

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

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1. Introduction

Desk research was based on a review of relevant scientific literature and key hard and soft law. With regard to the regulatory sources consulted, the following are worth mentioning here:

- Legislative Decree 206/2005, i.e. Italian Consumer Code¹;
- Legislative Decree 152/2006, i.e. Italian Environment Code²;
- 5th Update of the National Report for the Implementation of the AARHUS Convention in ITALY 2021³;

¹ [Decreto Legislativo 6 settembre 2005, n. 206](#), “Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229”. An informative webpage on the Italian Consumer Code is available at the [website](#) of the Ministry of Economic Development.

² [Decreto Legislativo 3 aprile 2006, n. 152](#), “Norme in materia ambientale”.

³ Ministero della Transizione Ecologica, [Quinto aggiornamento del Rapporto Nazionale per l'attuazione della Convenzione di AARHUS in ITALIA](#), 20 march 2021.

- 1st and 2nd Italian National Action Plans on Business and Human Rights⁴;
- EU directives, Italian laws, decrees and decrees law quoted in the report.

Experts consultations have been performed through videocall, and these have been sometimes integrated by written input subsequently shared by the interviewees. Nine individual consultations have been performed. For a breakdown of consultations, see the table below.

Professional interviewed	Method
Company: Phone and communication company Role: Corporate Social Responsibility Manager; Coordinator of the due diligence on Business and Human Rights	Videocall Written input
University: Università Statale di Milano Role: Professor in International Law and B&HR;	Videocall Written input
NGO: Human Rights International Corner (HRIC) – leading Italian NGO dealing with B&HR, HRDD and ENV	Videocall
Institution: OECD Italian National Contact Point (NCP), Ministry of the Economic Development Role: Public Official	Phone call
Law firm 1; Milan Role: Lawyer and legal practitioner dealing with B&HR;	Written input
University: Università degli Studi di Ferrara Role: Full Professor, Private Law, Consumers Rights, Environmental Law	Videocall Written input
Institution: National Research Council (CNR) Role: Researcher, International Law and Human Rights;; HRIC Member	Phone call Written input
NGO: Italian Clean Clothes Campaign – NGO dealing with B&HR, labour rights, consumers rights	Videocall
Law firm 2; Milan Rome & other Role: Senior Legal Advisor;	Videocall Written input
Law firm 3; Naples	Videocall

⁴ Inter-ministerial Committee for Human Rights (CIDU), [Italian National Action Plan on Business and Human Rights](#) (2016-2021), 1st December 2016; Inter-ministerial Committee for Human Rights (CIDU), [Second National Action Plan on Business and Human Rights](#) (2021-2026), 1st December 2021.

Difficulties have been encountered in reaching organisations and professionals due to the summer vacations and the consequent limited availability of the participants. In particular, the following ones were unreachable or not available to release an interview:

- Representative of the Inter-ministerial Committee for Human Rights (CIDU).
- Officer of the Italian Competition and Market Authority ([AGCM, consumer rights department](#)).
- Italian consumers rights CSOs contacted by email: ADICONSUM, Altroconsumo, A Sud ONLUS, Terra! ONLUS, WeWorld.
- Italian businesses (CSR managers) contacted by email: ENI, ENEL, CNH Industrial, Lavazza, Ferrero, Poste Italiane, AlceNero.

Generally speaking, desk research showed that neither law firms specialised in consumers law and/or environmental law nor independent consumer lawyers deal with environmental protection through consumers law enforcement in Italy. Several stakeholders interviewed confirmed that no interest in linking consumers rights and environmental protection has risen yet in the Italian legal panorama. In the Italian legal practice, environmental protection is achieved both through administrative law and criminal law, which is often linked to the protection of health and safety at work and the protection of the public health. This is proved by the fact that there is no specific section on environmental law specialists in the Italian lawyers' register, nor there is an unambiguous training path to ensure adequate training in environmental law.

“La maggior parte dei miei colleghi avvocati specializzati in diritto dei consumatori si concentra sull’aspetto patrimoniale, della concorrenza e della tutela del patrimonio - e quasi mai dell’ambiente. L’Italia è indietro: non usiamo molto il contenzioso transnazionale contro l’impresa. Il problema di fondo è che in Italia non c’è contenzioso civilistico in materia di impresa e diritti umani”.

