

‘Business and human rights: promoting environmental protection through enforcement of consumer rights’

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1. Introduction

This report aims to present the impact of business activity on human rights in Belgium, including environmental protection highlighting the existing interlinkages with consumer rights. It examines the relevant legal framework covering consumer laws and environmental laws, in particular with regards to the access to information, as well as business obligations of due diligence and non-financial reporting and provisions on collective interest claims.

The report compiles information from legislative and regulatory texts of the different Belgian entities (Federal and three Regions) as well as desk research of publicly available documents concerning the implementation of the law (case law¹, decisions of self-regulatory bodies², public guidelines³, press releases, codes of conducts, policy notes and EU reports).

Nine different stakeholders were contacted for interviews: two public administrations (Federal Public Service Economy and Belgian Consumer Ombud Service), two legal practitioners (Advertising Ethics Jury and Consumer Protection Agency), three consumer organisations and two businesses. The requests have received replies from six stakeholders: the Federal Public Service Economy, the Belgian Consumer Ombud Service the European Consumer Centre for Belgium, the Jury for Ethical Practices in advertising, one consumer organisation and one business. Three of these replied that they did not have time, resources or competence to participate in the study (Federal Public Service Economy, one consumer organisation and one business). Among the four respondents who provided inputs (the Belgian Consumer Ombud Service, the European Consumer Centre for Belgium, the Jury for Ethical Practices in advertising and Colruyt), three were gathered via online interviews and one was through written contributions (Jury for Ethical Practices in advertising).

2. Scope of consumer protection laws and environmental laws

This section provides an assessment of the scope and potential interlinkages between consumer protection and environment protection laws, in particular as regards empowering consumers to influence the behaviour of business to become more environmentally sustainable.

2.1. Distribution of competences

In Belgium, consumer and product policy are federal issues⁴, hence all measures regarding environmental claims, labelling requirements, guarantees and information to consumers are dealt with at federal level. Regions can however request the adoption of measures to the Federal Government. In contrast, environmental protection is a regional competence in Belgium⁵. Hence, environmental protection is regulated by Flanders, Wallonia and Brussels-Capital respectively. However, the federal authority remains competent on a number of topics, including on establishing product standards (such as for packaging) and competences

¹ Belgian case-law portal (<https://juportal.be/home/accueil>); LSE Litigation Cases ([<https://climate-laws.org/litigation_cases?from_geography_page=Belgium&geography%5B%5D=17>](https://climate-laws.org/litigation_cases?from_geography_page=Belgium&geography%5B%5D=17))

² Decisions of the Jury for Ethical Practices in Advertising (<https://www.jep.be/fr/decisions-du-jep/>)

³ FoD Economy, series of guidelines available here (<https://economie.fgov.be/fr/themes/entreprises/guidance>), including the Practical Guide on Environmental Claims, <https://economie.fgov.be/sites/default/files/Files/Entreprises/Guide-pratique-Bonnes-pratiques-en-matiere-d-Allegations-environnementales.pdf>

⁴ Article 6 (1), II, last indent, Special Law of Institutional Reforms (*Loi Spéciale de réformes institutionnelles*), 8 August 1988.

⁵ Article 6 (1), II, Special Law of Institutional Reforms (*Loi Spéciale de réformes institutionnelles*), 8 August 1988

are shared between the federal government and the regions when it comes to international dimensions of environmental policy and matters that require similar measures throughout the territory, such as air pollution or international environmental reporting obligations. In some cases, cooperation agreements between federal and regional authorities transpose EU Directives or coordinate the authorities' respective transpositions.

2.2. Consumer protection law

2.2.1. Belgian Code of Economic Law

Environmental claims are regulated through the legal framework on misleading and unfair practices (transposing [Directive 2005/29/EC](#) on unfair business-to-consumer commercial practices in the internal market, the UCPD, and complemented by the corresponding Guidance document⁶) and the transposing legislation of Directive 2011/83/EU on consumer rights and Directive 2019/2161 on better enforcement and modernisation of Union consumer protection rules, which is ensured by Books I, VI and XV of the Belgian Code of Economic Law. The Belgian Code of Economic Law was lastly amended in May 2022 to transpose Directive (EU) 2019/2161 amending the UCPD by the Law of 8 May 2022⁷.

The Belgian Code of Economic Law defines what 'misleading commercial practices' consist of and blacklists certain commercial practices which will always be considered unfair, in accordance with the latest EU legislation in this respect⁸. The prohibition against misleading commercial practices, including advertising, is defined broadly by Article VI.97 Code of Economic Law:

“A commercial practice is deemed to be misleading if it contains false information and is therefore misleading or if in any way, including its general presentation, it misleads or is likely to mislead the average consumer in that relates to one or more of the following, even if the information presented is factually correct, and that, in either case, it causes him or is likely to cause him to make a business decision that he does not would not have taken otherwise:

1° the existence or nature of the product;

2° the main characteristics of the product, such as its availability, its advantages, the risks it presents, its execution, its composition, its accessories, the after-sales service and the handling of complaints, the method and date of manufacture or of performance, its delivery, its suitability for use, its use, its quantity, its specifications, its geographical or commercial origin or the results which can be expected from its use, or the results and the essential characteristics of the tests or checks carried out on this one;

3° the extent of the company's commitments, the motivation for the commercial practice and the nature of the sales process, as well as any statement or any symbol suggesting that the company or the product benefits from sponsorship or direct or indirect support;

4° the price or the method of calculating the price, or the existence of a specific price advantage;

5° the need for a service, a spare part, a replacement or a repair;

⁶ European Commission, [new Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive](#), 17 December 2021

⁷ Law amending Books I, VI and XV of the Code of Economic Law (*Loi modifiant les livres Ier, VI et XV du Code de Droit Economique*), 8 May 2022.

⁸ Linklaters, 'The never-ending modernisation of Belgian consumer protection legislation: Belgian transposition of the 'Omnibus' Directive', 6 May 2022, available at: <https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2022/may/06/the-never-ending-modernisation-of-belgian-consumer-protection-legislation>

6° the nature, qualities and rights of the company or its intermediary, such as its identity and its assets, its qualifications, its status, its approval, its affiliation or its links and its industrial, commercial or intellectual property or its awards and honours;

7° the rights of the consumer, in particular the right of replacement or reimbursement of a good, digital content or digital service in accordance with Articles 1649bis to 1649h and 1701/1 to 1701/19 of the former Civil Code⁹, or the risks it may incur.”

To clarify the application of this broad provision, the Federal Public Service Economy (‘FOD Economy’) has published **guidelines on environmental claims** in May 2022¹⁰. Within the FOD Economy, the Consumer Protection Service is the department responsible for legislation regarding unfair commercial practice, together with the Federal Public Service on public health and regional governments¹¹. The purpose of the guidelines is to inform companies about the applicable rules in Belgium regarding sustainability claims and misleading commercial practices¹².

The Law of 30 March 2022 amending the Code of Economic Law also introduced the concept of “damage to the collective interests of consumers” which is defined as the actual or potential harm to the interests of a number of consumers affected by infringements¹³.

2.2.2. Application and enforcement

Administrative and public enforcement mechanisms

For cases regarding false environmental claims, greenwashing or unverifiable environmental labelling, administrative action is the first public enforcement mechanism. The Economic Inspectorate, which is part of the FOD Economy, investigates misleading commercial practices (for example regarding dubious ‘greenwashing’ claims) out of its own motion and further to consumer complaints, which may be submitted by consumers via an online complaints’ portal, the Contact Point, managed by the Economic Inspectorate¹⁴. The Economic Inspectorate can conduct an inspection regarding the businesses’ economic behaviour, which will include hearing the business concerned, collecting evidence on the infringing behaviour, and attempting to lead the business to cease this behaviour¹⁵.

