

‘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

We have searched internet-databases possibly containing information on consumer protection and environmental laws. These databases are:

- www.ft.dk - The official website of the Danish Parliament, (*Folketinget*), which provides information on bills and parliamentary procedures, including transcripts from the readings in Parliament.
- www.retsinformation.dk – The official database on Danish legislation maintained by the Civil Affairs Agency (*Civilstyrelsen*), an agency of the Danish Ministry of Justice (*Justitsministeriet*), in charge of publishing Danish legislation and providing information on current and former legislation and bills.
- www.karnovgroup.dk – A commercial legal resource website that offers extensive notes and research on most current and former legislation as well as most Danish case law and academic articles.
- www.regeringen.dk – The official website of the Government of Denmark, which provides information on initiatives and action plans adopted by the government and its ministries.
- www.justitsministeriet.dk – The official website of the Danish Ministry of Justice (*Jusitsministeriet*).
- www.ombudsmanden.dk - The Danish Parliamentary Ombudsperson (*Ombudsmanden*)
- www.forbrugerombudsmanden.dk – The Danish Consumer Ombudsperson (*Forbrugerombudsmanden*)
- www.domstol.dk – the official websites of the courts in Denmark
- www.mim.dk – the official website of the Danish Environmental Agency (*Miljøministeriet*)
- www.ecolabel.dk – the website of the Denmark's official eco-labels: the Swan label and the EU flower.

The above-mentioned websites have been searched with the following search keys:

Forbrugerbeskyttelseslove (*consumer protection laws*), Danish Crown, Arla, Greenwashing, Markedsføringsloven (*the Marketing Practices Act*), Miljøretssager (*Environmental lawsuits*), forbrugerrettigheder (*Consumer rights*), Erstatningsansvarsloven (*the Danish liability for Damages Act*), Retsplejeloven (*the Danish Administration of Justice Act*), Retssager om greenwashing (*Lawsuits on greenwashing*), falsk markedsføring (*False advertisement*), Svanemærket (*the Swan label*), EU-Blomsten (*the EU flower*), miljømærkningsordninger (ecolabels), gruppesøgsmål (*class action*), PFOS

forgiftning i Korsør (*PFOS poisoning in Korsør*), den grønne omstilling og forbrugere (*the green transition and consumers*).

Beside searching on the websites mentioned above with these key words, the key words were also applied for www.google.com.

Number of individual consultations

- *Breakdown of consultations:*

We have conducted an interview with two representatives from the Danish Consumer Ombudsman, a CSO working with consumer protection, a legal practitioner as well as a representative from a business that is engaged in issues relating to environmental protection. To respect agreements on anonymity with the persons that we have conducted interviews with, we have removed their personal information from our report. We will refer to their opinions by stating the category or if possible by stating the authority/organisation that they are employed in.

We have conducted four interviews with a total of five persons. Four of our interviewees were female and one were male. Two of the interviews (with the legal practitioner and the Danish Consumer Ombudsman) were conducted face to face. The interview with the representative of a CSO and the representative of a business were conducted via Teams.

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:

- a) What kind of claims (ex. judicial or non-judicial, civil, administrative) can be submitted under existing consumer protection or environmental laws to enforce: access to reliable information regarding a product and its environmental impact;*

There are no legal obligations on Danish companies to disclose information to consumers regarding a product and its environmental impact. However, companies increasingly chose to provide such information voluntarily due to increasing consumer focus on adverse effects on the climate and environment and thus as such information can give a competitive advantage.

A central claim that can be brought against companies under Danish national legislation for the protection of consumers, is the violation of the Danish Marketing Practices Act (*Markedsføringsloven*) for aggressive or misleading marketing¹. This Act applies when companies choose to give information regarding their products. The most central provisions in the Act that can ensure reliable information regarding a product and its environmental impact is section 5, 6 and 13.

Section 5 includes both a prohibition on knowingly providing false information and a prohibition on providing information in a way that gives consumers a false impression. Section 5, subsection 1, reads as follows: "A trader's commercial practice must not contain false information or, by virtue of the way information is presented, or otherwise mislead or be likely to mislead the average consumer, whether or not the information is factually correct.

Section 6, subsection 1, reads as follows: "A trader's commercial practice must not mislead by omitting or concealing substantial information or presenting substantial information in an unclear, incomprehensible, ambiguous or inadequate manner."

¹ Denmark, Consolidated Act no. 866 on the Danish Marketing Practices Act, 15 June 2022 (*lovbekendtgørelse nr. 866 af 15. juni 2022 af markedsføringsloven*), available in Danish here: <https://www.retsinformation.dk/eli/lta/2022/866>.

Section 13 reads as follows: “The trader shall be able to document the accuracy of factual information.

The Danish Consumer Ombudsman can, on its own initiative or on the basis of complaints from consumers, consider cases regarding consumer protection, cf. executive order on the rules for the activities of the Consumer Ombudsman, section 1².

The Danish Consumer Ombudsman oversees mainly from a consumer perspective the compliance with the Danish Marketing Practices Act, cf. section 25, subsection 1, of the Danish Marketing Practices Act.

The Danish Consumer Ombudsman can demand from anyone all information deemed necessary for the work of the Danish Consumer Ombudsman, including the information necessary to decide whether a matter falls under the provisions of the law, cf. section 25, subsection 2, of the Danish Marketing Practices Act.

It is possible for both consumers and businesses to complain to the Danish Consumers Ombudsman but the Danish Consumer Ombudsman is not obliged to consider the complaint. Rather, complaints are used as part of the assessment of which complaints and issues that the Danish Consumer Ombudsman shall prioritize to address.³ In that assessment, the interest of consumers shall be a primary concern.⁴ Besides having the interest of consumers as a primary concern, it is not specified how the Danish Consumer Ombudsman should assess which issues to prioritize.

The Danish Consumer Ombudsman can issue decisions with injunctions if an actual or potential action (or a lack of action) by a business actor is in violation of the Danish Marketing Practices Acts and if it is not possible through negotiations with the business actor to ensure the necessary change of action, cf. section 32, subsection 2, of the Danish Marketing Practices Act. An injunction can take the form both of ordering that a business actor has a duty to act or that a business actor should refrain from certain acts in the future. An injunction based on the current marketing practices is limited to only have effect for current and future actions. The injunction may thus oblige a business actor to recall material that is part of an ongoing marketing effort.

The decisions of the Danish Consumer Ombudsman cannot be appealed against to another administrative authority, cf. section 25, subsection 4, of the Danish Marketing Practices Act. However, if a decision from the Danish Consumer Ombudsman contains an injunction the business actor that the injunction is directed at can demand that the injunction is brought before the courts, cf. section 32, subsection 3, of the Danish Marketing Practices Act. Furthermore, anyone that fulfils the general criteria of legal interest can bring a decision from the Danish Consumer Ombudsman before the courts (for more information on legal interest see section 2, subsection 2, below).

Although the Danish Consumer Ombudsman in principle oversees compliance with the Danish Marketing Practices Act in all sectors, it has until the end of 2021 been the case that the Danish Consumer Ombudsman forwarded complaints it received involving the food sector to the Danish

² Denmark, executive order on the rules for the activities of the Consumer Ombudsman of 25 November 2014, (*Bekendtgørelse om regler for Forbrugerombudsmandens virksomhed*), available in Danish at: <https://www.retsinformation.dk/eli/lt/2014/1249>.

³ Denmark The public authority Ombudsman, complain regarding marketing (*klag over markedsføring*), available in Danish at: <https://www.forbrugerombudsmanden.dk/kontakt/spoergmaal-eller-klage/>. See also an explanation of the complaints procedure in English at: <https://www.consumerombudsman.dk/about-us/complaint-procedure/>.

⁴ Denmark, executive order on the rules for the activities of the Consumer Ombudsman of 25 November 2014, (*Bekendtgørelse om regler for Forbrugerombudsmandens virksomhed*), § 1, subsection 1, available in Danish at: <https://www.retsinformation.dk/eli/lt/2014/1249>.

Veterinary and Food Administration. Decisions of the Danish Veterinary and Food Administration can be appealed against to the Danish Environment and Food Board of Appeal (*Miljø- og fødevareklagenævnet*). The reason for the previous practice of forwarding complaints was both because of the specialised knowledge of the Danish Veterinary and Food Administration but also due to limited resources at the Danish Consumer Ombudsman. With the Financial Act for the year of 2022, the Danish Consumer Ombudsman received a substantial increase in the budget (going from 24,3 mio. DKK in 2021 to 29,6 mio. DKK in 2022).⁵ Consequently, the Danish Consumer Ombudsman no longer forwards complaints it receives regarding potential violations of the Danish Marketing Practices Act in the food sector.

The practice of the Danish Consumer Ombudsman has been subject to critique from both a Danish politician that is a member of the EU-Parliament and from a lawyer that questions whether the practice up until the end of 2021 was in accordance with EU-law, notably the Unfair Commercial Practices Directive.⁶ According to the news article it is not the fact that complaints were handled by the Danish Veterinary and Food Administration and not the Danish Consumer Ombudsman that was problematic. It was the fact that complaints were only handled under the specific legislation on food and not under the Danish Marketing Practices Act. Notably, the Danish Veterinary and Food Administration can only issue fines up until 10.000 DKK, whereas there is no limit on the level of the fines that the Danish Consumer Ombudsman can issue.

A claim that a company is acting in violation of the Danish Marketing Practices Act can also be filed in court. It follows from section 32, subsection 1, of the Act, that anyone with legal interest may initiate proceedings for prohibitions, injunctions, compensation and remuneration pursuant to section 24. The Danish Consumer Ombudsman may initiate proceedings for prohibitions and injunctions pursuant to section 24, subsection 1, and on request initiate proceedings on compensation and remuneration. Prohibitions can e.g. be part of cases dealing with illegal marketing or cases of unreasonable conditions in contracts. As the overall goal is to efficiently stop illegal marketing, it is in principle possible to direct a prohibition against anyone that prepares or contributes to illegal marketing. Therefore, a prohibition can be directed at amongst others the company selling a product, an advertising agency that is making the marketing campaign or a company supplying products that are to be part of an illegal marketing campaign.

Section 32 thus grants business- and consumer organisations competence to initiate proceedings. Cases on prohibition follow the general rules on civil procedure as specified in the Danish Administration of Justice Act (see below under section 2, no. 2).

It follows from section 24, subsection 1, that a court in a judgment can prohibit an action if it is deemed to be contrary to the law. In connection with such judgment or later in a new judgment, injunctions may be given as may be deemed necessary to ensure 1) compliance with the prohibition, including by stipulation that agreements entered into in violation of a prohibition are invalid, and 2) restoration of the conditions existing before the illegal act, including the destruction or recalling of products and the sending of information or correction of statements.