“Most of my lawyer colleagues specialising in consumer law focus on property, competition and asset protection - and almost never on the environment. Italy is lagging behind: we do not use transnational litigation against companies that much. The basic problem is that in Italy there is no civil litigation on business and human rights”. (Lawyer specialised in B&HR and the Environment).

2. Scope of consumer protection laws and environmental laws

Types of claims that can be submitted under existing consumer protection or environmental laws in Italy

- 1) Unfair commercial practices⁵ (main complaint instrument)

⁵ An [informative webpage](#) on the unfair commercial practices is available at the website of the Ministry of Economic Development.

From 21 September 2007, Legislative Decrees No. 145/2007⁶ and No. 146/2007⁷ entered into force, transposing the European Directives 2005/29/EC and 2006/114/EC respectively. In particular, the second decree introduces a new regulation for the protection of consumers against **unfair commercial practices in business-to-consumer relationships**. The new rules apply to all conducts constituting **unfair commercial practices** and **misleading and comparative advertising**, perpetrated after 21 September 2007. Legislative Decree no. 146/2007 replaces articles 18 to 27 of the Consumer Code (Legislative Decree 206/2005, mentioned above).

According to this reform, the competent authority in this matter is the **Italian Competition Authority (Autorità garante della concorrenza e del mercato - AGCM)**. AGCM enforces the discipline to all conducts that constitute unfair commercial practices in business-to-consumer relations (B2C). AGCM, of its own motion or at the request of any person or organisation having an interest in it, shall inhibit the continuation of unfair commercial practices and eliminate their effects by applying the penalties provided for. AGCM may decide: the **provisional suspension** of unfair commercial practices if there is particular urgency; the **prohibition of the dissemination or continuation** of the commercial practice judged to be incorrect; the **publication** of the decision or a specific corrective statement by and at the expense of the professional condemned. Moreover, AGCM provides for the application of the following **administrative fines**: from EUR 5,000.00 to EUR 500,000.00, taking into account the seriousness and duration of the violation; from EUR 10,000 to EUR 150,000 in case of non-compliance with emergency and injunctions or removal of effects and in case of non-compliance with the commitments undertaken; the suspension of business activity for a period not exceeding 30 days in cases of repeated non-compliance. An **appeal** against decisions taken by the AGCM may be lodged at the territorially competent **administrative court**⁸.

With regard to the AGCM competence, numerous **cases**⁹ have been filed against companies that have violated consumer protection regulations, by providing misleading information regarding the environmental performance or environmental impact of their products. Such administrative litigation has been initiated by AGCM autonomously as well as by NGOs, consumer associations, and other stakeholders. Among others, we can quote:

- “Movimento Difesa del Cittadino e Legambiente vs ENI avanti AGCM” (2019): AGCM has fined ENI S.p.A. EUR 5 million for having spread misleading advertising messages¹⁰ in the promotional campaign on Eni Diesel+ fuel, judged as an incorrect commercial practice

⁶ [Decreto Legislativo 2 agosto 2007, n. 145](#), “Attuazione dell’articolo 14 della direttiva 2005/29/CE che modifica la direttiva 84/450/CEE sulla pubblicità ingannevole”.

⁷ [Decreto Legislativo 2 agosto 2007, n. 146](#), “Attuazione della direttiva 2005/29/CE relativa alle pratiche commerciali sleali tra imprese e consumatori nel mercato interno e che modifica le direttive 84/450/CEE, 97/7/CE, 98/27/CE, 2002/65/CE, e il Regolamento (CE) n. 2006/2004”.

⁸ This is without prejudice to the jurisdiction of the **ordinary judge** in matters of acts of unfair competition, pursuant to Article 2598 of the Civil Code, as well as, as regards comparative advertising, in relation to acts carried out in violation of the regulations on copyright protected by Law No. 633 of 22 April 1941, as amended, and trademarks protected under Legislative Decree No. 30 of 10 February 2005 and subsequent amendments, as well as of the designations of origin recognized and protected in Italy and other distinctive signs of competing companies, goods and services.

⁹ The list of cases is derived from an unpublished study produced by the NGO Human Rights International Corner (HRIC) for the University of Bozen.

