

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

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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)

The desk research went through three stages – research on consumer law, environmental law and the possible links between the two, including case law research. The main sources used for the desk research were the relevant legal acts, their legal commentaries and related case law accessed through a database of published court decisions. The difficulties during the desk research were mostly related to the lack of case law to show how the relevant legal provisions are applied in practice.

The preliminary findings from the desk research were discussed with relevant stakeholders through a series of consultations. Additionally, phone calls with representatives of several consumer protection associations were held to informally confirm certain findings from the desk research. Overall, the consulted stakeholders confirmed the findings of the desk research, including the lack of relevant court cases, adding their own perspectives on the reasons thereof.

A total of five individual consultations with stakeholders were held.

In the category of representative of a relevant department of public administration or a representative of a state-based non-judicial body, two consultations were held: one with a public official from the Ministry of Environment and Water (MEW) (*Министерство на околната среда и водите, МОСВ*) responsible for environmental policies and control, and one with a representative of the Commission for Consumer Protection (CCP) (*Комисия за защита потребителите, КЗП*) responsible for supervising the market. Both consultations took place face to face.

In the category of representative of relevant CSOs dealing with consumer and/or environmental rights, one consultation was held with a senior representative for Bulgaria of one of the leading international environmental non-governmental organisations. This consultation took place online.

In the category of a legal practitioner experienced in litigation in consumer/environmental cases, one consultation was held with a lawyer with experience in high-profile environmental cases. The consultation took place face to face.

In the category of a representative of a business responsible for sustainability/environmental impact, one consultation was held with a public relations manager of one of the biggest companies from the food industry.

A detailed breakdown of the consultations is provided in the table below.

Table 1: Breakdown of consultations

Category	Profile	Method of conducting the consultation
Representative of a relevant department of public administration or a representative of a state-based non-judicial body relevant to the field of the research	Representative of the Ministry of Environment and Water (MEW), responsible for environmental policies and control	Face to face
	Representative of the Commission for Consumer Protection (CCP), responsible for supervising the market	Face to face
Representative of relevant CSOs dealing with consumer and/or environmental rights	Representative of the senior management of the Bulgarian branch of an international environmental organisations	Online
Legal practitioner experienced in litigation in consumer/environmental cases	Lawyer with experience in high-profile environmental collective claims	Face to face
Representative of business, for example, responsible for sustainability/environmental impact	Senior representative of the public relations department of a large food production company	Online

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.).*

According to Bulgarian law, claims concerning access to reliable information regarding a product can be submitted under consumer law. The Consumer Protection Act (CPA) (*Закон за защита на потребителите*)¹ regulates the rights of consumers and the legal remedies for their protection. The CPA contains no provisions specifically concerning the right to reliable information regarding a product and its environmental impact. Nevertheless, there are more general provisions on the right to information, which, in some specific cases, can apply in relation to environmental issues.

One option for submitting a claim related to access to information about a product is the set of rules governing the obligation of traders to provide information about the composition of a product and its packaging. The information on the composition of the product should be complete and accurate, which is explicitly stated in the CPA.² This information must be written on the label of the product. Additionally, the law authorises the government to adopt separate regulations on the requirements for particular groups of goods and their labelling.³ Based on these provisions, consumers can submit complaints before the Commission for Consumer Protection (CCP) (*Комисия за защита на потребителите*, КЗП) in case the provided information about a product is not accurate. However, such a complaint can address environmental matters only in relation to certain products, for which there is a special requirement for traders to provide environment-related information. There are such special requirements, for example, concerning energy labelling and luminaries. However, as noted by the consulted stakeholders, there have been virtually no cases of access to information complaints relating specifically to the impact of a product or its packaging on the environment.

Unlike the right of consumers to information about a product, which is explicitly enshrined in the law, their right to be provided with sustainable and affordable choices when purchasing a product or service is not. According to some of the consulted stakeholders,⁴ if the facts of the case allow it, a consumer may seek the protection of their rights through the general prohibition of unfair commercial

¹ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022.

² Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 4.

³ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 12.

⁴ Consultation with a representative of the Commission for Consumer Protection.

practices.⁵ According to the law, a commercial practice is unfair if it contravenes the requirement of good faith and professional competence and substantially alters or is likely to alter the economic behaviour of the average consumer.⁶ A type of unfair commercial practice is the misleading commercial practice. The misleading commercial practice is one which provides false information or misleads or is likely to mislead the average consumer in any way, including by its overall presentation.⁷ Thus, if a consumer chooses a product misled by its false presentation, e.g., in terms of its sustainability, they may seek protection of their legal interest by submitting a complaint for unfair commercial practices. However, as also noted by the consulted stakeholders, the potential application of this option in environmental cases, including greenwashing, could not be confirmed in practice as no such cases have been brought so far before the Commission for Consumer Protection (CCP) (*Комисия за защита на потребителите*, КЗП) or the court.

(Representative of the Commission for Consumer Protection): “Unfortunately, the Bulgarian consumer does not have an explicit right which can ensure that they will be provided with sustainable choices and even more – sustainable choices which are also affordable. So, the only path they can seek is through unfair commercial practices but it must meet certain conditions and it really depends on the case.”

The competent authority in cases of access to information or unfair commercial practices is the Commission for Consumer Protection (CCP) (*Комисия за защита на потребителите*, КЗП), which is a quasi-judicial body.

In addition to the procedure before the Commission for Consumer Protection (CCP) (*Комисия за защита на потребителите*, КЗП), consumers also have the option of filing a civil claim to the court. Such claims are not specifically governed by the Consumer Protection Act (CPA) (*Закон за защита на потребителите*) but are admissible under the general rules of civil law. There is no explicit legal provision specifying to which competent authority the consumer should turn first, so consumers are free to choose to which body to refer their case. In case the consumer decides to refer the matter to the Commission for Consumer Protection, this does not preclude their right to refer the same matter to the court. The procedure before the Commission for Consumer Protection is an administrative procedure and the one before the court is a civil judicial procedure. Although there is no prohibition on filing civil claims for access to information and unfair commercial practices, there are no such lawsuits before the courts, and these provisions are mainly used for contract cancellation claims (most often in relation to loans or telecommunication service contracts).

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.*

⁵ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 68c.

⁶ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 68c, Par. (1).

⁷ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 68d, Par. (1).

According to Bulgarian law, one of the main consumers' rights is the right to access judicial and non-judicial procedures for resolving consumer disputes.⁸ Consumer legislation provides consumers with the possibility to defend their rights if they were violated both through judicial and non-judicial dispute resolution procedures. In order to use these procedures, the consumer does not need to have suffered damage, it is sufficient that their rights under consumer law have been violated.⁹

The main non-judicial remedy available to consumers when their rights are infringed is to lodge a complaint, signal or suggestion to the supervisory body – the Commission for Consumer Protection (CCP) (*Комисия за защита на потребителите*, КЗП).¹⁰ Complaints can be submitted by both individual consumers and consumers' organisations. When submitting a complaint before the Commission for Consumer Protection, the consumers must state their grievances, their claims and the evidence at their disposal.¹¹ With the complaint, the applicant can request, among other things, additional information about a product, reduction of the price, or refund, but cannot claim compensation for damages.

If the violation referred to in the complaint is among the legal grounds for imposing compulsory administrative measures or administrative sanctions, the Commission can issue an individual administrative act (for imposing a compulsory measure) and/or administrative penal order (for imposing a sanction).¹² When the Commission issues an administrative penal order, such an order can be appealed before the court.¹³ If the order is not appealed it becomes enforceable seven days after it has been issued. The order has an administrative character and includes only information about the established violation and the amount of the imposed sanction.

The consumer can also seek compensation for damages suffered as a result of violations of consumer legislation.¹⁴ The procedure for claiming compensation is a civil judicial procedure and takes place only in court.

The proceedings before the Commission for Consumer Protection are not a mandatory prerequisite for bringing a compensation claim before the court. Consumers can choose to seek compensation for damages either after obtaining a decision from the Commission or without going through the quasi-judicial procedure before the Commission and directly filing a claim to the court. If the case is brought before the court after obtaining a decision from the Commission for Consumer Protection, the consumer can benefit from the advantage of referring to the facts already established by the

⁸ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 1, Par. (2), p. 5.

⁹ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 178, Par. (1).

¹⁰ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 178.

¹¹ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 178, Par. (3), pp. 4 and 6.

¹² Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 165, Par. (4), p. 6.

¹³ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 233, Par. (3).

¹⁴ Bulgaria, Contracts and Obligations Act ([Закон за задълженията и договорите](#)), 5 December 1990, last amended 27 April 2021, Art. 45.

