

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

**Austria**

**November 2022**

Contractor: European Training and Research Centre for Human Rights and  
Democracy

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## **DISCLAIMER:**

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## 1. Introduction

Please provide a brief outline of the desk research and expert consultations, and describe any difficulties or specific situations encountered during the research. This outline should include:

- Sources consulted
- Number of individual consultations
- Breakdown of consultations:
  - Professional group
  - Gender
  - Method of conducting the interview (e.g. face to face)

Desk research comprised in-depth research on consumer protection laws and environmental law. Apart from consulting the legal sources and searching for case law in the legal information system (<https://www.ris.bka.gv.at/>), a search for academic publications and commentaries on the matter was conducted. This research revealed that there is little to none scientific debate on the issue of promoting environmental protection through the enforcement of consumer rights in Austria. Further sources consulted include the websites, reports and strategies of the

- relevant Ministries ([Federal Ministry of Social Affairs, Health, Care and Consumer Protection](#); [Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology](#); [Federal Ministry of Labour and Economy](#); [Austrian NCP for the OECD Guidelines for Multinational Enterprises at the Federal Ministry of Labour and Economy](#); [Federal Ministry of Justice](#); [Federal Ministry for Agriculture, Forestry, Regions and Water Management](#)),
- the consumer protection organisations authorized to class action (Chamber of Labour, Consumer Information Association),
- relevant agencies ([Environment Agency Austria](#)),
- as well as relevant NGOs, civil society initiatives and networks (including Netzwerk Soziale Verantwortung, Südwind, Working Group on Global Responsibility, Aid organisation of the Catholic Children's Movement, Greenpeace, Fridays for Future, European Coalition for Corporate Justice).

Moreover, a comprehensive keyword search was conducted on the website of the Parliament to understand the current debates and identify motions for resolutions and drafts.

Consultations with six experts were conducted for this report. The precise breakdown of the consultations is provided in the table below.

Professional group	Organisation	Method of interview
publ. administration	Austrian NCP for the OECD Guidelines for Multinational Enterprises (Federal Ministry of Labour and Economy)	online interview on 30 September 2022
publ. administration	Human Rights Coordinator at the Federal Ministry of Labour and Economy	online interview on 30 September 2022
publ. administration	Representative of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection	online interview on 21 September 2022
publ. administration	Representative of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection	online interview on 21 September 2022

consumer protection authority	Vienna Chamber of Labour: Lawyer and consultant for European law in the EU & International Affairs Department	Written response received on 22 September 2022
CSO	Südwind (Member of the Working Group on Global Responsibility)	online interview on 30 September 2022

## 2. Scope of consumer protection laws and environmental laws

*This section should provide assessment of the scope and potential interlinks between consumer protection and environment protection laws, in particular as regards empowering consumers to influence the behaviour of business to become more environmentally sustainable). It should cover the following:*

- 1) *What kind of claims (ex. judicial or non-judicial, civil, administrative) can be submitted under existing consumer protection or environmental laws to enforce:*
  - a) *access to reliable information regarding a product and its environmental impact;*
  - b) *consumers' right to be provided with sustainable and affordable choices when purchasing a product or service (for example to have the possibility to buy products in environmentally friendly packaging, or to be able to choose a product that is affordable and sustainable, confirmed by verifiable labels, etc.).*

In Austria, there are no effective possibilities for claims to be brought under consumer protection law in narrow understanding to access reliable information regarding the environmental impact of a product. However, at least in theory, there are intersections between consumer rights in a broader sense and the protection of the environment. To substantiate this finding confirmed by experts, a review of the relevant legal provisions is provided in the following.

§ 5a Consumer Protection Act<sup>1</sup>, and § 4 Act on Distance Contracts and Off-Premises Contracts (*Fern- und Auswärtsgeschäfte-Gesetz*)<sup>2</sup> set out general pre-contractual information duties of entrepreneurs. As a result, information must be provided (among other things) in general about the essential characteristics of the product and (if essential) about its compatibility and interoperability.<sup>3</sup> These general information obligations foreseen in Austrian law do not include the obligation to provide information regarding the environmental impact of a product, but merely extend to other key characteristics of the goods or services, such as the total price of the goods or services inclusive of taxes and fees, arrangements for payment, delivery, duration of the contract, etc. Experts recall that according to a current proposal by the European Commission for a directive<sup>4</sup>, these pre-contractual information duties could be extended in the future. Then, for instance, reference might have to be made to an existing durability guarantee of the manufacturer (or its non-existence). In case an entrepreneur fails to comply with its general information obligations outlined in § 5a Austrian

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1 Austria, Consumer Protection Act ([Bundesgesetz vom 8. März 1979, mit dem Bestimmungen zum Schutz der Verbraucher getroffen werden, Konsumentenschutzgesetz – KSchG](#)), Federal Law Gazette No. 140/1979.

2 Austria, Act on Distance Contracts and Off-Premises Contracts ([Fern- und Auswärtsgeschäfte-Gesetz](#)), Federal Law Gazette I No. 33/2014.

3 For non-binding details on the interpretation of this provision see European Commission, Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, 2021/C 525/01.

4 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM/2022/143 final.

Consumer Protection Act, § 28a Consumer Protection Act<sup>5</sup> currently provides for the possibility of a class action (*Verbandsklage*). Anyone who fails to comply with such information obligations or violates Regulation 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector and thus impairs the general interests of consumers may be sued for an injunction according to § 28a (1) Consumer Protection Act. § 29 Consumer Protection Act clarifies further that such an action may be brought by the Austrian Economic Chamber, the Federal Chamber of Labour, the Council of Austrian Chambers of Agricultural Labour, the Presidential Conference of Austrian Chambers of Agriculture, the Austrian Trade Union Federation, the Consumer Information Association and the Austrian Council of Senior Citizens.