Established infringements of Articles VI.93 – VI.100 of the Code of Economic Law regarding misleading commercial practices are sanctioned in accordance with Articles XV.70 and XV.83 of the Code of Economic Law with a monetary fine of up to EUR 80.000 or 4% of the annual turnover when this is a higher amount.

Besides imposing an administrative fine, the Economic Inspectorate may also issue warnings, submit its findings to the Public Prosecutor, or offer a financial settlement to cease prosecution¹⁶. The Economic Inspectorate can submit its findings to the Public Prosecutor upon establishing the existence of an offence or

⁹ The Civil Code was amended by a succession of laws between 2019 and 2022. Its new version entered into force on 1 July 2022. Older legislative acts can include references to the former Civil Code – in which case it is explicitly stated.

¹⁰ Federal Government Service Economics (FOD Economie), Guidelines on Environmental Claims, 14 June 2022

¹¹ Information provided by the FoD Economie by e-mail of 21 September 2022.

¹² Federal Government Service Economics (FOD Economie), Guidelines on Environmental Claims, 14 June 2022, p. 3

¹³ Code of Economic Law, Art. I.20, 10°.

¹⁴ <https://meldpunt.belgie.be/meldpunt/nl/welkom>

¹⁵ Federal Public Service Economics (FOD Economie), “Victim of cheating? what now?” (“Slachtoffer van bedrog? What nu?”), available at: <https://economie.fgov.be/nl/node/89>

¹⁶ Federal Public Service Economics (FOD Economie), Guidelines on Environmental Claims, 14 June 2022, p. 9

once the perpetrator refused or failed to pay the administrative fine¹⁷. If the Economic Inspectorate submits its findings to the Public Prosecutor, the procedure becomes judicial and leaves the realm of administrative enforcement. The Public Prosecution is independent from the Economic Inspectorate and it has the option either to initiate proceedings before the criminal court to obtain the conviction of the person responsible, or to propose to the offender a transactional fine whose payment extinguishes the public action, or to close without further action¹⁸. The practice however shows that cases of greenwashing have so far been resolved without the involvement of the Public Prosecutor.

In 2021, the Economic Inspectorate started to treat greenwashing claims separately from other misleading commercial practices: it received nine claims of greenwashing, carried out 29 inspections on that matter which resulted in 16 warnings being issued to businesses, all of which were voluntarily complied with¹⁹.

The option for consumers to lodge complaints with the FOD Economy with regards to unfair commercial practices related to environmental claims is new and still unfamiliar to many consumers²⁰. As a consequence, an expert interviewed reported that complaints in that field do not reach the authority²¹. To address this lack of awareness, an information and awareness raising campaign related to environmental claims is foreseen to take place in March 2023, in the context of a wider campaign on Fraud Prevention²².

Alternative Dispute Resolution

Besides introducing a complaint via the administrative route of the Economic Inspectorate, consumers are advised to attempt mediation or submit a complaint with the consumer ombud institution prior to initiating a legal action²³. The Belgian Consumer Ombud Institution has a central consumer ombud service which collects all consumer complaints and redirects consumers to the appropriate service if applicable, or else handles consumer complaints itself²⁴. The Consumer Ombud Institution provides services to consumers free of charge, subject to the condition that the consumer must first try to come to an amicable settlement with the company concerned²⁵. The Consumer Ombud Institution however does not see a trend of consumers bringing in files related to greenwashing, environmental protection or sustainable practice of companies²⁶. This may be explained by the fact that consumers do not perceive the Consumer Ombud Institution to provide recourse in such matters, being traditionally associated with commercial conflicts. Moreover, the possible solutions the Consumer Ombud Institution may offer to consumers concerned about greenwashing or environmental impact of a companies' products, may be considered unsuitable; a refund of the product purchased or compensation for false beliefs incited by advertisement, will not contribute to environmental protection or emissions mitigation²⁷.

¹⁷ Cour des Comptes, Consumer Policy, 2020, p. 12, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjottL9Jz7AhXRUMAKHU7IAjYQFnoECBEQAQ&url=https%3A%2F%2Fec.europa.eu%2Finfo%2Fsites%2Finfo%2Ffiles%2Fbe_country_report_french_2020-06-05.pdf&usq=AOvVaw3Vqg230zxYltZNVkmKMGOL

¹⁸ Cour des Comptes, Consumer Policy, 2020, p. 12.

¹⁹ FOD Economy, Annual Report of the Economic Inspectorate – 2021, 12 October 2022, p.32, available here: <https://economie.fgov.be/fr/publications/rapport-annuel-2021-direction>.

²⁰ Interview with the European Consumer Centre - Belgium, 16 September 2022.

²¹ Interview with the European Consumer Centre - Belgium, 16 September 2022.

²² Interview with the European Consumer Centre - Belgium, 16 September 2022.

²³ Vlaanderen, Consumentenbescherming, available at: <https://www.vlaanderen.be/consumentenbescherming>

²⁴ Consumenten Ombudsdienst's website is available at: <https://consumentenombudsdienst.be/nl/over-ons>

²⁵ Consumenten Ombudsdienst's website is available at <https://consumentenombudsdienst.be/nl/over-ons>

²⁶ Interview with Consumer Ombud Service, 14 September 2022.

²⁷ Interview with Consumer Ombud Service, 14 September 2022.

Civil and commercial cases

As per the Code of Economic Law, *sellers* are obliged to deliver a product which corresponds to the contractual agreement between buyer and seller and complies with statutory obligations. This means that the product must be in accordance with the description given about the product by the seller, which includes information provided in promotions or online, such as environmental claims made by the seller²⁸.

A statutory limitation period of one year from the day on which the consumer became aware of the lack of conformity of the product applies. In any event, the time period cannot expire before the statutory guarantee period of two years has passed. In case of an agreement between parties, the time period within which the consumer may report issues of non-conformity cannot be shorter than two months from the day on which the consumer had knowledge about the non-conformity.

It is for the consumer to raise the non-conformity claim, i.e. why the product in question fails to correspond to the product as described and advertised. Any lack of conformity is then implied, within the timeframes mentioned in the second paragraph, as existing at the time when the goods were delivered, unless proved otherwise by the seller.

Under the Code of Civil Law, amended by the Law of 20 March 2022 to transpose Directive (EU) 2019/770²⁹ and Directive (EU) 2019/771³⁰, consumers may assert these consumer rights through a private claim based on non-conformity³¹. As required by Directive 2011/83/EU (the ‘Consumer Rights Directive’), consumers may claim for repair or replacement of the product (which is less relevant in case of an action on the basis of misleading environmental claims), for a suitable price reduction or renunciation of the purchase contract, in addition to a claim for damages³².

Two cases of greenwashing heard by Belgian Courts provide examples of the application of the law through the judicial route. In the case *Werner & Merz “Froggy” v. Ecover*³³, the Court of Appeal of Brussels considered a claim that a soap bottle was made 50% out of plastic recycled from the ocean, while it was lower than 50% and recovered from ocean beaches. The Court concluded that the advertisement did not constitute a misleading commercial practice, because the average consumer would interpret the environmentally friendly claims in a general sense rather than taking them literally. Therefore, in the opinion of the Court, the average consumer’s economic behaviour would not have been any different if the claims about the soap bottle had been stated with 100% accuracy. As such, the material requirement laid down in Article VI.97 of the Code of Economic Law to assess an advertisement as misleading was not met.

In the case *Ferrero v. Delhaize*³⁴, Ferrero accused the supermarket chain of misleading environmental (and nutritional) claims in its “free from palm oil” campaign. The Court of Appeal of Brussels pointed out the character not verified and non-objective of the environmental claims made by Delhaize for its spread and ordered the cessation of the advertising campaign under penalty of a fine of 25,000 euros per new broadcast.

