online portal utopia.de provides rankings for sustainable products and background information on environmental and labour aspects.
Public broadcasting channels also offer programmes dedicated to consumer affairs, such as ZDF Wiso or WDR Markt. This is as a good example of how public broadcasters can effectively carry out their public mission of providing informative, educational and unbiased content to the general public.

Environmental and consumer organisations interviewed noted that well-trusted labels such as the 'Blue Angel' should increase the frequency of recertification, use independent third parties for analysis and move away from funding label initiatives through licensing fees [19] . All sustainability labels should be based on accredited standards that fulfil legal minimum requirements and are audited by independent third parties [20] .

However, one of the consumer organisations highlighted the main concerns regarding these government sustainability initiatives:

- reliable sustainability logos such as the Green Button have a very low market share;
- the duplication of government efforts and sources of information can overwhelm consumers and lead to conflicting results.

Moreover, all these information and transparency initiatives tend to place the responsibility of sustainable consumption on consumers, who are unable to change the outcomes of the production process through their purchasing decisions.

The 'Made Green in Italy' label is the first national certification scheme on the Product Environmental Footprint, which was established in 2016 to assess and communicate the environmental impact of products. This voluntary scheme, promoted by the Ministry of the Environment, provides both quantitative and qualitative information on a product's environmental performance through a logo and a product environmental footprint statement. The Ministry of the Environment grants companies a licence to use the label for 3 years after a positive verification by an accredited certification body, according to the conditions set out in the reference regulation. Accredia, the single accreditation body, is a private body appointed by the Italian Government to certify the competence and impartiality of certification bodies and laboratories.

The Netherlands Authority for Consumers and Markets called on the Dutch government to propose legislation that empowers consumers to make sustainable choices when it comes to packaging and products. Research has shown that consumers cannot currently make informed choices regarding sustainability because of numerous confusing and privately awarded labels. Businesses often provide misleading information about sustainability, as confirmed by recently completed investigations into the fashion industry and the energy sector. The government should therefore establish labelling that is accredited by a governmental or other independent body.

Due to the large number of labels available, the system lacks transparency, and consumers must search for additional information online to understand the environmental impact of

products from production to sale. This also applies to packaging. The Food Centre (Voedingscentrum) recommends 12 labels for food information, most of which also pertain to the environment. Focus on the Environment (Milieucentraal) provides explanations for labels, including 27 labels specifically for meat, about half of which are related to the environment. This demonstrates the difficulty in making choices for food, let alone for all products and services.

Consumers struggle to make informed decisions about sustainability because of the abundance of ecolabels in the market. Many of these are confusing and only a few of them actually help consumers choose environmentally better products. To assess ecolabels, consumers should prioritise transparency and be cautious of companies declaring their products to be environmentally friendly. It is necessary to have clearer and more standardised eco-labelling practices to prevent consumer confusion and enhance trust in sustainability claims.

1.5. Aarhus Convention provisions relevant to consumer protection

The Aarhus Convention of 1998 is a United Nations Economic Commission for Europe convention on access to information, public participation in decision-making and access to justice in environmental matters. The EU and its 27 Member States are all parties to the Aarhus Convention. The convention links environmental rights and human rights. It protects every person's right to live in a healthy environment and guarantees the public three key rights on environmental issues: access to information, public participation in decision-making and access to justice.

It acknowledges that sustainable development can be achieved only through the involvement of all stakeholders, including consumers. It also guarantees the right to receive environmental information held by public authorities, which can help consumers make informed environmental choices. In addition, the convention establishes that every person has the right to live in an environment adequate for their health and well-being, which includes protection from environmental harm caused by consumer products. Article 5(8) of the convention provides that each party shall develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner that enables consumers to make informed environmental choices.

Access to information refers to the public's right to receive environmental information held by public authorities. This includes information on:

- the state of the environment;
- policies or measures affecting the environment;
- public health and safety where these are affected by the state of the environment.

The access to environmental information directive aims to ensure that environmental information is systematically made available by the authorities to the public either actively or on request. The directive contains provisions that are in compliance with the Aarhus Convention. The Aarhus regulation (No 1367/2006) extended Regulation (EC) No 1049/2001 regarding public access to environmental information to all EU institutions and bodies. It was revised in 2021 by Regulation (EU) 2021/1767 to allow for better public scrutiny of EU acts affecting the environment by NGOs and members of the public. The revision increased the range of decisions that may be subject to internal review.

In Poland, the Aarhus Convention was implemented in the Act on Environmental Information, Public Participation and Environmental Impact Assessments (hereinafter the 'EIA act') [21] . The act provides access to environmental information that public authorities hold [22] . Anyone can request such information from public authorities. The entity requesting information is not required to demonstrate a legal or factual interest [23] .

The law allows access to environmental information to be denied in certain cases, such as when data is protected, in case of pending legal proceedings, in cases involving intellectual property rights violations and for public security reasons [24] . Third-party information of commercial value, including technological data, may also be excluded from disclosure if submitted with a justification for a deterioration in competitive position [25] . However, denial of access must not be automatic and the public interest must be considered in every case [26] .

In practice, public authorities tend to apply this exception automatically if the company claims that releasing the requested information would result in a deterioration of its competitive position. However, administrative courts have taken the view that the company must always prove the plausibility of such a deterioration.

In France, the right to access to environmental information is provided for in several provisions of the law. Article 7 of the Environmental Charter, which has constitutional value as of 2005 and has direct effect, provides that 'everyone has the right, under the conditions and to the extent provided in law, to access environmental information held by public bodies and to participate in public decisions that affect the environment.'

Public authorities have the obligation to provide environmental information held by or for them to anyone on request, without having to demonstrate an interest. The grounds for refusal in the Environmental Code include, inter alia, the risk that the disclosure of information infringes France's foreign policy, public security, national defence, the safety of persons or administration information systems or the progress of ongoing legal proceedings.

An example is the petition filed by Greenpeace France in 2021 before the Commission on Access to Administrative Documents to challenge the implicit refusal of the Louvre Museum to disclose administrative documents relating to its partnership agreements with TotalEnergies Foundation. The Commission on Access to Administrative Documents issued a favourable opinion for Greenpeace.

The grounds for refusal of access to information are sometimes interpreted too broadly. Commercial or industrial confidentiality are, for instance, too often invoked to block free access to information [27] . In addition, the possibility of review in the event of improper use of this power has been criticised because of long delays (proceedings can take up to 2 years), especially since the relevance of the information requested fades with time [28] .

The right to be informed can also be hampered by delays in the response of the administration due to lack of human resources or means [29] or knowledge of the topic.

In Austria, the application and administration of the Federal Environmental Information Act and relevant provincial acts are decentralised and thus carried out by the provinces or by district administrative and municipal authorities. The Austrian Environmental Agency (Umweltbundesamt) operates as a coordination office for environmental information and has the mandate to contribute to the improvement of environmental information. The requirement for the development of active environmental information systems is not fully

implemented. Often, a direct enquiry to the responsible authorities such as district authorities and municipalities is necessary. The Federal Environmental Information Act stipulates that operators of facilities that are obliged to measure and record emission data must actively disclose this environmental information on their own initiative. In practice, some businesses voluntarily publish environmental information, such as through environmental statements or sustainability and activity reports. The present research did not unveil further practical implementation or specific Austrian case-law based on the above provisions.

In Belgium, the Aarhus Convention is implemented at the regional and federal levels indirectly through reference to Article 32 of the Constitution of Belgium, granting citizens a right to obtain a copy of a document stemming from a public authority. For example, in the Walloon Region, the Environmental Code allows citizens to request access to information on documents related to an environmental aspect such as applications for town planning or environmental permits, municipal development plans or impact studies. The code lists a [https://www.uvcw.be/focus/environnement/art-23092] to that right of access to information in line with the access to environmental information directive, such as confidentiality of personal data, intellectual property rights or confidentiality of commercial or industrial information. However, according to a recent assessment, the current legal framework does not fully comply with the directive, affecting citizens' access to information about the environmental impacts of certain projects [30].

Hundreds of requests to access environmental information are listed in the database of the Walloon Appeals Commission for the right of access to information on the environment, for example related to the general interest to access environmental information versus the specific interest not to divulge information owing to intellectual property rights. However, these provisions do not give the right for a consumer to claim the right to information directly against a business.

The main law in Bulgaria related to access to information on environmental matters is the Environmental Protection Act. The Access to Public Information Act provides the general legal rules on access to public information and applies in the absence of a special provision in the Environmental Protection Act.