Commission as evidence in the proceedings before the court. In the procedure before the Commission, it is enough for the consumer to claim that the trader has violated the consumer protection legislation and the trader is the one who should prove the opposite. Depending on the complexity of the case, the Commission can issue its decision with or without conducting an investigation. If the Commission decides to conduct an investigation it has the competence to demand from the trader to produce certain documents necessary for completing the investigation. In the proceedings before the court, on the other hand, the general rules on evidence in civil proceedings apply and each party should prove the facts, on which their claims are based. Thus, if a consumer seeks compensation for damages as a result of a violation of the consumer protection legislation, they can use the facts already established in the proceedings before the Commission where the procedural rules and the rules on evidence are more favourable for the consumers.¹⁵

The enforcement of environmental rights is not nearly as structured as the consumers' ones since environmental rights are not regulated in a single piece of legislation. The ways of implementing the three main pillars of the environmental rights framework – access to information, public participation in environmental matters and access to justice – are described below.

The first group of rights, related to access to information, give the citizens the opportunity to obtain information on environmental issues. The implementation of these rights is described in the subsection on the application of the Aarhus Convention as regards access to information in environmental matters below.

The second group of rights, related to citizens' participation in environmental matters, are laid down in the Environmental Protection Act (*Закон за опазване на околната среда*)¹⁶ and in the general legal framework concerning citizens' participation in the state and local government.¹⁷ However, the specific procedures and measures to ensure the participation of citizens in environmental protection matters are often criticised as not sufficiently effective. Thus, for example, the operation of consultative mechanisms (councils, online platforms, etc.) is not sufficiently regulated. The lack of clear criteria and procedures for selecting civil society representatives as members of advisory councils allows the chairs of these councils to select the members themselves, which contradicts the principles of representation, transparency and accountability.¹⁸ The lack of obligation for authorities to give feedback on proposals received from citizens makes it impossible to assess which proposals have been considered and which have been rejected and for what reason.¹⁹ The lack of a consistent legal framework governing the dialogue between the government and the citizens on environmental issues (interaction between the public administration and civil society organisations, procedures for conducting public deliberations, access to standardised information on ongoing and upcoming

¹⁵ Consultation with a representative of the Commission for Consumer Protection.

¹⁶ Bulgaria, Environmental Protection Act (*Закон за опазване на околната среда*), 25 September 2002, last amended 7 June 2022.

¹⁷ Bulgaria, Direct Participation of Citizens in State Power and Local Self-Government Act (*Закон за прякото участие на гражданите в държавната власт и местното самоуправление*), 12 June 2009, last amended 22 February 2022.

¹⁸ Executive Environment Agency (2019), Recommendations for introducing concrete measures in Bulgaria to improve citizen participation in environmental protection (*Препоръки за въвеждане на конкретни мерки в България за подобряване гражданското участие в опазването на околната среда*), 10 September 2019.

¹⁹ Consultation with a representative of the senior management of the Bulgarian branch of an international environmental organisation.

deliberations, timetables for draft regulations, etc.) is another obstacle to the implementation of environmental rights from the second pillar.²⁰

The rules on enforcing the rights from the third pillar, which concerns access to justice on environmental matters, are also laid down in different legal acts. The citizens can seek access to justice on environmental matters under administrative legislation or civil legislation (when damage is caused).

The Environmental Protection Act (*Закон за опазване на околната среда*) includes a general provision that everyone who intentionally causes damages by polluting or harming the environment is obligated to compensate them.²¹ In addition to compensation for damages, the applicant can also bring an action for the discontinuation of the violation and for the removal of the effects of pollution.²² The claim can be submitted only by the “affected person”, i.e., only by the person(s) who suffered the damage. The applicant should prove the existence of pollution and the damage suffered, but they do not need to prove the violation of a certain legal provision or administrative decision. The Environmental Protection Act does not provide any specific procedural rules, which means that the claims are filed and the cases are heard according to the general procedural rules for tort cases. According to Bulgarian tort law, the applicant is the one who should prove the existence of harm (damage). There are no rules envisaging a reversed burden of proof in environment-related cases.²³

Some of the legal acts regulating specific environmental issues such as the Clean Air Act (*Закон за чистотата на атмосферния въздух*)²⁴ and the Water Act (*Закон за водите*)²⁵ also allow for submitting claims for compensation of damages resulting from violations of their provisions. As in the case of the general provision in the Environmental Protection Act, these laws also do not provide any specific procedural rules, which means that the cases are heard according to the general rules on tort cases and the applicant is the one who should prove the damage.

A specific mechanism for involving the public in enforcing environmental rights is laid down in the Environmental Protection Act (*Закон за опазване на околната среда*). This mechanism enables individuals and environmental organisations to supervise compliance with the law and participate in the procedure for imposing penalties for violations. In Bulgaria, the procedure for imposing administrative penalties is divided into two main phases. During the first phase, the supervising authority formally establishes the violation by producing a specific document called a ‘report for the establishment of administrative violation’ (*акт за установяване на административно нарушение*). Based on this document, during the second phase, the sanctioning authority imposes the penalty by issuing an administrative penal order. As a rule, both the supervising authority and the

²⁰ Executive Environment Agency (2019), Recommendations for introducing concrete measures in Bulgaria to improve citizen participation in environmental protection (*Препоръки за въвеждане на конкретни мерки в България за подобряване гражданското участие в опазването на околната среда*), 10 September 2019.

²¹ Bulgaria, Environmental Protection Act (*Закон за опазване на околната среда*), 25 September 2002, last amended 7 June 2022, Art. 170.

²² Bulgaria, Environmental Protection Act (*Закон за опазване на околната среда*), 25 September 2002, last amended 7 June 2022, Art. 171.

²³ Bulgaria, Contracts and Obligations Act (*Закон за задълженията и договорите*), 5 December 1990, last amended 27 April 2021, Art. 45.

²⁴ Bulgaria, Clean Air Act (*Закон за чистотата на атмосферния въздух*), 28 May 1996, last amended 11 March 2022.

²⁵ Bulgaria, Water Act (*Закон за водите*), 27 July 1999, last amended 11 March 2022.

sanctioning authority are public bodies. By way of exception, the Environmental Protection Act (*Закон за опазване на околната среда*) enables representatives of the public and of non-governmental environmental organisations, designated by the Minister of Environment and Water, to draw up reports for establishing administrative violations under the Environmental Protection Act.²⁶ Based on these acts, the Minister of Environment and Water can issue administrative penal orders and impose sanctions on those who committed the violation. Thus, by giving the opportunity to representatives of the public to issue reports for the establishment of an administrative offence, the law provides them with three main functions: to establish the administrative offence, to identify the offender and to refer the case to the sanctioning administrative authority.

More options are available to persons whose environmental rights have been violated as a result of a legal act or decision issued by a public authority. According to the Administrative Procedure Code (*Административнопроцесуален кодекс*)²⁷ citizens can challenge certain administrative acts or administrative decisions issued by public authorities if such acts violate a legal provision or their legal interest. Citizens can choose whether to approach the court or the competent administrative authority (the superior authority of the authority which issued the decision). The procedures laid down in the Administrative Procedure Code do not specifically refer to violations of environmental rights, but the different legal acts in the area of environmental protection²⁸ contain various mandatory administrative requirements addressing the citizens, the legal entities and the public authorities, which can serve as grounds for such administrative appeals. Environmental NGOs often use this mechanism to challenge certain administrative decisions related to the environment.²⁹ One exemplary case in this respect is the case of Greenpeace Bulgaria challenging a permit issued by the Executive Environment Agency (EEA) (*Изпълнителна агенция по околна среда, ИАОС*), which increased the amount of waste that can be incinerated at the Bobov Dol thermo-electric power plant (TPP "Bobov dol").³⁰ However, after several twists and turns, in this specific case, the Supreme Administrative Court (SAC) (*Върховен административен съд, ВАС*) finally validated the original permit and the case turned out to be unsuccessful for Greenpeace Bulgaria.³¹ The case passed through several court instances before it reached its final decision. The challenged permit, which was issued in May 2018, changed the description of the fuel that the thermo-electric power plant was allowed to incinerate from 95.5 % coal and 0.5 % waste to 80 % coal, 19.5 % biomass and 0.5 % waste. The new permit was first challenged before the Administrative Court – Kyustendil (ACK) (*Административен съд – Кюстендил, АСК*) (*Административен съд Кюстендил*), which found the appeal inadmissible on the grounds that the appealed permit was not a new one but was only amending an already issued permit and as such was not subject to appeal. This court decision was appealed before the Supreme

²⁶ Bulgaria, Environmental Protection Act (*Закон за опазване на околната среда*), 25 September 2002, last amended 7 June 2022, Art. 169.

²⁷ Bulgaria, Administrative Procedure Code (*Административнопроцесуален кодекс*), 30 April 2006, last amended 19 February 2021.

²⁸ For example, see Bulgaria, Clean Air Act (*Закон за чистотата на атмосферния въздух*), 28 May 1996, last amended 11 March 2022; Water Act (*Закон за водите*), 27 July 1999, last amended 11 March 2022; and others.