¹⁰ In detail, ENI promoted the dissemination of advertisements and information material for the promotion of its fuel 'Eni Diesel+' in which information is provided on the fuel's characteristics in terms of fuel savings, reductions in gaseous emissions, and the positive environmental impact of its use. Example: video entitled “Eni Diesel+: one fuel, many cares for the environment” posted on ENI's website.

pursuant to Articles 21 and 22 of the Consumer Code, and prohibits its continuation.¹¹ ENI's appeal to the Regional Administrative Court was dismissed¹².

- “FERRARELLE IMPATTO ZERO”¹³ (2012): AGCM considered it a misleading commercial practice that Ferrarelle used, for advertising purposes, its membership for a limited period of time to an environmental project aimed at offsetting CO2 emissions related to the production of bottles of its brand.
- “AGCM vs Apple and Samsung”¹⁴ (2018): AGCM defined some conduct engaged by professionals based in Italy and belonging to the Apple multinational group and Samsung Electronics Italia S.p.A. as practices of “planned obsolescence” with possible (indirect) impact on the environment. With regard to Apple, information provided and actions performed during the release of iOS operating system updates for certain iPhone models and information provided on the battery characteristics of the same devices were targeted. Not differently, Samsung’s provided information and performed actions during and following the release of firmware updates based on the Marshmallow version of its Android operating system for its 'Galaxy Note 4' model smartphones. AGCM has judged them as unfair commercial initiatives pursuant to Articles 20, 21, 22 and 24 of the Consumer Code, and has prohibited their dissemination or continuation. Both companies were fined EUR 5 million euros.
- “Acqua San Benedetto di fronte al Consiglio di stato per multa AGCM” (2017): the Council of State, with the judgment of 27 April 2017 n. 1960¹⁵, confirmed the fine imposed by AGCM (EUR 70,000) arguing that “*Directive 2005/29/EC (...) provides a legal basis to ensure that traders do not make environmental claims unfairly to consumers.*” The ruling confirmed the AGCM’s decision, which had qualified as an unfair commercial practice the one implemented by the company San Benedetto and consisting in the dissemination, through the daily press and its own website, of advertisements relating to San Benedetto natural mineral water, highlighting the effort that the professional would have made to reduce harmful emissions associated with the production of PET bottles.

2) Institute of Advertising Self-discipline¹⁶

To challenge a green claim, a citizen, a consumer protection association, and a company can report the case to the **Istituto dell’Autodisciplina Pubblicitaria** ([IAP – Institute of Advertising Self-Discipline](#)). The IAP is a private Italian association set up in 1966 to ensure that commercial communication is ‘honest, truthful and fair’ to protect the public, consumers and businesses. It is a self-regulatory system for the entire advertising sector. EU and Italian legal and administrative practices recognised the IAP’s role as a non-state based alternative dispute resolution system¹⁷. Anyone who claims being harmed by a commercial communication that is contrary to the Self-Discipline Code may submit a

¹¹ AGCM, [Resolution of 20 December 2019](#).

¹²

[Eni, Tar conferma multa Antitrust da 5 mln € su pubblicità “Diesel+” - GestoriCarburanti](#)

¹³ Camera dei deputati, [RELAZIONE SULL’ATTIVITA’ SVOLTA DALL’AUTORITA’ GARANTE DELLA CONCORRENZA E DEL MERCATO](#) (ANNO 2012), p. 190

¹⁴ AGCM, [Resolution of 25 September 2018](#) (Apple); AGCM, [Resolution of 25 September 2018](#) (Samsung).

¹⁵ Council of State, Section 4th, Decision No. 1960 of 27 April 2017 (Consiglio di Stato, Sezione VI, [Sentenza 27 aprile 2017, n. 1960](#)).

¹⁶ Input received by a Milan-based lawyer and supporting the NGO Human Rights International Corner.

¹⁷ For further details, see the “L’Autodisciplina e lo Stato” section [here](#).

written complaint to the IAP's so-called “*Giurì*” against a party who, having accepted the Code in one of the prescribed forms (adherence, acceptance clause), has disseminated commercial communications that are considered unfair. *Giurì*'s members¹⁸ may not be selected among experts exercising their professional activities in the field of commercial communications, in order to be placed in a position to judge with absolute independence and impartiality. The *Giurì*, after the discussion with the parties and the viewing of the documentation, retires and issues its decision¹⁹. When the decision establishes that the commercial communication under examination does not comply with the rules of the Code of Conduct, the *Giurì* orders its termination. With regard to the enforcement, if those who are obliged to comply with the decisions of the *Giurì* fail to do so within the prescribed time limit, no real sanctions are envisaged. The *Giurì* orders that notice of non-compliance be given to the public through the press by the IAP but at the expense of the losing party.