§ 14 Federal Act Against Unfair Competition foresees a claim for injunction (*Unterlassungsanspruch*) in case an entrepreneur resorts to misleading commercial practices. § 2 (1) Federal Act Against Unfair Competition defines commercial practice as misleading if it contains false information (§ 39 Federal Act Against Unfair Competition) or otherwise is able to deceive a market participant in relation to the product in such a way that he will be caused to take a transactional decision that he would not have taken otherwise. Displaying a label, quality mark or equivalent without having obtained the necessary authorisation is regarded misleading according to § 2 (2) Federal Act Against Unfair Competition in connection with the Annex Federal Act Against Unfair Competition. An injunction action is therefore possible, if an entrepreneur uses a green label, quality mark or equivalent without having obtained the necessary authorisation. An action for injunctive relief can also be brought, if inaccurate or vague information about the environmental impact of a product is provided (e.g. vague green statements such as “environmentally/climate friendly”) or if legal requirements that must be complied with in any case are presented as a special feature of the product.<sup>6</sup> The established case law applies a strict standard when assessing whether such “environmental advertising” is permissible.<sup>7</sup> The Supreme Court found, for instance, that selling an insect repellent with the label “*Biowelt*” (organic world) and the claim “with active ingredients of nature”, although the product contained synthetically produced substances is not permissible.<sup>8</sup> The Consumer Information Association regularly examines environmental advertisements which, in its opinion, should be critically questioned. The Association runs a dedicated website for this purpose.<sup>9</sup> In the cases set forth in § 2 Federal Act Against Unfair Competition the injunction action may be filed by any entrepreneur who manufactures or markets goods or services of the same or a similar kind (competitor) or by associations to promote the economic interests of entrepreneurs, provided that such associations represent interests which are affected by the offence. Moreover, in the case set forth in (inter alia) § 2 Federal Act Against Unfair Competition injunction action may also be filed by the Federal Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture, the Austrian Trade Union Federation or by the Federal Competition Authority. In the cases of aggressive or misleading commercial practices pursuant to (inter alia) § 2 Federal Act Against Unfair Competition a suit for an injunction order may also be filed by the Consumer Information Association.

Consumer protection experts recall that according to the current proposal for a directive<sup>10</sup>, the ban on greenwashing statements could be extended and be made more specific. They further recall that

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5 Austria, Consumer Protection Act ([Bundesgesetz vom 8. März 1979, mit dem Bestimmungen zum Schutz der Verbraucher getroffen werden, Konsumentenschutzgesetz – KSchG](#)), Federal Law Gazette No. 140/1979.

6 Details on the interpretation can be found in the European Commission, Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, 2021/C 526/01, p. 72.

7 Hofer, M., and Amschl, I. (2021), *Greenwashing und UWG: Ein Überblick*, in: *Nachhaltigkeitsrecht* 1, pp. 421-427.

8 Austrian Supreme Court (*Oberster Gerichtshof*), 4Ob90/94, 20 September 1994.

9 Austrian Consumer Information Association, [Website on the Greenwashing-Check](#).

10 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives

the European Ecodesign Directive (and respectively the current proposal for a new Ecodesign Regulation) of the European Commission lays down certain criteria for sustainable product design that must be met when placing products on the European market. According to these proposals, it is essentially the task of the market surveillance authorities to monitor compliance with the criteria and to impose appropriate sanctions in the event of non-compliance. The European Ecodesign Directive was mainly implemented with the Ecodesign Ordinance 2007 in Austria.<sup>11</sup> This Ordinance stipulates that the competent market surveillance authority shall have the power to carry out appropriate checks on the conformity of products and to require the manufacturer or the authorised representative to withdraw non-conforming products from the market, to request from the parties concerned all necessary information, and to take samples of products and to carry out a conformity check. According to consumer protection experts, physical product checks were only carried out as part of market surveillance in concrete cases of suspicion.

Moreover, the European Regulation on Energy Labelling (2010/30/EU) provides for the labelling of certain energy-related products with regard to energy consumption and other resources. Consumer protection experts recall that this labelling is intended to give consumers the opportunity to compare products on the market. Here, too, as with the Ecodesign Directive and Regulation, the market surveillance authority is essentially responsible for control and sanctions. The Regulation on Energy Labelling 2010/30/EU is mainly implemented by the Products-Consumption Information Ordinance 2011 in Austria.<sup>12</sup> § 7 of this Ordinance stipulates that labels and data sheets shall be presumed to comply with the relevant legal provisions until proven otherwise. The competent Minister may require suppliers to provide proof of the accuracy of the information contained on the labels or the data sheets if he has reason to believe that such information is incorrect. Control functions are thus mainly foreseen in case of specific signals. Austrian experts report that indirectly, non-compliance with such product regulations could lead to warranty claims by consumers in the future (in the sense of an objectively required characteristic according to e.g. § 6 (2) 5 Austrian Consumer Warranty Act<sup>13</sup>), but there is still a lack of legal clarification in terms of the interlinking of public law regulations and contract law (e.g. recital 33 of Directive (EU) 2019/771 excludes liability under warranty law for the availability of spare parts, which is partly prescribed in ecodesign).

The main example of consumer rights in a broader sense regulated by environmental laws in Austria are environmental impact assessments (*Umweltverträglichkeitsprüfung*). Certain projects, the realisation of which is expected to have potentially significant environmental impacts, must be subjected to the environmental impact assessment prior to approval. Projects that may be subject to an environmental impact assessment are, for example: waste treatment facilities, amusement parks, shopping centres, power plants, groundwater extraction, intensive livestock farming, industrial plants, etc. Most of these projects are only subject to environmental impact assessments if they exceed a certain size. A potential environmental impact assessments obligation is usually triggered by a threshold value or a certain criterion (e.g., production capacity, land use) and sometimes also by the characteristic of the site. If the site of a project is located in a nature reserve or water protection area,

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2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM/2022/143 final.

11 Austria, Ecodesign Ordinance 2007 ([Verordnung des Bundesministers für Wirtschaft und Arbeit zur Schaffung eines Rahmens für die Festlegung von Anforderungen an die umweltgerechte Gestaltung energieverbrauchsrelevanter Produkte, Ökodesign-Verordnung 2007 – ODV 2007](#)), Federal Law Gazette II No. 126/2007.

12 Austria, Products-Consumption Information Ordinance 2011 ([Verordnung des Bundesministers für Wirtschaft, Familie und Jugend über Grundsätze der Verbrauchsangaben bei energieverbrauchsrelevanten Produkten mittels einheitlicher Etiketten und Produktinformationen \(Produkte-Verbrauchsangabenverordnung 2011 - PVV 2011\)](#)), Federal Law Gazette II No. 232/2011.

13 Austria, Consumer Warranty Act ([Bundesgesetz über die Gewährleistung bei Verbraucherverträgen über Waren oder digitale Leistungen, Verbrauchergewährleistungsgesetz – VGG](#)), Federal Law Gazette I No. 175/2021.

for example, certain projects are subject to environmental impact assessments even at a lower threshold value. If the interests of the public have not been taken into account or have not been sufficiently taken into account by the authority in decision-making procedures relevant to the environment, citizens and environmental protection organisations have the opportunity to take action against this. The actors that may have party status in such proceedings are enumerated in § 19 of the Environmental Impact Assessment Act 2000<sup>14</sup> and include neighbours, citizens' initiatives as well as environmental organisations. An environmental organisation under the Environmental Impact Assessment Act 2000 is an association (*Verein*) or foundation (*Stiftung*) that is primarily dedicated to environmental protection, operates on a non-profit basis, has been active for at least three years prior to the date of application and (if organised as an association) consists of at least one hundred members. An alliance (*Verband*) must comprise at least five member associations which themselves meet the above criteria and together reach the number of members required for five environmental organisations (500). The competent Ministries shall decide upon application, whether an environmental organisation meets these criteria and in which provinces the environmental organisation is authorised to exercise party rights. The fulfilment of the criteria must be verified every three years, or the criteria can also be verified at the request of an environmental impact assessment authority. There are currently 59 environmental organisations listed in Austria.<sup>15</sup> Parties may be heard in such proceedings and under certain conditions, an appeal against the decision of the Federal Administrative Court may be lodged with the Constitutional Court or the Administrative Court.