Regarding compliance with the prohibition as mentioned in section 24, subsection 1, litra 1, the provision could, inter alia, provide for an obligation on a business to identify customers affected by

⁵ Denmark, Financial Act for the year of 2022, page 370 (*Finanslov for finansåret 2022*), available in Danish at: <https://fm.dk/media/25454/fl22a.pdf>.

⁶ Denmark, Børsen, Politicians and lawyers suspect Danish complaint handling of greenwashing og being illegal, 21 January 2022, (*Politikere og advokater mistænker dansk klagebehandling af greenwashing for at være ulovlig*), available in Danish at: <https://borsen.dk/nyheder/baeredygtig/politikere-og-advokat-mistaenker-dansk-klagebehandling-af-greenwashing-for-at-vaere-ulovlig>.

unlawful marketing, such as an unfair contractual term, and to inform them that the term is unenforceable.

In a court case the Danish Maritime and Commercial High Court on 6 April 2018 decided a case regarding a loan giving company that offered interest free loans of up to 2.000 DKK (app. 266 euro) to consumers in connection with online purchases. The consumer obliged to pay a monthly instalment and if the instalment was not paid by the consumer, the company would automatically withdraw money covering the instalment plus and auto-pay fee of 39 DKK (app. 5 euro). The Danish Maritime and Commercial High Court found that the collection of an auto-pay fee and reminder fee from consumers was in breach of Section 9a and Section 9b of the Interest Act and Section 9b of the Marketing Act. It was further decided that the Danish Consumer Ombudsman had legal interest in the proceedings although the company had promised to stop the practice in question. This was so, because the Danish Consumer Ombudsman had an obvious interest in establishing whether the practice used was legal.⁷

We have not been able to find judgments involving companies' efforts to appear more environmentally friendly. This may be because of a general lack of practice from the courts in such matters as stated by the legal practitioner that we interviewed. However, as not all judgments in Denmark are publicly available, we cannot fully verify that such judgments don't exist.

In another case the Danish Maritime and Commercial High Court on 30 December 2011 decided that a company was prohibited from using a specific image and several statements for marketing purposes. The company was in practice prohibited from using such statements in the future as the company had already removed the statements and the image from its website and had destroyed remaining brochures containing the image and statements after receiving an inquiry from a European trade association for the metal packaging industry that was suing the company in the case before the Danish Maritime and Commercial High Court.

In five of the six prohibited statements the company alleged that the plastic products the company made was more environmentally friendly than using products made of metal or glass. These statements were prohibited as the correctness of the statements was not sufficiently documented, as the company had only referred to their own calculations that were not verified by an unbiased expert. Furthermore, it was not sufficiently clear that the environmental statements only related to some phases of the products life cycle and thus inter alia did not consider the possibility of reuse of metal when producing new metal. These statements were therefore regarded as false and misleading and capable of appreciably influencing behaviour on the market. In the last prohibited statement, the company praised using a plastic container as opposed to using a metal container. This statement had to be read in conjunction with an image of an overturned and dented paint and could therefore be regarded as discrediting the metal packaging industry by presenting metal packaging in an unfavourable and downgrading manner.

In the judgment the court stated that it has significant commercial value for a company to be able to highlight environmental advantages of using the products of the company. To prevent disloyal competition there must be strict requirements to the correctness of such environmental statements. Such statements have to be clear, true, concrete and not misleading ("*klare, sande, konkrete og ikke vildledende*") and companies shall be able to substantiate documentation from an unbiased expert.⁸

⁷ The case was found using Karnov, which is a commercial online service that is only available with a subscription. However, the Danish Consumer Ombudsman has on 6 April 2018 published information on the case in Danish here, <https://www.forbrugerombudsmanden.dk/find-sager/markedsoeringsloven/sager-efter-markedsoeringsloven/gebyrer/misligholdelsesgebyrer-skulle-tilbagebetales-da-forbrugerne-ikke-havde-modtaget-rykkere/>.

⁸ Denmark, the Danish Maritime and Commercial High Court, judgment of 30 December 2011, available in Danish at: <https://domstol.fe1.tangora.com/media/-300011/files/H000901B.pdf>.

Currently, there are several ongoing cases regarding potential violations of the Danish Marketing Practices Act when it comes to statements on more climate friendly products.

One such case is a representative action claim against the Danish company Danish Crown. The case involves the environment (potential “greenwashing”) but is also brought as a consumer matter since it involves the marketing of pork by Danish Crown. The case concerned a label made by the company Danish Crown which is one of Europe’s largest producers of pork. The label stated that the pork they sold was “climate-controlled” (Klimakontrolleret Gris), insinuating that the meat is more climate friendly than it actually is. Moreover, the company used the phrase “Our pigs are more climate friendly than you think”⁹. The CSO Greenpeace complained to the Consumer Ombudsmand that Danish Crown’s campaign was misleading and in violation of the Marketing Practices Act (Markedsføringsloven), as Greenpeace argues that the company is unable to document its claim that specific pork labelled “climate-controlled” should be any less environmentally damaging than any other kind of pork, since the labelling is a set of voluntary targets established by the companies themselves. The green CSO’s The Climate Movement (*Klimabevægelsen*), The Green student Movement (*Den Grønne Studenterbevægelse*) and the Danish Vegetarian Society (*Dansk Vegetarisk Forening*) have also chosen to sue Danish Crown over the same issue¹⁰. The city court of Randers has deemed the case to be of a general public importance and therefore directly referred the case to the Western High Court¹¹. The case is still pending.

Another case involves the Danish dairy company Arla. Arla had marketed some of their foods as being “CO2- neutral”. Their claim of CO2 neutrality was, amongst other things, based on carbon credits that Arla bought in deforestation projects in Brazil and Indonesia¹². The Danish association The Margarine Association (*Margarine Foreningen*) complained to the Danish Veterinary and Food Administration (*Fødevarestyrelsen*) that Arla’s campaign was an expression of greenwashing and thus in violation of the Danish Marketing Practices Act. In 2021, the Danish Veterinary and Food Administration (*Fødevarestyrelsen*) acquitted Arla of being in violation of the Act, saying that an overall assessment of Arla’s documentation of the carbon credits was in accordance with the applicable marketing rules¹³. The CSO Forbrugerrådet Tænk and the Environmental Organization Noah have appealed the decision of the Danish Veterinary and Food Administration (*Fødevarestyrelsen*) to the Danish Environment and Food Board of Appeal (*Miljø- og fødevarerklagenævnet*), as they believe that Arla’s campaign was greenwashing towards the consumers¹⁴. The case before the Danish Environment and Food Board of Appeal (*Miljø – og fødevarerklagenævnet*) is still pending.

⁹ Denmark, Newsarticle in Politiken, *The High Court must rule on a case of general public importance against Danish Crown regarding misleading marketing*, 04/01/2022, (*Landsret skal afgøre principial sag mod Danish Crown om vildledende markedsføring*), available in Danish at: <https://politiken.dk/oekonomi/virksomheder/art8553784/Landsret-skal-afg%C3%B8re-principiel-sag-mod-Danish-Crown-om-vildledende-markedsf%C3%B8ring>

¹⁰ Denmark, Newsarticle in Fødevarewatch, *Danish Crown puts the label climatecontrolled pig on the shelf after criticism*, 13 Oktober 2021, (*Danish Crown lægger mærket for klimakontrolleret gris på hylden efter kritik*), available in Danish at: <https://fodevarewatch.dk/Fodevarer/article13365366.ece>

¹¹ Denmark, Newsarticle in Effektivtlandbrug, *Danish Crown accused in Denmark’s first climate trial*, 5 January 2022, (*Danish Crown under anklage i Danmarks første klimaretssag*), available in Danish at: <https://effektivtlandbrug.landbrugnet.dk/artikler/klima/72628/danish-crown-under-anklage-i-danmarks-foerste-klimaretssag.aspx>

¹² Denmark, Mediet Markedsføring, *news on Arla – campaign and greenwashing*, (24/11/2021), available in Danish at: <https://markedsforing.dk/artikler/nyheder/arla-kampagne-bliver-beskyldt-for-greenwashing-efter-afsloerende-satellitfotos/>

¹³ Denmark, Fødevare Watch, *news on Arla*, available in Danish: <https://fodevarewatch.dk/article13154282.ece>

¹⁴ Denmark, Børsen, *news on the Arla case*, (21/03/2022), available in Danish at:

<https://borsen.dk/nyheder/baeredygtig/arla-efterlyser-retningslinjer-efter-droppet-klimakampagne>

When applying the provisions of the Danish Marketing Practices Act in practice, the Danish Consumer Ombudsman has published guidance on what companies must consider when marketing their products as more environmentally friendly than others.¹⁵ In a quick guide for Companies on environmental marketing” (*Kvikguide til virksomheder om miljømarkedsføring*) published in December 2021, the Consumer Ombudsman has specified further what the requirements in section 13 of the Danish Marketing Practices Act entails. It follows that factual information shall normally be supported by statements or studies from independent experts. Furthermore, and as a general rule, if the survey is made by the manufacturer of the product or by the company that sells it, the study must be confirmed by independent experts. Lastly, if there is significant disagreement among experts, a company must disclose this in the marketing or refrain from using the statements.¹⁶

The Consumer Ombudsman distinguishes between general and concrete statements. General statements are positive statements about a company or product, for example “green”, “climate friendly”, “environmentally friendly”, “sustainable”. Notably, it is the position of the Danish Consumer Ombudsman that such free-standing, general statements will be perceived by the consumer as though a product has no negative impact on the environment/climate. However, since all production affects the environment/climate, it is as a general rule misleading when companies use such statements. If a company use such statements in marketing, the company must be able to document the general statements based on a life cycle analysis of the product that is supported by statements or assessments by independent experts.¹⁷ Furthermore, it is demanded that the product environmentally shall be one of the absolute best products when comparing to similar products. If for instance all the products on the market are equally good, it is not allowed for companies to use such general statements. It is therefore as a general rule required that companies can document that their product has a substantially decreased impact on the climate or the environment than comparable products.