IAP *Giurì*'s decisions can be challenged in the framework of an **administrative complaint**.

With regard to the protection of the environment, **Article 12 of the Self-Discipline Code (Codice di Autodisciplina)**²⁰ provides that “*marketing communication claiming or evoking environmental or ecological benefits must be based on truthful, relevant and scientifically verifiable data. Such communication must make it clear to which aspect of the advertised product or activity the claimed benefits relate*”.

3) Labelling system

Moreover, **Legislative Decree 116/2020**²¹ transposed in Italy the **Directive 2018/851 on waste** and the **Directive 2018/852 on packaging and packaging waste**, amending the Legislative Decree 152/2006 (Environmental Consolidation Act). According to the Directives and to its implementation Legislative Decree, the packaging must be properly **labelled** in compliance with the provisions established by the UNI technical standards and in compliance with the determinations adopted by the European Commission in order to give accurate information to consumers on the final destinations of packaging. Article 261, paragraph 3 of the Legislative Decree No. 152/2006 states that “*A pecuniary administrative sanction ranging from EUR 5.200,00 to 40.000,00 shall apply to anyone who places packaging on the market without the labelling requirements*”. According to Article 262 of the Environment Code, the Municipality where the violation occurs is competent to impose the penalty.

In this framework, the “Made green in Italy” Label shall be quoted. This is the first national certification scheme on the Environmental Product Footprint, defined on 2 February 2016 with the entry into force of the Environmental Annex to the 2016 Stability Law (Law 221/2015).

Basically Made Green in Italy is a voluntary national scheme promoted and developed by the Ministry of the Environment to assess and communicate the environmental footprint of products. For Made Green in Italy products, there is a logo and a product environmental footprint statement that provides both quantitative and qualitative information on the product's environmental performance. The

¹⁸All *Giurì*'s members are law university professors specialised in the IAP's matters. Current list of members can be found [here](#).

¹⁹ Decisions of the IAP's *Giurì* are available [here](#). A selection of decisions with regard to the so called “green claims” is available [here](#).

²⁰ [Codice di Autodisciplina della Comunicazione Commerciale](#).

²¹ [Decreto Legislativo 3 settembre 2020, n. 116](#), “Attuazione della direttiva (UE) 2018/851 che modifica la direttiva 2008/98/CE relativa ai rifiuti e attuazione della direttiva (UE) 2018/852 che modifica la direttiva 1994/62/CE sugli imballaggi e i rifiuti di imballaggio”.

Ministry of the Environment grants the company a licence to use the logo for "Made Green in Italy" products (for the duration of three years), following a positive verification by an accredited certification body²², and according to the conditions set out in the reference regulation.

Made Green in Italy is designed according to the new European PEF (Product Environmental Footprint) approach, which integrates the 'traditional' methodological approach to product/service environmental assessment linked to Environmental Product Declarations (EPDs) according to ISO 14025. The Made Green in Italy certification scheme, which also encodes a specific environmental mark, in fact underlies the family of product environmental performance declarations based on the quantification of environmental impacts through product life cycle assessment (LCA - Life Cycle Assessment) methodologies, with independent third-party verification. The scheme therefore refers to a certification tool within the context of Type III environmental labels, now consistent with the indications of the ISO 14025 ("Environmental labels and declarations - Type III environmental declarations"). The Made Green in Italy scheme has broad similarities with the 'classic' Environmental Product Declaration (EPD) since it is set up starting from the same type of certification tool expressed at European level by the PEF.

Material and procedural requirements for enforcing consumer and environmental rights²³

1) Environmental damage

In Italy, the **environmental damage**²⁴ is defined as “any significant and measurable deterioration, direct or indirect, of a natural resource or the utility provided by it, compared with its original condition”²⁵. Environmental damage is the damage caused to a “collective interest”, i.e., to the environment itself considered and distinct from the individual assets composing it (see Constitutional Court, 1 June 2016, no. 126). Art. 311, paragraph 2, of the Environmental Code²⁶, provides that “anyone causes environmental damage with intent or negligence”²⁷ is obliged to adopt the necessary remedial measures²⁸. In the event that these measures are omitted or incomplete, physical or legal persons responsible may be required to pay a sum equal to the costs of the activities necessary for their complete implementation.²⁹ The **Ministry of the Environment** is the only subject with legal standing in such legal cases, as it represents a matter of protection of a collective interest³⁰. Legislative

²² ACCREDIA is the Single Accreditation Body, a private body appointed by the Italian Government to certify the competence, independence and impartiality of bodies and laboratories that verify the conformity of goods and services to standards. See details for accreditation to release the “Made Green in Italy” [here](#). In this framework, [CSQA](#) was the first Certification Body to obtain accreditation from ACCREDIA for Made Green in Italy.