Further environmental laws grant members of the public (i.e., persons directly affected and/or recognized environmental organisations) the possibility to claim violations in important environmental areas such as waste (Waste Management Act<sup>16</sup>), air (Emission Control Act<sup>17</sup>) and water (Water Act<sup>18</sup>).

The Austrian Eco-label (*Umweltzeichen*) is awarded to products and services that meet high standards of environmental protection and quality.<sup>19</sup> An eco-label guideline is drawn up by an expert committee chaired by the Association for Consumer Information on the proposal of the “Environmental Label Advisory Board”, an advisory body to the Minister of the Environment. The basis for the certification of a certain product/service with the Austrian Eco-label are guidelines with binding criteria. They are drawn up with the involvement of environmental and technical experts and revised every four years. The “life cycle approach” is applied for this purpose: This means that the environmental impacts of use, production and disposal are considered. The same applies to the consumption of raw materials and energy, toxicity of the ingredients, emissions (exhaust gases, water waste, noise, etc.), waste and recyclability, packaging, distribution and transport. In addition, quality and usability as well as safety, durability and ease of repair are tested.

The Association for Consumer Information, on behalf of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, inspects products on the Austrian market and checks whether the use of the Austrian Eco-label is correct. For example, whether it is clearly

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14 Austria, Environmental Impact Assessment Act 2000 ([Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000](#)), Federal Law Gazette No. 697/1993.

15 Austria, Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, Recognition as an environmental organisation ([Anerkennung als Umweltschutzorganisation](#)).

16 Austria, Waste Management Act ([Bundesgesetz über eine nachhaltige Abfallwirtschaft, Abfallwirtschaftsgesetz 2002](#)), Federal Law Gazette I No. 102/2002.

17 Austria, Emission Control Act ([Bundesgesetz zum Schutz vor Immissionen durch Luftschadstoffe, Immissionsschutzgesetz – Luft](#)), Federal Law Gazette I No. 115/1997.

18 Austria, Water Act ([Wasserrechtsgesetz 1959](#)), Federal Law Gazette No. 215/1959,

19 Austria, Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, Website on the Austrian Eco-label ([Umweltzeichen](#)).

recognisable which products are certified with the Austrian Eco-label - and which are not. Every year, products are tested by means of market controls. In addition, in some areas additional, specific checks are carried out to ensure compliance with the criteria - for example in the case of printers or financial products. In addition to the market controls proactively carried out by the Association for Consumer Information, information from critical consumers or competitors is also received time and again - this is particularly useful if a company without a contract for the use of the Austrian Eco-label advertises an Eco-label-certified product. If a discrepancy is found in the course of a market control, the company concerned is asked to clarify the facts - e.g., to adjust its communication or to remove its advertising with the Austrian Eco-label. However, deliberate misuse of the Austrian Eco-label is extremely rare - most of the complaints, which are rare anyway, are based on ignorance or misunderstanding, which are then corrected quickly and cooperatively. Theoretically, however, there would also be the possibility of blocking the use of the label in the case of serious misuse - however, this option has never had to be used. On the contrary, the market controls show that the vast majority of the label users apply the Austrian Eco-label correctly to advertise their products. Nevertheless, market monitoring is regarded an important and central instrument for monitoring and controlling the use of the label and serves to ensure that the credibility and reputation of the Austrian Eco-label is not undermined by false applications, as stated by the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.<sup>20</sup>

However, as confirmed by expert consultations, there are no possibilities foreseen in Austrian law that enable consumers to be provided with sustainable and affordable choices when purchasing a product or service. Consumer protection experts explain that it is imaginable to consider specific aspects related to the environment as objectively necessary characteristics of a product within the scope of warranty claims. Theoretically, it could be argued, for instance, that a certain environmental aspect of a product is an objectively required characteristic according to § 6 (2) 5 Austrian Consumer Warranty Act. However, this is not the prevailing legal opinion and there are no standards available yet that sufficiently define the durability requirements of products. Moreover, such claims would require longer warranty periods in any case (also see recommendations below).

2) *What are the material and procedural requirements for enforcing consumer/environmental rights? For example: what are the requirements for proving the existence of harm/damage? Is it possible to submit claims "in the general interest" without reference to individual damage? Is it necessary to challenge a particular administrative decision, etc.*

According to § 28 (1) Consumer Protection Act injunction proceedings may be brought against any person who lays down conditions in the "general terms and conditions" (*Allgemeine Geschäftsbedingungen*) and or in "printed forms used for contracts" (*Formblätter für Verträge*), which contravene a statutory prohibition, or which are contrary to public policy (*gegen die guten Sitten*). This provision thus applies, if an entrepreneur lays down, for instance, a general exclusion of damages for intentional and grossly negligent damage or his unjustified right of withdrawal from the contract in his general terms and conditions. § 28a (1) Consumer Protection Act enumerates the conditions under which persons who fail to comply with information obligations or violate a statutory order or prohibition when providing services in the internal market may be sued for an injunction. For an injunction according to § 28a (1) Consumer Protection Act, the "general interests of consumers" have to be impaired. Consumer protection experts explain that these "general interests of consumers" are to be understood in a quantitative sense, meaning that these interests are usually impaired, if around three or more persons are affected by the practice of the entrepreneur. The right to injunctive relief

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<sup>20</sup> Austria, Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, Website on market monitoring ([Umweltzeichen konkret: Marktkontrolle](#)).



further requires the danger of a repeated violation of the obligation to cease and desist.<sup>21</sup> The burden of proof for the substantive requirements is generally on the claimant. However, in respect to the danger of a repeated violation the burden of proof might be reversed: If the defendant has already behaved unlawfully in the past, it is assumed that he will not comply with the law in the future either. The defendant must then demonstrate special circumstances that make a repetition of his unlawful act appear impossible or at least extremely unlikely.<sup>22</sup> There are no further requirements for such injunction proceedings and the legally entitled associations mentioned above may thus initiate injunction proceedings without referring to individual damages.