The way in which the Danish Consumer Ombudsman views the obligations of companies concretely is illustrated by the following description of relevant decisions:

- In a case decided by the Danish Consumer Ombudsman in 2009 (case 08/02992) a petrol company marketed a petrol product in a TV advertisement showing a car covered in grass. The car was refuelled with the petrol product, after which it drove away with a trail of flowers in its wake followed by the slogan: "5% less CO2. Same price – better for the environment". The Consumer Ombudsman stated that tools such as flowers, grass, green colors and the like will undoubtedly give the consumer the impression that this is a product that is not harmful to the environment. Therefore, such means must not be used in marketing if an environmental benefit cannot be documented on a safe and correct basis based on a life cycle analysis. The company could not document such an environmental benefit and the marketing was therefore misleading.¹⁸
- In another case decided by the Danish Consumer Ombudsman in 2010 (case 09/05694) an airline that flew domestically with propeller aircraft marketed itself with the fact that a recent

¹⁵ Denmark, the Danish Consumer Ombudsmand (*Forbrugerombudsmanden*), *Ethical and environmental expressions in marketing*, 2014, (*Etiske og miljømæssige udtryk i markedsføringen*), available in Danish at: <https://www.forbrugerombudsmanden.dk/hvad-gaelder/markedsfoeringsloven/etik-og-miljoe/> and the Danish Consumer Ombudsmand (*Forbrugerombudsmanden*), *quick guide to companies on environmental marketing*, December 2021, (*Kvikguide til virksomheder om miljømarkedsføring*), available in Danish at: <https://www.forbrugerombudsmanden.dk/media/56731/kvikguide-om-miljoemarkedsfoering.pdf>.

¹⁶ Denmark, page 3 of the *quick guide*.

¹⁷ Denmark, page 3 of the *quick guide*.

¹⁸ Denmark, The Danish Consumer Ombudsman, 30 June 2009, Company ends “green” marketing (*Virksomhed stopper "grøn" markedsføring*), available in Danish at: <https://www.forbrugerombudsmanden.dk/find-sager/markedsfoeringsloven/sager-efter-markedsfoeringsloven/miljoeoetik/groenmarkedsf/>.

study by the Danish Energy Agency (*Energistyrelsen*) showed that the CO2 emissions of propeller aircraft were much more than half that of a regular jet aircraft. Furthermore, the airline wrote that their propeller planes were fully competitive from an environmental point of view with other forms of transport and added "You won't get far in your car with eight kilograms of fuel, but in our propeller plane you can get all the way from Copenhagen to Aalborg." However, the airline did not state that the assessment by the Danish Energy Agency also showed that transport with regional trains emitted significantly less CO2 than propeller planes. The airline had therefore omitted essential information and the marketing was misleading. Emphasis was also placed on the fact that the choice of colors and the background illustration (including colorful flowers, a rainbow and a green background) signaled that flying with the company did not affect the environment.¹⁹

- In a recent decision from 9 June 2022 (case 22/03829), the Danish Consumer Ombudsman decided that it was legal for a company to use the statements "a more environmentally friendly choice of floor paint" and "certified wooden floor" because the products were certified with EU-Blomsten and the indoor climate certification (*Indeklimamærket*) as well as the FSC-certification and Svanemærket (see regarding certifications below under section 2, subsection b).²⁰
- In another recent decision from 29 August 2022 (case 22/0532), the Danish Consumer Ombudsman decided that it was not legal for a company to use the statement "recycled plastic" regarding a plastic product that consisted of up to 55% recycled plastic. The Danish Consumer Ombudsman stated that because the plastic product consisted of up to 55% recycled plastic, it would be misleading to use the statement "recycled plastic". It was the Consumer Ombudsman's assessment that the average consumer would understand the wording in the statement as an indication that the plastic product was made exclusively – or at least predominantly – of recycled plastic. When the product only consisted of up to 55% recycled plastic, it was not sufficient to call a plastic product "recycled". In this connection, the Consumer Ombudsman referred to the prohibition on misleading marketing in Sections 5 and 6 of the Danish Marketing Practices Act.²¹

It is the position of the representatives of the Danish Consumer Ombudsman that we interviewed that the rules in the Danish Marketing Practices Act provide the necessary legislative protection to ensure the correctness of the information that companies voluntarily decide to provide. The public authority is worried that putting in place legislation in different sectors with specific rules on marketing, which is already regulated by the Danish Marketing Practices Act by general provisions, may lead to an overall decrease in the protection for consumers. Therefore, according to the public authority, new legislation should refrain from creating specific additional obligations on how companies present themselves in marketing when the purpose of new legislation is preventing misleading marketing to

¹⁹ Denmark, The Danish Consumer Ombudsman, 22 September 2010, airline company's "Fly Green" campaign was misleading (*Et flyselskabs "Flyv Grønt" kampagne var vildledende*), available in Danish at: <https://www.forbrugerombudsmanden.dk/find-sager/markedsfoeringsloven/sager-efter-markedsfoeringsloven/miljoeoetik/flyv-groent-kampagne/>.

²⁰ Denmark, The Danish Consumer Ombudsman, 9 June 2022, A company could legally use statements "a more environmentally friendly choice of floor paint" and "certified wooden floors" (*En virksomhed kunne lovligt bruge udsagnene "et mere miljøvenligt valg af gulvmaling" og "certificeret trægulv"*), available in Danish at: <https://www.forbrugerombudsmanden.dk/find-sager/markedsfoeringsloven/sager-efter-markedsfoeringsloven/miljoeoetik/en-virksomhed-kunne-lovligt-bruge-udsagnene-et-mere-miljoevenligt-valg-af-gulvmaling-og-certificeret-traegulv/>.

²¹ Denmark, The Danish Consumer Ombudsman, 29 August 2022, A company could not legally use the statement "recycled plastic" regarding a plastic product (*En virksomhed kunne ikke lovligt bruge udsagnet "recycled plastic" om et plastikprodukt*), available in Danish at: <https://www.forbrugerombudsmanden.dk/find-sager/markedsfoeringsloven/en-virksomhed-kunne-ikke-lovligt-bruge-udsagnet-recycled-plastic-om-et-plastikprodukt/>.

consumers. New legislation should instead focus on providing consumers with new rights to receive specific information from companies e.g. on the durability of their products.

The legal practitioner that we interviewed expressed a similar view as the representative of the Danish Consumer Ombudsman. Furthermore, the legal practitioner believes that the primary problem is a lack of caselaw from the Danish courts and administrative decisions from the Danish Consumer Ombudsman that translates the general rules of the Danish Marketing Practices Act (*Markedsføringsloven*) into the sphere of green marketing by companies. As described both above and in further detail below as a promising practice under section 5, there are guidelines on the obligations companies have when engaging in marketing of their products as green, environmentally friendly etc. However, there is a lack of knowledge on how these general requirements are assessed in concrete situations. As mentioned above there are cases pending both at the courts (Danish Crown-case) and at an administrative body (Arla-case) dealing specifically with the obligations of companies in the sphere of marketing. It is not clear why there hasn't earlier been cases such as the Danish Crown-case or the Arla-case. One reason might be that companies try to a larger extent to promote their products as green or environmentally friendly to respond to increasing consumer demands.

Complaints can also be submitted to the Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct (NCP Denmark) that is the Danish National Contact Point based on the OECD Guidelines for Multinational Enterprises. NCP Denmark is an independent non-judicial grievance mechanism established by law. NCP Denmark is mandated to handle specific instances (complaints) concerning whether Danish companies, public authorities, and public and private organisations act in observance of the OECD Guidelines for Multinational Enterprises. In other words, whether the entities have observed the international guidelines on human rights, labour rights, environmental standards and anti-corruption.

NCP Denmark can determine whether a corporate or public entity has observed the OECD Guidelines for Multinational Enterprises and can provide recommendations. NCP Denmark cannot prescribe remedy or compensation to impacted parties²².

According to the representatives from the Danish Consumer Ombudsman that we have interviewed, the primary concern for ensuring sufficient consumer protection is not insufficient legislation in the EU. The primary concern is a problem with ensuring that the current rules are enforced in the EU.

The legal practitioner that we interviewed expressed a similar concern as the representative of the Danish Consumer Ombudsman. The legal practitioner also points to long case processing times both at the Danish Consumer Ombudsman (*Forbrugerombudsmanden*) and the Danish Veterinary and Food Administration (*Fødevarestyrelsen*) as an obstacle for ensuring compliance with the obligations that companies are under in the sphere of marketing.

The Danish Consumer Council (*Forbrugerrådet Tænk*) echo the concern from the legal practitioner and are of the opinion that the length of the proceedings means that companies can widely spread a message that is potentially greenwashing before it is deemed unlawful²³.

The representatives of the Danish Consumer Ombudsman that we interviewed points to a lack of balance in resources between oversight/supervision of public authorities and oversight/supervision of companies where too little resources are invested into securing sufficient oversight of global

²² Denmark, OECD Guidelines for Multinational Enterprises, Denmark's contact point for responsible business conduct, available in Danish here: [NCP Denmark | Virksomhedsadfærd \(virksomhedsadfaerd.dk\)](https://ncp-denmark.dk/virksomhedsadfaerd).

²³ Denmark, The Danish Consumer Council, Morten Steiniche, press release on the Arla case, 08/04/2022, available in Danish: <https://taenk.dk/raadgivning/markedsfoering/arla-stopper-kampagne-om-co2-neutralitet>

companies given their social importance. When asked, the Danish Consumer Ombudsman confirms that long case processing times by the enforcement authorities, including at the Danish Consumer Ombudsman, is also a matter of resources.

- 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.).*

There is no legislation granting consumers a right to a sustainable and affordable choice when purchasing a product or service. However, The Danish Environmental Protection Agency (*Miljøstyrelsen*) is aware that the Aarhus convention obliges national authorities to actively inform citizens on the environment. The Danish Ministry of Environment actively inform citizens on the environment using several activities and communication channels, including the two certification schemes mentioned below.²⁴

Besides the rules in the Danish Marketing Practices Act (*Markedsføringsloven*) mentioned above under section 2.a, there are schemes enabled by the Danish Government to provide consumers the ability to make informed environmental choices when choosing products. Several brands such as *EU-Blomsten* and *Svanemærket*, led by Ecolabeling Denmark²⁵ can be obtained by companies provided that their products live up to certain environmental standards.²⁶ Ecolabeling Denmark is part of Danish Standards (*Dansk standard*) that is the national standardisation organisation in Denmark. It is a commercial fund, but it has signed a performance contract with the Danish Environmental Protection Agency concerning the EU and Nordic ecolabels (*EU-Blomsten* and *Svanemærket*).²⁷

Conditions for granting the labels:

As before mentioned, there are two officially recognized environmental labels: *EU-Blomsten* and *Svanemærket*. According to the Danish Environmental Protection Agency (*Miljøstyrelsen*) the main difference between the two labels is that *Svanemærket* is a Nordic environmental label whereas *EU-Blomsten* is an EU environmental label. There are, however, practical reasons behind having both labels, inter alia that there are still more product groups that can be labelled with *Svanemærket* than *EU-Blomsten*.²⁸ A company can apply for a label if they meet the requirements for the specific product group. The specific requirements for a given product group are gathered in a so called "criteria document", and the applicant company must document that their product or service meets *all* the requirements in the criteria document. Ecolabelling Denmark assess whether a company meets the requirements of *Svanemærket* and/or *EU-Blomsten* and if they are meet Ecolabeling Denmark also certify the product.