²⁸ Mattijs, Voet & Co, New Consumer Sales Act (*Nieuwe wet consumentenkoop*), 12 August 2016, available at: <https://www.advocatenkantoor-mattijs.be/nl/nieuws/rechtsinfo/73-nieuwe-wet-consumentenkoop>

²⁹ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

³⁰ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

³¹ Articles 1641 et s, 1649bis to 1649octes of the Civil Code.

³² Mattijs, Voet & Co, New Consumer Sales Act (*Nieuwe wet consumentenkoop*), 12 August 2016, available at: <https://www.advocatenkantoor-mattijs.be/nl/nieuws/rechtsinfo/73-nieuwe-wet-consumentenkoop>

³³ Brussels Court of Appeal, 28 June 2019, *Werner & Merz “Froggy” v. Ecover*.

³⁴ Brussels Court of Appeal, 2 June 2017, *Affaire Ferrero*.

The existence of the administrative route, mediation, and the competence of a self-regulatory body on advertising (see below on voluntary initiatives and JEP) to solve a complaint leads to a limited number of courts' decisions related to greenwashing in Belgium³⁵. Another hurdle is the material requirement that an advertisement is only assessed as misleading by a court if it can deceive the average consumer (through an act or an omission) and, if it causes or is likely to cause the consumer to take a transactional decision that he would not have taken otherwise³⁶. As a result, Belgian courts can conclude that, even in cases where the claim is not entirely accurate, it did not constitute a misleading commercial practice because the degree of inaccuracy was too limited as to influence the consumer's ultimate transactional decision (Article 6(2) of the UCP Directive 2005/29/EC and the newly revised Guidance document³⁷).

Pursuing a private damage claim for misleading commercial practice as a means to stimulate more sustainable behaviour of companies or punish false environmental advertisement is criticized as being ineffective in practice, given the time, financial means and efforts required to pursue such claims, evidentiary hurdles³⁸, and only small potential (economic) gain for consumers³⁹. Consumer organisations consider administrative enforcement or government regulation to be more effective alternatives to address issues such as greenwashing or other misleading commercial practices which are harmful for the environment⁴⁰.

2.3. Voluntary initiatives

2.3.1. Code of Environmental Claims

There are voluntary initiatives promoting self-discipline of the advertisement sector, the most relevant of which is the Code of Environmental Claims⁴¹. The Code of Environmental Claims⁴² is a non-regulatory initiative created at the initiative of the advertising industry. It is non-binding but aims to encourage self-discipline in the sector. It applies to all commercials related to the environmental impacts of a product or a service during their lifecycle, including on the product's packaging.

The Code of Environmental Claims contains fourteen articles providing general principles for environmental claims including: commercials cannot abusively refer to environmental concerns, cannot contain misleading information on the characteristics of the product; commercials should not encourage behaviours or actions going against the protection of the environment; terms such as 'good for the environment' or 'environmentally sound' or any term implying that a product does not have any impacts on the environment are forbidden, unless, according to Article 14, the producer can clearly justify and without delay the

³⁵ CMS, Belgium – Sustainability Claims and Greenwashing, available at: <https://cms.law/en/rou/publication/cms-green-globe/belgium>; Borres, S., 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?*), 2018, p. 55, available at : <http://hdl.handle.net/2078.1/thesis:15788>

³⁶ Article VI.97 Code of Economic Law.

³⁷ [Directive 2005/29/EC](#) on unfair business-to-consumer commercial practices in the internal market and the [new Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive](#), published on 17 December 2021.

³⁸ Pursuant to Article 8(4) Civil Code, the burden of proof lies with the plaintiff unless otherwise stated by the law.

³⁹ Interview with Consumer Ombud Service, 14 September 2022; Interview with European Consumer Centre – Belgium, 16 September 2022.

⁴⁰ Interview with Consumer Ombud Service, 14 September 2022, Interview with European Consumer Centre – Belgium, 16 September 2022.

⁴¹ Other voluntary initiatives are the International Chamber of Commerce's Code on Advertising and Marketing Communication Practice (available [here](#)), the Code of Advertising and Commercial Communication for Cosmetic Products (available [here](#)) and various other codes specifically designed for laundry detergents, hazardous chemicals, building products, food products and organic food. Because these other initiatives do not target environmental claims specifically, this study focuses on the Code of Environmental Claims instead.

⁴² Code de la publicité écologique/ Milieureclamecode available here: [FR / NL](#)

environmental claim; signs or symbols related to environmental impacts should not be misleading or create confusion on their meaning or falsely claim an official approval etc. The advertiser should be able to justify all claims without delay.

2.3.2. Implementation

Jury for Ethical Practice in Commercials

The 'Jury for Ethical Practice in Commercials' (*Jury voor Ethische Praktijken inzake Reclame / Jury d'Ethique Publicitaire*, hereafter referred to as 'JEP')⁴³ is the private, self-regulatory body created in 1974 by the Communication Centre⁴⁴. Member of the European Advertising Standards Alliance ('EASA')⁴⁵, it is the professional body that brings together all the communication professions and is composed for one half of members of civil society and for the other half of the advertising industry.

The jury can have different compositions. In first instance, the jury is composed of one of two groups of members, each composed of three members from the advertising industry and three members from civil society. In appeal of the decisions taken in first instance, the jury is composed of ten other members (five members from the advertising industry and five members from civil society). Although selection requirements have not been identified, the names of the members of the jury are publicly available as well as their affiliation⁴⁶.

The JEP is in charge of the implementation and compliance of voluntary self-regulatory codes, including the Code of Environmental Claims. The JEP can advise the industry (upon request). The JEP also adjudicates complaints with decisions which, in case of non-compliance by companies concerned, may ultimately lead the JEP to send a request of suspension of an advertisement with the relevant media broadcasting/showing the advertisement⁴⁷.

The jury of first instance of the JEP may be petitioned with a complaint concerning an advertising message on the initiative of any of the following natural or legal persons and provided that they act for the purpose of defending the interests of the consumer and/or the advertising industry: consumer, consumer organisation, socio-cultural association, professional, association/ federation, member or representative of an official body or public authority. After examining the advertisement submitted, the Jury can take three types of decisions:

- It may consider that the advertising message does not contain any element that is contrary to the applicable legislation and/or self-disciplinary codes. The Jury therefore makes no comment;
- It may consider that the message contains editorial elements (texts, statements, indications, slogans, etc.) and/or visual elements (images, drawings, photos, etc.) which do not comply with the legislation or the codes. Depending on the nature or extent of the non-compliant elements, it formulates a decision to modify or stop advertising. This decision is addressed to the advertiser responsible for the message. In the absence of a favourable response or in the event of no response, the Jury sends a recommendation to

⁴³ Jury voor Ethische Praktijken inzake Reclame / Jury d'Ethique Publicitaire, see: <https://www.jep.be/> for more information

⁴⁴ The Communication Centre is the professional organization that brings together all the communication professions, themselves represented by their respective associations. Its website is available here: <https://www.jep.be/fr/centre-de-la-communication/>

⁴⁵ The EASA is a European association representing advertising self-regulatory organisations (i.e. standard bodies) and advertising companies: <https://www.easa-alliance.org/>

⁴⁶ See Question 1 "Qu'est-ce que le JEP ? », <https://www.jep.be/fr/f-a-q/>

⁴⁷ See <https://www.jep.be/fag/>

suspend advertising to the media who adhere to the Jury's action and have committed to follow its decisions;

- in the event that the advertising message raises only reservations, the Jury limits itself to expressing an opinion, leaving the advertiser, the agency and the media responsible for the follow-up to be given.