The Environmental Protection Act fully transposes the definition of "information on environmental matters" envisaged in the Convention and states that "every person has the right to access information on environmental matters without the need to justify their interest (article 17). The right to request information is limited to public authorities and it is not possible to request information directly from business entities. However, the information requested from public authorities can concern third parties, which are broadly defined as 'any natural or legal person providing public services relating to the environment and carrying out this activity under the control of the authorities which collect and process environmental information'. In such cases, the public authority must request the information from the third party and provide it to the person requesting it. Access to public information on environmental matters can be denied under certain specific conditions explicitly listed in the Environmental Protection Act, for example when the information is classified as a state, trade or official secret or when the information is subject to intellectual property rights.

Although there is no publicly available statistical data on the number of applications for access to information on environmental matters and their outcomes, several court cases reveal challenges in the application of the Aarhus Convention (see Box below).

Bulgaria: access to environmental information under the Aarhus Convention

In 2015, the Bulgarian branch of the World Wildlife Fund requested information on Pirin National Park's management and contracts with third parties. The park director rejected a request for information owing to lack of consent from contractors. However, the administrative court revoked the refusal, deeming the contractor's refusal unfounded as their interests were not affected, and the prevailing public interest was not properly considered by the administrative authority. This case demonstrates how the court resolved a conflict between the interest of a third party (protecting their reputation) and the public interest (*).
The environmental association For the Earth requested a report from the Ministry of Environment and Water on reducing harmful substance emissions from large combustion plants. The minister refused access owing to the report's preparatory nature. The five-member panel of the Supreme Administrative Court held that the requested information constituted environmental information under the Aarhus Convention and the Environmental Protection Act, as it concerned environmental impact of emissions. The information was later used to file a lawsuit against the Municipality of Sofia. The court held that the provision of the general access to public information law, which permits the restriction of access to preparatory documents, did not apply to environmental matters, specifically those related to emissions of harmful substances (**).
Sources:
(*) Bulgaria, Administrative court Blagoevgrad, Decision No 639 on case No 8/2016, 6 April 2016.
(**) Bulgaria, Supreme Administrative Court, Decision No 11951 on case No 7396/2014, 9 October 2014.

The right of access to information in Germany is covered by the Environmental Information Act (Umweltinformationsgesetz). In 2020, the Federal Environmental Agency commissioned a study to evaluate the (federal) Environmental Information Act; it concluded that the 'right to access to environmental information is still widely unknown' and only 52 cases relating to the federal Environmental Information Act came before administrative courts. During the diesel emissions scandal, the federal Environmental Information Act was successfully used to obtain information from federal ministries and agencies.

The study noted that consumer organisations were expected to make more use of the Environmental Information Act and confirmed that consumer organisations indeed rely on this act when claims under the Consumer Information Act do not achieve the desired result.

Furthermore, the Consumer Information Act, which is not based on EU law but was introduced as a response to food industry scandals [31], allows anyone to access information without needing to prove a legitimate interest, similar to other freedom of information acts. The act covers information about consumer products, including health and safety risks, and information such as composition, labelling, origin and production of consumer products. Provisions of the act may potentially overlap with the Environmental Information Act.

Germany: information relating to animal protection is not environmental information

The Federal Administrative Court denied access to information on potential violations of animal welfare provisions related to livestock transport, despite their relevance for consumer decisions and environmental impacts of factory farming. The court deemed the information on farmed animals as not related to 'biological diversity', as defined in Directive 2003/4/EC and the Aarhus Convention.
Source: Germany, Federal Administrative Court, BVerwG 10 C 11.19, judgment of 30 January 2020.

In Denmark, the Environmental Information Act provides broader access to information regarding environmental matters than the Danish Public Information Act. It applies in particular to information on emissions and information that is (exclusively) included in public statistics or scientific studies.

The Aarhus Convention was ratified in Italy by Law No 108/2001. An example of the

application [32] of the Aarhus Convention in the present context is the case filed by the environmental NGO A Sud and 200 plaintiffs in June 2021 before the Civil Court of Rome, alleging that, by failing to take action necessary to comply with Paris Agreement targets, the Italian government violated fundamental rights, including the right to a stable and safe climate. This could also give rise to non-contractual liability under the Civil Code. The action was part of the 'Giudizio Universale' campaign and aimed to obtain a declaration that the government's inaction is contributing to the climate emergency and a court order to reduce emissions by 92 % by 2030 compared with 1990 levels. The case is still pending.

The Netherlands implemented the Aarhus Convention in the Environmental Management Act and the Government Information (Public Access) Act. Dutch case-law [33] shows that the courts take great care to balance the right of civil servants to express their opinions against the interest in access to environmental information. The case-law shows that in practice there is a broad, and not restricted, interpretation of the concept and scope of environmental information [34].

The Aarhus Convention is therefore an important tool for promoting transparency, accountability and public participation in environmental decision-making, which can help to ensure that consumers have access to accurate and reliable information about the environmental impact of products and services.

1.6. Due diligence and reporting obligations

Laws pertaining to due diligence can play a role in protecting the rights of consumers and increasing the proportion of sustainable products in the economy as a whole, thereby advancing environmental protection and sustainability goals.

According to the OECD guidelines for multinational enterprises on responsible business conduct – Chapter VIII of which is specifically dedicated to 'Consumer interests' – enterprises, 'when dealing with consumers', 'should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide'. The reporting framework on the UNGPs also refers to consumers as among the individuals or groups that may be affected by business activities and relationships. Their rights should therefore be an integral part of due diligence processes.

Some EU Member States have already adopted national due diligence legislation, such as France, Germany and Portugal, but the implementation practice has yet to be established.

The majority of due diligence laws adopted or proposed do not specifically address the negative effects of corporate activities on climate change or the environment. However, the experts involved in this study noted the potential use of such instruments.

This research did not identify cases brought on the basis of the national due diligence laws invoking infringement of consumer rights. So far, such laws relate more broadly to human rights and environmental protection and climate change.

Experts from France pointed out that, even since the duty of vigilance law has been in effect, NGOs continue to use provisions relating to misleading commercial practices against big corporations such as TotalEnergies to hold companies accountable for their corporate social responsibility commitments and to protect the environment.

As the connection between consumer rights and larger societal concerns becomes clearer, it is likely that more specific laws or litigation will emerge targeting the infringement of consumer rights in relation to environmental and social responsibility matters. This shift would not only hold companies accountable for their actions but also empower consumers to make informed choices that align with their values.

2. Legal requirements for enforcing collective consumer and environmental rights

Definitions

Collective action and representative action are two different legal mechanisms that allow consumers to protect their collective interests. The relevant definitions include the following.
Collective action / class action refers to action taken together by a group of people whose goal is to enhance their condition and achieve a common objective.
Collective interests can be defined as interests that are common to all members of a particular group.
Diffuse interests refer to interests that are not individualised and are shared by a large number of people, such as the environment or public health.
Representative action means an action for the protection of the collective interests of consumers that is brought by a qualified entity as a claimant party on behalf of consumers to seek an injunctive measure, a redress measure or both. The RAD was adopted, in 2020, to ensure protection of collective consumer interest in the EU, by making representative actions effective and regulating the use of collective actions. Its measures should be applicable in Member States as of June 2023.
Damages is the compensation provided to a person or entity who/that has suffered harm or loss due to the omission or action of another. Damages try to quantify in financial terms the extent of harm suffered by a plaintiff due to the actions of the defendant.
Damage refers to actual and/or physical damage to tangible property.
Harm means an adverse impact affecting the life, health, physical integrity or property of a natural or legal person, or causing significant immaterial disadvantage.

Protecting consumers and protecting the environment can align in several ways, as both aim to promote sustainable practices and responsible consumption by addressing green marketing, sustainable consumer protection policies, sustainable consumption, consumer education and greenwashing. Tackling corporate failures and promoting sustainability initiatives, in support of consumer and environmental protection, can be pursued through collective or representative actions, given the collective nature of consumer interests and owing to the collective interest of most environmental actions.

In the area of private enforcement, the RAD introduced, in all Member States, the possibility of enforcing the UCPD through **representative actions**. Such actions could be brought by qualified entities, seeking injunctive relief or damages on behalf of the affected consumers.

The legal systems of EU Member States regulate legal (material and procedural) conditions for collective actions mostly in civil law. This chapter analyses and compares how the legal frameworks of 10 EU Member States regulate the requirements for collective and representative consumer actions when linked to the protection of environmental rights. In this, it identifies gaps, barriers and promising practices.

2.1. Collective consumer actions relating to the environment

Definitions

An **opt-out** mechanism automatically includes individuals in a lawsuit unless they choose to remove themselves from the class. They must actively opt out by notifying the court that they do not want to participate.
An **opt-in** mechanism requires individuals to take proactive steps to join the class or collective action.
The RAD allows EU Member States to choose whether collective actions operate on an opt-in basis, an opt-out basis or a combination of both.