²³ Input received by academics from Universities and Italian National Research Council.

²⁴ Andrea Torrente, Piero Schlesinger (2021). “Manuale di diritto privato”. A cura di: F. Anelli, C. Granelli, 25ed, ed. Giuffrè, pp. 947-949. For a significant literature contribution, see Salanitro, Ugo (2018). “Il Danno Ambientale Tra Interessi Collettivi E Interessi Individuali”. *Rivista di diritto civile* 1/2018, p. 248.

²⁵ Art. 300, paragraph 1 and 2, environmental code; Art. 302, paragraph 12, environmental code; Supreme Court of Cassation, decision No. 8662 of 4 April 2017

²⁶ [Constitutional Court, Decision No. 126/2016](#).

²⁷ Supreme Court of Cassation, Decision No. 8662 of 4 April 2017.

²⁸ Measures indicated in Annexes 3 and 4 to the same Environmental Code; Supreme Court of Cassation, Decision No. 21936 of 21 September 2017; Supreme Court of Cassation, Decision No. 14935 of 20 July 2016.

²⁹ Art. 311, paragraph 2, last part, Environmental code.

³⁰ Art. 311, paragraph 1, Env. Code; see Constitutional Court, [Decision No. 126](#) of 1st June 2016.

Decree No. 152/2006, as amended, grants the (renamed) Minister of Ecological Transition the legal standing for **the action for compensation for environmental damage**. This is a **judicial action** codified in Articles 313-315 of the Environment Code. Local authorities, physical persons, legal persons, and environmental protection associations, are recognized as holders of the interest in submitting to the Minister, through the Prefectures, complaints and observations, accompanied by documents and information, concerning cases of environmental damage, in order to request the intervention of the State to protect the environment through complaints and observations, supported by documents and information³¹. The Minister assesses requests concerning cases of environmental damage or threat of damage and informs the applicants of the measures taken in this regard without delay. In case of imminent threat of damage, the Minister shall, in extreme urgency, take action on the reported damage even before having replied to the applicants³². The Ministry can issue an order, immediately enforceable, pursuant to which to order those found responsible harmful act to take action to ensure **environmental restoration**, by way of "compensation in a specific form", within a period set in the same order³³. The priority of 'reparation' measures over compensation for pecuniary equivalent, as a consequence of the absolute peculiarity of the damage to the 'environmental good', responds to the European Commission's repeated criticisms promoted through infringement procedures. In the event of a refusal by the Ministry, or in the event of its inaction (i.e., in case of 'silence of the Public Administration' according to the Italian Code of Administrative Procedure), the person who filed the request has a right of appeal against the Ministry's refusal or silence. The administrative judge has jurisdiction in such a case. In any case, the right of the persons harmed by the event producing environmental damage, in their health or in their property, to take legal action in courts against the responsible party to protect the rights and interests harmed remains unaffected³⁴.

Significant case law deserves to be mentioned in this framework, in order to detail the discipline for legal standing of individuals and associations. Criminal Court of Cassation Judgement 36514/2006 stated that "the legitimacy to file a civil action is not only due to public entities, pursuant to Article 311 of Legislative Decree No. 152/2006 (environmental code), in the name of the environment as a **public interest**, but also to the individual or associated person, in the name of the environment as a fundamental right of every man and a value of constitutional relevance". Moreover, the Criminal Court of Cassation's sentence no. 33887/2006 declared, referring not to Law no. 349/1986 nor to Legislative Decree no. 152/2006 (the environment code), but to Article 2043 of the Civil Code³⁵, that environmental associations are autonomously and principally legitimated to bring an action for compensation for environmental damage when they are statutory carriers of territorially determined environmental interests concretely injured by unlawful activity. Similarly, according to the Criminal Court of Cassation's decision no. 12295/2013, all other parties, whether individual or associated, including public territorial bodies and Regions, may instead bring an action, pursuant to Article 2043 of the Italian Civil Code, to obtain compensation for any further and concrete pecuniary damage that they have proven to have suffered from the same conduct damaging the environment in relation to the injury of their other pecuniary rights, other than the public and general interest in the protection of the environment as a fundamental right and value of constitutional relevance.