In respect to the Act Against Unfair Competition, the claimant is also generally obliged to prove the (imminent) violation of competition law and the risk of a future violation. These are preconditions for the claim for injunctive relief under the Act Against Unfair Competition. Case law also assumes a reversal of the burden of proof for establishing the risk of repetition. This is justified by the presumption that whoever has violated the law – even if only once – will be inclined to do so again. Therefore, the defendant must show why the risk of repetition is extremely unlikely.<sup>23</sup>

Consumer protection experts recall that the scope of application of the new Directive on representative actions goes even further and provides that the right to sue (legal standing) of bodies authorised to bring collective actions also relates to, for example, ecodesign provisions or energy efficiency. So, if non-compliant products are distributed, injunctive relief and/or damages, repair, etc. could thus be claimed based on individual cases.

- 3) Based on your findings, what main intersections or gaps can you identify regarding the links between consumer rights and protection of environment, that is to what extent current consumer law can serve as a tool to enforce environment protection, and which elements of the legal framework should be improved;

#### Gaps between consumer rights in a narrow sense and the protection of the environment

The Consumer Protection Act and related Acts include the Austrian consumer protection law in a narrow sense and builds on a precise definition of what a “consumer” is. According to § 1 Consumer Protection Act an “entrepreneur” is a person who makes the transaction in the course of carrying out a business and “consumer” as a person to whom this former definition does not apply. In Austria, this consumer law in a narrow sense currently cannot properly serve as a tool to enforce environmental protection. As far as can be seen at the moment, there is also no tangible domestic legal initiative on track in this respect.

#### Intersections between consumer rights in a broader sense and the protection of the environment

Austrian provisions against unfair competition are relevant as they contain consumer rights in a broader sense and allow for collective enforcement (in particular injunction of practices identified as “greenwashing”) based on the Federal Act Against Unfair Competition.

Further intersections relevant from a consumer perspective in a broader sense exist between warranty law and the protection of the environment. Warranty law potentially is an instrument to make consumer claims related to the environment or sustainability. Experts report that theoretically legal arguments related to pre-contractual information duties concerning durability requirements and reparability could be brought forward for such warranty claims. However, the lawfulness of such arguments is disputed among legal experts and enforcement is difficult in practice as relevant

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21 Austria, Supreme Court (2017), [10Ob13/17k](#), 21 March 2017.

22 Austria, Supreme Court (*Oberster Gerichtshof*), [4Ob193/00m](#), 3 October 2010.

23 Austria, Supreme Court (*Oberster Gerichtshof*), [5Ob 118/13h](#), 25 July 2014.

standards (e.g., on durability requirements) are missing in legislation and proving of the existence of damage is difficult in such cases. Moreover, the Austrian Consumer Warranty Act<sup>24</sup> only entered into force on 1 January 2022 and there is no relevant practice to be reported according to consumer protection experts.

#### OECD Guidelines for Multinational Enterprises as relevant soft law provisions on consumer interests and the environment

As reported by the Austrian National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, the OECD Guidelines for Multinational Enterprises could be regarded as relevant soft law provisions that are partially related consumer interests and the environment. In Austria, complaints about alleged breaches of the OECD Guidelines are handled in accordance with the “Structures and processes of National Contact Points for the OECD Guidelines for Multinational Enterprises”, supplemented by procedural provisions provided in the Terms of Reference of the Austrian National Contact Point. While the NCP does not have any judicial or enforcement powers, it provides a platform to mediate between the parties involved. This way the NCP contributes to settling issues and problems in an impartial, predictable and equitable manner that is compatible with the principles and standards of the OECD Guidelines. Anyone (including NGOs, individual) who can credibly demonstrate an interest on the subject matter may thus bring a complaint to the NCP. However, the application of this complaint procedure is rather limited in practice. The Austrian NCP concluded five cases thus far, which are available on a dedicated website, and only partially relate to consumer interests and the environment.<sup>25</sup> Yet, the Austrian NCP observes that cases concerning the environmental standards of the OECD Guidelines increased over the recent years for NCP in many countries. Moreover, the upcoming update of the OECD Guidelines will put a stronger focus on the environment, especially climate aspects.

#### *a) What is the practical application of the Aarhus Convention as regards access to information in environmental matters?*

Austria ratified the Aarhus Convention on 17 January 2005, and the Convention entered into force for Austria on 17 April 2005.<sup>26</sup> For the transposition of the Aarhus-related EU Directives into national law, adaptations were made in numerous Austrian laws at the federal (see Federal [Environmental Information Act](#)<sup>27</sup>) and provincial (see the list of provincial [Environmental Information Acts](#)) levels. The application and administration of these acts are mainly decentralized and thus carried out by the provinces or by district administrative and municipal authorities.<sup>28</sup> As stipulated in § 3 Environmental Information Act<sup>29</sup>, the bodies subject to environmental information requirements include administrative authorities, their departments or offices at the federal, provincial, district and municipal levels; outsourced legal entities (e.g. Federal Statistical Office Austria, Federal Environment Agency GmbH, universities, Austrian Agency for Health and Food Safety GmbH); outsourced legal entities that provide public services in the area of services of general interest (e.g. energy supply

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24 Austria, Consumer Warranty Act ([Bundesgesetz über die Gewährleistung bei Verbraucherverträgen über Waren oder digitale Leistungen, Verbrauchergewährleistungsgesetz – VGG](#)), Federal Law Gazette I No. 175/2021.

25 Austria, Austrian NCP for the OECD Guidelines for Multinational Enterprises (Federal Ministry of Labour and Economy), [Activities of the Austrian National Contact Point \(NCP\)](#).

26 Austria, Aarhus Convention ([Übereinkommen von Aarhus über den Zugang zu Informationen, die Öffentlichkeitsbeteiligung an Entscheidungsverfahren und den Zugang zu Gerichten in Umweltangelegenheiten samt Erklärung](#)), BGBl. III Nr. 88/2005.

27 Austria, Federal Environmental Information Act ([Bundesgesetz über den Zugang zu Informationen über die Umwelt, Umweltinformationsgesetz – UIG](#)), BGBl. No. 495/1993.

28 Oesterreich.gv.at, Website on the content and implementation of the Aarhus Convention in the EU and Austria ([Inhalt und Umsetzung der Aarhus-Konvention in der EU und in Österreich](#)).

29 Austria, Federal Environmental Information Act ([Bundesgesetz über den Zugang zu Informationen über die Umwelt, Umweltinformationsgesetz – UIG](#)), BGBl. No. 495/1993.

companies); corporations under public law operating in connection with the environment (e.g. water associations); legal entities under public law, insofar as they perform public administration tasks conferred by law in connection with the environment; natural or legal persons governed by private law performing public functions or providing public services in relation to the environment under the control of one of the above-mentioned entities.