Claimants can appeal the decisions taken in first instance. In such case, the case and decision are reviewed by a jury sitting in appeal, composed of ten members other than the ones involved in first instance.

JEP decisions

The JEP's decisions (first instance and appeal) are publicly available. The JEP database contains hundreds of decisions mentioning the environment in the complaint⁴⁸. The application given by the JEP of the Code of Economic Law and its guidelines differs from the one of the Belgian Courts. Most importantly, 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. Complaints addressed to the JEP regard a wide range of products and media, e.g.:

- In a complaint brought by a consumer against car manufacturer Hyundai, the JEP asked Hyundai to stop the use of the term "ecological cars" in an advertisement as cars are, by definition, not environmentally friendly⁴⁹.
- The use of a green and blue logo as well as the terms "environmentally friendly" on an advert by Gas.be, promoting the benefits of gas as a source of energy was criticized by an association as giving the impression that fossil fuels, such as gas, had a positive role in a sustainable energy policy. While the JEP concluded that the visual elements were not problematic, the terms of the advert should be modified or not used⁵⁰.
- Ferrero's use of the terms "natural" in the description of the ingredients contained in a sweetened hazelnut cocoa spread, Nutella, as well as a representation of a balanced and healthy lifestyle was attacked by a consumer as incompatible with the importance of palm oil in its composition. In First Instance, the JEP decided that the sentence "from a certified industry, respectful of the environment" had to be modified to exclude the terms "respectful of the environment", and that the mention that the oil was "naturally extracted from the fruits of the oil palm" had to be modified to remove the term "naturally". In appeal to this decision, the Appeal Jury revised its decision: the terms "respectful of the environment" were considered accurate as they explicitly and visibly related to a certified production procedure rather than to the characteristics of the product or its impact on the environment. The Appeal Jury held its view concerning the removal of the word "naturally"⁵¹.
- An association brought a complaint against Shell for its allegations of making existing fuels cleaner and more efficient in a magazine advert. The JEP held that because the advert was not promoting specific products, it was of an informative nature without allegation or misleading representations⁵².

While it is worth bearing in mind that the JEP is a self-regulatory body and its decisions are not binding or enforceable, it remains, as pointed out by the JEP, a body likely to provide answers to consumers; and especially since the consumer does not have to demonstrate any damage in order to be able to file a complaint

⁴⁸ See <https://www.jep.be/fr/decisions-du-jep/>

⁴⁹ JEP, Hyundai, 5 February 2021, available at: <https://www.jep.be/fr/decisions-des-jep/hyundai-05022021/>

⁵⁰ JEP, Gas.be, 8 June 2021, available at: <https://www.jep.be/fr/decisions-des-jep/gasbe-08062021/>

⁵¹ JEP, Ferrero, 5 September 2013, <https://www.jep.be/fr/decisions-des-jep/ferrero-05092013/>.

⁵² JEP, Shell, 27 January 2010, <https://www.jep.be/fr/decisions-des-jep/shell-27012010/>.

with the JEP⁵³. Voluntary initiatives such as the Code for Environmental Claims and the JEP are however criticized by the Consumer Ombud Service for being partial to the companies who set up the codes, too open ended, not effective, lacking real sanctions and sometimes serving the undertakings which set them up by drawing attention to the relevant disputed commercial.⁵⁴

2.4. Right to information

2.4.1. The Aarhus Convention in Belgian law

In parallel to the legislation on unfair commercial practices, citizens have a right to obtain a copy of a document stemming from a public authority which is guaranteed in Article 32 of the Belgian Constitution. As such, the public may request information from any public authority. The institutions involved (Regions and Federal State) are responsible for implementing the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in environmental matters within their own areas of authority⁵⁵. This information can be requested from:

- Administrative authorities (federal, regional, local, intercommunal, etc.);
- Any natural person or legal entity:
 - occupying a post in public administration, especially in relation to the environment;
 - providing public services relating to the environment under the control of a body that is part of the two preceding categories.

As Regions are mainly competent on environmental matters, the regional legislations translate this obligation in their respective legislative frameworks. For instance, in Wallonia, Articles D.10 and D6, 11° of the Environmental Code allow 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, impact studies, complaints made during public inquiries, management plans for natural parks.

The law lists a series of exceptions to that right of access to information in line with the EU legislation⁵⁶, namely the confidentiality of personal data, intellectual property rights, confidentiality of commercial or industrial information, the unfinished nature of the document and the secrecy of deliberations⁵⁷. The rights to privacy protection and intellectual property are highlighted by the Walloon authorities as conflicting with the right to information⁵⁸. The request must follow the procedural requirements laid down in the Environmental Code⁵⁹.

As an example of the consequences of EU environmental law on the right to access information, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment ('EIA Directive') draws a link between protection of the environment and access to information as requested by the Aarhus Convention. The EIA Directive is transposed at Federal and regional levels in Belgium. The current

⁵³ JEP, Written contribution, 6 September 2022.

⁵⁴ Interview with Consumer Ombud Service, 14 September 2022

⁵⁵ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in environmental matters, at Aarhus, Denmark, on 25 June 1998

⁵⁶ In particular the Access to information Directive 2003/4/EC

⁵⁷ See more details on the exceptions here: https://www.uvcw.be/focus/environnement/art-2309#_ftn2

⁵⁸ Belgium, Implementation Report of the Aarhus Convention, 2020, p.44, <https://www.health.belgium.be/fr/synthesis-implementation-report-belgium-aarhus-2020>

⁵⁹ The public portal on right to access to information provides an overview of the requirements and procedure applicable: http://environnement.wallonie.be/droit_information/.

obligations of information have however been recently assessed as not in compliance with the EIA Directive on several points, thereby compromising the extent to which citizens can access information pertaining to impacts on the environment of certain public and private projects⁶⁰.

2.4.2. Application and enforcement

There are hundreds of cases of requests to access environmental information listed in the database of the Walloon Appeals Commission for the right of access to information on the environment (*Commission de recours pour le droit d'accès à l'information en matière d'environnement* or 'CRAIE')⁶¹ alone. Here are a few cases illustrating the application of the right to information of citizens:

- In the Decision of 14 July 2022 on Case No 1247⁶², the CRAIE ruled, in the context of a procedure granting a single permit⁶³ to an association, that the balance of the general interest to access environmental information versus the specific interest not to divulge information due to **intellectual property rights** leaned towards the communication of the requested documents (architectural plans to use of external land to create islets and channels on a pond). As a result, a copy of the plans had to be communicated to the claiming party.
- In the Decision of 21 June 2022 on Case No 1240⁶⁴, the CRAIE ruled, in the context of a procedure granting a single permit to a company for the installation of wind turbines, that the **rights to privacy protection** did not prevent sharing a relevant contract on which appeared the names of the individuals part of the company. As a result, a copy of the contract had to be communicated to the claiming party.
- In its Decision of 13 July 2021 on Case No 1147⁶⁵, the CRAIE decided that, in the context of a request to access all documents concerning the public installation of wind turbines, a specific series of documents could not be communicated as it would undermine the protection of **confidentiality of commercial information**, yet the exception had to be interpreted restrictively - therefore applied document by document and did not prevent accessing other documents.

While the right to information is a useful tool to obtain information related to the environment, it requires the existence of a decision by a public authority. As a consequence, there is *no* claim by a consumer directly against a business on the basis of the right to information.

⁶⁰ Milieu, Conformity Study for DG ENV, Transposition by Belgium of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU, December 2019.

⁶¹ CRAIE, Case-law database, http://environnement.wallonie.be/cgi/dgrne/aerw/pe/droitinfo/li_difiche.idc

⁶² CRAIE, Decision No 1247, 14 July 2022, available at: <http://environnement.wallonie.be/cgi/dgrne/aerw/pe/droitinfo/1247.pdf>

⁶³ Single permits are permits that cover both environmental legislation (environmental permit) and urban planning legislation (urban permit).