Rules on collective action in national legal systems vary. They can be regulated either in the general administrative or civil law, which is the case for Austria, Belgium, Bulgaria, Denmark, Italy and the Netherlands, or in consumer-specific legislation focusing on the environment which is the case for France. In some Member States, namely Germany, Poland and Portugal, the possibility of collective action appears 'fragmentated' in several legislative acts.

2.1.1. Enforcement under general consumer law

The 'Dieselgate' cases across Europe

The 'Dieselgate' scandal, also known as 'Emissionsgate', is a significant automotive industry scandal that primarily involved the Volkswagen (VW) Group and its subsidiaries Audi, Škoda, Seat and other brands. The VW Group was accused of using deceptive software during emissions testing and providing false information that buyers relied on when making their car purchases. While the scandal originated in the United States, it had widespread implications for the entire European automotive industry, as it raised concerns about both the emission levels of diesel vehicles and the regulatory oversight of emissions testing. In many European countries, consumer and environmental CSOs took legal actions based primarily on provisions for misleading commercial practice, resulting in fines, recalls and individual compensation. Consumer protection laws played a crucial role in holding the carmakers accountable for misleading advertising, product liability, lack of transparency and lack of disclosure, and in the enforcement of consumer rights through measures such as class action lawsuits and strengthened regulatory oversight, as below.

In Belgium, the consumer organisation Test Achats filed a collective action against VW in 2016. The Court of First Instance of Brussels applied an opt-out approach, requiring consumers to demonstrate their intention not to receive compensation by July 2018. Owing to the lack of settlement between the parties, the court proceeded with the litigation, and in July 2023 the court ruled that VW (but not importers or other brands of the VW Group) must compensate affected buyers located in Belgium, who should receive either 5 % of the purchase price or 5 % of the difference between the purchase price and resale price if they come forward within 4 months of the court's decision.

The case shows that collective actions face lengthy proceedings and financial burdens, which a representative consumer organisation willing to engage in such cases must be able to bear.

Also in 2016, the Italian NGO Altroconsumo filed a class action against VW. In 2017, the first instance court held the group responsible for unfair commercial practices and ordered to pay around 200 million euros of compensation to 63 037 consumers. VW appealed. In December 2023, the Court of Appeal of Venice confirmed that VW manipulated its software and ordered it to pay EUR 300 to all consumers involved as compensation for moral damages. Altroconsumo appealed to the Supreme Court to obtain pecuniary damages for affected consumers. Federico Cavallo, Head of External Relations at Altroconsumo, stated as follows: 'This is a historic result which adds a very important piece to the history of class actions in our country: this tool is not yet fully known and used, certainly perfectible and for this reason evolving in both national and European legislation. A tool, however, that proves to be one of the most effective and important weapons to protect the rights of individual consumers who, by coming together, can face the major players in the global market.'

In the Netherlands, the relevant collective action was brought before the District Court of Amsterdam in July 2021 by the Volkswagen Car Claim Foundation. The VW Group admitted to the deceit but claimed that environmental friendliness was not a significant factor for car buyers. However, the court held that buyers would choose a more environmentally friendly car if given the option. Moreover, VW's actions contradicted claims about the importance of the environment in its advertisements. As a result, the court ordered a reduction in the price of the cars and allowed the Volkswagen Car Claim Foundation to negotiate damages with the defendant, as the law did not allow the court to award damages at that time.

Prior to this, in October 2017, the Netherlands Authority for Consumers and Markets imposed a fine of EUR 450 000 on the VW Group for deceiving consumers regarding the sustainability of its vehicles.

Lawsuits have also been filed in France, Germany and other Member States. In France, the consumer association CLCV filed lawsuits in 2015. The CLCV also provides an informative toolkit on their website for consumers who wish to file an individual civil lawsuit. In Germany, lawsuits filed by the Federation of German Consumer Organisations were settled in 2020. Lawsuits have been filed in several other Member States. These lawsuits were reported by the European Consumer Organisation (BEUC) in the Dieselgate 7th reportpublished in 2022.

Whether under administrative law, civil law or consumer law, class actions and/or collective actions are available in Austria, Belgium, Bulgaria, Denmark, Germany, Italy and the

Netherlands.

Austrian law does not explicitly regulate consumer claims related to the environment. Two types of action exist:

1. class actions (Verbandsklagen) for injunctive relief against unlawful clauses or the impairment of general consumer interests or unfair business practices, which can only be brought by certain plaintiffs exhaustively listed in the law;
2. collective actions (Sammelklage österreichischer Prägung), which cede claims to a plaintiff, who pursues a joint claim for all claimants and their damages in the form of an accumulation of claims (Klagshäufung).

Class actions (e.g. for injunctive relief against greenwashing business practices) and collective actions (e.g. bundled claims of consumers harmed by such practices) on environmental issues are possible under the current legal framework, using the broader interpretation of the relevant provisions of the Consumer Protection Law.

The Belgian Code of Economic Law (Book XVII, Title 2 introduced in 2014) provides for consumers who are victims of the same conduct by a company to file a collective action for damages at the Commercial Court of Brussels. Such action constitutes a civil law claim for repair of damage suffered by a group of consumers due to a similar cause, for instance a similar violation of contractual or statutory obligations by an undertaking. The Code of Economic Law was amended on 30 March 2022 to introduce the concept of 'damage to the collective interests of consumers'. This is defined as the actual or potential harm to the interests of a number of consumers affected by infringements.

Grounds for collective actions are intentionally limited by the legislator, and matters such as the environment or public health are excluded. Collective damage claims would be possible on the basis of Book VI (market practices and consumer protection) and Book IX (safety of products and services) of the Code of Economic Law, regarding advertising and information on the product or service, but not solely or directly on the grounds of a company's failure to comply with environmental legislation.

Since the introduction of the collective action regime in Belgium, as of December 2022, nine class actions have been initiated, eight of which were brought by Test Achats, the main Belgian consumer protection organisation. They were focused on particular consumer protection rights, such as the rights of air passengers and the rights of car buyers in the Dieselgate scandal.

The Bulgarian Consumer Protection Act provides for the possibility of bringing both collective and representative claims beyond the scope of consumer matters. Although matters related to the environment (including greenwashing) are not explicitly listed as potential grounds for seeking collective redress, the act's provisions prohibiting the implementation of unfair commercial practices could be used for that purpose.

Claims that do not fall within the scope of collective consumer protection can still be filed under the general collective action rules of the Civil Procedure Code, which allows for two categories of collective actions: (1) establishing harmful acts or omissions, their unlawfulness and guilt; and (2) discontinuing violations, remedying consequences and compensating damages. In practice, the option to file complaints related to the environment is not commonly used under the Consumer Protection Act, but there have been rare cases of collective complaints on environmental issues filed under the Civil Procedure Code (see Box below).

Examples of collective actions on environmental issues in Bulgaria are mainly related to air pollution

In 2017, the Supreme Cassation Court of Bulgaria ordered the Municipality of Plovdiv and the Regional Environmental Protection Agency to improve air quality in Plovdiv. The defendants were accused of failing to protect the air quality, which resulted in excessive levels of fine particulate matter. The court ordered them to achieve legally permissible levels within 12 months (*).
Another case was filed in 2017 by the Clean Air Group (a group of citizens and NGOs) against Sofia Municipality for contributing to air pollution in Sofia. The group claimed that the municipality allowed excessive fine particulate matter emissions, putting people's health at risk. The court ordered the municipality to implement measures to improve air quality, such as using alternative heating methods, assessing the measures taken in the transport sector and constructing interconnected bicycle paths (**).
Sources:
(*) Bulgaria, Court of Appeal of Velikovo Tarnovo, Case No 239/16 of 22 February 2017.
(**) Bulgaria, Sofia City Court, Decision No 266455 on Civil Case No 6614/2017, ECLI:BG:DC:110:2021:20170106614.001, 8 November 2021.

In Denmark, Chapter 23 of the Danish Administration of Justice Act allows for collective/representative action if several conditions are simultaneously fulfilled. These conditions are thatmultiple people hold similar claims, the claims can be processed in Denmark, the court seized has competence to examine the claims a collective action is the best way to process the claims, members of a collective action claim can be identified and notified in an appropriate way, and a representative for the collective action claim is appointed. If the conditions are met, the legal framework allows for consumer collective/representative action related to environment.

The Danish Administration of Justice Act has an opt-in system for identifying collective action members. However, if the claims are too small to be pursued individually, the court can include those who did not opt out of the collective action. There is a specific time limit for withdrawing from the action, and in certain cases registration can still be allowed after the deadline. Registering for the action is a simple process that requires only filling out a form with personal information. The deadline for registration is typically 4–8 weeks after receiving notification of the case (in case of individual notification to the individual group members) or 2–3 months in other cases.