²⁹ Consultation with a representative of the senior management of the Bulgarian branch of an international environmental organisations.

³⁰ Greenpeace Bulgaria (2019), 'The temporary permit for waste incineration at TTP Bobov Dol quietly became permanent' (*Тухомълком временното разрешително за изгаряне на отпадъци на ТЕЦ „Бобов дол“ се превърна в постоянно*), press release, 23 April 2019.

³¹ Greenpeace Bulgaria (2022), 'TPP "Bobov Dol" can burn as much as it wants, and those affected have no right to an opinion' (*ТЕЦ „Бобов дол“ може да изгаря колкото от каквото поиска, а засегнатите нямат право на мнение*), press release, 12 April 2022.

Administrative Court (SAC) (*Върховен административен съд*, ВАС), which ruled that the challenged permit could be appealed because the change it provided was substantial. Thus, the case was sent back to the first-instance court for reconsideration. In January 2021, the Administrative Court – Kyustendil (ACK) (*Административен съд – Кюстендил*, ACK) issued a decision repealing the challenged permit on the grounds that it was issued without a preliminary environmental impact assessment. The thermo-electric power plant appealed this decision, the appeal was successful and the case was sent again to the first-instance court but to a different judge. In July 2021, the new judge, to whom the case was assigned, issued a decision in the opposite direction and ruled that there was no violation since, according to his judgment, biomass burning was not polluting the air and there was no need to assess its effect on nature and human health. This decision was in turn unsuccessfully appealed by Greenpeace Bulgaria and in its final decision on the case, the Supreme Administrative Court (SAC) (*Върховен административен съд*, ВАС) agreed with the last decision of the first-instance court that the change of the incinerated fuel did not require an assessment of the impact on human health and nature. However, this decision was issued with a dissenting opinion of one of the judges, according to whom such an assessment should have been carried out, taking into account the simultaneous combustion of coal, biomass and waste. The two opposite decisions of the first-instance court and the inability of the judges from the Supreme Administrative Court (SAC) (*Върховен административен съд*, ВАС) to reach a unanimous could indicate that the one reason for losing the case was the interpretation of the relevant law.

There are no special rules on the **burden of proof** when challenging administrative acts or decisions on environmental matters. According to the general procedural rules, the public authority and the persons for whom the challenged administrative decision is favourable should prove the facts, on which the decision is based, and the fulfilment of the legal requirements for its issuance.³² **In practice, however, it is often difficult for citizens to prove the violation of their legal interest if such interest is only related to the environment and no personal harm was caused.**³³ Thus, for example, in 2014, the environmental organisation For the Earth (*За земята*) appealed against the construction permit issued for the building of South Stream pipeline. The court, however, dismissed the application on the ground of lack of legal interest noting that the applicant, although meeting the Aarhus Convention's definition of 'the public concerned', was not a directly interested party, which were only the contracting authority, the construction company and the owners of the properties on which the construction was taking place.³⁴ Although this case does not represent a dominant trend in the interpretation of requests under the Aarhus Convention, as there have been successful cases as well, it is indicative of the conflicting interpretation of the concept of 'legal interest'.

In theory, the constitutional provision proclaiming the "right to a healthy and favourable environment corresponding to established standards and norms"³⁵ should be a sufficient legal ground for any individual or organisation to challenge an administrative act or decision before the court (including decisions affecting the activities of companies that harm the environment). However, the lack of court

³² Bulgaria, Administrative Procedure Code ([Административнопроцесуален кодекс](#)), 30 April 2006, last amended 19 February 2021, Art. 170.

³³ Consultation with a representative of the Ministry of Environment and Water.

³⁴ Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Ruling No 13216 on administrative case No 13777/2014 ([Решение № 13216 по административно дело № 13777/2014](#)), 11 May 2014.

³⁵ Bulgaria, Constitution of Republic of Bulgaria ([Конституция на Република България](#)), 13 July 1991, last amended 18 December 2015, Art. 55.

cases, in which the approach of referring directly to the constitutional provision has been used, makes it difficult to conclude whether the courts would accept a direct reference to the Constitution as a sufficient legal justification for filing such a claim.

Another option for seeking compensation for damages caused by public authorities is the Liability of the State and Municipalities for Damages Act (*Закон за отговорността на държавата и общините за вреди*).³⁶ The procedure is a judicial procedure and the claims are filed to the court. There are no special provisions reversing the burden of proof and the damage should be proven by the applicant. This option is often the preferred procedural way for citizens to address environmental issues arising from acts and decisions of public authorities.³⁷ Thus, for example, under these legal provisions the Municipality of Botevgrad was sentenced to pay compensation for damages to the owners of a land plot, which was contaminated by the adjacent landfill for municipal waste.³⁸ At the same time, the lack of provisions reversing the burden of proof prevents the use of this mechanism for certain cases of environmental pollution like air pollution due to the inability of applicants to produce convincing evidence that the damage they have suffered is a direct and proximate consequence of the pollution.³⁹ Such lack of evidence is due to different factors but mainly to the financial difficulty to provide technical expert assessment of the damages. Moreover, even if such an assessment is done, it often concludes that the damage caused is a result of many factors and not just of the pollution caused by the defendant, which means that the applicant cannot receive any compensation because the damage is no longer considered direct damage.⁴⁰ So far in Bulgaria there have been two court decisions in such air pollution cases, both illustrating this problem. In both cases, Clean Air Group vs. Sofia Municipality⁴¹ and Association for European Integration and Human Rights Foundation vs. Plovdiv Municipality⁴² the applicants decided not to claim compensation at all, but only to request measures to stop the pollution.

Bulgarian law does not provide for claims in the general interest (*actio popularis*). The Bulgarian legal system follows an interest-based model. The rules that only persons having a legal interest may bring claims before the court are general rules and apply to all areas of law, with no specific exceptions provided for environmental matters. Usually, the legal interest principle is interpreted strictly rather than broadly, which narrows the range of persons entitled to file a claim.⁴³ As illustrated by the unsuccessful appeal against the construction permit granted for the building of the South Stream pipeline, the range of persons considered by courts to have a legal interest is often extremely narrow

³⁶ Bulgaria, Liability of the State and Municipalities for Damages Act (*Закон за отговорността на държавата и общините за вреди*), 5 August 1988, last amended 29 November 2019.

³⁷ Consultations with lawyer with experience in high-profile environmental collective claims.

³⁸ Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Decision No 429 on administrative case No 1789/2015 (*Решение № 429 по административно дело № 1789/2015*), 14 January 2016.

³⁹ Gospodinov, D. (2018), The right to clean air – community and national dimensions. Options for judicial protection in Bulgaria (*Правото на чист въздух – общностно и национално измерение. Възможности за съдебна защита в България*), 1 May 2018.

⁴⁰ Consultation with lawyer with experience in high-profile environmental collective claims.

⁴¹ Bulgaria, Sofia City Court (*Софийски градски съд*), Decision No 266455 on civil case No 6614/2017 (*Решение № 266455 по гражданско дело № 6614/2017*), ECLI:BG:DC:110:2021:20170106614.001, 8 November 2021.

⁴² Bulgaria, Supreme Court of Cassation (*Върховен касационен съд*), Decision No 60155/2021 on cassation case No 2584/2017 (*Решение № 60155 по касационно дело № 2584/2017*), 22 July 2021.

⁴³ Gospodinov, D. (2018), The right to clean air – community and national dimensions. Options for judicial protection in Bulgaria (*Правото на чист въздух – общностно и национално измерение. Възможности за съдебна защита в България*), 1 May 2018.

(in this case, the contracting authority, the construction company and the owners of the properties on which the construction is taking place).⁴⁴

(Representative of the Ministry of Environment and Water): “Environmental legislation does not envisage any special procedural rules for environmental cases different from the general ones, which also applies to the burden of proof and the requirement to prove a legal interest.”

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;*

The main gap regarding the link between consumer protection rights and the protection of the environment is the lack of explicit legal provisions providing for such a link. The law does not explicitly provide the consumers with environment-related rights and in case they want to use some of the available remedies to enforce the sustainable behaviour of the business, they should search for complicated legal justification, which is often unsuccessful.⁴⁵ Therefore the elements of the right of consumers to request and receive information should be improved to explicitly include more environment-related information.

In consumer legislation, there is a lack of legally binding requirements for traders to provide information regarding their environmental impact. There is also a gap concerning the greenwashing commercial practices of the traders. Keeping in mind that greenwashing is an increasingly common practice, consumers would benefit from an explicit legal prohibition of such practices and/or a less complicated civil procedure for its establishment and for claiming compensation for damages (for example by reversing the burden of proof).

In the current environmental legislation, there are no rules regulating the collective claims (of consumers or other interested parties) concerning the environment.