Although the requirements vary from product group to product group, the following apply to all eco-labelled products:

²⁴ Denmark, The Danish Environmental Protection Agency, News on Access to Environmental Information (*Adgang til miljøoplysninger*), available in Danish at: [Adgang til miljøoplysninger - Miljøstyrelsen \(mst.dk\)](https://mst.dk/da/om-miljo/miljooplysninger).

²⁵ Denmark, Ecolabel, About Ecolabel: Available in English at: <https://www.ecolabel.dk/en/about>

²⁶ Denmark, The Danish Environmental Protection Agency, News on Access to Environmental Information (*Adgang til miljøoplysninger*), available in Danish at: [Adgang til miljøoplysninger - Miljøstyrelsen \(mst.dk\)](https://mst.dk/da/om-miljo/miljooplysninger).

²⁷ Denmark, Danish Standards, who we are, available in English at: <https://www.ds.dk/en/about-danish-standards/who-we-are>.

²⁸ Denmark, The Danish Environmental Protection Agency (*Miljøstyrelsen*), Environmental labels *EU-Blomsten* and *Svanemærket* (*miljømærkerne EU-Blomsten og Svanemærket*), available in Danish at: <https://mst.dk/service/borgerindgang/miljoemaerkerne-eu-blomsten-og-svanemaerket/>.

- Environmental properties (degradability, bioaccumulation, and toxicity to aquatic organisms) of the chemical substances used. The entire product life cycle from raw materials to production, use, disposal, waste management and recycling is included in the assessment of the product in all relevant phases of the product's life cycle.
- The health properties of the chemical substances used (perfume, aromas, dyes etc.) are strictly regulated.
- The requirements for eco-labelled products and services are regularly evaluated and tightened based on the latest knowledge and developments in the market. When the requirements are revised, manufacturers must document that the new requirements are met, otherwise they lose the right to use the brand.
- All products must go through a comprehensive certification process at Ecolabelling Denmark - with documentation and control that it meets the set requirements.²⁹

All companies must pay an application fee when applying for the labels. Furthermore, a fee is required when renewing, changing, and using the licence³⁰.

All the companies are inspected to see if they meet the certification standards. If Ecolabelling Denmark discovers any issues during the inspection, they will firstly ask the companies to correct the issues to follow with the label standards. If the company does not comply, Ecolabelling Denmark can strip the companies of their licenses. Ecolabelling Denmark conducts controls of the companies that are granted a license. Every company will be controlled at least once in the period that their license is granted for. Ecolabelling Denmark also conducts a systematic monitoring of the market as well as reacting to inquiries from companies or private persons. Worst case scenario, Ecolabelling Denmark has the option of reporting a company to the police, even though this rarely happens³¹.

According to the report from 2021 regarding controls conducted by Ecolabelling Denmark in 2021 the controls exposed minor violations of the labelling criteria. Typical violations were:

- the quantity of a substance had changed without the company having applied for approval of the change.
- a substance was already used in production before it was approved.
- the annual statement of resource consumption (e.g. consumption of chemicals, paper and energy) for the previous year was missing.
- some service companies, e.g. cleaning companies and laundries, have used some chemicals that were not approved or permitted.
- lack of control over procedures and responsibilities in connection with environmental labelling.

In 2021 Ecolabelling Denmark found 74 violations through the monitoring of the market. None of the violations were so serious, that they were reported to the police.³²

²⁹ Denmark, Ecolabel, Criterias for eco-labelling, available in Danish at:

<https://www.ecolabel.dk/da/virksomheder/kriterier/kriterier-for-miljoemaerkning>

³⁰ Denmark, Ecolabel, Criterias for eco-labelling, available in Danish: <https://www.ecolabel.dk/da/virksomheder/priser-og-gebyrer>

³¹ Denmark, Ecolabel, Annual reports, and control reports, available in Danish: <https://www.ecolabel.dk/da/om-os/aarsrapporter-og-kontrolrapporter>

³² Denmark, Ecolabelling Denmark, Control report 2021 (*Kontrolrapport 2021*), page 3, available in Danish at: <https://www.ecolabel.dk/~media/Ecolabel/Files/om-os/kontrolrapporter/Kontrolrapport-2021.ashx?la=da>.

Moreover, The Danish Environmental Protection Agency (*Miljøstyrelsen*) created a database of approved pesticides. And on the webpage of the Danish Environmental Protection Agency, mst.dk, the agency provides advice on spray-free gardening and which sprays have the least impact on the environment³³.

Introducing new pesticides in Denmark requires the companies to meet specific national requirements in the Danish assessment framework. This framework consists of, amongst other things, the Danish Environmental Protection Agency's (*Miljøstyrelsen*) principles for how to assess both health and environmental effects of specific pesticides³⁴. The framework includes a risk assessment for both the human health and environment impact of the pesticide in question³⁵.

Furthermore, the Danish Environmental Protection Agency (*Miljøstyrelsen*) conducts inspections of chemicals or microplastics in products ranging from food, tattoo ink, cosmetic products and dangerous substances in concrete, cement, or pesticides. Their focus is both targeted at the health of consumers *and* the environmental damage that the substances or chemicals might cause. The inspections can be prompted by either complaints from companies or citizens who suspects breaches of the law on chemicals, or the Danish Environmental Protection Agency can take up the matter on its own initiative. The Agency receives over 800 reports from citizens or companies every year regarding possible violations of the Danish Chemical Substances and Products Act³⁶. It is the responsibility of the Danish Environmental Protection Agency to monitor compliance with the Danish Chemical Substances and Products Act. They, however, have a special unit - the Chemical Inspection Service – who carries out practical monitoring and supervision to ensure that importers, producers, and distributors of chemical substances comply with the regulations³⁷.

If the Chemical Inspection Service finds that a product is in violation of the law, they have different options to restore the products compliance with the law. Amongst other things, the Chemical Inspection Service can order the responsible person/company to

- provide sufficient information about the dangers of the product and how it can be prevented by ensuring that the product is labelled correctly,
- to remedy conditions which are the cause of the danger, e.g., by mandating that a chemical product be packaged or stored legally,
- to withdraw the substance or product from the market, or
- to destroy the substance or product in violation of the law.

If the Chemical Inspection Service is inspecting a product and the person/company behind the product refuses to display the information requested by the Inspection Service, they can order:

- a prohibition of the import, sale or use of the substance, product, or item,
- order the manufacturer or importer to have the substance/product/item analyzed to document that the substance/product/item meets the stipulated requirements, or
- the Inspection service can report the matter to the police.

³³ Denmark, The Danish Environmental Protection Agency (*Miljøstyrelsen*), private house owners (*Private haveejere*), available in Danish at: <https://mst.dk/kemi/pesticider/anvendelse-af-pesticider/private-ikke-professionel-brug/>.

³⁴ Denmark, Danish Environmental Protection Agency, Information on the Assessment framework for environment and health, available in Danish: [Vurderingsrammer for miljø og sundhed \(mst.dk\)](https://mst.dk/valg/valg-og-sundhed/valg-og-sundhed)

³⁵ Denmark, Danish Environmental Protection Agency, Information on the Assessment framework for environment and health, available in English: [framework assessment pesticides version 1-7 november 2019.pdf \(mst.dk\)](https://mst.dk/valg/valg-og-sundhed/valg-og-sundhed)

³⁶ The Danish Ministry of Environment, reporting of illegal products, available in Danish: <https://mst.dk/service/kontakt/selvbetjening/kemikalier/anmeld-ulovlige-produkter/>

³⁷ The Danish Ministry of Environment, The Chemical Inspection Service, available in English: <https://eng.mst.dk/chemicals/chemicals-in-products/the-chemical-inspection-service/>

A decision made by the Chemical Inspection Service cannot be appealed to another administrative body. The decision can, however, be brought before the Danish courts³⁸.

- 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.*

In general, the plaintiff must have a legal interest in the case in order to have their claim processed at the courts. A legal interest entails an individual and current interest in the matter.

The principle of legal interest for having a claim processed at the courts applies generally across legal areas and is not explicitly regulated in the Danish Administration of Justice Act. A requirement of legal interest is mentioned in different sections of the Act that regulates specific aspects such as third-party intervention or collective claims (see below). To show a legal interest, the plaintiff must prove that they have a substantial, qualified, and individual interest in having a case decided by the courts.

We have not been able to find caselaw where the courts have included the question on legal interest as part of the judgment. It may be the case that the question on legal interest was not in dispute by the parties in the cases that we have identified close to the topic of the research.

The same requirements on legal interest apply both to a third party who wishes to intervene in the case in support of one of the parties and to collective claims, cf. the Danish Administration of Justice Act section 252 and chapter 23(a).

For intervention in support of one of the parties, this means that it is at the discretion of the courts to allow such intervention when it is deemed reasonable and well-founded. This also applies to CSOs. A CSO will therefore have to prove having a concrete interest in the case. However, it is not required that a CSO has to prove that the case will influence them as an organisation. A concrete interest can also be comparing the purpose and activities of the CSO with the subject matter of the case. Thus, an organisation working with consumer or environmental matters may be able to prove a concrete interest referring to the purpose and activities of the organisation. Regarding the role of CSOs in collective claims see below under 3.

To be compensated for a loss, the individual must first prove the existence of a harm/damage. These requirements are regulated in the Danish Liability for Damages Act (*Erstatningsansvarsloven*). To claim compensation for a damage, there are some general requirements that the individual needs to prove. Firstly, there must be a loss. Secondly, there must be a tortfeasor who is responsible for the loss. Thirdly, there must be a causal link between the tortfeasor's actions and the injury. Lastly, the claim must not be statute-barred. It is not possible to submit claims "in the general interest" under the Danish Liability for Damages Act.

Case: In March 2020, a group of experts accidentally discovered that the sewage water in a nearby sewage treatment plant in the city of Korsør contained an increased value of the health-damaging fluorine substance PFOS. In October 2020, the Slagelse municipality informs the Danish Environmental Protection Agency (*Miljøstyrelsen*) about the matter. The municipality found in February 2021 that the source of the pollution stems from a firefighting school in Korsør (a public entity), as PFOS was previously used in fire extinguishing foam, which has been used in exercises at the firefighting school.