Representative action claims related to the environment before Danish courts include cases against Danish Crown (see Box below) and the Danish dairy company Arla (see Section 1.2), both pertaining to environmental greenwashing through the marketing practices of the involved companies.

Danish Crown

A representative action was filed in 2022 against the company Danish Crown, for potential greenwashing and misleading marketing of its pork products. The company's label claimed that its pork was 'climate-controlled' and more environmentally friendly than it actually is. Moreover, the company used the phrase 'Our pigs are more climate friendly than you think.' Greenpeace and several other environmental organisations complained that the company cannot prove this claim since the labelling is a set of voluntary targets established by the company and initiated legal action for violation of the Danish Marketing Practices Act. The case has been referred to the Western High Court because of its general public importance. The judgement is expected in February 2024.

In Germany, the Bundled Enforcement of Consumer Rights Act and the Actions for Injunctions Act provide for representative actions (*Vebandsklagen*) in civil law matters, particularly regarding:

- injunctive measures against unlawful clauses or the impairment of general consumer interests or unfair business practices;
- redress measures for the benefit of consumers registering their claims with a specific representative action;
- declaratory judgments in favour of such consumers.

Representative actions can be brought only by registered qualified entities that fulfil certain requirements regarding their size and financing. Representative actions are not limited to claims relating to the environment but encompass every possible consumer claim irrespective of its legal foundation.

In addition, Germany's Code of Civil Procedure allows for complementary collective action instruments such as consolidated action (*Sammelklage* or *Einziehungsklage*) and enables certain consumer organisations to represent consumers in low-value claims, where no attorney is required. However, this provision applies only to representation in court, and consumer claims are usually assigned to consumer protection organisations for collection. This approach is primarily used for test cases owing to its limited reach and resource constraints.

In Italy, the Consumer Code provides for the collective action to protect consumers exclusively. Courts decide on liability and individual damages together and victims' compensation is defined on a lump-sum basis. In 2021, Law No 31/2021 introduced organic regulation of collective civil proceedings, in the Code of Civil Procedure, including injunctions and class actions from the Consumer Code. It has a wider scope of application than the RAD but does not regulate cross-border infringements.

In the Netherlands, the Dutch Civil Code previously allowed representative action on behalf of a group of people with similar interests and in the public interest (including environmental interest), as long as the legal representative had the authorisation of the persons concerned. Since 2020, it has been possible for a representative entity to bring a collective action on an opt-out basis and claim damages under the Resolution of Mass Damage in Collective Actions Act. Persons who live abroad can join the collective action on an opt-in basis. So far, several class actions have been initiated by civil society organisations (see Box The Netherlands: consumer obligation to verify misleading claims and Box The 'Dieselgate' cases across Europe and Box Dutch lawsuits against big polluters).

Dutch lawsuits against big polluters

In April 2019, the environmental group Milieudefensie filed a lawsuit against Shell in the Netherlands, accusing the company of violating Dutch law and human rights obligations (including Article 8 of the European Convention on Human Rights) by contributing to climate change. The case involves several NGOs and over 17 000 citizens seeking a court ruling to reduce CO_2 emissions in line with the Paris Agreement. The case against Shell builds on the Urgenda case (which found that the Dutch government's inadequate action on climate change violated a duty of care to its citizens), arguing that private companies have a duty of care to reduce greenhouse gas emissions, based on the Paris Agreement's goals and scientific evidence. In May 2021, the court (*) ordered Shell to reduce emissions by 45 % across both its own operations and use of the oil it produces. The court acknowledged that Shell has individual partial responsibility in the global problem for its contribution to global emissions, which it can control. The court made the decision provisionally enforceable even during the appeal process. The court allowed the case to proceed as a class action, as it aligned with the objectives of the environmental groups and NGOs involved. In July 2022, Shell appealed. The appeal is pending.
In July 2022, ClientEarth, along with Fossielvrij Netherlands and Reclame Fossielvrij, filed a lawsuit against KLM in the Netherlands, challenging the airline's misleading marketing that promoted the sustainability of flying. It also challenged KLM's carbon-offset marketing, which suggests that customers can reduce their flight's impact by supporting reforestation projects or the airline's costs of purchasing small quantities of biofuels. It is the first-ever legal claim challenging airline industry greenwashing. KLM has denied the allegations and argued that the group bringing the lawsuit did not represent most KLM customers and did not have the right to bring a lawsuit. In a significant development, in June 2023, the District Court of Amsterdam granted permission (**) for the lawsuit to proceed to a full trial (see also the Advertising Code Committee decision in Section 1.2).
Sources:
(*) District Court of The Hague, Milieudefensie et al. v Royal Dutch Shell PLC, judgment of 26 May 2021, C/09/571932/HA ZA 19-379.
(**) District Court of Amsterdam, Foundation for the promotion of the fossil free movement, judgment of 7 June 2023, C/13/719848/HA ZA 22-524.

2.1.2. Environmental claims regulated by specific legislation

In France and Germany, there is specific legislation for collective actions relating to environmental claims.

In Germany, Article 9(3) of the Aarhus Convention is implemented through the Environmental Appeals Act, which allows environmental organisations to bring representative action if they meet certain criteria set out in this law and have been recognised as an environmental organisation. However, the scope of the Environmental Appeals Act is narrower than that of the Aarhus Convention and does not cover product authorisations.

The connection between representative actions brought under this act and consumer interests can be indirect or direct, depending on the specific environmental issue. It is often indirect, such as in the case of the impact of conservation of bodies of water on drinking water, but may be more direct, for example when related to waste reduction. The Federal Nature Conservation Act and state nature conservation acts also provide for representative action instruments.

However, the public and political backlash against environmental law enforcement has led to threats to the non-profit status and tax benefits of environmental organisations.

French legislation provides for two types of collective/representative action relating to the environment beyond consumer matters:

- collective actions by accredited associations for environmental protection, as set out in the Environmental Code;

- environmental group action, which is distinct from the group action available to consumer associations.

Environmental group action was introduced in 2016 for the purpose of seeking cessation and/or compensation for bodily injuries or material damage to the environment. The harms covered here are broader than in consumer group actions, which are limited to pecuniary injury caused by products with misleading or incomplete information, and offers remedy in cases such as harm by a toxic product.

Beyond that, group action in consumer law has been progressively extended to include accredited associations of health system users, with compensation limited to bodily injuries. The 2016 Law on Modernisation of Justice of the 21st Century established a common legal framework for group actions in judicial and administrative proceedings, and established a specific procedure in respect of discrimination, in particular related to work, the environment and personal data. However, the autonomous nature of consumer action groups remains in place.

The number of cases in France is limited (by the end of 2022 there were 21 group actions and no entity had been held liable). The restrictive capacity to act, strict requirements and long delays, particularly due to formal notice requirements, have hindered environmental group action.

2.1.3. Environmental claims dispersed in different laws

Poland has a more fragmented legislative framework. Collective claims are regulated in the Collective Claims Act [35] , but can also be based on various consumer protection regulations, tort claims under civil law [36] or the separate Environment Protection Act. As of 2021, none of the collective claims in civil proceedings related to the environment. However, such claims beyond consumer matters are possible, for example, as tort claims under Article 415 or 435 of the Civil Code.

The Collective Claims Act defines collective claims as claims of one type brought by at least 10 people, based on the same factual basis. The Act contains an exhaustive list of claims which can be brought in collective action, such as claims relating to consumer protection, product liability and tort claims and claims for bodily injury excluding other personal rights claims. The court determines the admissibility of a class action before the case can be heard in class proceedings.

Consumer protection cases, including those related to environmental protection, involve consumer claims against entrepreneurs arising from various consumer protection regulations in general, the provisions focusing on unfair market practices [37] .

The District Court of Warsaw stated that consumer protection cases are not limited to claims based on specific consumer laws but cover all consumer cases against business entities. The court emphasised the importance of meeting conditions for class actions in consumer claims.

Portuguese legislation allows for collective actions in matters of consumer and environmental law, to protect ‘diffuse interests’. According to the Supreme Court of Justice of Portugal, diffuse interests are characterised by having both an individual and a supra-individual dimension. They are owned by each and every member of a class or group (regardless of their will) and pertain to assets that can be enjoyed simultaneously, rather

than exclusively. There are currently a limited number of registered cases relating to protection of consumers and the environment.

2.2. Legal standing in collective actions relating to the environment

Definitions

Legal standing refers to the right or capacity of a party to bring a lawsuit in court. A party seeking a legal remedy is required to show that they have a sufficient legal interest in the matter at hand. Legal standing is determined by the legislation of the state where the lawsuit is filed.
Legal representation is the act of representing a party in a legal proceeding.