⁶⁴ CRAIE, Decision No 1240, 21 June 2021, available at: <http://environnement.wallonie.be/cgi/dgrne/aerw/pe/droitinfo/1240.pdf>

⁶⁵ CRAIE, Decision No 1147, 13 July 2021, available at: <http://environnement.wallonie.be/cgi/dgrne/aerw/pe/droitinfo/1147.pdf>

3. Collective claims by consumers or representations of collective interests

This section presents the legislative framework and practice on collective/representative action beyond consumer matters, including related to the environment. In terms of distribution of competences, consumer and product policy are federal issues in Belgium, as mentioned in the previous sections⁶⁶.

3.1. Legal framework

Transposition of Directive 2020/1828

Directive (EU) 2020/1828 of the European Parliament and the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers ('RAD' repealing Directive 2009/22/EC) is a key element of the "New Deal for Consumers" initiative aimed at strengthening and modernising consumer protection across the EU. The RAD sets out minimum standards for procedural rules in Member States for collective redress and injunctions for consumers. Preparatory works for the implementation of Directive 2020/1828 are on their way⁶⁷. The RAD must be implemented in Belgian law by 25 December 2022 and must enter into force 6 months later. An impact assessment was planned to assess the relevant legal provisions and implementation requirements and a legislative proposal to implement the Directive in the Belgian legal order is being prepared but has not been published yet⁶⁸. Given that collective actions by consumers are already provided for in Belgian law, the implementation of Directive 2020/1828 in Belgium is likely to give rise to only minor amendments to the existing system of collective damage claims by consumers, for instance regarding possibilities for funding such damage claims and certain minor changes required to harmonise the different class action systems in the EU⁶⁹.

Code of Economic Law

Since September 2014, the Belgian Code of Economic Law provides for the possibility of a collective action for damages to consumers who are the victim of the same behaviour by a company⁷⁰. Consumers can base a collective action for damages on Title 2, Book XVII of the Code of Economic Law. 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. Collective claims by consumers must be filed at the Commercial Court of Brussels.

Grounds for collective claims

Article XVII. 36 (1) of the Code of Economic Law exhaustively lists the causes on the basis of which a collective damages claim is permissible, which are defined as: (i) an alleged violation by an undertaking of one of her contractual obligations; (ii) one of the European regulations or acts as defined in Article XVII.37 Code of Economic Law.

⁶⁶ Article 6 (1), II, last indent, Special Law of Institutional Reforms (*Loi Spéciale de réformes institutionnelles*), 8 August 1988.

⁶⁷ Economic Policy note of the Belgian Parliament of 29 October 2021, document 55 2294/005 (2021/2022), p. 14.

⁶⁸ Economic Policy note of the Belgian Parliament of 29 October 2021, document 55 2294/005 (2021/2022), p. 14.

⁶⁹ VBO-FEB, Towards a European Class Action? ("*Naar een Europese 'Class Action'?*"), 12 January 2021, available at: https://www.vbo-feb.be/actiedomeinen/recht-justitie/class-action/naar-een-europese-class-action_2021-01-12/

⁷⁰ The Code of Economic Law was amended by the Law of 28 March 2014, inserting a title 2 "On action for collective reparation" in book XVII "Special jurisdictional procedures" of the Code of economic law and inserting the definitions specific to book XVII in book 1 of the Code of economic law. See also: <https://economie.fgov.be/nl/themas/consumentenbescherming/vordering-tot-collectief>

Article XVII.37 lists a wide array of acts and regulations in the realm of consumer protection, which include regulations regarding food safety, passenger rights and personal data protection, to name a few examples, but none that directly relates to environmental causes. The legislator intentionally made this list exhaustive⁷¹ and therefore excluded collective damage claims from matters such as the environment or public health⁷². As a consequence, the scope of application of collective claims must be interpreted strictly: any act not explicitly mentioned in Article XVII.37 may not be used as a basis for a collective damages claim. Collective damage claims would be possible on the basis of Book VI (mark et practices and consumer protection) and Book IX (safety of product and services) of the Code of Economic Law. These would cover claims regarding advertising and information on the product or service. Hence, the legal framework technically does not allow collective claims strictly on the grounds of failure for a company to comply with environmental legislation. However, claims that relate to consumer protection, such as misleading advertising and misleading commercial practices, including on the labelling or sustainability allegation of a product, would fall under Article XVII.37.

Claimants and consumer representation

Pursuant to Art. XVII.39 of the Code of Economic Law, a group of consumers may only have standing for collective actions through a group representative. Neither an individual person, nor a group of consumers themselves can start a collective action, only a representative may do so. Persons who may initiate collective actions on behalf of consumers as a representative are: (i) associations who have as their objective the defence of consumer interests and have legal personality; (ii) specific associations designated for this purpose by the Minister (associations protecting certain specific groups of consumers); (iii) the consumer ombud institution, but only in the negotiation and dispute resolution phase; and (iv) a representative institution, recognized by a Member State of the EU or the EER that meets certain conditions⁷³. In practice, a group of consumers must therefore find an appropriate representative, such as an existing consumer association willing to take their claim to court, or create a new association for the purpose of bringing their claim to court. All claimants individually affected by a common situation must be identified in the request made by the representative to the court⁷⁴. The judge in charge of examining the admissibility of the claim determines whether an inclusion ('opt-in')⁷⁵ system applies or an exclusion ('opt-out')⁷⁶ system applies.

The Belgian Consumer Ombud Institution views critically the two roles (one as mediator, the other as representative of consumers) that it was given by the Belgian legislator⁷⁷. The capacity to represent consumers in the negotiation phase of collective actions gives it more power and lowers the threshold for consumers to initiate such actions⁷⁸. However, the double function of mediator, on the one hand, and representative of consumers in collective claims before a court, on the other hand, potentially undermines both roles of the ombud service, since the former requires impartiality, and the latter requires representation of one party. In the opinion of a representative of the European Consumer Centre - Belgium, collective claims against

⁷¹ Doc. Parl., Ch. repr., 2013-2014, DOC 53-3300/004, preamble, pp. 46 – 48.

⁷² Michel and Malou, "The action for collective reparation in Belgian law" (*"L'action en réparation collective en droit belge"*), Bulletin Juridique et Social, n°523/2, December 2014, p. 7.

⁷³ FPS Economy, Claim for collective recovery for consumers (*Vordering tot collectief herstel voor consumenten*), available at: <https://economie.fgov.be/nl/themas/consumentenbescherming/vordering-tot-collectief>

⁷⁴ JustiFit, Collective action among Belgians (*L'Action collective chez les Belges*), 19 October 2020, <https://www.justifit.be/b/action-collective/>.

⁷⁵ For instance, the case *Test-Achats v Ryanair* used an opt-in system (<https://www.rdc-tbh.be/news/le-tribunal-de-lentreprise-francophone-de-bruxelles-declare-recevable-une-action-en-reparation-collective-a-lencontre-de-ryanair-trib-entr-fr-bruxelles-8-decembre-2020/>); so did the case *Test-Achats v. Apple* (<https://www.test-achats.be/actions-collectives/apple-iphone>).

⁷⁶ For instance, the case *Test-Achats v. Groupe Volkswagen* uses an opt out system, <https://economie.fgov.be/fr/themes/protection-des-consommateurs/action-en-reparation/decisions/affaire-test-achats-contre-vw>.

⁷⁷ Interview with Consumer Ombud Service, 14 September 2022.

⁷⁸ Interview with Consumer Ombud Service, 14 September 2022.

misleading practices are not the most appropriate course of actions: in line with the inquisitorial nature of the public law system, the State should be the main actor in enforcing economic and environmental law⁷⁹. Furthermore, there is the risk of a court deciding differently than the ombud service in its decision in mediation, as well as high costs associated with acting as a representative in legal actions.