³⁸The Danish Ministry of Environment, Enforcement of the Chemical Substances and Products Act, available in Danish: <https://mst.dk/kemi/tilsyn-og-haandhaevelse/om-kemikalieinspektionen/haandhaevelse-af-kemikalieiloven/>

An analysis carried out by the National Food Institute showed that the meat from the cattle in Korsør contained large quantities of PFOS, possibly constituting a severe health risk to the people consuming the veal in question. The cattle contained large quantities of PFOS, as they had been grazing in an area where the water that the grass used for growing contained PFOS. The cattle belonged to a local community association by the name of Korsør Kogræsser og naturplejeforening. In April – August 2021 the members of the association discovered that their blood samples displayed severely elevated levels of PFOS in their blood³⁹. To our knowledge, the meat was primarily distributed to the members of the association.

The affected members of the association (around 187 citizens) intend to file a lawsuit against either the firefighting school, the Municipality, or the Danish Environmental Protection Agency (*Miljøstyrelsen*). The Association made a working group consisting of 8 people, with the purpose of investigating what opportunities the group have when it comes to compensation pursuant to the Danish Liability for Damages Act⁴⁰. To our knowledge the lawsuit has not been filed yet. One reason why this has not happened might be because the group of affected citizens are first trying to settle with the municipality. If a friendly settlement is not reached with the municipality, then the group of affected citizens will file a lawsuit. The head of the environmental committee of Slagelse municipality has stated that the area where the cows have been grazing is the responsibility of Region Zealand but that the firefighting school is the responsibility of Slagelse municipality. Therefore, it may be difficult to decide who is legally responsible.⁴¹ This is also due to the fact that the intended lawsuit will be the first of its nature in Denmark. Therefore, it is uncertain how the courts will apply the relevant provisions in the Danish Liability for Damages Act (*Erstatningsansvarsloven*) in the concrete case. The general limitation period in Denmark is three years, unless otherwise decided in the specific legislation, cf. section 3, subsection 1, in the law on limitation of claims (*Forældelsesloven*).⁴² The limitation period starts to run from the time when the damage occurred. However, the period is suspended if the person doesn't know or couldn't have known that a damage has occurred, cf. section 3, subsection 2, in the law on limitation of claims.

Since 2021, and as a reaction to the case of PFOS poisoning in Slagelse municipality, the Danish Environmental Protection Agency (*Miljøstyrelsen*) has been gathering information on where in Denmark firefighting foam containing PFOS has been used. The result was a list of 181 fire drill sites throughout Denmark. Subsequently, on 13 October 2021 the Danish Environmental Protection Agency (*Miljøstyrelsen*) asked municipalities to launch an investigation and assess the health risk surrounding the areas in question and report the results back to the Agency⁴³. Up until recently it has been the responsibility of the affected municipalities to handle possible PFOS contaminations themselves. In August, however, the Danish Minister for the Environment called for a national plan of action to combat the discovery of elevated PFOS levels in areas around Denmark⁴⁴.

³⁹ Denmark, Danmarks Radio, news: Citizens from Korsør gathers after news on toxins in bloodsamples,(30/08/2021) available in Danish at: <https://www.dr.dk/nyheder/indland/borgere-fra-korsoer-samles-efter-nyhed-om-farligt-stof-i-blodet>

⁴⁰ Denmark, TV2 East, news: PFOS-poisoned citizens will demand compensation, (04/11/2021), available in Danish at: <https://www.tv2east.dk/slagelse/pfos-forgiftede-borgere-vil-kraeve-erstatning-ny-arbejdsgruppe-forbereder-erstatningssag>

⁴¹ Denmark, DR.dk, news: PFOS-affected citizens will sue Slagelse municipality, (02/04-2022), available in Danish at: <https://www.dr.dk/nyheder/regionale/sjaelland/pfos-ramte-borgere-vil-sagsoege-slagelse-kommune>

⁴² Denmark, Consolidated Act no. 1238 on limitation of claims (*Lovbekendtgørelse om forældelse af fordringer (forældelsesloven)*), available in Danish at: <https://www.retsinformation.dk/eli/lta/2015/1238>

⁴³ The Danish Environmental Protection Agency, New overview over possible PFOS-poisonings, 2021, available in Danish: <https://mst.dk/service/nyheder/nyhedsarkiv/2021/sep/nyt-overblik-over-mulige-pfos-forureninger/>

⁴⁴ TV2, news on a national plan of action to combat PFOS contamination, 17/08/2022, available in Danish at: <https://nyheder.tv2.dk/samfund/2022-08-17-regeringen-vil-have-national-strategi-for-pfas-forurening>

According to the executive order to the Environmental Protection Act (*Miljøbeskyttelsesloven*) Section 91(1): the municipal council's decisions and resolutions pursuant to the law can be appealed to the Danish Environment and Food Board of Appeal. Furthermore, the procedural requirements for appealing the decisions of the municipal board does not entail a harm/damage requirement but can be appealed by 1) the addressee of the decision and 2) anyone who has an individual, significant interest in the outcome of the case, pursuant to section 98(1 and 2)⁴⁵.

In the preparatory works to section 98 it is described that the requirement of individual substantial interest means that the decision must affect the person concerned personally and be of a certain strength. The interest may be justified by residence near a company that pollutes. In a decision from 2017 (MAD.2017.310)⁴⁶, the Danish Environment and Food Board of Appeal (*Miljø- og Fødevareklagenævnet*) found that persons with residence 400-600 metres away from a biogas plant had an individual, significant interest in the outcome of the case. In a decision from 2016 (MAD.2016.351) the Danish Environment and Food Board of Appeal (*Miljø- og Fødevareklagenævnet*) found that persons with residence between 880 metres and 1,8 kilometres away from a biogas plant did not have an individual, significant interest in the outcome of the case.

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;*

According to the representative from the Danish Consumer Ombudsman that we interviewed one of the best tools for avoiding greenwashing is the Danish Marketing Practices Act (*Markedsføringsloven*) as it prohibits misleading marketing in general. One of the major challenges identified by the representatives of the Danish Consumer Ombudsman that we interviewed was, however, that there are not sufficient resources at national enforcement authorities in general and that there might also be a lack of efficient sanctions in the EU. There are, however, also other actors that play a role in ensuring that companies keep the promises they make and that their business activities do not have devastating effects on climate and the environment. CSOs play a crucial role in this regard where organisations such as the investigative media and research center, Danwatch, or ActionAid Denmark (*Mellemfolkeligt Samvirke*) wholly or as part of their activities focus on the business sector and climate and environmental protection.

For instance, a recent news article from Danwatch looked into Arla's sustainability incentive model (described below under promising practice). In the article two professors are interviewed states that the new climate plan from Arla is not ambitious enough. One problem involves the use of soja from areas that have been cleared of forest. Farmers that supply milk to Arla is still allowed to use soja from areas that have been cleared of forest, but farmers not using soja or that are using soja from areas that have not been cleared from forest will receive more money from their milk. The news article did

⁴⁵ Denmark, executive order to the Environmental Protection Act of 19 January 2022 (*Bekendtgørelse af lov om miljøbeskyttelse*), available in Danish at: <https://www.retsinformation.dk/eli/lt/2022/100?id=210726#id59e6c7b6-94ac-4408-a5e4-1033c7b8e070>

⁴⁶ The administrative practice is found through access to Karnovgroup, which amongst others is a database over legislation and practice from the Danish courts and public authorities. The database is not publicly available. The two decisions are chosen as they illustrate the requirements of showing an individual, substantial interest in the outcome of the case. The Danish Environment and Food Board of Appeal (*Miljø- og Fødevareklagenævnet*) publish administrative decisions on their webpage which is available in Danish at: <https://mfkn.naevneneshus.dk/>. It has not been possible to find the two decisions on the webpage of The Danish Environment and Food Board of Appeal (*Miljø- og Fødevareklagenævnet*).

not lead to any substantial change, but a representative from Arla explained the reasoning behind this aspect of the sustainability incentive model.⁴⁷

Another case involved a ranking called the SB Index. SB Index has conducted a survey regarding what brands consumers perceive as sustainable. However, Danwatch has documented that companies used the survey in their communication branding themselves as the most sustainable company based on the survey from SB Index. After the disclosures the company behind SB Index has sent of a press release with new guidelines on how companies can communicate regarding their placement in the SB Index. In the press release, the company also acknowledge that the existing guidelines has not been able to prevent companies from communicating in ways that could be “confusing” for the receiver. However, regardless of the new guidelines from SB Index a professor quoted in a Danwatch article states that the main problem with the index still exist; namely that it is possible as a consumer to participate in the survey without having any knowledge on sustainability.⁴⁸

Clearer guidelines and frameworks

The legal practitioner suggested clearer guidelines from the authorities on the “greenwashing” area, so that the possibility of taking legal action against companies or authorities would not solely depend on an interpretation of the Danish Marketing Practices Act (*Markedsføringsloven*). This could, for example, be more specific guidelines on compensation-tools for companies such as “carbon credits”, which companies buy to compensate for their CO2 emissions.

The representative of a business that we interviewed was of a similar opinion calling for guidelines in more areas both at the EU level and the national level that were less complicated and easy to understand.

The business representative inter alia called for a clear framework or guidelines on carbon credits and other “tools” that companies use to compensate for CO2-emissions. The representative did not have a specific opinion on whether the framework should originate from the EU or at a national level, but the representative called for guidelines in more areas both EU-wide and at the national level that were less complicated and easy to understand.

According to the expert, there is a general lack of official sources and regulation when it comes to the regulation of the market for carbon credits. Many companies want to participate and endorse the green transition, but at the moment they may be worried that by promoting themselves with climate-friendly marketing if they have used carbon credits as a way of compensating for CO2 emissions, they might be accused of greenwashing.

For now, companies must rely on their own analysis of whether a carbon credit is sustainable, which can be a difficult assessment. This is due to lack of transparency from the companies that sell carbon credits and since the area is technically difficult to understand. The situation could be significantly improved by dispensing official labels authenticating which carbon credits are valid.

Lack of enforcement

⁴⁷ Denmark, news article, Arla will make milk green, but continue to use black fodder (*Arla vil gøre mælk grønt, men fortsætter med at bruge sort foder*), Danwatch 28 Oktober 2022, available in Danish at: <https://danwatch.dk/arla-vil-goere-maelk-groent-men-fortsætter-med-at-bruge-sort-foder-til-malkekvæg/>.

⁴⁸ Denmark, news article, Danwatch exposed them in misleading. Now SB Index will improve (*Danwatch afsloerede dem i at vildlede. Nu vil SB Index stramme op*), Danwatch 21 November 2022, available in Danish at: <https://danwatch.dk/danwatch-afsloerede-dem-i-at-vildlede-nu-vil-sb-index-stramme-op/>.