Legal standing is an essential requirement for ensuring effective enforcement of consumer and environmental protections, particularly with respect to collective action brought by organisations. Without legal standing, these entities are unable to advocate for and protect the rights and interests of consumers and the environment.

The RAD aims to ensure that consumers are able to protect their collective interests in the EU through representative actions: the legal actions brought by representative entities (so-called qualified entities). Qualified entities are organisations designated by Member States to bring representative actions on behalf of consumers.

The RAD distinguishes between claims brought in a Member State where a qualified entity is designated (a 'domestic representative action') and those brought by a qualified entity in a Member State where it is not domiciled (a 'cross-border representative action'). The RAD sets out criteria that qualified entities must meet to bring cross-border representative actions, including having at least 12 months of actual public activity. On the other hand, Member States have more discretion in setting criteria for qualified entities in domestic representative actions. Here, the RAD merely requires that Member States ensure that the criteria 'are consistent with the objectives' of the directive.

Therefore, it seems unlikely that the implementation of the RAD by the Member States (required by December 2022) would bring more harmonisation of the different conditions that are currently set in Member States.

The regulation of legal standing in environmental matters in the EU Member States varies. Some Member States allow civil society organisations and individual legal representatives to provide representation without imposing specific conditions. This is the case for Austria, Belgium, Bulgaria and Denmark. Other Member States require specific conditions and/or registration for civil society organisations to have legal standing which is the case for France, Germany Italy and the Netherlands. They also maintain a list of accredited civil society organisations and/or consumer organisations. In Poland, civil society organisations, including consumer protection organisations, are not allowed to represent groups of plaintiffs in court under the Environmental Protection Act. However, they can have legal standing in public interest.

Austrian legislation allows specific consumer protection organisations or NGOs to represent consumers as plaintiffs in the collective actions.

Both Belgian and Bulgarian legislation provide legal standing in collective actions to any non-profit consumer organisation that promotes consumer protection. Article XVII.39 of the

Code of Economic Law of Belgium states that a group of consumers can bring a collective action only through a group representative (other than a group member). Representatives can be consumer associations with legal personality and sitting on the Special Consumption Advisory Commission, specific associations designated by the Minister of Economy and Consumers, consumer ombuds institutions (only in the negotiation phase) or a representative institution recognised by a Member State of the EU or European Economic Area (EEA). To bring a collective action, the group must find an appropriate representative (or create a new association) and identify all claimants individually affected by a common situation. The judge determines whether an opt-in or opt-out system applies.

Under the Bulgarian Consumer Protection Act, consumers may be represented by consumer protection associations, the Commission for Consumer Protection or a qualified organisation of an EU Member State in the territory of which the consequences of the infringement of the collective interest of consumers have occurred. In litigation under the Civil Procedure Code, the persons affected by the violation can be represented by 'an organisation for the protection of injured persons or of the injured collective interest, or for the protection against such violations'.

Danish legislation allows established and ad hoc organisations to bring a class action on behalf of consumers in administrative/judicial proceedings. Collective actions require a group representative, who can be a member of the group, an organisation, a private institution or association, or a public authority. The Danish Competition and Consumer Authority will publish a list of approved authorities and organisations for national class actions, requiring approval from the Minister of Industry, Business and Financial Affairs, according to the newly proposed draft act on access to the initiation of class actions for the protection of the collective interests of consumers.

In Portugal, in accordance with Article 14 of the Right to Procedural Participation and Popular Action Act, in popular action proceedings the plaintiff shall represent, on their own initiative, all other holders of the rights or interests at stake (that have not exercised the right of self-exclusion), without the need for a mandate or express authorisation. Thus, a citizen or a group of citizens, an association/foundation or even the public prosecutor's office can file a claim in the name of other holders of the right without their express authorisation. There is therefore no need to identify (potential) injured parties to file a popular action.

In France, Germany and Italy, only CSOs that meet specific criteria outlined in the law can represent consumers in collective actions.

In Germany, the new Consumer Rights Enforcement Act entered into force in October 2023 which introduced redress action that complements existing options for collective actions against companies. Consumer protection organisations and consumer associations are entitled to bring collective actions for consumer protection related to environmental matters if they meet requirements for a 'qualified institution':

- they have at least 30 member associations or 750 natural persons as members;
- they have performed their statutory duties as a registered association for at least 1 year;
- they do not receive more than 5 % of their funding from corporate sources.

French legislation regulates legal standing in consumer claims related to the environment in the Consumer Code and in the Environmental Code. The Consumer Code allows only CSOs

fulfilling specific criteria set by law to represent consumers. To be eligible for national accreditation, the organisation has to have carried out, for at least 1 year, effective and public action relating to the protection of consumer interests and have a minimum number of members (at least 10 000). Therefore, individual lawyers also do not have standing to bring a consumers' collective action, only accredited consumer organisations.

Different criteria are provided for other types of class actions. Class actions under environmental law are open to environmental associations accredited through a decree (with a statutory aim entailing defence of victims of injuries or members' economic interests) or in accordance with Article L141-1 of the Environmental Code. Ad hoc or human rights-focused associations would probably lack legal standing. These actions directly concern accredited consumer associations if legal standing has been explicitly recognised in other matters, such as ma environmental or personal data matters.

France: court decision on the legal standing of NGOs

In the greenwashing case against TotalEnergies, filed in March 2022 by Greenpeace France, Friends of the Earth France and Notre Affaire à Tous, supported by ClientEarth, a pre-trial judge decided in May 2023 to allow the legal action, confirming legal interest of French associations in the case (*l'intérêt à agir*). However, the court did not allow ClientEarth, which is not a France-based NGO, to be a formal intervener in the case.
Source: France, Greenpeace France, 'Greenwashing de TotalEn ergies: première victoire procédurale des ONG', 17 March 2022.

A similar approach is taken in Italy and the Netherlands, which allow consumer rights to be represented by organisations that are registered and fulfil certain conditions.

In Italy, Law No 31/2019 amending the Code of Civil Procedure expanded the subjects entitled to make use of the class action. Accordingly, non-profit organisations and associations with statutory objectives for protecting homogeneous rights, and also each member of the group, may bring action against the wrongdoer to seek (1) determination of liability and (2) a court order for compensation and restoration. However, only organisations and the associations fulfilling statutory requirements and registered in a public list established at the Ministry of Justice can bring the action. To meet the requirements, an organisation must:

- have been officially established and have been actively operating for at least 3 years, with a democratic structure and a sole statutory purpose of protecting consumers without making a profit;
- keep an updated list of members and their fees;
- have a certain number of members based on the national population and presence in multiple regions or provinces;
- provide financial statements and maintain proper bookkeeping;
- have legal representatives with no convictions in relations to the association's activities and who do not own or manage any companies in the same sector.

The list of eligible organizations is constantly updated on the Ministry of Economic Development website. The acting entity will represent a group of consumers who have chosen to participate in a class action (opt in).

The legal framework in the Netherlands provides extensive requirements for consumer protection organisations seeking to bring collective action. In the case of CSOs, they must

be a non-profit organisation [38]. The representative organisation must be a foundation or an association with full legal powers and they must protect similar interests of other persons, insofar as they represent these interests pursuant to their articles of association and provided that these interests are sufficiently safeguarded [39].

The relevant provisions in the Netherlands outline the requirements for consumer protection organisations, which must meet certain criteria required by law. The representative body of the consumer protection organisation must have the necessary experience and expertise to initiate legal proceedings and must account for its activities annually. Foreign organisations or public bodies may represent the interests of persons who regularly reside in the country where these organisations or public bodies are established.

In Poland, according to the Environmental Protection Act, if the threat or infringement concerns the environment as a common good, the action may be brought by the State Treasury, a local authority or an environmental organisation. Collective claims can be brought by a group representative who is either a member of a group or a district consumer ombudsman. Additionally, the claimant must be represented by a professional lawyer. Currently, an environmental organisation or other NGO cannot represent or bring a class action on behalf of the group (claimants). This should change following the implementation of the RAD.

2.3. Requirement of harm and possibility of *actio popularis*

Definitions

Actio popularis is a legal concept that originated in Roman law and refers to the right of an individual or a CSO to take legal action in defence of a **public interest**, even when they are not directly affected or victimised by the issue at hand. The plaintiff therefore acts in the **public interest and represents the common good** on its own behalf, without a specific complainant to support or represent, where the discrimination case affects a larger, (partially) unidentifiable group of persons.
It can be said that *actio popularis* is a type of collective redress.
The OSCE report Use of actio popularis in Cases of Discrimination defines it as a 'mechanism for the protection of a particular group of people against systematic violations of rights which represents a public interest in a society that is defined as democratic'.
The use of *actio popularis* varies across European legal systems (see also Equality bodies working on cases without an identifiable victim: Actio popularis).