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

The main law related to the application of the Aarhus Convention regarding access to information on environmental matters is the Environmental Protection Act (*Закон за опазване на околната среда*).⁴⁶ It provides the legal framework regarding access to public information specifically on environmental matters. The other relevant law is the Access to Public Information Act (*Закон за достъп до обществена информация*).⁴⁷ It provides the general legal rules on access to public information and applies only when there is no special provision in the Environmental Protection Act.

⁴⁴ Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Ruling No 13216 on administrative case No 13777/2014 (*Решение № 13216 по административно дело № 13777/2014*), 11 May 2014.

⁴⁵ Consultation with a representative of the Commission for Consumer Protection.

⁴⁶ Bulgaria, Environmental Protection Act (*Закон за опазване на околната среда*) 25 September 2002, last amended 7 June 2022.

⁴⁷ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2002, last amended 26 February 2019.

The Environmental Protection Act fully transposes the definition of “information on environmental matters” envisaged in the Convention and states that “every person has the right to access information on environmental matters without the need to justify their interest”.⁴⁸ The right to request information is limited to public authorities and it is not possible to request information directly from business entities. However, the information requested from public authorities can concern third parties broadly defined as ‘any natural or legal person providing public services relating to the environment and carrying out this activity under the control of the authorities which collect and process environmental information’. In such cases, the public authority must request the information from the third party and provide it to the person that have requested it.

Information related to environmental matters should be provided within 14 days of the date on which the applicant was informed of the competent authority’s decision to grant access to the information requested.⁴⁹ According to the general rules on access to public information, the information can be provided in various forms: review of the information by the applicant, provision of hard copy, electronic provision and oral response.⁵⁰

Access to public information on environmental matters can be denied under certain specific conditions explicitly listed in the law, for example when the information is classified as state or official secret or when the information is subject to intellectual property rights.⁵¹ One of the grounds for not providing environmental information is when the information is a trade secret. This particular ground is sometimes criticised for being too broad and thus allowing businesses to deny access to information based on their own subjective evaluation of what constitutes a trade secret.⁵²

The decisions to grant or deny access to information are subject to judicial review. They can be appealed before the administrative court and the fee of BGN 10 (approximately €5) makes the procedure affordable for citizens. It is important to note that, since 2019, as a result of an amendment to the Access to Public Information Act, the administrative courts’ decisions are not subject to further judicial review (cassation appeal). According to the official Bulgarian report on the implementation of the Aarhus Convention compiled by the Ministry of Environment and Water (MEW) (*Министерство на околната среда и водите*, МОСВ) the change was done to accelerate the procedure for providing environmental information.⁵³ However, the environmental CSOs disagree with such a justification and

⁴⁸ Bulgaria, Environmental Protection Act ([Закон за опазване на околната среда](#)), 25 September 2002, last amended 7 June 2022, Art. 17.

⁴⁹ Bulgaria, Access to Public Information Act ([Закон за достъп до обществена информация](#)), 7 July 2002, last amended 26 February 2019, Art. 20, Par. (2).

⁵⁰ Bulgaria, Access to Public Information Act ([Закон за достъп до обществена информация](#)), 7 July 2002, last amended 26 February 2019, Art. 26.

⁵¹ Bulgaria, Environmental Protection Act ([Закон за опазване на околната среда](#)), 25 September 2002, last amended 7 June 2022, Art. 20.

⁵² Consultation with a representative of the senior management of the Bulgarian branch of an international environmental organisations.

⁵³ Ministry of Environment and Water (*Министерство на околната среда и водите*) (2020), Aarhus Convention implementation report in accordance with Decision IV/4 (ECE/MP.PP/2011/2/Add.1), 2 December 2020. The final version of the report is not available online and was obtained by request. For a draft version of the report, see the [website](#) of the Ministry of Environment and Water.

claim that the new rule violates the right of access to justice on environmental matters.⁵⁴ The amendment was included in a communication to the Aarhus Convention Compliance Committee of the United Nations submitted in October 2018 by the environmental organisation For the Earth (*За земята*). In January 2019, the Committee assessed the complaint as admissible and the case is currently pending further investigation.⁵⁵

(Representative of the senior management of the Bulgarian branch of an international environmental organisation): “We are trying to raise awareness. We really think that such a provision violates the right to access to justice and a very good example of this is the fact that very often people from small cities, where it is common to have different influences from certain people (which are often well known to the citizens), can suffer that their second and last instance is the local district court. The fact that people know that their case will not have access to cassation at the Supreme Administrative Court might even have a “freezing effect” for them and prevent them from filing a request for access to public information.”

(Representative of the Ministry of Environment and Water): “Yes, I am aware of the wishes of NGOs and the reasons behind them. However, I am part of the public administration. A change of law is a political decision and it does not depend on me. Whether I think it was a good decision? I cannot say with certainty. However, I can share that for sure this decision made the whole procedure, from requesting access to public information to receiving it, much faster.”

According to the law, there is a wide range of public and private bodies obliged to provide access to public information related to the environment, including individuals and legal entities providing environment-related public services under the control of the public authorities listed in the same law.⁵⁶

The Executive Environment Agency (EEA) (*Изпълнителна агенция по околна среда*, ИАОС) provides access to public information through its website. The information includes reports, monitoring results, licences, registers, etc.⁵⁷ The EEA manages the National Environmental Monitoring System, which provides updated information on the status of environmental components and the factors affecting them. The monitoring performed by the EEA includes monitoring of the air, water, land and soils, forests and protected areas, biodiversity, noise and non-ionizing and ionizing radiation. The EEA publishes an annual report on the protection of the environment, which includes, among other things, recommendations for addressing the problems identified during the preceding year.⁵⁸ As an administrative authority with environmental competencies the EEA is responsible for issuing permits for certain activities that could affect the environment.⁵⁹ Environmental organisations can submit

⁵⁴ Consultation with a representative of the senior management of the Bulgarian branch of an international environmental organisations.

⁵⁵ Aarhus Convention Compliance Committee (2018), [Case ACCC/C/2018/161 Bulgaria](#).

⁵⁶ Bulgaria, Environmental Protection Act ([Закон за опазване на околната среда](#)), 25 September 2002, last amended 7 June 2022, Art. 21.

⁵⁷ For more information, see the [website](#) of the Executive Environment Agency.

⁵⁸ For example, see Executive Environment Agency (2022), National report on the state and protection of the environment in the Republic of Bulgaria ([Национален доклад за състоянието и опазването на околната среда в Република България](#)), 15 June 2022.

⁵⁹ For more information about the issued permits, see the [website](#) of the Executive Environment Agency.

proposals and opinions to the EEA but they are not binding and the Agency is not obliged to undertake any measures in response to them.⁶⁰

The Ministry of Environment and Water (MEW) (*Министерство на околната среда и водите, МОСВ*) has introduced a one-stop shop for providing access to public information. All requests for access to information are submitted in one place and then forwarded to the relevant administrative authority. The head of each administrative structure is required to compile annual reports with information about the number of received applications, the number of refusals and the grounds for the refusals.⁶¹

In practice, the detailed rules and procedures for requesting, reviewing and granting access to public information are laid down in internal rules of different public authorities.⁶²

A common problem related to the provision of public information concerns the cases, in which the public authorities do not have the requested information and need to collect it from third parties, e.g., their contractors. In many such cases, public officials are not precise in their requests for information and, as a result, the third parties (individuals or legal entities) provide unnecessary or inaccurate information.⁶³

The provision of access to information on environmental matters is also affected by the general problems of the access to public information procedure. In this regard, in 2020, the National Association of the Secretaries of Municipalities in the Republic of Bulgaria (NASMRB) (*Национална асоциация на секретарите на общини в Република България, НАСДРБ*) published a statement summarising the main challenges faced by municipalities in relation to the processing of public information requests.⁶⁴ According to the statement, there was a significant increase in the number of requests for access to public information submitted to municipalities. Some of the problems mentioned in the statement include unprecise requests (that could be overcome by introducing a mandatory requirement for applicants to specifically indicate the type of information requested, e.g., a document, an administrative act, etc.), requests for information about historical data covering long periods of time, insufficient human and financial resources, etc. The statement also criticises the abolition of the cassation appeal in access to public information cases noting that “this will lead to a diverse case law of administrative courts on the application of the Access to Public Information Act and, respectively, to different application of the law in the respective regions of these courts.”

Although there is no publicly available statistical data on the number of applications for access to information on environmental matters and their outcome, there are a number of court cases that

⁶⁰ Consultation with a representative of the senior management of the Bulgarian branch of an international environmental organisations.

⁶¹ Bulgaria, Access to Public Information Act ([Закон за достъп до обществена информация](#)), 7 July 2002, last amended 26 February 2019, Art. 15, Par. (2).

⁶² See for example the rules and procedures for access to public information of the Ministry of Environment and Water published on the [website](#) of the ministry.

⁶³ Consultation with a representative of the senior management of the Bulgarian branch of an international environmental organisations.