³¹ Art. 309 of the Environmental Code; Council of State, Section IV, 8 February 2021, Decision No. 1166

³² Art. 309 of the Environmental Code, paragraphs 1, 3-4

³³ Articles 313, paragraph 1, and 314, paragraphs 1, 2 and 3, Environmental code.

³⁴ Articles 313, paragraph 7, Environmental code.

³⁵ General rule on non-contractual liability, i.e. civil compensation for a tort.

2) Product liability

With regard to **product liability**, according to **Art. 114 of the Consumer Code** “the producer is responsible for damage caused by defects in his product”. A reference to **Art. 124 of the same Consumer Code** is necessary as well. According to this legislative provision, “a consumer who complains of damage caused by a defective product is entitled to compensation therefor, any covenant excluding or limiting in advance against him the producer's liability being null and void”. Producer liability is presumed. To obtain compensation, the victim of the damage must prove: a) the damage suffered; b) the defect of the product (meaning not the specific design or manufacturing defect, which could hardly be identified by the user, but only the insecurity of the product, as it manifested itself in the use for which it is intended); c) the causal connection between defect and damage (Art. 120 of the Consumer Code)³⁶. This is a safety-related standard, so applying it by analogy to environmental damage would require regulatory adjustments, unless there is an impact on people's health.

3) Class action

Moreover, in **the judicial field**, the new system of the **class action** allows victims to find compensation for the collective interest violated. See Chapter 3 for a detailed description of this tool.

4) Italian National Contact Point

In the **extrajudicial field** there is the dispute settlement system of the **Italian National Contact Point** (NCP³⁷) of the Organization for Economic Cooperation and Development (OECD), through the presentation of “specific [instances](#)”. A specific request can be submitted by anyone who has an interest in it (stakeholders: individuals, NGOs, trade unions, other companies, etc.) to the NCP to lend its offices. Stakeholders, when they consider that a company, by its conduct, causes or risks causing a negative impact in one of the areas of the OECD Guidelines for Multinational Enterprises³⁸, have the possibility to submit a request to the NCP to obtain mediation between the parties aimed at resolving the issue in a consensual manner. This must be submitted against one or more Italian multinational companies or foreign multinational companies operating in Italy, if the latter are based in one of the Countries adhering to the Guidelines. The Guidelines are addressed to all the entities that compose the multinational company (mother companies, subsidiaries, suppliers, subcontractors, etc.) which are called upon to cooperate and assist each other to facilitate compliance with the Guidelines. If the parties reach an agreement, this concludes the procedure. Otherwise, the procedure closes with a final statement from the NCP with recommendations to the parties on how to implement the Guidelines. There is no means of appeal to the courts against the failure to implement the statements or recommendations.

³⁶Supreme Court of Cassation, Decision No. 29828 of 20 November 2018; Supreme Court of Cassation, Decision No. 3258 of 19 February 2016. Torrente, Schlesinger (2021). *Supra*. P. 950.

³⁷ Italian NCP's Public Official consulted.

³⁸ OECD, [OECD Guidelines for Multinational Enterprises](#), 2011.

After an assessment of the [Italian NCP specific instances' database](#), no cases of intersection between consumers rights and environmental protection have been detected.

“Finora, nella maggior parte dei casi, i nostri uffici si sono concentrati su lavoratori sfruttati e popolazioni indigene in pericolo per problemi ambientali. La maggior parte delle istanze specifiche che riceviamo provengono dai sindacati”.

“So far, in most cases, our offices have focused on exploited workers and Indigenous peoples endangered by environmental problems. Most of the specific instances we receive come from trade unions.” (Official, Italian OECD NCP).

The **Aarhus Convention** recognises the individual right of access to environmental information and a related obligation to allow access to it by public and private administrations if they exercise public functions (Article 2 Aarhus Conv.). For private individuals, control is exercised indirectly, through the system of controls that hangs over public administrations.