In several jurisdictions, it is possible for individuals to seek damages in the event of a breach of a law that is considered essential to safeguard fundamental rights. In order for a legal action for damages to be pursued in court, three conditions must be met: a breach of a legal obligation, the occurrence of harm, and the establishment of a causal link between the breach and the harm. From the perspective of environmental protection, these requirements present two main challenges: (1) the identification of a victim (who sustained harm) and (2) the diffuse, collective, cross-border and generalised nature of the interest of environmental protection. This section analyses the effectiveness of national safeguards of the general interest of consumers in the event of environmental damages (i.e. existence of *actio popularis*).

Italy allows for claims to be submitted in the general interest, with judicial action for compensation for environmental damage brought by the Minister of Ecological Transition (under the Environmental Code). An 'extended' class action mechanism was introduced by a recent reform of the Civil Procedure Code.

The Resolution of Mass Damage in Collective Actions Act was adopted in the Netherlands in 2020 and applies to collective actions for damages relating to 'events' that occurred on or after 15 November 2016. It does not distinguish between different types of actions. According to the explanatory memorandum to the Resolution of Mass Damage in Collective Actions Act, a collective action can be brought on behalf of anyone and can be based on any type of legal infringement that affects a class. Mass damages claims should be closely connected to the Dutch jurisdiction, although cross-border cases are still covered, if the defendant has its headquarters in the Netherlands or most of the consumers are Dutch.

In Poland, a civil judicial claim can be brought by environmental organisations (social organisations whose statutory objective is the protection of the environment) only in case of a breach of Article 80 of the Environmental Protection Act, and they can request only injunctive relief, not damages. Consequently, organisations do not have to prove damage or show legal interest in the proceedings – this mechanism serves as an *actio popularis*. As confirmed by case-law [40], the producer, advertising agency and entity issuing the advertisement can be sued in this case.

The Portuguese legal system allows an *actio popularis* (*ação popular*) through a mechanism of collective action, when collective or diffuse interests are at stake, to respond to infringements on consumer rights and/or environmental rights. The Portuguese Constitution (Article 52(3)) recognises the right to popular action (*ação popular*) as a judicial mean available to citizens (individually considered or through associations), to be exercised before any court, for the defence of diffuse interests, without the necessity of invoking a personal and direct interest or demonstrating any connection with the material factuality in dispute. The conditions for filing a popular action are set out in other laws, such as the Right to Procedural Participation and Popular Action Act. Additionally, the right to popular action in environmental matters is established in Article 7 of the Bases of Environmental Policy Law.

Consumer rights and environmental rights are considered 'diffuse interests', being included in the categories of 'environment' and 'consumption of goods and services' as regulated by the Right to Procedural Participation and Popular Action Act.

In the case against Banco Comercial Português, the Supreme Court of Justice of Portugal ruled on the admissibility of the class action and protection of diffuse interests, related to bank guarantees. The ruling, as far as it regards the protection of collective interests and homogenous individual interests, is also applicable to consumer protection and environmental claims in general.

The important outcome of the judgment is that the popular legitimacy must be measured by:

- the power of the plaintiff to represent the holders of the diffuse interest;
- the interest in suing – the advantage that the plaintiff derives from the merits of the action.

2.4. Burden of proof in collective consumer and environmental claims

Definitions

The **burden of proof** refers to the requirement that the plaintiff shows the 'weight of evidence' that all the facts necessary to win a judgment are presented and are probably true. In some cases, the burden of proof may shift to the defendant if they raise a factual issue in defence during the proceeding.
The concept of burden of proof is an essential aspect of legal proceedings, typically requiring one party to adequately substantiate their claim. Usually, it is the party initiating the claim that bears the responsibility of demonstrating its validity and carries the burden of proof. The general rule for civil proceedings within the EU (and its Member States) is that a claimant must prove their case. However, in certain circumstances, such as cases involving discrimination or product liability, **this burden of proof can be shifted**. In EU consumer law, the shift of burden of proof is an important aspect of consumer protection.

Legal regulation of burden of proof in consumer and environment related cases in the analysed countries varies. National laws either provide specific provisions on burden of proof in environmental law or administrative law or refer to general principles of consumer law in civil, administrative or environmental law. Some Member States regulate the burden of proof in various, complementary laws. (See Table 1).

Pursuant to Article 8(4) of the Civil Code in Belgium, the burden of proof lies with the plaintiff unless otherwise stated by the law. This is applicable in the situation guaranteed by the Code of Economic Law, when the application is given by the JEP, whose guidelines differ from those provided by the Belgian courts. The JEP requires that the advertiser demonstrates the accuracy and truthfulness of its claims, whereas in courts the burden of proof rests with the plaintiff unless otherwise stated by the law.

In Bulgaria, according to the Contract and Obligations Act, there are no rules envisaging a reversed burden of proof in environment-related cases.

Table 1 – Laws regulating the burden of proof in consumer and environment related cases, by Member State

Member State	Regulation of burden of proof in civil law / consumer law	Regulation of burden of proof in environmental law / administrative law	Varied legal regulations regulating the burden of proof	Shift of burden of proof
Austria	√			√
Belgium	√			√
Bulgaria	√			
Denmark		√		
France	√			
Germany			√	√
Italy		√		
Netherlands		√		√
Poland		√		√
Portugal			√	

Source: FRA, 2023.

Specific provisions in the administrative law or environmental law relating to the burden of proof and the claimant's obligation to prove the fault of the defendant exist in Denmark, Italy, the Netherlands and Poland.

Chapter 3 of the Danish Administration of Justice Act places the burden of proof on the claimant filing a collective action claim to show how persons falling under the collective action claim in question can be identified. In some cases, it is sufficient for the claimants to attach a list of names and addresses of the members of the group. Otherwise, the claimant can inform the group members in a specified local area through an advertisement in the newspaper within a time limit set for notification by the court.

Article 840-bis of the Code of Civil Procedure in Italy allows non-profit organisations and associations whose statutory objectives include the protection of the homogeneous rights or each member of the class to safeguard individual homogeneous rights through class action. It also refers to the requirement of providing evidence to justify the claim in order to require the payment of damages.

In the Netherlands, the Resolution of Mass Damage in Collective Actions Act provides for the possibility to claim damages, including environmental damages. It is possible for a representative entity to bring a 'collective action' on an 'opt-out basis' [41], which means that individuals who do not want to be represented have to declare that they do not want to be involved in the proceedings. The claimant always bears the burden of proof, notwithstanding the type of action, and the mass damage must be connected to Dutch jurisdiction.

In Poland, in proceedings before civil courts, the burden of proof that a specific market practice does not constitute an unfair practice lies with the company using the practice.

Claims for damages may be limited to a request to establish the liability, followed by separate individual monetary claims by each of the claimants.

In case of tort claims under general rule of Article 415 of the Civil Code, in which claimants' damage is connected to the environmental degradation, claimants must prove that the damage is a normal consequence of the act or the omission in question [42], and that it is the defendant's fault. This claim can be brought against any natural or legal person, including one exercising public authority [43]. Under Article 435 of the Civil Code, operators of enterprises or plants powered by natural forces are liable for any damage unless it was caused by the injured party or an unavoidable event.

Article 323(1) of the Environmental Protection Act allows individuals to file a tort claim for environmental damage caused by unlawful impacts. These claims are solely of a reparative and preventive nature (a person seeking pecuniary damages must resort to the general rules of the Civil Code). The burden of proof lies with the claimant. However, in an effort to rectify the inequalities in access to essential information, the law stipulates that individuals seeking compensation for environmental harm may request the court to compel the responsible party to disclose all pertinent details essential for assessing the extent of their liability.

More specific legal regulation regarding the burden of proof exists in Germany and Portugal.

In Germany, consumer claims are regulated in civil and administrative law. Civil law regulation on consolidated action enables certain consumer organisations to represent consumers' interests and puts the burden of proof on the claimant.

In Portugal, the Consumer Protection Law mandates proof in consumer claims related to the environment. However, because the Portuguese Constitution guarantees *actio popularis* for diffuse interests, there is no burden of proof for the claim and no need to invoke a personal and direct interest or demonstrate any causality in the dispute. The Right to Procedural Participation and Popular Action Act and Bases of Environmental Policy Law also support popular action relating to environmental rights and establish relevant conditions, including with respect to burden of proof.

3. Ways forward

Addressing greenwashing aligns with both the Charter's guarantee of consumer protection (Article 38) and its provision on environmental protection (Article 37). The empowerment of consumers as rights holders can help advance environmental sustainability and climate-related policy goals.