⁶⁴ Bulgaria, National Association of the Secretaries of Municipalities in the Republic of Bulgaria (*Национална асоциация на секретарите на общини в Република България*) (2020), Application of the Access to Public Information Act ([Приложение на Закона за достъп до обществена информация](#)), 7 July 2020.

have gained media publicity and reveal some problematic areas in the application of the Aarhus Convention.

- *Rosen Bosev against the Executive Environment Agency*. In August 2019, Rosen Bosev, a journalist, requested information from the Executive Environment Agency (EEA) (*Изпълнителна агенция по околна среда, ИАОС*) about waste imports by private businesses. Specifically, he requested a list of businesses that have imported waste products to Bulgaria, their country of origin and the type of waste imported, in relation to EU environmental regulations. The Executive Environment Agency rejected the request on the grounds that the requested information was classified according to the provisions of the Waste Management Act (*Закон за управление на отпадъците*) related to waste import permissions.⁶⁵ The agency's decision was appealed and revoked by the court on the grounds that the requested information matched the definition of public information concerning environmental matters. The court noted that waste imports could have a crucial environmental impact in the sense of Article 5 of the Environmental Protection Act and as such should be considered as a piece of information falling within the scope of the definition of public information. The court revoked the decision for denying access to information and sent the case back to the Executive Environment Agency with instructions to provide access to the requested information.⁶⁶
- *World Wildlife Fund Bulgaria against Pirin National Park Directorate*. In 2015, the Bulgarian branch of World Wildlife Fund (WWF) requested information regarding the management of Pirin National Park, specifically related to the contracts signed with third parties for developing a management plan. The director of Pirin National Park rejected the request on the grounds of a lack of consent from a third party – the contractor Proles Engineering Ltd (*Пролес инженеринг ООД*). The court revoked the rejection and ordered the director of Pirin National Park to grant access to the requested information. The court noted that the refusal of the contractor to consent was unfounded, as their interests were not affected, and that there was prevailing public interest, which was not properly considered by the administrative authority. The court's decision was not appealed and came into force. In May 2016, the director of Pirin National Park provided the requested information. The case was exemplary for how the court solved the conflict between the interest of a third party (not to reveal information that can potentially be harmful to their image) and the public interest.⁶⁷
- *For the Earth and Greenpeace Bulgaria against the Ministry of Environment and Water*. The environmental organisations For the Earth (*За земята*) and Greenpeace Bulgaria requested the official communication between the Ministry of Environment and Water (MEW) (*Министерство на околната среда и водите, МОСВ*) and the Bobov Dol thermo-electric power plant. The ministry forwarded the request to the thermo-electric power plant, which refused to provide the information on the grounds that part of it was a trade secret. The application for access to public

⁶⁵ Bulgaria, Waste Management Act ([Закон за управление на отпадъците](#)), 13 July 2012, last amended 5 March 2021, Art. 48, Par. (7).

⁶⁶ Bulgaria, Sofia City Administrative Court (*Административен съд – София-град*), Decision No 138 on administrative case No 18892/2019 ([Решение № 138 по административно дело № 10892/2019](#)), 8 January 2020.

⁶⁷ Bulgaria, Administrative court Blagoevgrad (*Административен съд – Благоевград*), Decision No 639 on administrative case No 8/2016 ([Решение № 639 по административно дело № 8/2016](#)), 6 April 2016.

information was thus rejected and the two organisations appeal the rejection before the court. The Supreme Administrative Court (SAC) (*Върховен административен съд*, ВАС) ordered the ministry to grant access to the requested information noting that the official communication between the Ministry of Environment and Water and the thermo-electric power plant constituted information with regard to environmental matters, and as such the public should have access to it. This case gained public attention and after the requested documents were released, it became evident that the amount of waste burned at the power plant was dangerously large and hazardous for the environment and public health.⁶⁸

- *For the Earth against the Ministry of Environment and Water.* The environmental association For the Earth (*За земята*) requested the Ministry of Environment and Water (MEW) (*Министерство на околната среда и водите*, МОСВ) to provide a copy of a report on the reduction of emissions of harmful substances from large combustion plants, related to a warning of the European Commission to Bulgaria for non-compliance with the ceilings on emissions of sulphur, nitrogen oxide and fine particulate matter. The minister refused to grant access on the grounds that the requested report was of a preparatory nature and had no independent significance, which is one of the grounds for refusal under the general access to public information legislation. A three-member panel of the Supreme Administrative Court (SAC) (*Върховен административен съд*, ВАС) upheld the minister's decision.⁶⁹ The decision of the three-member panel was appealed before a five-member panel of the Supreme Administrative Court, which revoked both the decision of the first instance and the rejection of the minister. The court held that the requested information constituted environmental information within the meaning of both the Aarhus Convention and the Environmental Protection Act. The requested information was related to emissions and other harmful effects on the environment and was later used to bring a claim against the Municipality of Sofia. According to the court, the provision of the general access to public information law, which allowed access to preparatory documents to be denied, did not apply to information concerning environmental matters and in particular concerning emissions of harmful substances.⁷⁰

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, including related to the environment?*

The national legal framework envisages the possibility of bringing collective and representative claims both within and beyond the scope of consumer matters. The Consumer Protection Act (*Закон за защита на потребителите*), which is the main piece of legislation governing consumer rights and

⁶⁸ Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Decision No 11951 on administrative case No 7396/2014 ([Решение № 11951 по административно дело № 7396/2014](#)), 9 October 2014.

⁶⁹ Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Decision No 3421 on administrative case No 14648/2013 ([Решение № 3421 по административно дело № 14648/2013](#)), 11 March 2014.

⁷⁰ Bulgaria, Supreme Administrative Court (*Върховен административен съд*), Decision No 11951 on administrative case No 7396/2014 ([Решение № 11951 по административно дело № 7396/2014](#)), 9 October 2014.

remedies for their protection, provides for the possibility of bringing collective claims.⁷¹ Such claims seek to enjoin or prohibit acts or commercial practices that are in breach of the collective interests of the consumers. The law lays down two cumulative prerequisites for there to be a violation of the collective interest of the consumers.⁷² The first one is that the committed act must harm the collective interest of the consumers. There is no legal definition of “collective interest of the consumers”, which means that matters related to the environment are not explicitly excluded. The second prerequisite is that the act or omission, in which the infringement consists, should contravene one of the legal provisions exhaustively listed in the law. This list of provisions includes both general consumer protection rules from the Consumer Protection Act and rules from other laws. None of them, however, is specifically related to the environment.

Although matters related to the environment (including “greenwashing”) are not explicitly listed as possible grounds for seeking collective redress under the provisions of the Consumer Protection Act, some of these provisions could be used for such purpose. Such provisions are, for example, the provisions prohibiting the implementation of unfair commercial practices. According to the Consumer Protection Act, unfair commercial practices are prohibited⁷³ and can be a reason for bringing collective claim.⁷⁴ According to the same law, an unfair commercial practice can also be a misleading one. The law states that “a commercial practice is misleading where it contains false information and is therefore deceptive or where it misleads or is likely to mislead the average consumer in any way, including through its overall presentation, even if the presented information is factually accurate [...] and results or is likely to result in the making of a commercial decision which the consumer would not have made without the use of the commercial practice.”⁷⁵

In this regard, it is possible for the citizens to seek collective consumer protection in cases where the trader’s advertising strategy is (aimed at) misleading the consumer. The Competition Protection Act (*Закон за защита на конкуренцията*)⁷⁶ prohibits misleading and unauthorised comparative advertising and gives a legal definition of “misleading advertising”. Misleading advertising is any advertising that in any way, including the matter of its presentation, deceives or is likely to deceive the persons to whom it is addressed or communicated and is therefore likely to influence their economic behaviour or, for those reasons, harms or is likely to harm a competitor.⁷⁷ The assessment of whether an advertisement is misleading is based on its effect – whether it has influenced the economic behaviour of its addressees or whether it has caused damage to a competitor. The two effects are alternatively stated, which means that for the purpose of collective redress it is sufficient for the applicant to focus only on the first effect, namely the effect on the economic behaviour of the

⁷¹ Bulgaria, Consumer Protection Act (*Закон за защита на потребителите*), 9 December 2005, last amended 11 March 2022.

⁷² Bulgaria, Consumer Protection Act (*Закон за защита на потребителите*), 9 December 2005, last amended 11 March 2022, Art. 186, Par. (2).

⁷³ Bulgaria, Consumer Protection Act (*Закон за защита на потребителите*), 9 December 2005, last amended 11 March 2022, Art. 68c

⁷⁴ Bulgaria, Consumer Protection Act (*Закон за защита на потребителите*), 9 December 2005, last amended 11 March 2022, Art. 186.

⁷⁵ Bulgaria, Consumer Protection Act (*Закон за защита на потребителите*), 9 December 2005, last amended 11 March 2022, Art. 68e, Par. (1).