3.2. Application and enforcement

Since the entry into force of the collective claim action regime in September 2014, nine class actions have been initiated. Eight out of nine actions were brought by Test-Achats, the main Belgian consumer protection organisation, the last action was brought by the Ombudsman for Energy:

1. Action based on Regulation (EC) No 261/2004 on the rights of air passengers against the commercial airline company Thomas Cook following a major delay of a flight from Tenerife South to Belgium⁸⁰.
2. Action for compensation from the National Railway Company (*Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen*) for the interruption and the suspension of the train service during eight days of strikes in 2014 and 2015⁸¹.
3. Action against the Volkswagen Group within the context of the so-called "Dieselgate" scandal⁸². For the breach by VW and others, of Book VI of the Code of Economic Law and/or Article 1641 et s. of the Civil Code, Test Achat launched a claim in 2016 on behalf of all consumers who own a VW, Skoda, Seat, Audi and Porsche vehicle equipped with an EA 189 engine purchased from 1 September 2014⁸³. The receivability decision of 18 December 2017 by the Dutch speaking Tribunal of First Instance of Brussels led to the application of an opt-out approach under which consumers had to manifest by 9 July 2018 their intention not to receive the compensation. It is noteworthy that the tribunal decided that Test Achat had to pay 6700 euros for the publication of the decision in the Official Journal. Due to the lack of settlement between the parties, the date of the 1st audience on the merits of the case is scheduled for 15 May 2023⁸⁴. This case demonstrates that collective claims face substantial hurdles in the form of lengthy proceedings and substantial financial burden (publication and legal fees in interim) which a representative consumer organisation, recognised as such by the law, must be willing to bear – even in well documented and publicly reported cases such as Dieselgate.
4. Action against the main Belgian telecommunications company (Proximus) after it introduced a renting formula of its new decoders⁸⁵.

⁷⁹ Interview with the European Consumer Centre – Belgium, 16 September 2022.

⁸⁰ Decision of admissibility (Tribunal of First Instance of Brussels, 4 April 2016, 2015/4019/A, available at: <https://economie.fgov.be/sites/default/files/Files/Consumer-protection/Vonnis-rechtbank-1e-aanleg-Brussel-class-action-Thomas-Cook-Airlines.pdf>); Final Ruling (Tribunal of First Instance of Brussels, 4 April 2016, 2015/4019/A, available at: <https://economie.fgov.be/sites/default/files/Files/Consumer-protection/Besluit-vonnis-TA-Thomas-Cook.pdf>).

⁸¹ Settlement agreement reached <https://trends.levif.be/economie/entreprises/retards-sur-le-rail-test-achats-s-associe-a-la-sncb-et-met-fin-a-la-class-action/article-belga-647723.html>; see also: <https://www.rtb.be/article/class-action-test-achats-reclame-a-la-sncb-40-euros-pour-chaque-navetteur-9159897>

⁸² Decision of the Tribunal of First Instance of Brussels, 18 December 2017, available at : <https://economie.fgov.be/sites/default/files/Files/Consumer-protection/Dispositief-vonnis-ontvankelijkheid-18-12-2018-Test-Aankoop-VW.pdf>; see also, FOD Economy, Affaire Test-Achats contre VW, available at : <https://economie.fgov.be/fr/themes/protection-des-consommateurs/action-en-reparation/decisions/affaire-test-achats-contre-vw>

⁸³ The full decision is only available in Dutch, available [here](#). Summary of Decision of the Tribunal of First Instance of Brussels, 18 December 2017, available in FR, NL and EN, at : <https://economie.fgov.be/fr/themes/protection-des-consommateurs/action-en-reparation/decisions/affaire-test-achats-contre-vw>

⁸⁴ <https://www.test-achats.be/mobilite/autos/presse/7-ans-vw-dieselgate>

⁸⁵ Ruling of the Court of Appeal of Brussels, 30 January 2019, available at : <https://economie.fgov.be/sites/default/files/Files/Consumer-protection/Uittreksel-Arrest-Hof-van-beroep-Test-aankoop-Proximus-30-01-2019.pdf>; see also, FOD Economy, Affaire Test-Achats contre Proximus, <https://economie.fgov.be/fr/themes/protection-des-consommateurs/action-en-reparation/decisions/affaire-test-achats-contre>

5. Action against eight websites involved in the resale of concert tickets at exorbitant prices⁸⁶.
6. Action against the marketing company Groupon following a sales offer for nappies by a company named Luierbox⁸⁷.
7. Action against three Facebook entities within the context of the Cambridge Analytica data scandal⁸⁸.
8. Action was initiated at the initiative of the Ombudsman for Energy by the consumer ombudsman service against six energy suppliers concerning fixed fees that energy suppliers continue to charge when the energy contract is terminated early⁸⁹.
9. The most recent class action was filed against Ryanair in relation to flight delays and cancellations resulting from the airline strikes during the summer of 2018⁹⁰.

After claims were brought successfully against Apple in the United States, Italy and France for its planned obsolescence of iPhone 6⁹¹, Test-Achats is leading the collective claim currently brought against Apple in Belgium⁹². Test-Achat is asking for compensation of behalf of the owners of said phones and that the Court allows an opt-out system. On 10 October 2022, the case was heard on the matter of receivability of the claim⁹³.

4. Due diligence and reporting obligations

This section addresses the extent to which existing reporting obligations on companies enable them to fulfil their full potential to promote and ensure human rights, consumer and environmental protection in Belgium.

4.1. Draft law on due diligence

On 22 April 2021, the Belgian Federal Parliament debated a legislative proposal on due diligence to strengthen obligations of companies throughout their supply chains⁹⁴. The proposed law will require companies registered or operating in Belgium to identify and prevent human rights violations and to mitigate social and environmental risks in their supply chains, including in their subsidiary companies. The envisioned act includes corporate liability in case of lack of or insufficient precautions taken to prevent or alleviate damage, as well as access to justice for persons concerned⁹⁵.

The sanction mechanism envisioned is a combination of criminal sanctions, administrative sanctions and civil liability. As regards civil liability, the proposal entails a deviation from general rules on civil liability, making

⁸⁶ Settlement reached, <https://www.test-achats.be/famille-prive/droits-des-consommateurs/news/tickets-concert-accord-events-belgium> ; see also : <https://www.test-achats.be/famille-prive/droits-des-consommateurs/news/tickets-concert-accord-events-belgium>

⁸⁷ Settlement agreement reached, <https://www.test-achats.be/famille-prive/jeunes-parents/news/grouponluierbox>; see also <https://www.test-achats.be/famille-prive/jeunes-parents/news/grouponluierbox>;

⁸⁸ Opt-in period closed, see: <https://www.test-achats.be/actions-collectives/facebook>.

⁸⁹ Judgment of admissibility (Tribunal of First Instance of Brussels, 4 November 2019) ; Ruling (Court of Appeal of Brussels, 14 April 2021) ; see also : <https://www.ombudsmanenergie.be/nl/node/1385>.

⁹⁰ Settlement agreement reached, <https://simontbraun.eu/simont-braun-assists-test-achats-in-reaching-successful-agreement-with-ryanair/2021/12/16/> ; see also, Judgment of admissibility (Tribunal of First Instance of Brussels, 7 December 2020).

⁹¹ In 2017, Apple sent an update request to owners of iPhone 6 series (iPhone 6, iPhone 6 Plus, iPhone 6s and iPhone 6s Plus) to the iOS 10 operating system. This update and subsequent ones, however, rendered iPhones unusable.

⁹² Test Achat, Action Apple, available at: <https://www.test-achats.be/actions-collectives/apple-iphone>.