The legal practitioner that we interviewed was also of the opinion that one of the major issues is a lack of enforcement of the rules as also mentioned above. This refers to the fact that there is uncertainty of the obligations that companies are under in the area of consumer rights and environmental protection due to a lack of caselaw. Another aspect of the lack of enforcement regards the length of the proceedings before the courts and the administrative authorities.

In general, the length of proceedings in the Danish courts have increased over the recent years and in ordinary civil cases at the City Court where the case is heard by the court the case processing time was in 2021 in general 20,6 months. In civil cases where the High Court is a first instance court because the case involves a matter of general importance – as is the situation in the Danish Crown-case explained above, the case processing time was in 2021 in general 36,8 months. However, the general case processing time at the High Court from 2017 and 2021 fluctuates a lot every year and was 21,8 months in 2017, 22 months in 2018, 37,5 months in 2019 and 22,1 months in 2020. The fluctuation between the years may be due to a limited number of cases where the High Court act as a first instance court.⁴⁹

Waste management

The representative of a business that we interviewed called for a streamlined approach to waste disposal and recycling throughout the EU-member states. The representative emphasized that since many member states have different approaches to waste management and recycling, the process of providing sustainable and recycled packaging for the companies' products to ensure that the consumers have sustainable choices becomes complicated. In the opinion of the representative there is a need for the member states to align on waste management and recycling procedures to optimize companies' abilities to accommodate the green transition and provide consumers with green options.

Reporting obligations on companies

The representative of a business that we interviewed was of the opinion that EU-legislation on reporting obligations as part of the green transition are so extensive that small and medium businesses will have difficulties in complying with the requirements. According to the representative, the widespread and complicated nature of the reporting obligations originating from EU makes the process unnecessarily heavy for companies – especially small and medium businesses. The representative was worried that this can lead to a situation where companies will spend more time trying to understand and comply with the reporting obligations than focusing on how they in their business activities can contribute to a more sustainable and green transition. Thus, the representative called for fewer less strict requirements that is possible for all companies to comply with to ensure a stronger impact in practice. Another way of encompassing smaller and medium sized companies is to differentiate the scale of the reporting obligations to e.g., the size of the companies.

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

The right of access to documents regarding environmental matters is regulated in the Environmental Information Act (*Miljøoplysningsloven*).⁵⁰ The legislation was adopted on the basis of the Aarhus Convention⁵¹. The legislation applies to public authorities that falls under the scope of the Public

⁴⁹ Denmark, The Danish Courts, Key numbers on caseflow and case processing times (*Danmarks Domstole, Nøgletal om sagsflow og sagsbehandlingstider*), pages 10 (City Courts) and 15 (High Courts), available in Danish at: <https://www.domstol.dk/media/1qbewjdg/noegletal-2021.pdf>.

⁵⁰ Denmark, Consolidated Act no. 980 on the Environmental Information Act, 16. August 2017 (*lovbekendtgørelse nr. 980 af 16. august 2017 af miljøoplysningsloven*), available in Danish at: <https://www.retsinformation.dk/eli/ta/2017/980>.

⁵¹Denmark, The Danish Ministry of Environment, News on Access to Environmental Information (*Adgang til miljøoplysninger*), available in Danish at: [Adgang til miljøoplysninger - Miljøstyrelsen \(mst.dk\)](#)

Information Act from 1985.⁵² The legislation also applies to other entities in accordance with directive 2003/4 on public access to environmental information.

Due to the Environmental Information Act, the access to information regarding environmental matters has become easier than accessing documents through the Danish Public Information Act (*Offentlighedsloven*)⁵³. This is due, amongst other things, to the fact that document access according to the Environmental Information Act must be assessed according to the Public Information Act dating from 1985, to which the Environmental Information Act refers, and not according to the Public Information Act (2013) that is applicable in all other cases that does not deal with information regarding environmental matters. Which act on public information that is applicable therefore depends on the subject matter of the request on access to information. That there can be a broader access to documents regarding request on access to information on environmental matters is shown by, amongst other things, the fact that the Public Information Act from 1985 does not contain a provision allowing the exemption of ministerial service documents from the access to documents.

Furthermore, The Danish Public Information Act from 1985 doesn't contain a provision exempting documents from being accessed on the grounds that that the processing of the request will necessitate a disproportionate use of resources⁵⁴.

According to section 12, subsection 1 of the Danish Public Information Act from 1985, there is no right to access to information on

1. the private matters, including economical, of persons and of
2. technical arrangements or procedures or on operational or business matters or the like, in so far as the non-acceptance of the request is of significant economic importance to the person or undertaking to whom the information relates.

The assessment that authorities shall make under section 12, subsection 1, of the Danish Public Information Act from 1985 can be exemplified with the following decision from The Danish Parliamentary Ombudsman:

A journalist complained to the Ombudsman that the Ministry of the Environment had refused him access to the database "Denmark's elevation model". The Ministry had justified the refusal on the grounds that two private companies had a copyright to the database and that it would entail an imminent risk that the companies would suffer significant financial loss if the Ministry granted the journalist's request for access.

The Ombudsman stated that the provision in Article 12(1)(2) of the Danish Public Information Act from 1985 could, in certain circumstances, allow access to be refused in order to protect copyright. However, in the Ombudsman's view, if access to documents were to be refused in order to protect copyright, it would have to be presumed that the request for access to the documents served an unlawful purpose. The burden of proving that a request for access had to be presumed to serve an unlawful purpose had to lie with the public authority.

On balance, the Ombudsman considered that the Ministry did not have sufficient grounds, either on the basis of what the journalist had said during the procedure or on the basis of his conduct during

⁵² Denmark, Act no. 572 on Public Information, 19. December 1985 (*Lov om offentlighed i forvaltningen (Offentlighedsloven)*), available in Danish at: <https://www.retsinformation.dk/eli/ta/1985/572>.

⁵³ Denmark, Consolidated Act no. 145 on the Public Information Act, 24 February 2020 (*lovbekendtgørelse nr. 145 af 24. februar 2020 af offentlighedsloven*), available in Danish at: <https://www.retsinformation.dk/eli/ta/2020/145>.

⁵⁴ Denmark, The Danish Parliamentary Ombudsman, What is information on the environment? (*Hvad er "miljøoplysninger"*), available in Danish: https://www.ombudsmanden.dk/myndighedsguiden/specifikke_sagsomraader/hvad_er_miljoeoplysninger/

the procedure, to consider that the height model would be unlawfully disclosed if he were to have access to it. The Ombudsman therefore considered that the Ministry could not have refused the journalist access to the database.⁵⁵

Section 2, subsection 5 of the Danish Environmental Information Act (*Miljøoplysningsloven*) amongst other things stipulates that the exemption for trade secrets regulated in Section 12, subsection 1 of the Danish Public Information Act from 1985, does not apply to the companies' and livestock's emission information, if application of the exception would contravene Article 4, subsection 2 of directive 2003/4/EC of 28 January 2003 on public access to environmental information. This means that emission information will only very rarely be exempt from public access. However, exemptions could happen, for example, if the publication of information would reveal e.g., unknown production methods that could potentially obtain intellectual property protection⁵⁶.

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, related to the environment?*

The Danish legal framework generally allows for collective/representative action if several conditions are fulfilled, pursuant to chapter 23 a in the Danish Administration of Justice Act. The conditions are the following:

- That multiple people hold similar claims.
- That the claims can be processed in Denmark
- That the court where a collective action claim is filed has competence to process on of the claims
- That a collective action is deemed to be the best way to process the claims
- That members of a collective action claim can be identified and notified on the case in an appropriate way
- That a representative of the collective action claim is appointed.

Specifically, regarding identifying members of collective action the Danish Administration of Justice Act puts in place an opt-in system as a general rule. However, where the collective action concerns claims where it is clear that the claims are generally not likely to be advanced by individual actions because of their small size, and it must be assumed that a class action with registration would not be an appropriate way of dealing with the claims, the court may, at the request of the class representative, order that the class action shall include the members of the group that have not opted out of the collective action. The court sets a time limit within which to withdraw from the class action by written notice. The court decides where to opt out. The court may exceptionally allow cancellation to take place after the deadline if there are special reasons for doing so.

Similarly, in opt-in cases the court sets a time limit within which to register in writing in the collective action. The court decides where registration should be made. The court may exceptionally allow registration to take place after the deadline if there are special reasons for doing so. Registration in a collective action should be simple and, where the form of notification so provides for, the notification

⁵⁵ Denmark, The Danish Parliamentary Ombudsman, news article on FOB 2011-9-1, Copyright not a hindrance for access to database (*Ophavsret ikke til hinder for indsigt i database*), available in Danish at: https://www.ombudsmanden.dk/find/udtalelser/beretningssager/alle_bsager/2011_9-1/.

⁵⁶ Denmark, The Danish Ministry of Environment, the Danish Environmental Information Act, (24/06/2021), available in Danish at: <https://miljotilsynsvejledning.dk/3-for-myndigheder/38-rammer-og-begraensninger-i-afgivelse-af-oplysninger-og-offentliggørelse/382-miljoeoplysningsloven/>

should therefore be accompanied by a registration form, which only needs to be completed with personal data, signed, and submitted. Registration can also be done digitally.

Regarding the time limit set by the court, the deadline may in general be set at 4-8 weeks after the time when the group members are deemed to have received notification of the case, if the notification is made by individual notification to the individual group member. In other cases, the time limit may generally be set at 2-3 months after the date on which the group members are deemed to have received notification of the case.

Regarding special reasons for allowing registration after the time limit set by the court, this exemption is supposed to be used restrictively. Formally, it is allowed to register in the collective action up until there is a judgment in the case. But the main use of this exemption is minor delays in registration.

The persons whose claims fall within the scope of the collective action shall be informed of the relevant information and of the legal consequences of registering or opting out of the collective action. The notification shall be given in the manner determined by the court. The court may order that the notification be made wholly or partly by public notice. The court may also order the group representative to make the notification. The costs of the notification shall be paid provisionally by the group representative.

Furthermore, it is up to the claimant filing a collective action claim to show the court how persons falling under the collective action claim can be identified. It is not possible to exhaustively describe how this can be done in practice as it is up to the courts in each individual case to decide. However, in some cases it can be sufficient for the claimants to attach a list of names and addresses on the members of the group. In other cases, it would be sufficient for the claimant to inform that the members of the group all reside in a specified local area and that they e.g. could be reached through an advertisement in the local newspaper that is distributed to their house. If the members of the group are reached through notification by e.g. an advertisement in the local newspaper or public notice the court would need to first set the time limit, as the time limit shall be included in the notification. However, in any case by the end of the time limit set by the court

If the conditions listed above is fulfilled the legal framework allows for collective/representative action claims beyond consumer matters related to the environment.