The Environmental Agency Austria ([Umweltbundesamt](#)) operates a coordination office for environmental information in Austria, and has the mandate to contribute to the improvement of environmental information and to provide environmental data and information in the best possible way for this purpose. The requirement for the development of active environmental information systems is not fully implemented. Often, a direct inquiry to the responsible authorities such as district authorities and municipalities is necessary.<sup>30</sup> It has to be noted though that the right to access environmental information exists only vis-à-vis the bodies legally obliged to provide information not vis-à-vis all operators running facilities that potentially harm the environment. The Federal Environmental Information Act<sup>31</sup> stipulates in § 13 that operators of facilities that are obliged to measure and record emission data must actively disclose this environmental information on their own initiative.<sup>32</sup> In practice, some businesses voluntarily publish environmental information, such as through environmental statements or sustainability and activity reports.<sup>33</sup>

### 3. Possibilities for collective claims by consumers or representations of collective interests.

*This section should address the following:*

- 1) *Does the legal framework and practice on collective/representative action allow claims beyond consumer matters, for example related to the environment?*

The Austrian legal framework on collective/representative action does not explicitly foresee consumer claims related to the environment. Yet, consumer protection experts explain that in principle, 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 in the broader sense are imaginable within the current legal framework. So far, however, there is no practical experience in this area in Austria.

*“In general, this is a rather new topic in the Austrian legal discourse.”<sup>34</sup>*

An expert from a civil society organisation asserts that as of now there are no effective instruments for collective action available for the topic at hand in Austria.

- 2) *Who can represent consumers in such litigation (CSOs, institutions etc.)?*

The possible representation of consumers in litigation depends on the type of action as follows:

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30 Austria, Environmental Agency Austria, Bodies obliged to provide information ([Informationspflichtige Stellen](#)).

31 Austria, Federal Environmental Information Act ([Bundesgesetz über den Zugang zu Informationen über die Umwelt, Umweltinformationsgesetz – UIG](#)), BGBl. No. 495/1993.

32 Austria, Environmental Agency Austria, Bodies obliged to provide information ([Informationspflichtige Stellen](#)).

33 Austria, Environmental Agency Austria, Bodies obliged to provide information ([Informationspflichtige Stellen](#)).

34 Consumer protection experts of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.

Class actions (“*Verbandsklagen*”) for injunctive relief against unlawful clauses or the impairment of general consumer interests or unfair business practices can only be brought by certain plaintiffs exhaustively listed in the law as follows: § 29 Consumer Protection Act enumerates the Austrian Economic Chamber, the Federal Chamber of Labour, the Council of Austrian Chambers of Agricultural Labour, the Presidential Conference of Austrian Chambers of Agriculture, the Austrian Trade Union Federation, the Consumer Information Association and the Austrian Council of Senior Citizens.

The possibility of bundling civil claims (e.g., damages) within the framework of an Austrian-style collective action (“*Sammelklage österreichischer Prägung*”) works by ceding claims to a plaintiff. The plaintiff then pursues a joint claim for all claimants and their damages in the form of an accumulation of claims (*Klagshäufung*). The main advantage of this approach is that all claimants pursue a uniform strategy and cannot be played off against each other. In addition, the total amount in dispute is higher and it is easier to negotiate a mediation or settlement because one person can negotiate for all. Plaintiffs can be consumer protection organisations with the power to bring class actions, such as the Chamber of Labour or the Consumer Information Association, but also lawyers, legal techs, or NGOs are possible.

§ 14 Federal Act Against Unfair Competition exhaustively enumerates entrepreneurs who manufacture or market goods or services of the same or a similar kind (competitor), associations promoting the economic interests of entrepreneurs, as well as the Federal Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture, the Austrian Trade Union Federation or by the Federal Competition Authority under certain circumstances. In the cases of aggressive or misleading commercial practices pursuant to (inter alia) § 2 Federal Act Against Unfair Competition injunction relief may also be filed by the Consumer Information Association.

Consumer protection experts recall that within the framework of the current transposition of Directive 2020/1828 in Austria, further consumer protection associations and possibly also environmental protection organisations could be granted representative action powers in the future.

3) *What is the state of transposition of Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers?*

The Federal Ministry of Justice has set up a working group in early summer 2021 to deal with the implementation of the Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers into national law. The Federal Chamber of Labour was involved by the Ministry of Justice, which is responsible for the legislation. All relevant meetings have been completed. According to the current state of work, it is planned to enact a “Federal Qualified Entities Act” (*Bundesgesetz über Qualifizierte Einrichtungen, QEG*), which will regulate the procedure and criteria for recognising a legal entity as a Qualified Entity for cross-border and/or domestic representative actions in accordance with the Directive. Procedural provisions are also to be incorporated into a separate section of the Code of Civil Procedure.<sup>35</sup> As confirmed by experts, there is no draft of the Federal Qualified Entities Act available yet.

#### 4. Due diligence and reporting obligation:

*This section should address the following:*

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<sup>35</sup> Austria, Federal Minister of Justice, [Response to parliamentary question 10633/J-NR/2022](#), 3 June 2022.

1) Are there national due diligence laws in your country? If YES: can it be applied in the area of consumer protection as relevant for the protection of the environment?

As will be explained in more detail in this section, there are currently no relevant due diligence provisions available in Austria.<sup>36</sup>

Legal consumer protection experts recall that in Austria there is a “long debate as to which laws can even be considered due diligence laws in terms of consumer protection.” According to their perception, environmental liability law, the Emission Protection Act, laws on the protection of water or similar acts can in principle be regarded as due diligence laws in a broader sense. The legal enforcement instruments foreseen for these laws are actions for damages. In such cases, however, it is always difficult to prove who caused the damage and what the damage is in the first place. It is often difficult to prove the causal connections in this respect. To claim damages in such cases, it must generally also be proven that the company not only caused this damage, but that it also acted unlawfully and culpably in doing so. “Such due diligence laws can theoretically be enforced in environmental agendas, but in practice this is factually impossible”<sup>37</sup> according to consumer protection experts.

In terms of due diligence laws in a narrower sense, Austria implemented Regulation (EU) 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas by way of the Federal Act amending the Mineral Resources Act,<sup>38</sup> which entered into force on 1 January 2021. However, experts confirmed that this act has no relevance in terms of consumer protection, as consumers do usually not buy any of the raw materials covered by this act.