⁹³ Test Achat, Premières plaidoiries dans le procès (class action) de Test Achats vs Apple, 10 October 2022, available at : <https://www.test-achats.be/hightech/gsm/presse/apple-plaidoiries?skipbean=true>

⁹⁴ CNCD, "Pour une loi belge sur le devoir de vigilance", 22 April 2021, available at : <https://www.cncd.be/Pour-une-loi-belge-sur-le-devoir?lang=fr>

⁹⁵ Belgian Parliament, Legislative proposal regarding the introduction of a duty of care and responsibility for undertakings throughout their value chain (*Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur*), 2 April 2021, Document number 1903/001

companies liable for any damages caused in their entire supply chain, including activities of subsidiaries and activities enabled by their investments, enforceable through collective damage claims⁹⁶. With regard to civil liability of companies for their supply chains and investments, the proposed Belgian act is modelled on the existing French Act nr. 2017 – 399 of 27 March 2017 relating to the duty of vigilance of parent companies and ordering companies (*Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*).

On 2 July 2021, the Federal Parliament requested the opinion of the Council of State on the legislative proposal⁹⁷. The Council of State issued its opinion on 27 September 2021⁹⁸ which was followed by substantial amendments⁹⁹ to the draft legislation made in August 2022. The parliamentary debate on the draft legislation resumed on 26 September 2022 and further developments are expected.

4.2. National Action Plan on Business and Human Rights

In July 2017, the Belgian government adopted a National Action Plan on Business and Human Rights¹⁰⁰. The National Action Plan contains a set of principles, tools, guidelines and actions to stimulate undertakings active in Belgium to respect human rights, including supply chain due diligence to improve strategic policy choices by companies to strengthen human rights protection. As part of the National Action Plan, a toolbox was developed with eight concrete instruments to improve the human rights situation in companies and sectoral supply chains¹⁰¹. The Belgian National Action Plan took as an important source of inspiration the 2011 UN Guiding Principles on Business and Human Rights¹⁰². The Action Plan is not legally binding but set out the direction of the Belgian Federal and regional governments in introducing human rights in corporate social entrepreneurship and sustainable development, support corporate social responsibility and further cooperation with Belgian undertakings that want to improve their ambitions in this regard¹⁰³. The Action Plan listed the transposition of Directive 2014/95/EU on Non-Financial Reporting as a key action of the Federal Government (Action 26). As a result, in September 2017, Belgium adopted the Law of 3 September 2017 on disclosure of non-financial and diversity information by certain large companies and groups¹⁰⁴ transposing Directive 2014/95/EU on Non-Financial Reporting ('NFRD'). The Law amends the Belgian Code of Companies (*Code des Sociétés / Wetboek van vennootschappen*) by inserting non-financial reporting obligations applicable to Belgian companies.

⁹⁶ Belgian Parliament, Legislative proposal regarding the introduction of a duty of care and responsibility for undertakings throughout their value chain (*Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur*), 2 April 2021, Document number 1903/001, p. 11

⁹⁷ Belgian Parliament, Ongoing adoption procedure of the Legislative proposal regarding the introduction of a duty of care and responsibility for undertakings throughout their value chain, Parliament Document 55k1903, available at: <https://www.lachambre.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=55&dosierID=1903>

⁹⁸ Council of State, Document 1903/002, 27 September 2022, available at: <http://www.lachambre.be/FLWB/PDF/55/1903/55K1903002.pdf>

⁹⁹ Belgian Parliament, Legislative proposal regarding the introduction of a duty of care and responsibility for undertakings throughout their value chain (*Proposition de loi instaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur*), 8 August 2022, Document number 1903/003, available at: <http://www.lachambre.be/FLWB/PDF/55/1903/55K1903003.pdf>

¹⁰⁰ See information provided on the website of the Belgian Federal Institute on Sustainable Development, dedicated webpage on the Action Plan on Business and Human Rights: <https://www.duurzameontwikkeling.be/nl/themas/business-human-rights/beleidskader>

¹⁰¹ Toolbox developed as part of the National Action Plan, available at: <https://bedrijven-mensenrechten.be/>

¹⁰² <https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/>

¹⁰³ Belgian National Action Plan on Business and Human Rights, p. 4

¹⁰⁴ Law of 3 September 2017 on disclosure of non-financial and diversity information by certain large companies and groups (*Loi relative à la publication d'informations non financières et d'informations relatives à la diversité par certaines grandes sociétés et certains groups*), available at: <http://www.ejustice.just.fgov.be/eli/loi/2017/09/03/2017020487/justel>

4.3. Application and enforcement

It appears that thus far, there is no Belgian litigation where non-financial reporting standards implementing Directive 2014/95/EU in the Belgian legal order¹⁰⁵ are used to determine a general duty of care of economic operators, a violation of which may trigger liability¹⁰⁶.

One important recent climate case in Belgium was initiated at the court of first instance in Brussels on the basis of the general duty of care in Belgian tort law (*responsabilité civile*)¹⁰⁷. It concerned an action initiated by 8.422 citizens and the climate association Klimaatzaak against the Belgian federal state as well as the three regional governments for an insufficient climate policy.¹⁰⁸ The court condemned the Belgian government on the basis of statistical evidence on (lack of) climate change mitigation, a lack of good climate governance and repeated warnings by the European Commission, in addition to not taking all necessary measures to prevent the effects of climate change which threaten the right to life and private life of the claimants, as enshrined in Articles 2 and 8 of the European Convention on Human Rights. The judge concluded that the Belgian State and its three Regions had breached Article 1382 of the Civil Code (civil liability) as well as Articles 2 and 8 of the European Convention on Human Rights. However, unlike in the Urgenda¹⁰⁹ and Shell¹¹⁰ cases, the Court took the view that it is not for the judiciary to decide how Belgium should ensure its reduction of greenhouse gases emissions. Hence, this case provides an example of invocation by citizens and an association representing private interests of a combination of human rights and environmental principles to condemn (a lack of) climate action of governments, but no Belgian examples were found of litigation making the link with consumer rights or litigation against corporate actors based on non-financial reporting obligations.

Other recent relevant cases include Lauwrys A.O. v. the Province of Antwerp¹¹¹, ClientEarth v. Flemish Region¹¹² and ClientEarth v. Belgian National Bank¹¹³. Note that all cases concern disputes with public institutions concerning their commitments to climate objectives, rather than private entities such as businesses.

¹⁰⁵ The Belgian Law of 3 September 2017 implements the Non-Financial Reporting Directive into Belgian law, 'Law of 3 September 2017 on disclosure of non-financial and diversity information by certain large companies and groups' (*Loi relative à la publication d'informations non financières et d'informations relatives à la diversité par certaines grandes sociétés et certains groups*), available at: <http://www.ejustice.just.fgov.be/eli/loi/2017/09/03/2017020487/justel>

¹⁰⁶ N. Rogge, 'Are credit institutions obliged to consider potential consequences for human rights when providing loans' (Dutch), Financial Law Institute, Ghent University, 2021, p. 29 and N. Rogge, 'The possible impact of climate cases on the obligations of banks and other undertakings' (Dutch), BFR 2021, nr. 3, 182-185; Interview with Colruï

¹⁰⁷ Art. 1382 of the Belgian Civil Code.

¹⁰⁸ French speaking Tribunal of First Instance of Brussels, ASBL Klimaatzaak v. Belgian State, Walloon Region, Flemish Region and the Brussels Capital Region, 17 June 2021, 20-15/4585/A, available at: http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210617_2660_judgment-1.pdf.

¹⁰⁹ Case Urgenda v. Dutch Government, <https://sustainability.freshfields.com/post/102f3ub/human-rights-invoked-by-dutch-court-of-appeal-in-ordering-the-netherlands-to-take>.