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

A collective action needs to have a group representative, cf. section 254 b, subsection 1, litra 7, of the Danish Administration of Justice Act. A group representative can either be 1) a member of the group, 2) an organisation, a private institution or other association if the collective action falls within the objects of the organisation etc., or 3) a public authority with a legal mandate to do so, cf. section 254 c, subsection 1, of the Danish Administration of Justice Act. An organisation etc. encompass both already established organisations etc. or ad hoc organisations etc. established with the purpose of filing a class action. The requirement that the collective action falls within the objects of the organisation etc. appears to be similar to the requirement that an organisation can show a concrete interest in the case in order to be allowed to intervene in support of one of the parties. Therefore, an organisation may be able to prove that the collective action falls within the object of the organisation by referring to the purpose and activities of the organisation (e.g. in the field of consumer and environmental matters).

It is also a requirement that the group representative is capable of securing the interests of the members of the group during the proceedings, cf. section 254 c, subsection 3, of the Danish

Administration of Justice Act. In particular, the group representative must have such an economic or ideological interest in the case that the group representative can be expected to have the necessary motivation to promote the interests of the group members during the case. The group representative must also have sufficient financial resources, including where appropriate insurance covering legal expenses or by being granted free legal aid, to conduct the proceedings in a proper manner.

According to the newly proposed draft Act on access to the initiation of class actions for the protection of the collective interests of consumers (*Forslag til lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser*)⁵⁷ section 5, subsection 2, the Danish Competition and Consumer Authority (*Konkurrence – og Forbrugerstyrelsen*) will publish a list of approved authorities and organisations. The list will consist of authorities and organisations approved to bring national class actions by the Minister for Industry, Business and Financial Affairs in cooperation with other ministers concerned. To be put on the list the organisation needs to be approved by the Minister of Industry, Business and Financial Affairs. To be approved the organisation needs to fulfil the following criteria, cf. section 3, subsection 2 of the proposed draft Act:

- 1) The organization is a legal person who can demonstrate 12 months of actual public activity in the field of protecting consumers' interests prior to for the request for approval.
- 2) The organization's statutory purpose shows that it has a legitimate interest in protecting the interests of consumers as set out in specific EU law provisions covered by an annex to the draft Act.
- 3) The organization does not work with profit in mind.
- 4) The organization is not subject to insolvency proceedings and is not declared bankrupt.
- 5) The organization is independent and is not influenced by anyone other than consumers, especially not by companies who have a financial interest in filing a class action, including in the case of funding from third parties, and that the organization for this purpose has put in place procedures that prevent such an influence and prevents conflicts of interest between themselves and the organization's financiers and the interests of consumers.
- 6) The organization publishes in a clear and understandable language using appropriate means, in particular on its website, information that demonstrates that the organization meets the conditions mentioned in nos. 1-5, and information about the organization's funding sources in general, organizational and management structure and membership structure, statutory purposes and activities.

The Act was proposed to the Danish Parliament on 5 October 2022.⁵⁸ However, as elections were called on the same day, the Act will have to be proposed to the Danish Parliament again when a new government has been formed.

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?*

On 28 May 2022, an Act on Consumer Agreements and Act on Agreements and other Legal Transactions in the Area of Property Law entered into force (*Lov om ændring af lov om forbrugerftaler og lov om aftaler og andre retshandler på formuerettens område*)⁵⁹.

⁵⁷ Denmark, Public consultation on Act on Access to the Initiation of Class Actions for the Protection of the Collective Interests of Consumers (*Høring over forslag til lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser*), available in Danish at: [Høringsdetaljer - Høringsportalen \(hoeringsportalen.dk\)](https://www.ft.dk/hoeringer/2022/lovforslag/115/index.htm)

⁵⁸ Denmark, The Danish Parliament, L 15 legislative proposal on Act on access to the initiation of class actions for the protection of the collective interests of consumers (*Forslag til lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser*), available in Danish at: <https://www.ft.dk/samling/20221/lovforslag/115/index.htm>.

⁵⁹ Denmark, *Act on Consumer Agreements and Act on Agreements and Other Legal Transactions in the Area of Property Law, (Lov om ændring af lov om forbrugerftaler og lov om aftaler og andre retshandler på formuerettens område)*, available in Danish at: <https://www.retsinformation.dk/eli/lta/2021/2158>.

The Act implemented certain parts of the EU New Deal for Consumers – including Directive (EU) 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers – into Danish national legislation.

To prepare for the implementation of several EU directives including Directive (EU) 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers, the Minister of Justice (*Justitsministeren*) set up a committee with a wide range of relevant stakeholders in 2020, such as consumers, business parties, authorities, the judiciary, the legal profession etc., with the purpose of considering how the directives would be best implemented in Danish national legislation. The stakeholders had to consider, amongst other things, whether – and if so how - the implementation of the directives could be used to support the green transition⁶⁰.

The committee submitted two interim reports to prepare for the implementations of the directives⁶¹. The committee addressed the impact of the directives on the green transition, and commented, among other things, on the warranty period for a product. In the first interim report, one of the things that the majority of the committee's members found after an overall assessment was that there was no need for proposing an extension of the warranty period beyond a year – not even for specific product categories. A majority of the committee's members placed particular emphasis on the fact that there is no evidence that an extension of the warranty period would have an effect on the green transition. They found that there is no basis for assuming that an extension of the warranty period would lead to ensure that the products on the Danish market will have a noticeably longer shelf life and lifespan than what is customary today, or that it will entail significantly more repairs⁶².

Furthermore, the Danish Competition and Consumer Authority (*Konkurrence – og Forbrugerstyrelsen*) sent a draft proposal for an Act on access to the initiation of class actions for the protection of the collective interests of consumers (*Lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser*) in a public consultation on 7 July 2022. The act is intended to fully implement Directive 2020/1828 of 25 November 2020 on representative actions for the protection of the collective interests of consumers into Danish national legislation. The date of commencement for the proposed Act has been set to 25 June 2023⁶³.

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?*

⁶⁰ Denmark, *Act on Consumer Agreements and Act on Agreements and Other Legal Transactions in the Area of Property Law*, (*Lov om ændring af lov om forbrugerftaler og lov om aftaler og andre retshandler på formuerettens område*), available in Danish at: <https://www.retsinformation.dk/eli/lt/a/2021/2158>.

⁶¹ Denmark, Danish Ministry of Justice, the committee on the implementation of the EU directives, interim report I (no. 1576) and interim report II (no. 1577), available in Danish at: <https://www.justitsministeriet.dk/wp-content/uploads/2021/01/Delbetaenkning-I-om-gennemfoerelse-af-varedirektivet-og-direktivet-om-digitalt-indhold.pdf> and https://www.elov.dk/media/betaenkninger/Delbet%C3%A6nkning_II_om_gennemf%C3%B8relse_af_visse_dele_af_diraktivpakken_New_Deal_for_Consumers.pdf

⁶² Denmark, Danish Ministry of Justice, the committee on the implementation of the EU directives, interim report I (no. 1576), 2021, p. 42, available in Danish at: <https://www.justitsministeriet.dk/wp-content/uploads/2021/01/Delbetaenkning-I-om-gennemfoerelse-af-varedirektivet-og-direktivet-om-digitalt-indhold.pdf>

⁶³ Denmark, Public consultation on Act on Access to the Initiation of Class Actions for the Protection of the Collective Interests of Consumers (*Høring over forslag til lov om adgang til anlæggelse af gruppesøgsmål til beskyttelse af forbrugernes kollektive interesser*), available in Danish at: [Høringsdetaljer - Høringsportalen \(hoeringsportalen.dk\)](https://hoeringsportalen.dk)

In general, there are no national due diligence laws in Denmark.

An exception to this, however, is the Danish Financial Statements Act, Section 99a (*Årsregnskabsloven § 99a*). According to this Act, large companies must report on their approach to sustainability and responsible business conduct including on due diligence policies and practices in connection with their annual report. The report shall contain inter alia information on environmental aspects, including the company's work to reduce the climate impact of the company's activity, social matters and matters relating to respect for human rights. The information must ensure an understanding of the company's development, result and situation and how the activity of the company impact on such matters. Therefore, the obligation is relevant in the area of consumer protection as it is one way that consumers – probably through more professional actors such as consumers organisations or the media – can be made aware of the work of companies regarding protection of the environment. The annual report from companies is publicly available and serve as one way to find information on how companies work with sustainability and responsible business conduct. If relevant, the annual reports can inter alia serve as evidence in court subject to the free assessment of evidence by judges at the Danish courts.

If the companies chose not to have a policy related to responsible business conduct, they are obligated to give a clear and reasoned explanation for this in the annual report, cf. section 99a (2).

The Danish Government however supports the introduction of EU level corporate sustainability due diligence directive as proposed by the Commission in February 2022.

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

We have not been able to find cases relation to a reporting obligation. Furthermore, none of the experts were familiar with any cases relating to a reporting obligation.

5. Conclusions and ways forward

This section should include a brief summary of findings and proposals how to improve environmental protection through consumers' rights, and how to improve enforcement of consumers' rights in this context.

What can be done on national level? What could be done at EU level?

Please include:

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

Danish law contains general provisions that is also applicable in the field of environmental protection e.g., if consumers wish to file complaints regarding environmental protection with the courts or if consumers wish to file a complaint against a company due to perceived violations of the Danish Marketing Practices Act (*Markedsføringsloven*). However, there is currently a lack of practice from the courts and administrative authorities on how these general provisions can be used to enforce environmental protection. There are, however, several cases, both at the courts and at administrative bodies, pending primarily relating to the marketing of companies regarding potential “greenwashing” that will hopefully lead to a clearer understanding of the interpretation of the general rules on marketing for companies in the field of environmental protection.

It was the opinion of the experts we interviewed that the current regulation on the marketing of companies on the legislative level is sufficient to ensure that the information that companies decide to provide on their products are correct. The problem is rather if the rules are complied with in practice.

The legal practitioner believed that the primary problem was a lack of practice by both the courts and the administrative authorities on the application of the general rules in the field of green advertising/marketing.

The representatives from the Danish Consumer Ombudsman stated that the long case processing times regarding administrative cases is also a matter of resources. Regarding practice from the court, the representative from the Danish Consumer Ombudsman was of the opinion that there is long case processing times at the courts in Denmark.

In that regard it is worth noting, that the Danish Consumer Ombudsman has been granted additional resources specifically to prioritize their work on potential “greenwashing”. It is also worth noting, that long case processing times that has been and still are increasing at the Danish Courts is an issue that the relevant minister has been aware of for some years and that efforts have continuously been attempted to decrease the case processing times. Such efforts have not been able to reverse the overall trend of increasing case processing times at the courts.