Relevant initiatives exist only at the policy level, where the Austrian foreign trade policy is stated as being committed to human rights, sustainability, environmental protection, anti-corruption, corporate responsibility, transparency, good governance and compliance with international obligations.<sup>39</sup> Austrian companies are supported in becoming aware of their corporate responsibility and acting accordingly. The OECD Guidelines for Multinational Enterprises and the National Contact Point established for this purpose play the main role in Austria. The Austrian NCP for the OECD Guidelines for Multinational Enterprises acts as a contact point for companies, civil society, and other interested parties, and organises relevant webinars and multistakeholder forums.<sup>40</sup>

According to the Austrian NCP for the OECD Guidelines for Multinational Enterprises a debate could be started, whether already existing legal terms and concepts, like the “diligence of a prudent businessman” (*Sorgfalt eines ordentlichen Unternehmers*), already laid down in Austrian laws (e.g., the Austrian Code of Commerce<sup>41</sup>), could be interpreted in a manner to also include the due diligence for human rights or the environment. Accepting this potential development of legal terms and concepts, however, is a legal opinion still in its infancy in Austria. An argument that could also be brought up in this context is that a violation of soft law standards, such as the OECD Guidelines for Multinational Enterprises, could be violation of a “protective standard” when claiming damages. Yet,

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36 This finding was also confirmed in consultations with the Austrian NCP for the OECD Guidelines for Multinational Enterprises and a civil society organisation.

37 Consumer protection experts of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.

38 Austria, Federal Act amending the Mineral Resources Act ([Bundesgesetz, mit dem das Mineralrohstoffgesetz geändert wird](#)), BGBl. I Nr. 14/2021.

39 Austria, Foreign trade strategy 2018 ([Außenwirtschaftsstrategie](#)), December 2018.

40 Austria, Foreign trade strategy 2018 ([Außenwirtschaftsstrategie](#)), December 2018.

41 Austria, Austrian Code of Commerce ([Unternehmensgesetzbuch](#)), Federal Law Gazette I No. 114/1997.

no such practice exists as of now according to the Austrian NCP for the OECD Guidelines for Multinational Enterprises and would require difficult analogies or interpretation of existing law.

In the past, several attempts have been made to introduce relevant due diligence laws. In 2018, a first motion for a resolution concerning a Social Responsibility Act<sup>42</sup> was presented. Another draft was proposed in May 2020 and aimed to prevent the marketing and distribution of products that violate the prohibition of forced and child labour along the production and supply chains. Planned sectors were garment and footwear manufacturers and the planned measures were to disclose the due diligence of the importer and the trader.<sup>43</sup> In March 2021, members of parliament presented a motion for a supply chain law<sup>44</sup> in the National Council. However, none of these draft laws has been adopted yet.

As confirmed in consultations held with experts, the Austrian legislator is waiting for developments and resulting implementation requirements concerning the European developments. According to the Austrian NCP for the OECD Guidelines for Multinational Enterprises there has been a long debate between Ministry for Social Affairs and the Ministry for Economic Affairs on the requirement of (non-)binding due diligence standards. Since this decision has now been made on the European level in favour of binding standards, this debate has now ended in Austria. Therefore, Austria waits for the precise implementation requirements and focuses how to find solutions within the entire European context. Following this logic, the National Council discussed the EU proposals in February 2022 in the run-up to the presentation of an EU-wide supply chain law by the EU Commission. On this occasion, the Austrian Federal Minister of Justice stated that she supports the EU Commission's plan to ensure rules for decent work in a healthy environment without imposing an excessive burden on small and medium-sized enterprises and called for a pan-European, effective solution.<sup>45</sup> Therefore, European provisions are welcomed and are expected to help ensuring legal certainty for both, consumers and business according to the Austrian NCP for the OECD Guidelines. A civil society organisation underlined that the responsible Austrian Ministries (the Ministry of Justice and Ministry of Labour and Economy) strongly involve the civil society in the process of developing proper regulations.

For the Austrian Chamber of Labour *"it is clear that without mandatory requirements from Brussels, there will be little improvement for consumers."*<sup>46</sup> The Austrian Chamber of Labour welcomed the European draft Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, but clearly noted that a far more ambitious approach is needed to improve the working conditions of people along supply chains globally. The main arguments brought forward by the Austrian Chamber of Labour are as follows:<sup>47</sup>

- The scope of application is much too narrow: According to the Austrian Chamber of Labour, the current draft covers only about 0.06% of Austrian companies. The Chamber of Labour criticises that the *"business lobby has clearly prevailed and weakened the legislative proposal."*<sup>48</sup>

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42 Austria, Motion for a resolution concerning a Social Responsibility Act ([Antrag betreffend ein Bundesgesetz mit dem ein Gesetz zur Einhaltung unternehmerischer Sozialverantwortung erlassen wird](#)), 2018.

43 Austria, Motion for a resolution concerning a Social Responsibility Act ([Antrag betreffend ein Bundesgesetz mit dem ein Gesetz zur Einhaltung unternehmerischer Sozialverantwortung erlassen wird](#)), 2020.

44 Austria, Motion for a resolution on supply chain ([Entschließungsantrag betreffend ein Lieferkettengesetz für eine soziale, menschenrechtskonforme und nachhaltige Produktionsweise](#)), 25 March 2021.

45 Austria, [Supply Chain Act - Parliamentary Correspondence No. 162: National Council discusses EU proposal](#), 23 February 2022.

46 Austrian Chamber of Labour.

47 Austria, Chamber of Labour, EC Draft EU Supply Chain Act: Initial Assessment ([EK-Entwurf EU-Lieferkettengesetz: Ersteinschätzung](#)), 1 March 2022.

48 Austria, Chamber of Labour, EC Draft EU Supply Chain Act: Initial Assessment ([EK-Entwurf EU-Lieferkettengesetz: Ersteinschätzung](#)), 1 March 2022.

- The size of the company and the annual turnover are not relevant for companies to determine whether risks may occur in their supply chains. The coupling of these two factors of company size and turnover further narrows the scope of application.
- Insufficient involvement of trade unions and workers' representatives: The draft does not provide for the mandatory involvement of trade unions and workers' representatives in the due diligence process. Yet it is precisely they who know about the respective human rights and environmental risks in the company and can also provide information about which measures lead to sustainable improvements on site.
- Liability in the supply chain: Significant gaps in the application of liability must be closed. The draft provides for a de facto exclusion of liability for misconduct in the supply chain if companies include model clauses in contracts with suppliers and have them externally audited.
- No effective access to justice for affected parties: The draft lacks a human rights-centred approach to redress in cases of human rights violations. Conducting transnational proceedings is expensive, lengthy and complex.
- Climate commitment without consequences: The draft stipulates that very large companies must submit a climate plan that determines the alignment of the company's strategy with the goal of limiting climate change to 1.5 °C according to the Paris Agreement and, if necessary, provides for emission reduction plans. However, there are no consequences for not submitting a climate plan or for submitting a plan that is deficient in content, which casts doubt on the effectiveness of the regulation.

Representatives of the civil society generally welcome the draft Directive on Corporate Sustainability Due Diligence, but note key aspects to remember in this respect:

- The proposed civil liability must be ensured by the Directive at all costs.
- All companies including small and medium-sized enterprises as well as one-persons companies should be covered.
- The current restrictions to “established business relationships” should be removed, as risky economic sectors do often not rely on such established relationships.
- Commercial audits are not enough. Audits should be made in local cooperation with the civil society and trade unions.