One way to improve environmental protection is to strengthen consumer rights, for example by facilitating the enforcement of regulations for unfair commercial practices, especially at the EU level. This would hold businesses accountable for their environmental claims and actions and prevent consumers from being misled by false or exaggerated statements, with potentially negative impacts on their fundamental rights.

There have been ongoing important developments in this area. In light of the gaps and obstacles identified in this report at both the national and the EU levels, relevant legal and policy measures should be implemented without delay to provide adequate protection.

Green claims such as 'CO_2-reduced' or 'climate-friendly' should be based on scientific criteria informing the development and use of relevant certifications. The prevention of misleading green claims should be prioritised, because once such claims are made it takes time for legal action to take effect and for misleading claims to be prohibited. During this time, the statement may continue to influence consumers' perceptions. This approach will also enable companies to steer clear of unnecessary legal disputes. To prevent the misuse of sustainability claims as a marketing tactic, an accreditation system should be established at the national and EU levels.

The use of carbon neutrality claims and the compensation measures for emissions (carbon offsetting) should be banned or limited in line with the Commission's proposal to prohibit carbon or climate neutrality claims if these are not supported by clear, objective and verifiable commitments by the trader. They should also be supported by a monitoring system. Companies should be required to demonstrate that they are making investments to reduce their emissions.

An explicit prohibition of unsubstantiated 'carbon-neutral' claims as inherently misleading would facilitate proving infringements of consumer rights involving environmental protection.

3.1. Ensuring effective enforcement of rights

Administrative and judicial decisions against greenwashing should systematically include sanctions in addition to ordering cessations of misleading green claims. Sanctions must be effective and dissuasive, and for that purpose they must not only deprive the trader of any benefit derived from using the misleading green claim in question, but also be proportionate to the size and turnover of the company. With respect to access to evidence, denying access to information for strategic or industrial reasons should not be allowed in matters relating to corporate social responsibility. In addition, access to information could be improved by restricting the exceptions pertaining to industrial confidentiality only to instances where it is deemed necessary, and creating a process for interim relief if access to environmental information is refused.

The rules on burden of proof should alleviate excessive hardships for consumers while

ensuring that false environmental claims cannot be made easily.

FRA activity - FRA opinion 1 in *Business and Human Rights – Access to remedy* (2020)

Drawing on existing EU law in regard to shifting the burden of proof, the EU should encourage Member States to consider shifting the burden of proof in cases where the fundamental rights of individuals are infringed by corporate activity. This should apply to causality between the company's conduct and damage, as well as to proving liability for the supply chain. The burden of proof should be shifted once it has been established prima facie that a business has breached a statutory duty. Those found to have violated a legal norm should be required to prove that ensuing damages are not the result of this violation. The same should apply to companies who fail to apply due diligence to their supply chain.
The EU should facilitate the development of clear minimum standards on disclosing information by companies. To ensure the application of the jurisprudential principle of equality of arms, companies should have an obligation, in any dispute against them, to disclose all their documents that relate to the incident, in order to ensure that anyone affected can access information that is necessary to establish a claim.
Source: FRA, Business and Human Rights – Access to remedy, Publications Office of the European Union, Luxembourg, 2020.

3.2. Enhancing cohesion of the supervisory system

Greater cohesion and standardisation in the supervisory system at both the national and the EU levels would be beneficial for upholding consumer rights.

Rules regarding administrative enforcement of consumer rights should not afford excessive discretion to administrative bodies regarding examination of a complaint, or the possibility to appeal a decision, which could result in depriving consumers of effective access to a remedy.

Moreover, to make the enforcement of consumer protection laws more effective, the competent authorities need to be adequately resourced, and collaboration with civil society and government administration needs to be promoted.

The EU should consider improving consistency and complementarity between its various relevant legislative initiatives such as the corporate sustainability reporting directive (CSRD), the proposal for a corporate sustainability due diligence directive (CSDDD) and various reporting obligations.

Some experts also suggest that the creation of an independent environmental authority and courts specialised in environmental matters could help uphold such cohesion and ensure that the requisite expertise could be relied on.

The French Senate's report recommends strengthening the powers of the Directorate-General for Competition Policy, Consumer Affairs and Fraud Control and promoting synergy between various agencies and administrations. The Court of Auditors recommends strengthening the governance of the consumer movement and better collaboration between accredited associations and administrations.

The Dutch Minister's letter to parliament on building blocks of corporate social responsibility legislation recommends establishing an EU supervisory body to make it easier for consumers to report harmful business behaviour, in particular regarding cross-border corporations. In the context of greenwashing, this would also benefit the environment.

3.3. Representative action and procedural rights of civil society organisations

Strengthening the legal capacity of consumer and environmental organisations to hold governments and business to account can improve the protection of consumer rights and environmental interests. Moreover, it would be important to expand the eligibility of organisations to take legal action, including actions in the general interest (*actio popularis*), and broaden the scope of consumer group actions. Such organisations should also be able to intervene in judicial proceedings in support of consumers (e.g. as *amici curiae*) in individual lawsuits.

While the primary legal responsibility remains with relevant state authorities as duty bearers under EU human rights law, improving the management of litigation risk and supporting civil society to address the growing number of environmental claims by businesses is essential in light of the proliferation of environmental claims by businesses and limited resources of NGOs to exercise their watchdog role in this respect.

FRA activity - FRA opinions 2 and 3 in *Business and Human Rights – Access to remedy* (2020)

FRA opinion 2
The EU and Member States should provide for effective collective redress and representative action beyond consumer protection to other cases of business-related human rights abuse.
[...]
The EU and Member States should ensure that legislation providing for representative action on behalf of persons affected by the actions of a business allows for legal standing of civil society organisations acting in the public interest, as well as statutory human rights organisations, such as national human rights institutions, Ombuds institutions or equality bodies.
FRA opinion 3
The EU and its Member States are encouraged to ensure adequate funding and legal protection for civil society organisation (CSOs) to enable them to effectively fulfil their role in supporting victims of business-related abuses and monitoring business compliance with human rights standards.
Member States should ensure that the criteria for obtaining qualified status by CSOs in order to be eligible for legal standing or obtain financial help from the state are clearly defined and not excessive.
Source: FRA, Business and Human Rights – Access to remedy, Publications Office of the European Union, Luxembourg, 2020.

3.4. Training and awareness-raising

The public authorities' lack of awareness of the significance of greenwashing in the context of environmental protection and of applicable legislation is often a greater obstacle than substantive or procedural gaps in the regulatory or enforcement system. It is important to provide training for administrative authorities, judges and lawyers on environmental aspects of consumer laws, and in particular regarding interpretation of misleading practices in the context of greenwashing.

Governments should fulfil their obligation to promote human rights and be proactive in educating consumers about their rights regarding misleading environmental advertising in order to empower them to take action. This includes campaigns to raise awareness of greenwashing and providing information on how to report it. Complaints and decisions of administrative bodies and courts should be published on the websites of relevant institutions and in professional journals, and also on company websites.

Without prejudice to the obligations of the Member States in this regard, and subject to the availability of adequate resources, national human rights institutions can play a significant role not only by engaging more actively in the development of relevant legal and policy measures, but also by developing their expertise on both consumer rights and the impact of climate change and the green transition [44] .

3.5. Guidance for business

Businesses need guidance and support to comply with national and international legal norms. It is important to provide guidance for businesses to comply with environmental obligations and encourage sustainable behaviour in line with the increase in reporting requirements.

With the increasing number of reporting requirements at both the national and the EU levels, coherence, complementarity and easily understandable guidance are essential to ensure that companies focus on avoiding or reducing negative impacts rather than only reporting them. It is important to include small and medium-sized companies in these efforts, and fair commercial practices must be considered from a competition law perspective.

3.6. Incorporating sustainability into consumer protection policy

Consumer protection laws are still often seen as effective only when a product presents a physical danger to the consumer. Legislation, however, should also consider any negative impact of a product on the environment, which also affects consumers. The relevant legislation should consider that environmental protection is a fundamental rights issue and connected to the broader protection of consumer rights.

Sustainability criteria, including environmental impact through the whole life cycle of a product, should be defined and explicitly included in warranty law. Warranty periods should be extended for durable products and the burden of proof should be on manufacturers, who should also be held accountable for ensuring durable product designs. Moreover, penalties for planned obsolescence should be strengthened. Planned obsolescence is defined as a practice in which products are intentionally designed to fail after a certain age or amount of use, which can lead to increased waste and overconsumption.