And when a judgment is passed by the Danish Courts, there may be a lack of access to the judgment as it has been the case up until the beginning of 2022 that only judgments from the Danish Supreme Court and selected judgments from the High Courts and City Courts were published. A judgment database was, however, launched in the beginning of 2022 with the aim of over time having a database containing all judgments from the Danish courts. The database is continuously being expanded with new judgments.⁶⁴ The database is, however, still a long way from containing all judgments from the Danish courts. Therefore, we cannot know with certainty that we have found all relevant judgments from the Danish courts with impact on environmental protection in Denmark.

There was agreement between the legal practitioner and the representative from a CSO that the main problem was ensuring sufficient enforcement by companies of the rules in the Danish Marketing Practices Act. This refers to the fact that there is uncertainty of the obligations that companies are under in the area of consumer rights and environmental protection due to a lack of caselaw. Another aspect of the current lack of enforcement regards the length of proceedings before the courts and the administrative authorities.

The representative from a CSO believed that there is a lack of enforcement in the fact that only the worst cases of fraud is prioritized. This makes it possible for companies to make promises regarding “green” or environmental claims to consumers that they in practice not always live up to as there is a lack of follow-up from the authorities on whether such promises are in fact kept by companies. The representative from a CSO recommended to increase the level of fines that could be imposed on companies and pointed to the fact that fines in Norway and Sweden are larger than in Denmark. The representatives from the Danish Consumer Ombudsman suggested that there might also be a lack of efficient sanctions in the EU.

The representatives from the Danish Consumer Ombudsman rather see the issue from a wider EU-perspective stating that there is a lack of enforcement in the EU and points to a lack of balance in

⁶⁴ Denmark, news, what you can find in the judgment database (*Det kan du finde i domsdatabasen*), 6 January 2022, available in Danish at: <https://domsdatabasen.dk/nyheder/det-kan-du-finde-i-domsdatabasen/?page=1>.

resources between oversight with public authorities and oversight with companies where too little resources are invested into securing sufficient oversight with global companies given their social importance.

The representatives from the Danish Consumer Ombudsman were of the opinion that further obligations on marketing in specific sections may risk of leading to a decrease in the general protection against misleading marketing by companies as The Danish Consumer Ombudsman has an established practice on how to comply with the Danish Marketing Practices Act that applies generally to all sectors. A decrease in protection may arise if obligations on marketing/advertisement of companies in specified EU-legislation in practice lowers what companies at the moment needs to prove in accordance with the Danish Marketing Practices Act when claiming that a product is e.g. “green” or environmentally friendly. In short, that new EU-standards would be lower than the established standards from the Danish Consumer Ombudsman.

The representatives of the Danish Consumer Ombudsman instead saw a need for improvements in consumers rights to be provided with additional information on products. Such additional information could be on the durability of a product which the representative from a CSO also expressed the need for. The label would encourage consumers to choose products with a longer lifespan, enhancing the consumers ability to make informed choices whilst having an advantageous environmental impact. At the same time, the label would improve enforcement of consumers’ rights, as the guaranteed lifespan of the product would be extended. Such a durability label should be created at an EU level.

The representative from a CSO pointed to a need for a national action plan regarding environmental protection and consumer rights. Such a plan should inter alia focus on reducing waste in the textile industry.

The representative from a CSO also underlined the need for certifications where the polluter pays as it is a problem that only certified companies pay for a certification scheme. A certification scheme whereby all companies pay the costs may lead to more companies being certified as it will no longer be economical considerations that hold companies back from being certified.⁶⁵

The representative from a CSO also pointed to a need for certification schemes in all areas relevant to consumers. It should inter alia be easier for consumers to take sustainable choices when shopping for groceries. One way to make it easier is to have a climate certification scheme that is run by the Danish authorities.

The representative from a business pointed to three areas where there was a need for improvement.

Firstly, the representative called for a clear framework or guidelines on carbon credits and other “tools” that companies use to compensate for CO₂-emissions. The representative did not have a specific opinion on whether the framework should originate from the EU or at a national level, but the representative called for guidelines in more areas both EU-wide and at the national level that were less complicated and easy to understand.

Secondly, the representative of a business called for a streamlined approach to waste disposal and recycling throughout the EU-member states. In the opinion of the representative there is a need for

⁶⁵ The representative of a CSO did not describe in further detail what type of certification is meant. However, to my understanding it could be certifications similar to the ones that are currently available, such as ecolabeling Denmark, but with alterations in the financial structure of such certifications whereby companies pay according to their impact on the environment such as their CO₂-emission.

the member states to align on waste management and recycling procedures to optimize companies' abilities to accommodate the green transition and provide consumers with green options.

Thirdly, the representative of a business was of the opinion that EU-legislation on reporting obligations as part of the green transition are so extensive that small and medium businesses will have difficulties in complying with the requirements. The representative called for fewer less strict requirements that is possible for all companies to comply with to ensure a stronger impact in practice. Another way of encompassing smaller and medium sized companies can be to differentiate the scale of the reporting obligations to e.g., the size of the companies.

Best promising practices:

Currently, we have identified three promising practices. Two comes from the Danish authorities and one comes from a business.

Guidance on non-financial reporting

According to section 99a of the Danish Financial Statements Act, large companies must report on their approach to sustainability and responsible business conduct including on due diligence policies and practices in connection with their annual report. The report shall contain inter alia information on environmental aspects, including the company's work to reduce the climate impact of the company's activity, social matters and matters relating to respect for human rights. One way to present the work of the company on environment, social and governance matters (ESG) is through using ESG key metrics. Using ESG metrics on a company's historical performance in corporate responsibility strengthens transparency in this area for the company's customers, investors and other stakeholders. The use of ESG metrics also provides the company with a better data basis for strategy development and risk analysis, especially if the company also sets target figures for the various ESG metrics.

The Danish Business Authority (*Erhvervsstyrelsen*) in February 2022 updated its general guidance on non-financial reporting to companies to include more granular guidance for reporting entities around reporting ESG key metrics. The guidance includes instructions on how to disclose a company's ESG key metrics in the annual report in detail and also contains an idea catalog with concrete proposals for ESG key figures and calculation methods that can be used by companies to report their ESG key figures⁶⁶, thus making it easier to comply with the reporting requirement in the Danish Financial Statements Act, Section 99a. The law doesn't require disclosing on specific ESG metrics but includes a requirement on companies to disclose information when they do make use of ESG metrics. The guidance is therefore also meant to support more voluntary disclosing of ESG related information by companies. The annual report from companies, in which information on the use of ESG metrics can be a part, is publicly available and serve as one way to find information on how companies work with sustainability and responsible business conduct.

Quick guide for companies on environmental marketing

The Danish Consumer Ombudsman (*Forbrugerombudsmanden*) published a "Quick guide for Companies on environmental marketing" (*Kvikguide til virksomheder om miljømarkedsføring*) in December 2021.⁶⁷ The quick guide is based on the Danish Consumer Ombudsman's more comprehensive document "Guidance on the use of environmental and ethical claims" (*Vejledning om brug af miljømæssige og etiske påstande m.v.*), which describes in detail what companies must

⁶⁶ Denmark, The Danish Business Authority (Erhvervsstyrelsen), Vejledning om ESG taksonomi, available in Danish at: <https://erhvervsstyrelsen.dk/vejledning-vejledning-om-esg-taksonomi>

⁶⁷ Denmark, the Danish Consumer Ombudsman (*Forbrugerombudsmanden*), *Quick guide for companies on environmental marketing*, December 2021, (*Kvikguide til virksomheder om miljømarkedsføring*), available in Danish at: <https://www.forbrugerombudsmanden.dk/media/56731/kvikguide-om-miljoemarkedsfoering.pdf>.

consider when marketing their products as more environmentally friendly than others⁶⁸. The quick guide, however, is meant to provide an easy-to-understand guidance on what companies must pay attention to regarding environmental marketing in general and how to avoid “greenwashing”.

Sustainability incentive model

The Danish dairy company Arla recently introduced a sustainability incentive to its farmers as a way of motivating them to live up to Arla’s 2030 emission reduction target and an overall goal of reaching zero carbon emissions in 2050. With the Incentive model the milk prices that each farmer receives for his or her dairy products will depend on the farmers environmental sustainability activities in relation to the farm⁶⁹.

The incentive model involves a voluntary point-based system whereby farmers can collect points based on the model’s 19 separate indicators. This includes biogas, biodiversity and use of renewable electricity⁷⁰ as well as the “Big 5” (some of the most CO2 heavy areas in farming), such as feed and protein efficiency, animal robustness and fertiliser and land use⁷¹. For every kilo of milk produced by the farmers, the Board of Directors will pay up to 0,03 eurocent for each point that the farmers are able to achieve. The greater impact that the farmers green initiatives have on the environment, the more points they will be able to achieve.

The scheme is validated through the farms submitting their Climate Check data. Arla states that although the scheme is voluntary, 95% of Arla’s farmers - representing 99 percent of Arla’s owner milk pool - have already registered their data in the 2022 Climate Check. This will automatically be calculated and rewarded in the new Incentive model⁷². The model is set to begin with milk being delivered from July 2023 with the first incentive payment set to be given as part of the monthly milk price in August 2023.

⁶⁸ Denmark, the Danish Consumer Ombudsmand (*Forbrugerombudsmanden*), Guidance on the use of environmental and ethical claims etc.), August 2014, (*Vejledning om brug af miljømæssige og etiske påstande m.v.*), available in Danish at: <https://www.forbrugerombudsmanden.dk/media/46475/2016-miljømæssige-og-etiske-udsagn.pdf>

⁶⁹ Denmark, Arla Foods, Press Release on the new Incentive model, 07/10/2022, available in English at: <https://www.arla.com/company/news-and-press/2022/pressrelease/arla-earmarks-up-to-500-meur-annually-for-rewarding-climate-activities-on-farm/>

⁷⁰ Newfoodmagazine, Arla introduces new Sustainability Incentive model, 10/10/2022, available in English at: <https://www.newfoodmagazine.com/news/168735/arla-introduces-new-sustainability-incentive-model/>

⁷¹ Denmark, Arla Foods, Climate check report, 2022, page 10-15, available in English: <https://www.arla.com/4a8073/globalassets/arla-global/sustainability/dairys-climate-footprint/arla-climate-check-report-2022.pdf>

⁷² Denmark, Arla Foods, Press Release on the new Incentive model, 07/10/2022, available in English at: <https://www.arla.com/company/news-and-press/2022/pressrelease/arla-earmarks-up-to-500-meur-annually-for-rewarding-climate-activities-on-farm/>