As a result, in Austria are currently no relevant due diligence laws in force in the area of consumer protection being relevant for the protection of the environment.

2) *Can you identify examples of application of provisions regarding non-financial reporting to enforce consumer rights in your country in respect to [Directive 2014/95/EU](#) (Non-Financial Reporting Directive – NFRD) - for example similar to the case submitted by Client Earth against supermarket groups – Ahold Delhaize ([Notification to the Dutch Authority for the Financial Markets \(clientearth.org\)](#); [We are taking action against a global supermarket giant on plastics | ClientEarth](#)).*

The Sustainability and Diversity Improvement Act<sup>49</sup> implemented the Non-Financial Reporting Directive in Austria which obliges certain large companies to report on environmental sustainability, amongst others as social and economic sustainability. According to the explanatory remarks to the Sustainability and Diversity Improvement Act<sup>50</sup>, companies can be guided by the following frameworks

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49 Austria, Sustainability and Diversity Improvement Act ([Nachhaltigkeits- und Diversitätsverbesserungsgesetz, NaDiVeG](#)), BGBl. I Nr. 20/2017.

50 Austria, Remarks to the Sustainability and Diversity Improvement Act ([Erläuterungen zum Nachhaltigkeits- und Diversitätsverbesserungsgesetz](#)).

when preparing a sustainability report: Global Reporting Initiative (GRI); Environmental Management and Audit Scheme (EMAS); Global Compact of the United Nations (UN); Guiding Principles on Business and Human Rights: Implementation of the UN's "Protect, Respect, Remedy" framework; OECD Guidelines for Multinational Enterprises; International Labour Organisation Trilateral Declaration of Principles concerning Multinational Enterprises and Social Policy; ISO 26000. A civil society expert reports that first company reports are about to be published in 2022 and still need to be analysed in depth. While the maximum fines foreseen in the Sustainability and Diversity Improvement Act are by far too low according to a representative of the civil society, the imposition of fines could be interesting for campaigning. However, no such practice exists as of now in Austria.

As confirmed by experts, there are no examples of applications of provisions regarding non-financial reporting to enforce consumer rights in respect to Directive 2014/95/EU in Austria.

In practice, an attempt has been made by the NGO Greenpeace to file a climate action against the state. In 2020, Greenpeace, on behalf of 8,000 Austrian citizens, requested the Constitutional Court to invalidate two laws that give tax credits for air travel but not rail transportation. The complainant mainly argues that Austria's tax exemption on kerosene fuel increases carbon dioxide emissions and contributes to climate change.<sup>51</sup> In 2020, the Austrian Constitutional Court dismissed the case as inadmissible on the grounds that rail passengers do not have standing to sue over preferential tax treatment given to air travel.<sup>52</sup> From a legal point of view, such "climate actions" are "Individual applications to the Constitutional Court", which are permissible according to Articles 139 (in respect to ordinances) and 140 (in respect to laws) of the Federal Constitution. Individuals who claim (in this case according to Art 140 (1) Z 1 lit c of the Federal Constitution) to have had his or her rights directly violated by an unlawfulness are entitled to file such an application, provided that the ordinance or law has become effective for this person without a court decision or without the issuance of a legal notice. This collective action is thus a bundling of individual applications. However, it cannot be directed against an entrepreneur, but the state only.

## 5. Conclusions and ways forward

*This section should include brief summary of findings and proposals how to improve environmental protection through consumers' rights, and how to improve enforcement of consumers' rights in this context. What can be done on national level? What could be done at EU level? Please include:*

- Short summary of findings
- Overarching observations and assessments
- Best promising practices
- Suggestions for improvements stemming from the research or opinions of experts

### Summary of findings

In Austria, consumer protection law in a narrow sense currently does not provide for any effective instrument for promoting environmental protection. However, some intersections between consumer rights in a broader sense and the protection of the environment have been identified in the Austrian provisions against unfair competition, namely the Federal Act Against Unfair Competition which allows for actions for injunction of practices identified as "greenwashing". Moreover, warranty law has been identified as potentially relevant instrument to make consumer claims related to sustainability. For such warranty claims, legal arguments related to pre-contractual information duties concerning durability requirements and reparability could be brought forward. However, the lawfulness of such arguments is disputed among Austrian experts and the enforcement of such claims is generally

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<sup>51</sup> Greenpeace, [Fact sheet \(Fact Sheet: Die Klimaklage\)](#), without date.

<sup>52</sup> Austria, Constitutional Court, [Beschluss G 144-145/2020-13, V 332/2020-13](#), 30 September 2020.



regarded as almost impossible. Accordingly, no such enforcement efforts have been made in Austria to date according to experts.

Class actions in particular for injunctive relief against greenwashing business practices, and collective actions on environmental issues in the broader sense, such as bundled claims of consumers harmed by such practices, are theoretically possible within the current Austrian legal framework. However, experts confirm that to date there are no relevant cases available in this area in Austria. In terms of collective claims, Austria appears to be delayed with the transposition of Directive 2020/1828 on collective claims by consumers or representations of collective interests as there is still currently no draft available of the “Federal Qualified Entities Act” (*Bundesgesetz über Qualifizierte Einrichtungen, QEG*), which is supposed to regulate the procedure and criteria for recognising a legal entity as a Qualified Entity for cross-border and/or domestic representative actions in accordance with Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers.

There are currently no pertinent due diligence provisions in force in Austria. The legislator at the time of drafting this report waits for developments and resulting implementation requirements concerning European regulations, especially the proposed Corporate Sustainability Due Diligence Directive.

#### Promising practices

In Austria, promising practices mainly extend to the provision of information to interested consumers. The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology runs an information website offering general tips and information on trends concerning sustainability and describing what consumers have to be aware of from a sustainability point of view when buying or using products and services (including specific information in respect to food, drinks, hygiene products, clothing, electric devices, school articles, toys, etc.).<sup>53</sup> The website also includes a “Label Compass” describing existing quality labels for sustainable products, the awarding authority or body, and what they mean exactly.<sup>54</sup> The Consumer Information Association regularly examines environmental advertisements which, in its opinion, should be critically questioned. The Association runs a dedicated website for this purpose.<sup>55</sup>

Numerous suggestions for improvements have been identified and are presented in the following.

#### Suggestions for improvements based on a study by the Chamber of Labour and the University of Vienna

A study based on empirical data from the consumer monitor project, conducted by the Chamber of Labour and the University of Vienna, found in 2022 that consumers currently face obstacles to sustainable consumption. As a consequence, the Chamber of Labour calls for the following concrete improvements, clustered in three areas:<sup>56</sup>

- More protection against greenwashing:
  - o Transparent sustainability labelling to help consumers make informed choices.
  - o Central accreditation system for green claims at European level to reduce the misuse of sustainability claims as a pure marketing tool.