⁷⁶ Bulgaria, Competition Protection Act (*Закон за защита на конкуренцията*), 28 November 2008, last amended 26 February 2021.

⁷⁷ Bulgaria, Competition Protection Act (*Закон за защита на конкуренцията*), 28 November 2008, last amended 26 February 2021, Art. 33.

addressees. The Competition Protection Act does not define “economic behaviour”. Such a definition can be extracted from the Consumer Protection Act, which defines the “substantial modification of the economic behaviour of consumers” as “the use of a commercial practice which significantly impairs the consumer's ability to make an informed decision, resulting in a commercial decision which the consumer would not have made without the use of that commercial practice”.⁷⁸ Therefore misleading advertising falls within the scope of unfair commercial practices and if it harms or might harm the collective interests of consumers it can be the subject of a collective/representative claim.

Although it is theoretically possible to seek a remedy for environment-related matters through the provisions of unfair commercial practices, it should be noted that there are no legal provisions specifically defining “greenwashing” or any other environment-related practices as unfair commercial practices. There are also no court cases confirming that these rules can be effectively used to file collective/representative claims in relation to environmental matters. As confirmed by the consulted stakeholders, in practice, collective claims under the Consumer Protection Act (*Закон за защита на потребителите*) are filed only for unfair clauses in contracts with consumers, mainly in contracts for loans, insurance services and telecommunications services.⁷⁹

Claims which do not fall within the scope of the special rules on collective consumer protection can be filed through the general procedure for filing collective claims, laid down in the Civil Procedure Code (*Граждански процесуален кодекс*).⁸⁰ The Civil Procedure Code envisages two categories of collective claims: claims for establishing the harmful act or omission, its unlawfulness and the guilt, and claims for discontinuing the violation, remedying its consequences on the harmed collective interest and/or compensating the damages caused to that interest.⁸¹ Representative claims under the Consumer Protection Act can seek only discontinuation or prohibition of a harmful practice and/or compensation for damages.

The subject matter of collective claims under the Civil Procedure Code is broadly defined as the protection of a collective interest against damage or threat of damage. The law does not define the term “collective interest”, but only states that a collective claim may be brought on behalf of persons injured by an infringement where, according to the nature of the infringement, their circle cannot be determined precisely but is identifiable.⁸² Thus, instead of determining the nature of the protected collective interest, the law is rather based on the capacity of the violation to affect an indefinite number of persons. Similar to other laws, the Civil Procedure Code also provides no possibility for claims in “general interest”.

Unlike the option under the Consumer Protection Act (*Закон за защита на потребителите*), which is not used to file complaints related to the environment, collective complaints under the Civil Procedure Code (*Граждански процесуален кодекс*) are filed, albeit rarely, on environmental matters.

⁷⁸ Bulgaria, Consumer Protection Act (*Закон за защита на потребителите*), 9 December 2005, last amended 11 March 2022, transitional and final provisions, § 15, p. 25.

⁷⁹ Consultations with lawyer with experience in high-profile environmental collective claims.

⁸⁰ Bulgaria, Civil Procedure Code (*Граждански процесуален кодекс*), 20 July 2007, last amended 5 August 2022.

⁸¹ Bulgaria, Civil Procedure Code (*Граждански процесуален кодекс*), 20 July 2007, last amended 5 August 2022, Art. 379, Par. (3).

⁸² Bulgaria, Civil Procedure Code (*Граждански процесуален кодекс*), 20 July 2007, last amended 5 August 2022, Art. 379, Par. (1).

(Lawyer with experience in high-profile environmental collective claims): “In Bulgaria, to my knowledge, there are only two successful big cases based on collective claims regarding the environment and one of them is ours.”

The most exemplary case based on a collective claim on environmental matters is the case of Clean Air Group vs. Sofia Municipality. In May 2017, a group of citizens and NGOs united under the name Clean Air Group (*Група за чист въздух*) filed a collective claim against Sofia Municipality (*Столична община*) as the main contributor to air pollution in Sofia. According to the Clean Air Group, Sofia Municipality, through its actions and omissions, has allowed excessive emission of fine particulate matter (PM 2.5 and 10), which has put people’s health at risk. On 9 November 2021, the court came up with a decision which ordered Sofia municipality to undertake a series of measures to improve the quality of air including, among others, introducing incentives to use alternative non-polluting heating methods, conducting an assessment of the measures taken so far in the transport sector, conducting analysis of the opportunities to construct condominium parking in residential and commercial areas and increase available buffer parking (to reduce parking in dirt areas), building a comprehensive interconnected bicycle network to allow easy and safe travel between neighbourhoods, conducting analysis of the opportunities to build parks and/or green walls in areas with excess pollution, etc.⁸³ The decision is not final, because it was appealed and the proceedings before the court of second instance are still pending.

The fees for filing collective claims are a well-known obstacle for citizens to participate in such procedures.⁸⁴ The fee in civil proceedings in Bulgaria is 4 % of the value of the claim. Since in cases of environmental issues applicants are very likely to claim damages of a large value and the value of the collective claim is calculated as the total of all claims, the applicants can often be unable to afford the costs of a court procedure.

According to some of the consulted stakeholders,⁸⁵ another obstacle for citizens wishing to participate in collective proceedings is the fact that it is hard to seek compensation for individual damages from legal entities through collective claims.

(Lawyer with experience in high-profile environmental collective claims): “The procedural legal framework for collective claims does not allow claiming compensation for personal harm (injury) and cannot be used for such purposes. It can be used only for claiming compensation for the damaged collective interest. Compensation must be awarded jointly to the injured parties and must serve to remedy the effects of the infringement or to create conditions for such infringement not to be committed again. In Bulgaria, there is no class action for damages for personal injuries, in which the awarded compensation is subsequently distributed among the injured parties. That is why in our case we did not make any claims for individual damages. Usually, in cases like ours, the court orders reparation for damages caused to the collective. In

⁸³ Bulgaria, Sofia City Court (*Софийски градски съд*), Decision No 266455 on civil case No 6614/2017 ([Решение № 266455 по гражданско дело № 6614/2017](#)), ECLI:BG:DC:110:2021:20170106614.001, 8 November 2021.

⁸⁴ Consultations with a representative of the senior management of the Bulgarian branch of an international environmental organisations.

⁸⁵ Consultation with lawyer with experience in high-profile environmental collective claims

our case, it ordered purchases of respiratory masks, construction of a bicycle lane across the city, etc.”

An illustrative case of the impossibility of seeking compensation for individual damages through a collective claim is the case of a group of individuals against Sofia Municipality concerning the excessive noise caused by a tram track in the centre of Sofia. In this case, which was filed in 2017, the applicants claimed the removal or, if this was not possible, the relocation of the tram track and compensation for the damages suffered from the noise. In its decision, delivered in August 2022, the court accepted the applicants’ arguments and ordered the relocation of the tram track within one year. At the same time, the court dismissed the compensation claims noting that these claims were for individual damages rather than for collective harm and as such should be filed separately according to the general rules for individual claims.⁸⁶

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

In litigations under the Consumer Protection Act (*Закон за защита на потребителите*), the consumers may be represented by consumer protection associations, the Commission for Consumer Protection (CCP) (*Комисия за защита на потребителите*, КЗП), which is the national supervisory authority on consumer rights, or a qualified organisation of an EU Member State on the territory of which the consequences of the infringement of the collective interest of consumers have occurred.⁸⁷ According to the law, a “qualified organisation” means any organisation established in accordance with the requirements of the national law of a Member State of the European Union for the protection of the collective interests of consumers which has a legal interest in bringing an action for the injunction or prohibition of acts or commercial practices contrary to the collective interests of consumers.⁸⁸ There is no requirement for such organisations to be active for a certain period of time (unless such a requirement exists in the Member State where the organisation is established), but the court is authorised to assess, on a case-by-case basis, whether the scope of activities of the particular organisation makes it eligible to file the particular claim. The Commission for Consumer Protection usually chooses what claims to pursue based on an analysis of the complaints lodged before the Commission by consumers during the previous year. Thus, if the consumers do not file enough claims on environment-related matters, it is unlikely that the Commission will proactively file claims for such violations.⁸⁹

In litigations under the Civil Procedure Code (*Граждански процесуален кодекс*) the persons affected by the violation can be represented by “an organisation for the protection of injured persons or of the injured collective interest, or for the protection against such violations”.⁹⁰

⁸⁶ Bulgaria, Sofia City Court (*Софийски градски съд*), Decision No 262691 on civil case No 8867/2017 ([Решение № 262691 по гражданско дело № 8867/2017](#)), ECLI:BG:DC:110:2022:20170108867.001, 15 August 2022.

⁸⁷ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Art. 165, Par. (3), p. 3, Art. 186 par. (1), and Art. 186a.