¹¹⁰ Case Friends of the Earth v. Royal Dutch Shell, <https://sustainability.freshfields.com/post/102f3ub/human-rights-invoked-by-dutch-court-of-appeal-in-ordering-the-netherlands-to-take>.

¹¹¹ Flemish Authority, Council for Licensing Dispute, Lauwrys A.O. v. the Province of Antwerp, 9 December 2021, available at: http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20211209_17808_decision.pdf.

¹¹² Client Earth, Press Release, 25 July 2022, available at: https://www.clientearth.org/latest/press-office/press/3bn-ineos-plastics-project-finally-faces-court-action/?utm_source=twitter&utm_campaign=litigation

¹¹³ Client Earth, Press Release, 31 January 2022, available at: <https://www.clientearth.org/latest/latest-updates/news/why-we-re-going-back-to-court-against-the-belgian-national-bank/>; see also: Climate Change Litigation Databases, available at: <http://climatecasechart.com/non-us-case/clientearth-v-belgian-national-bank/>

5. Conclusions and ways forward

Legislative framework

Belgium has transposed the EU Directives that constitute the framework surrounding consumer rights and environmental protection. The Code of Economic Law is the foundation of consumer rights, read in conjunction with the Civil Code, it transposes Directive 2005/29/EC on unfair business-to-consumer commercial practices, Directive 2011/83/EU on consumer rights, Directive (EU) 2019/2161 on better enforcement and modernisation of Union consumer protection rules, Directive (EU) 2019/771 on the sales of goods and Directive (EU) 2019/770 on Digital Content and Services Directive. The Code of Economic Law lays down the material and procedural conditions of collective claims. The Belgian Code of Companies transposes Directive 2014/95/EU on Non-Financial Reporting.

Main gaps and areas for improvements between consumer rights and protection of environment

- The private law legal framework on misleading commercial practices is not tailored to be used by consumers to address ‘greenwashing’, misleading labels or incorrect information on environmental impact. The evidentiary hurdles are high as are the costs of litigation, while the potential gain for the consumer and the environment is low. Procedural and evidentiary hurdles for consumers to assert their environmental rights through private damage claims may serve as a deterrent from effective private enforcement.
- Although no issue has been identified, consumer rights’ legal interpretation such as misleading commercial practices might be revisited in the future by the Belgian Courts to take into consideration the interpretation of the UCP [Directive 2005/29/EC](#) on unfair business-to-consumer commercial practices in the internal market as provided for in the [new Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive](#), published on 17 December 2021.
- Further to the above legislation, no binding legal instrument specifically regulating environmental claims is available in Belgium, only public guidelines, and the voluntary Code of environmental claims. The mechanism by which consumers can lodge complaints of unfair commercial practices (misleading and greenwashing) with the Federal Public Service (FOD) Economy is not well known and consequently under-used by consumers. The same applies to the complaint mechanism available to consumers via the Belgian consumer ombud institution, which seems not to be perceived by consumers as an available avenue for claims regarding for greenwashing, rather for consumer concerns related to, for instance, the quality of a product or lack of service.¹¹⁴ Voluntary initiatives are being criticized for being partial to the parties that erected them, too open ended, lacking effective sanctions and when it comes to misleading commercial practices, only creating more attention around the advertisement in question without resolving the challenged behaviour.
- The legislative proposal on due diligence to strengthen obligations of companies throughout their supply chains currently being considered by the Federal Parliament might strengthen the legislative framework by introducing corporate liability in case of lack of or insufficient precautions taken to prevent or alleviate damage, as well as access to justice for persons concerned.
- When it comes to administrative enforcement, the main challenges are lack of awareness from the public and scarcity of financial means which are generally dedicated to more imminent areas of (commercial) crime or misleading practices.

¹¹⁴ Interview with Consumer Ombud Service, 14 September 2022

Promising practices

- Several voluntary **codes of conducts** and public **guidelines** on environmental claims and advertisement implemented by the Federal Public Service Economy and the Jury for Ethical Practice in Commercials. The decisions of the Jury for Ethical Practice in Commercials show that it regularly intervenes upon requests from citizens with regards to environmental claims made by businesses.
- The possibility for consumers and consumers' organisations to bring a claim to court against businesses on the basis of consumer rights is effectively used, although there are limited examples of such case law related to environmental claims.
- The **Economic Inspectorate** investigates, of its own initiatives or on the basis of claims from consumers, cases of misleading commercial practices including environmental claims. The "**Contact Point**" portal allows consumers to lodge complaints online by specifying which issue they face, such as misleading advertising¹¹⁵. The online questionnaire does not yet include a specific procedure for greenwashing but it is currently being considered according to an expert¹¹⁶.
- Current proposal at federal level to adopt a proposal which strengthens the **due diligence** obligations of companies throughout their **supply chains**.
- A number of international **private sustainability labels** are used in Belgium, such as the [Forest Stewardship Council label \(FSC\)](#), [CO2 neutral](#), [Max Havelaar](#) of Fairtrade, [Nordic Swan](#), [Cradle to Cradle](#) and the [EcoScore](#). The FOD Economy also mentions the FSC label and actions related to supply chain due diligence (see further below in part 4 under 'Due diligence on supply chains') as initiatives with significant potential regarding transparency, consumer rights and environmental protection. Labelling is reported to increase transparency and help consumers make better informed choices, but labels should be regulated so as to improve reliability, trustworthiness and overview for consumers. The European Consumer Centre – Belgium considers that labels covering, on the one hand, the reparability of products and, on the other hand, the sustainability of the transportation (e.g. free delivery, free return of online purchases) should be further developed and promoted¹¹⁷. However, it is noted by consumer organisations that more clear, transparent and well substantiated labels should be promoted by the government through legislation, rather than the broad spectrum of generally business-initiated labels that currently exist and which are difficult for consumers to navigate¹¹⁸. In this context, too much information rather reduces the informative potential of such labels, hence government intervention on this level would be appreciated by the experts consulted¹¹⁹.

Possible improvements at EU level

Aside from the gaps listed above which could be addressed at national level, three issues related to private consumption were reported¹²⁰ as requiring EU-wide intervention - in order to ensure a level playing field across companies:

¹¹⁵ Contact Point, available here: <https://pointdecontact.belgique.be/meldpunt/fr/questionnaire/1?cid=1>.

¹¹⁶ Interview with ECC- Belgium, 16 September 2022.

¹¹⁷ Interview with European Consumer Centre – Belgium, 16 September 2022.

¹¹⁸ Interview with Consumer Ombud Service, 14 September 2022; Interview with Colruyt, 11 November 2022.

¹¹⁹ Interview with Consumer Ombud Service, 14 September 2022; Interview with Colruyt, 11 November 2022.

- The option for consumers to benefit from **free return of online purchases**, was reported, as increasing waste and emissions due to the transportation, thereby hindering the environmental objectives of the EU.
- Requirements on **sustainability labelling** should be explored, including the **reparability** of products. Labelling is reported to increase transparency and help consumers make better informed choices, but labels should be regulated so as to improve reliability, trustworthiness and overview for consumers.
- Allotting **legal personality to nature**, enabling the interests of the environment to be directly recognized in litigation and making it possible to initiate proceedings in the interest of the environment when it is being compromised by the behaviour of other legal persons, would be a significant step forward. Belgium would be following the French example of recognizing the rights of nature as opposed to the rights to nature, which has also been studied in the European context on request by the European Parliament¹²¹.

¹²¹ European Parliament, Can nature get it right? A Study on the Rights of Nature in the European Context, Study requested by the JURI committee, Policy Department for Citizens Rights and Constitutional Affairs, Directorate-General for Internal Policies, PE 689.328 – March 2021