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<sup>53</sup> Austria, Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, Website “[bewusstkaufen.at](#)”.

<sup>54</sup> Austria, Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, [Website on Label Compass](#).

<sup>55</sup> Austrian Consumer Information Association, [Website on the Greenwashing-Check](#).

<sup>56</sup> Bürger, J., and Paulinger, G. (2022), [Nachhaltiger Konsum: Potenziale und Hürden österreichischer Haushalte](#), Vienna.

- The EU's health claims database, which defines the criteria for the term “reduced fat”, for example, can be used as a model here. Green claims such as “CO2-reduced” or “climate-friendly” could then be linked to scientific criteria.
- Food sector: Quality label law that defines basic criteria for labels and ensures their independent control in order to reduce consumer uncertainty. A standardisation of quality labels would reduce the cognitive effort for consumers. Quality labels must have uniformly defined criteria and independent monitoring.
- Legal rules are urgently needed concerning the supply chain. Consumers need to be assured that the goods they buy are free of human rights violations and environmental destruction. The supply chain law should include:
  - Binding regulations for corporate responsibility along supply chains at national, European and international level.
  - Obligation to comply with all internationally recognised human and labour rights and climate and environmental standards.
  - Enable the establishment of trade unions along the supply chain.
  - Include the mandatory involvement of workers' representatives along the supply chain.
  - Cover all companies operating in the EU internal market.
  - Establish civil liability of companies in case of due diligence violations and effective remedies for those affected.
  - Establish independent monitoring institutions and set effective sanctions and penalties for violations.
- Consumers need a right to repair.

#### Suggestions for improvements by the Austrian Chamber of Labour brought up in direct consultations

- The Austrian Chamber of Labour suggests an extension of the warranty periods (at least for durable products) combined with a reversal of the burden of proof in favour of consumers. At the same time, the manufacturers should be held more accountable as they are best able to control a durable design of the product. The Austrian Chamber of Labour has long advocated a joint liability of manufacturers and importers under warranty law. However, Austria has not made use of the possibilities in this respect when implementing Directive 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services and Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods.
- At EU level, the European Commission proposals on eco-design and on the Consumer Empowerment Directive are very important starting points for ecological change, which should be consistently pursued and applied more broadly according. The Austrian Chamber of Labour published a position paper on this topic.<sup>57</sup> In this paper, the Austrian Chamber of Labour demands that products must not become significantly more expensive due to ecological improvements.

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<sup>57</sup> Austria, Chamber of Labour, Circular Economy Package Making sustainable products the rule ([Paket zur Kreislaufwirtschaft Nachhaltige Produkte zur Norm machen](#)), Position Paper, August 2022.

- In addition to mandatory product requirements (in particular durability) and information requirements, the Chamber of Labour also calls for a ban on the destruction of unsold goods and demands software update obligations.
- *“In order to prevent micro-damages and scattered damages which consumers could suffer (e.g., if they are harmed by an unfair business practice which are not claimed in collective actions due to the disproportionate effort involved), the possibility of skimming off unjust profits (e.g., on the occasion of the implementation of Directive 2020/1828) would be desirable.”<sup>58</sup>*

Suggestions for improvements by consumer protection experts of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection brought up in direct consultations

- Concrete standards concerning the protection of the environment are needed (e.g., a specification of what environmental standards can be relevant for actions based on the Austrian Federal Act Against Unfair Competition).
- *“There is a need for clearer specifications for environmentally relevant certifications (e.g., what standards specifically have to be met by a company to legitimately be termed “CO2-neutral”). On the one hand, such specifications can ensure legal certainty for companies, and on the other hand they can provide for a clear pathway for legal enforcement.”<sup>59</sup>*
- *“The current practice of compensation measures for emissions, especially full compensation, is not effective. The possibility of compensation measures for emissions should be limited for companies. Furthermore, companies should be required to demonstrate that they are making investments to reduce their emissions.”<sup>60</sup>*
- Environmental organisations should have the right to file lawsuits on behalf of consumers.
- Sustainability criteria should be defined and explicitly be included in warranty law.
- Independent repair markets should be established. As explained in a related study, there is currently a lack of independent repair shops and consumers cannot simply drop by a repair café with larger devices. In addition, it might be difficult in practice to find a specialist who can competently repair the devices. Consumers are also annoyed that fault diagnosis is often only possible with a specialist because, for example, a specific device is needed for this analysis.<sup>61</sup>
- The protection of the environment should become a purpose of consumer law.
- The relevant reports of companies should be made publicly accessible.

Suggestions for improvements by the Austrian NCP for the OECD Guidelines for Multinational Enterprises and the Human Rights Coordinator at the Federal Ministry of Labour and Economy

- *“There are currently many European proposals for regulations that dip into similar areas, but a coherent approach is lacking. In particular diverse due diligence rights need to be better aligned. If there is no coherent approach, the enforcement of consumer rights will remain challenging.”<sup>62</sup>*
- The expectations of consumers have to be managed on the European and national levels: The Corporate Sustainability Due Diligence Directive and the implementation thereof will not

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58 Austrian Chamber of Labour.

59 Consumer protection experts of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.

60 Consumer protection experts of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.

61 Bürger, J., and Paulinger, G. (2022), *Nachhaltiger Konsum: Potenziale und Hürden österreichischer Haushalte*, Vienna.

62 Austrian NCP for the OECD Guidelines for Multinational Enterprises.

produce the big results expected by many, because companies in many sectors simply do not get the necessary information about their supply chains.

- *“We have to be realistic and explain to all that this is a first step on longer journey.”*<sup>63</sup>
- Due diligence regulations must remain practicable. The key question from the point of view of the Ministry of Economic Affairs is *“How do we design a regulation that has a good mix of little administrative burden and the greatest possible effect?”*<sup>64</sup>

#### Suggestions for improvements by a representative of the civil society

All consumers should have the right to buy and consume products that are not produced with environmental pollution. Whether this can be achieved through provisions related to consumer law is very doubtful. Consumer rights might generally be the wrong lever to enforce environmental interest.

*“Consumer protection law works in practice only, if the product poses an immediate danger to consumers (e.g., salmonella) – otherwise they are ineffective. Such regulatory approaches do not work in the social or environmental spheres.”*<sup>65</sup>

Probably, other approaches would be needed, e.g. approaches that regulate the import of goods, similar to the recent proposal for a regulation on prohibiting products made with forced labour on the Union market (COM(2022) 453).

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63 Austrian NCP for the OECD Guidelines for Multinational Enterprises.

64 Human Rights Coordinator at the Federal Ministry of Labour and Economy.

65 Representative of the civil society.