⁸⁸ Bulgaria, Consumer Protection Act ([Закон за защита на потребителите](#)), 9 December 2005, last amended 11 March 2022, Transitional and Concluding Provisions, § 13, p. 22.

⁸⁹ Consultation with a representative of the Commission for Consumer Protection.

⁹⁰ Bulgaria, Civil Procedure Code ([Граждански процесуален кодекс](#)), 20 July 2007, last amended 5 August 2022, Art. 379.

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?*

In June 2022, the Ministry of Economy and Industry (MEI) (*Министерство на икономиката и индустрията*, МИЕ) officially announced that it has developed a Draft Representative Claims Act (*Законопроект за представителните иски*).⁹¹ According to the government's action plan for 2022 for implementing measures resulting from Bulgaria's EU membership, the development of the draft is a measure for transposing Directive 2020/1828.⁹²

(Representative of the Commission for Consumer Protection): *"I was there in the Ministry a few days ago when we discussed the Draft Representative Claims Act and I can tell there are uncertainties around some provisions and that is why it is not published yet. Another reason for its delay is the fact that in the beginning, it was not clear which ministry should be responsible for the act – the Ministry of Economy or the Ministry of Justice – since some changes to the Civil Procedure Code might be needed as well."*

Due to the unstable political situation in Bulgaria after the dissolution of parliament in August 2022, both the Draft Representative Claims Act and the expected amendments to the Consumer Protection Act (*Закон за защита на потребителите*) for transposing Directive 2019/2161 were put on hold. Nevertheless, on 1 November 2022, the government submitted to the newly elected parliament the Draft Representative Claims for the Protection of Consumers' Collective Interests Act (*Законопроект за представителните иски за защита на колективните интереси на потребителите*).⁹³ The main purpose of the proposed act, as defined in its explanatory report, is to transpose properly Directive 2020/1828. The discussions on the draft have not yet begun.⁹⁴

4. Due diligence and reporting obligation

This section should address the following:

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?*

In Bulgaria, there are no national due diligence laws. There are individual due diligence provisions, which apply only in specific cases. For example, the Commercial Act (*Търговски закон*) provides for a due diligence procedure in connection with reorganisations of commercial companies (mergers, acquisitions, divisions, etc.).⁹⁵ Most of the legal provisions governing this procedure are binding and

⁹¹ Bulgaria, Ministry of Economy and Industry (*Министерство на икономиката и индустрията*) (2022), 'Deputy Prime Minister Ninova: Collective claims for compensations will be free for consumers' (*Вицепремиерът Нинова: Колективните иски за обезщетения ще са безплатни за потребителите*), press release, 27 June 2022.

⁹² Bulgaria, Council of Ministers (*Министерски съвет*) (2022), Action Plan for 2022 with measures resulting from the Republic of Bulgaria's EU membership (*План за действие за 2022 г. с мерките, произтичащи от членството на Република България в Европейския съюз*), 20 January 2022.

⁹³ Bulgaria, National Assembly (*Народно събрание*), Draft Representative Claims for the Protection of Consumers' Collective Interests Act (*Законопроект за представителните иски за защита на колективните интереси на потребителите*), 1 November 2022.

⁹⁴ For regularly updated information on the progress of the bill, see the [website](#) of the parliament.

⁹⁵ Bulgaria, Commercial Act (*Търговски закон*), 18 June 1991, last amended 29 March 2022, Art. 262л and Art. 262м.

require mandatory provision of documents and performance of audits before the reorganisation contract is concluded. However, the law does not require any of these documents to contain information related to environmental protection and even if the parties agree on the presentation of such documents they are usually disclosed only to the partners and/or shareholders of the involved companies.⁹⁶

2) *Can you identify examples of application of provisions regarding non-financial reporting to enforce consumer rights in your country, such as 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 general reporting obligations of companies are regulated in the Accounting Act (*Закон за счетоводството*).⁹⁷ The law regulates two main types of reporting obligations which cover non-financial information, including the one that concerns the environmental compliance and impact of the reporting entity. Both obligations are a consequence of the transposition of Directive 2014/95/EU.

The first reporting obligation is regulated as part of the annual report on the activities of companies. The law requires such reports to provide information on key non-financial performance indicators relevant to the company's commercial activities, including issues related to the protection of the environment.⁹⁸ The preparation of annual activity reports is mandatory for all commercial companies.

The second reporting obligation concerning non-financial information requires all commercial companies to present a non-financial statement, which must include, *inter alia*, information to the extent necessary for understanding the company's development, performance, position and impact of its activity relating to environmental matters.⁹⁹ In line with the provisions of Directive 2014/95/EU, the obligation for presenting a non-financial statement applies only to large companies which are public-interest entities exceeding the criterion of the average number of 500 employees.¹⁰⁰

No cases were identified, in which the provisions regarding non-financial reporting were used to enforce consumer rights in respect of Directive 2014/95/EU.

One atypical option that can potentially be used for enforcing environmental rights is the procedure for filing claims against unjustified actions or inactions on the part of public authorities. The procedure is laid down in the Administrative Procedure Code (*Административнопроцесуален кодекс*) and entitles individuals to file claims to the court requesting the termination of actions of public authorities or public officials that are not based on an administrative act or the law, or the performance of actions that the public authorities or public officials are obliged to perform.¹⁰¹ Notwithstanding that this

⁹⁶ Bulgaria, Commercial Act (*Търговски закон*), 18 June 1991, last amended 29 March 2022, Art. 262h.

⁹⁷ Bulgaria, Accounting Act (*Закон за счетоводството*), 8 December 2015, last amended 5 March 2021.

⁹⁸ Bulgaria, Accounting Act (*Закон за счетоводството*), 8 December 2015, last amended 5 March 2021, Art. 39, Par. (2).

⁹⁹ Bulgaria, Accounting Act (*Закон за счетоводството*), 8 December 2015, last amended 5 March 2021, Art. 48.

¹⁰⁰ Bulgaria, Accounting Act (*Закон за счетоводството*), 8 December 2015, last amended 5 March 2021, Art. 41.

¹⁰¹ Bulgaria, Administrative Procedure Code (*Административнопроцесуален кодекс*), 30 April 2006, last amended 19 February 2021, Chapter XV.

mechanism could in theory be used for filing claims on environmental matters, this is not done in practice. Moreover, according to some legal practitioners, such claims would hardly be successful due to the legal interest principle, which narrows down the range of eligible applicants only to persons who can prove they have a personal interest in the termination or performance of the respective action.¹⁰²

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*

In Bulgaria, there is a lack of clearly defined remedy in the legislation that allows consumers to influence the sustainable behaviour of the business. One possible way to fill this gap is to provide the citizens with more consumer rights, in particular the right to information about the environmental impact of certain goods and services. Consumers would thus be able to make sustainable choices and traders would be predisposed to behave more sustainably.

The lack of publicly available documents concerning the transposition of Directive 2020/1828 is an obstacle to a more detailed and critical analysis of the upcoming legislation in the field of representative claims of consumers. Nevertheless, the drafting of the new legal provisions was considerably delayed and Bulgaria will most likely fail to transpose Directive 2020/1828 within the envisaged deadline of 25 December 2022.

- *Overarching observations and assessments*

There are no legal provisions explicitly linking consumer rights and environmental protection. The lack of court cases, in which the legal provisions on consumer rights are used to address environmental matters further prevents the analysis of such a link.

The review of the activities of the main Bulgarian consumer organisations and the consultations conducted showed that exercising supervision over and/or encouraging the sustainable behaviour of the business is not a priority on the agenda of national consumer organisations.

- *Best promising practices*

One promising practice identified in the course of the research is the practice of some companies, whose business activity includes packaging small goods for daily use, of placing QR codes that allow

¹⁰² Gospodinov, D. (2018), The right to clean air – community and national dimensions. Options for judicial protection in Bulgaria ([Правото на чист въздух – общностно и национално измерение. Възможности за съдебна защита в България](#)), 1 May 2018.

the consumer to receive more detailed information regarding the product's environmental impact (such as how much water or energy is used in its entire life cycle). Such QR codes are placed on small packages which do not have enough space for a lot of additional information. The information accessible through the QR codes is provided by the companies themselves and there are no specific rules or procedures for its verification.¹⁰³

Another good practice is the practice of auditing companies to verify the information on environment-related activities presented by the audited businesses, especially when the audited business has publicly advertised certain achievements in the area of environmental protection. The consequence of findings about fake information in such cases is that such findings are reflected in the audit report.¹⁰⁴

A promising practice is also the practice of some companies to educate consumers on environmental language to enable them to make sustainable choices. For example, when words such as “recyclable”, “ecoplastic”, etc., are used the company explains the exact meaning of such words in their business.¹⁰⁵

(Representative of a large food production company): “Sometimes we package products for countries that do not have a good recycling system in place, so our company policy is to raise awareness of the importance of recycling also for countries where recycling is not so well known.”