To incentivise a circular economy, which involves sharing, leasing, reusing, repairing, refurbishing and recycling products, the Commission presented the circular economy action plan in March 2020 as one of the main building blocks of the European Green Deal, Europe's new agenda for sustainable growth. The circular economy action plan aims to promote more sustainable product design, reduce waste and empower consumers. The Commission's proposals on ecodesign and the consumer empowerment directive are crucial for promoting ecological change in the EU.

Transparent sustainability labelling is essential to help consumers make informed choices. Labelling should be regulated by independent authorities to ensure the reliability, trustworthiness and comprehensiveness of the information provided. Quality labels should employ consistent criteria and be independently monitored, for example through a pre-approval system, such as the one proposed by the European Consumer Organisation, for green claims and labels, which would both help prevent greenwashing and promote those businesses with better environmental and substantiality performance.

3.7 Due diligence and reporting

A human rights-based approach to environmental protection and corporate climate accountability is rooted in the concept of human rights due diligence defined in the UNGPs and reflected in the proposal for a corporate sustainability due diligence directive (CSDDD).

In this context, laws pertaining to due diligence, such as the proposed CSDDD, could play an important role in protecting the rights of consumers and increasing the proportion of sustainable production in the economy.

According to the UNGPs, the due diligence process should include assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses and communicating how impacts are addressed. It is imperative to ensure that due diligence regulations are comprehensible and practical: a balance must be struck between robust and effective regulation and minimal administrative encumbrance.

Based on FRA's work in the area of business and human rights and the views of experts consulted for this report, the following aspects should be considered in the implementation phase of the proposed CSDDD:

- coverage of all companies operating in the EU internal market;
- binding regulations for corporate responsibility along supply chains at the national, EU and international levels;
- provisions ensuring effective access to justice;
- the obligation to comply with all internationally recognised human and labour rights and climate and environmental standards, as established by relevant international institutions, such as the Council of Europe, the UN, the EU (including the European Environment Agency) and the International Labour Organization;
- establishment of civil liability (and effective remedies) for companies for due diligence violations;
- establishment of independent monitoring institutions and effective sanctions and penalties for violations;
- public accessibility of relevant companies' reports.

Endnotes

[1] For a literature review aiming to identify the main concepts and typologies of greenwashing, see Freitas Netto, S. V., Sobral, M. F. F., Ribeiro, A. R. B. and da Luz Soares, G. R., 'Concepts and forms of greenwashing: a systematic review', Environmental Sciences Europe, Vol. 32, No 19, 2020.

[2] See, for example, Bernini, F. and La Rosa, F., 'Research in the greenwashing field: concepts, theories, and potential impacts on economic and social value', Journal of Management and Governance, 2023.

[3] For examples and assessment of the efficiency of NCPs, see FRA, Business and Human Rights – Access to remedy, Publications Office of the European Union, Luxembourg, 2020.

[4] See the press release 'Council and Parliament reach provisional agreement to empower consumers for the green transition', 19 September 2023.

[5] Interview with the European Consumer Centre Belgium, 16 September 2022.

[6] Interview with the Belgian Consumer Ombud Service, 14 September 2022.

[7] Heremans, T., (n.d.), 'Sustainability claims and greenwashing', CMS; Borres, S., (2018), 'Between consumer expectations and commercial policy of businesses: the legal response to greenwashing. How to ensure that businesses and consumers play a role in the ecological transition?', ('Entre attentes des consommateurs et politique commerciale des entreprises : la réponse du droit au greenwashing. Comment assurer aux entreprises et consommateurs un rôle dans la transition écologique?'), Université catholique de Louvain, Louvain-la-Neuve, 2018.

[8] Interview with the Belgian Consumer Ombuds Service, 14 September 2022; interview with the European Consumer Centre Belgium, 16 September 2022.

[9] Interview with the Belgian Consumer Ombuds Service, 14 September 2022; interview with the European Consumer Centre Belgium, 16 September 2022.

[10] Germany, Gesetz gegen den unlauteren Wettbewerb.

[11] Interview with a business organisation on 1 November 2022.

[12] Rehart, N. K., Isele, J. F. and Ruhl., H. J., in Fritzsche, Münker, Stollwerck, Beck Online Commentary Act against Unfair Competition, 17th edition, 1 July 2022, s. (5), paras 392, 403.

[13] Higher Regional Court of Koblenz, judgment of 10 August 2011 (9 U 163/11), BeckRS, 2011, 23895.

[14] See, for example, District Court of Frankfurt am Main (6th Division for Commercial Matters), judgment of 31 May 2016 (3-06 O 40/15), BeckRS, 2016, 141603.

[15] Steuer, ' "Klimaneutrale" Produkte im Lauterkeitsrecht' [' "Climate neutral" products and the law of unfair commercial practices'], GRUR, 2022, 1408, p. 1417.

[16] Poland, Appellate Court of Warsaw (Sąd Apelacyjny w Warszawie), VI ACa 621/09, 8 December 2009; VI ACa 666/09, 10 January 2010.

[17] France, Environnemental Code, Articles L229-61 to L229-67.

[18] Interview with Belgian Consumer Mediation Service, 14 September 2022.

[19] Interview with consumer organisation on 4 October 2022; interview with environmental organisation on 6 October 2022.

[20] Written information provided by consumer organisation on 15 October 2022.

[21] Poland, Act of 3 October 2008 on Providing Information on the Environment and Its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments ('Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko (t.j. Dz. U. z 2022 r. poz. 1029 z późn. zm.)'), 3 October 2008.

[22] Article 8 of the EIA act.

[23] Article 13 of the EIA act.

[24] Article 16 of the EIA act.

[25] Article 16(1)(7) of the EIA act.

[26] Poland, Provincial Administrative Court of Warsaw (Wojewódzki Sąd Administracyjny w Warszawie) IV SA/Wa 2854/17, 19 March 2018.

[27] Implementation report submitted by France on the Aarhus Convention (2017), p. 8, available here: UNECE Aarhus Convention NIRs 19 01 2024 | Aarhus Clearinghouse Regarding the expanded definition of commercial secrecy since 2018, see General Council forenvironment and sustainable development and the General inspection of Justice (Conseil général de l'environnement et du développement durable (CGEDD) et de l'Inspection générale de la justice (ICJ)), Report "Justice for the Environment" ("Une justice pour l'environnement"), October 2019, p.35.

[28] See examples relating to the timber sector quoted by Monnier, L. and Gonzalez, C., 'La démocratie administrative mise à mal par l'opacité de l'Administration', Actu Environnement, 2021.

[29] See, for instance, the implementation report submitted by France on the Aarhus Convention (2017), which mentions the lack of resource to process requests in some administrative authorities (p. 8).

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[32] Input received by academics from the Italian National Research Council and also from activists of the Italian Clean Clothes Campaign.

[33] See, for example, Case no ROT 21/18, 2022, Case no 202006761/1/A3 and Case no 202004537/1/A3.

[34] The Netherlands, Administrative Jurisdiction Division of the Council of State (Afdeling Bestuursrechtspraak Raad van State), Case no 202101970/1/A3, 18 May 2022.

[35] Poland, Competition and Consumer Protection Act of 16 February 2007, consolidated text, Journal of Laws 2021.275 (Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, t.j. Dz. U. z 2021 r. poz. 275).

[36] Poland, Collective Claims Act of 17 December 2009, consolidated text, Journal of Laws 2020.446 (Ustawa z dnia 17 grudnia 2009 r. o dochodzeniu roszczeń w postępowaniu grupowym t.j. Dz. U. z 2020 r. poz. 446).

[37] Poland, Act on Counteracting Unfair Market Practices of 23 August 2007, consolidated text, Journal of Laws 2017.2020 (Ustawa z dnia 23 sierpnia 2007 r. o przeciwdziałaniu nieuczciwym praktykom rynkowym t.j. Dz. U. z 2017 r. poz. 2070).

[38] The Netherlands, Civil Code (Burgerlijk Wetboek), Article 3:305a, paragraph 3a.

[39] The Netherlands, Civil Code (Burgerlijk Wetboek), Article 3:305a, paragraph 1.

[40] Poland, Appellate Court of Warsaw (Sąd Apelacyjny w Warszawie) VI ACa 621/09, 8 December 2009; Poland, Appellate Court of Warsaw (Sąd Apelacyjny w Warszawie) VI ACa 666/09, 10 January 2010.

[41] The Netherlands, Civil Code (Burgerlijk Wetboek), Article 3:305a; the Netherlands, Code on Civil Procedure (Wetboek van Strafvordering), Article 1018f.

[42] Poland, Article 361(1) of the Civil Code.

[43] Poland, Article 417 of the Civil Code.

[44] See also FRA, Strong and Effective National Human Rights Institutions – challenges, promising practices and opportunities, Publications Office of the European Union, Luxembourg, 2020.

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