Some consumer rights associations are trying to educate consumers on how to make sustainable choices. For example, the European Consumer Centre Bulgaria (*Европейски потребителски център България*) created a section on its website dedicated to the different ways of becoming an “eco-consumer”.¹⁰⁶

A promising practice related to advertising is the inclusion of environmental matters in the National Ethical Standards for Advertising and Commercial Communication in Bulgaria (*Национални етични правила за реклама и търговска комуникация в Република България*).¹⁰⁷ The standards were developed in 2009 by the National Council for Self-Regulation (NCSR) (*Национален съвет за саморегулация, НСР*), which is an independent non-governmental body for self-regulation in advertising and commercial communication in Bulgaria. The document provides a special rule on environmental behaviour, which states that marketing communication should not violate the law and the commonly accepted standards of responsible behaviour towards the environment.¹⁰⁸ In 2020, the standards were updated and a new more detailed section on environmental statements in marketing communication was added. It includes definitions of environment-specific terms such as environmental impact, life cycle and waste, and provides rules on honest and truthful presentation,

¹⁰³ Consultation with a representative of a large food production company.

¹⁰⁴ Consultation with a representative of a large food production company.

¹⁰⁵ For example, see the sustainability module on the [website](#) of Nestle Bulgaria.

¹⁰⁶ European Consumer Centre Bulgaria (*Европейски потребителски център България*) How to become an eco-consumer ([Как се става еко потребител](#)), 21 April 2021.

¹⁰⁷ Bulgaria, National Council for Self-Regulation (*Национален съвет за саморегулация*) (2009), [National Ethical Standards for Advertising and Commercial Communication in Bulgaria](#), 25 September 2009, last updated 25 June 2020.

¹⁰⁸ Bulgaria, National Council for Self-Regulation (*Национален съвет за саморегулация*) (2009), [National Ethical Standards for Advertising and Commercial Communication in Bulgaria](#), 25 September 2009, last updated 25 June 2020, Art. 21.

scientific research, superiority and comparative statements, product life cycle, components and elements, signs and symbols, and waste handling. The ethical standards are binding for the members of the National Council for Self-Regulation, which includes, among others, the three biggest advertising and communication associations in Bulgaria.¹⁰⁹ For enforcing compliance with ethical standards, the National Council for Self-Regulation has established an ethics committee, which accepts and handles complaints from individuals and legal entities. The decisions of the ethics committee are binding for the members of the National Council for Self-Regulation. Non-members who have violated the standards are invited to voluntarily discontinue the violation. Since the inclusion of environmental matters in the standards in 2020, however, no complaints on such matters have been submitted to the ethics committee.¹¹⁰

With regard to promising practices implemented by public authorities, few such practices were identified, mostly related to access to information. One such practice is the maintenance of a national catalogue of environmental information sources. The catalogue is maintained by the Executive Environment Agency (EEA) (*Изпълнителна агенция по околна среда, ИАОС*) and contains data on where and what environmental information is stored in Bulgaria, in what format and what is the access to it.¹¹¹

The Ministry of Environment and Water (MEW) (*Министерство на околната среда и водите, МОСВ*) coordinates a network of green lines for reporting cases of environmental pollution. The Ministry also publishes monthly updates on the reports received through the green lines and the measures undertaken in response to these reports.¹¹²

There are also various initiatives of public authorities awarding different labels and certificates for environmentally responsible businesses. One such initiative is the annual competition for receiving an eco-label for sustainable buildings organised by Sofia Municipality. The competition includes three categories: large shopping centres (shopping malls), large retail food chains and universities on the territory of Sofia Municipality. The initiative aims to promote the use of renewable sources, energy efficiency, reduction of greenhouse gas emissions and stimulation of the introduction of environmentally friendly solutions in the construction, renovation and use of buildings. By nominating and rewarding best practices, building owners are incentivised to innovate in the sustainable design of buildings and their surrounding areas, and in the efficient use of resources within them. The eco-labels for sustainable buildings are awarded on the basis of a set of pre-defined criteria divided into three categories: economic, environmental and social. The criteria include, among others, management and monitoring of water consumption, energy efficiency, roof and facade landscaping, air purification systems, recycling, waste management, awareness and training activities for employees, etc. The eco-label is for public prestige only and does not guarantee any additional rights. Compliance with the criteria after the award of the label is not done either.¹¹³

¹⁰⁹ Bulgaria, National Council for Self-Regulation (*Национален съвет за саморегулация*) (2009), [National Ethical Standards for Advertising and Commercial Communication in Bulgaria](#), 25 September 2009, last updated 25 June 2020, Chapter D.

¹¹⁰ For more information about the complaint procedure, see the [website](#) of the National Council for Self-Regulation.

¹¹¹ For more information about the catalogue, see the [website](#) of the Executive Environment Agency.

¹¹² For more information about the green lines and the monthly updates, see the [website](#) of the Ministry of Environment and Water.

¹¹³ For more information about the EU Ecolabel certification and a full list of awarded licenses and products in Bulgaria, see the [website](#) of the Ministry of Environment and Water.

Another authority that applies strict and reliable criteria when providing an eco-label is the Ministry of Environment and Water (MES) (*Министерство на околната среда и водите, МОСВ*), which is responsible for assigning the EU Ecolabel. However, the number of Ecolabel licenses awarded in Bulgaria is one of the lowest in the EU.¹¹⁴

- Suggestions for improvements stemming from the research and opinions of experts

One of the main obstacles restricting access to justice in environmental matters is the legal interest principle, which applies to most categories of claims and narrows down the range of eligible applicants. This obstacle can be overcome by introducing, through a legislative amendment or an interpretative decision of a competent judicial body, a precise yet broad definition of legal interest in environmental cases that would enable persons beyond the narrow circle of those directly related to the case to file claims and seek the protection of their rights.

According to the stakeholders consulted, in regard to the high state fees for filing environmental collective claims, it may be suggested to consider exempting applicants in such cases from paying the fee in advance. This approach has been applied in other areas of law, such as labour law, where the applicants are exempt from paying the fee in advance and only owe it if the court rules in favour of the opposing party.

(Lawyer with experience in high-profile environmental collective claims): “It will be very helpful if there is a special rule for environmental cases, similar to the one in labour law, where the applicant can pay the fee after the case. Because I can tell from my own practice that in environmental cases such fees are often unaffordable for the ordinary citizen. That is why in collective claims the applicants often claim very low damages.”

Some experts suggest that in relation to the consumers’ right to information about a product, it may be recommended to introduce a legal requirement for traders to specifically provide more information about the product’s environmental impact.¹¹⁵

Regarding greenwashing practices, it may be recommended to add greenwashing as a special form of unfair commercial practice related to the environmental impact of a product. In addition to that, there is a need for certain improvements in advertising, specifically related to the environmental impact of a product or a trader.¹¹⁶ More awareness about greenwashing is also needed, including on the part of civil society organisations and especially consumer rights associations, which should educate consumers on what is greenwashing and how it can be noticed.

(Representative of the Commission for Consumer Protection): “I do not know why but the Bulgarian consumer does not seem to care that much about the so-called “greenwashing”. I have not heard of any signals from consumers concerning greenwashing practices and I can

¹¹⁴ For more information about the competition, see the [website](#) of Sofia Municipality.

¹¹⁵ Consultation with a representative of the Commission for Consumer Protection.

¹¹⁶ Consultation with a representative of the Commission for Consumer Protection.

imagine there are many such cases. Probably the reason is that the consumers are not aware of “greenwashing”.

More attention should be paid to advertising on social media, especially hidden advertising, e.g., by influencers. Since this is a relatively new phenomenon, it often remains outside the scope of the application of the general rules on advertising. At the same time, social media advertising increasingly impacts consumers and their choices. The National Ethical Standards for Advertising and Commercial Communication in Bulgaria (*Национални етични правила за реклама и търговска комуникация в Република България*), developed by the National Council for Self-Regulation (NCSR) (*Национален съвет за саморегулация, НСР*), explicitly notes the responsibility to comply with these standards includes also the so-called influencers, bloggers, vloggers, affiliate networks, data analysers and ad technology companies, as well as those responsible for preparing algorithms and the usage of artificial intelligence for marketing communication.¹¹⁷ One possible measure to prevent misleading hidden advertising, already discussed in other European countries, is to introduce an obligation for labelling social media advertising.

Finally, some legislative changes may also lead to improved protection of environmental rights including, among others, transposing Directive 2020/1828 in Bulgarian legislation and reconsidering the abolition of second instance appeal in cases concerning access to public information.

¹¹⁷ Bulgaria, National Council for Self-Regulation (*Национален съвет за саморегулация*) (2009), [National Ethical Standards for Advertising and Commercial Communication in Bulgaria](#), 25 September 2009, last updated 25 June 2020.