Transposition³⁹ of the Aarhus Convention in Italy, as regards access to information in environmental matters, can be detected in **Law No. 108 of 16 March 2001**⁴⁰, which has ratified the Convention. The system of access to environmental information uses the remedies provided for by the internal legislation on access to administrative documents, as governed by **Law No. 241 of 7 August 1990**⁴¹.

The Fifth Update of the National Report for the Implementation of the AARHUS Convention in Italy 2021⁴² lists the legislative, regulatory, and other measures put in place to implement Article 9 of the Convention:

- a) **Non judicial mechanisms (Law No. 241/1990, Artt.22-28): Article 25** provides that, in the event of refusal of access, express or tacit, the applicant may request the administrative review of the Determination (review procedure), respectively to:
 - i) **Ombudsman** competent for the territory, where such acts have been issued by a Local Authority (Municipality, Province, Region),
 - ii) **Commission for access to administrative documents**, established at the Presidency of the Council of Ministers, in the case of measures adopted by central or peripheral administrations of the State.
- b) **Judicial claims:**
 - i) **Regional Administrative Court.** Article 25 of the **Law No. 241/1990**, provides that, in the event of refusal of access, express or tacit, the applicant may appeal to the competent TAR (alternatively to what is indicated in point (a) above). **Art. 116** of the **Legislative Decree No. 104/2010** regulates the judicial appeal against determinations and against silence on requests for access to administrative documents. It is a special procedure.

³⁹ Input received by Academics from the Italian National Research Council and HRIC activists.

⁴⁰ [Legge 16 marzo 2001, n. 108](#), “Ratifica ed esecuzione della Convenzione sull'accesso alle informazioni, la partecipazione del pubblico ai processi decisionali e l'accesso alla giustizia in materia ambientale, con due allegati, fatta ad Aarhus il 25 giugno 1998”.

⁴¹ [Legge 7 agosto 1990, n. 241](#), “Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi.

⁴² Ministry of Ecological Transition, [Fifth update of the National Report for the implementation of the AARHUS Convention in ITALY](#), 20 March 2021, pp. 35 ff.

- ii) An appeal against the decision of the TAR can be **appealed to the Council of State** (second instance of judgment). If the proceedings are concluded favourably, the TAR or the Council of State shall directly grant access to the information, by binding judgment.
- c) **Others:** Legislative Decrees No. 195/2005⁴³; 152/2006⁴⁴; 33/2013⁴⁵.

An **example of the practical application**⁴⁶ of the Aarhus Convention principles in Italy can be found in the case filed by the environmental justice NGO named “A Sud” and others two hundred plaintiffs in June 2021, alleging that the Italian government, by not taking actions necessary to comply with Paris Agreement temperature targets, was violating fundamental rights, including the right to a stable and safe climate. The action was part of the [“Giudizio Universale” campaign, which can be listed among the Italian promising practices in this framework](#), and was aimed to obtain a declaration that the government's inaction is contributing to the climate emergency and a court order to reduce emissions 92% by 2030 compared to 1990 levels. According to the claim, the Italian Government, with its omissive conduct, may have violated the human right to a stable and safe climate, giving rise to non-contractual liability under Article 2043 of the Civil Code.

Interim conclusions

Based on these finding, it is now possible to state that Italian consumer law, as it is currently framed, can only partially serve as a tool to enforce environment protection. As an outcome from the stakeholders consultations performed, a few elements of the legal framework should be improved.

On one hand, law firm 2 legal advisors suggested that the intersections between consumer rights and protection of environment can be found in the regulation of goods production and of the supply chain. Therefore, starting a process of integration between consumer law and environmental law can be a strong tool for the protection of the environment. Empowering consumers by giving them the right to verify that the products comply with the “environmental requirements” enables a widespread and ancillary monitoring. This implies that each environmental law, as well as each regulation of the supply chain and of the production of goods, should include a mechanism of verification by the consumers and shall recognize to them the possibility to raise claim.

On the other hand, with regard to a direct consumers law’s impact on the environment protection, most of the academia and CSOs representatives interviewed suggested policymakers shall focus on the prioritization of repair over replacement of defective or obsolete products, while by now the consumer can freely choose among the two solutions. Increasing the warranty time would also be

⁴³ It regulates the right of access to environmental information held by public authorities, to ensure that this information is made available to anyone who requests it and is disseminated in forms and formats that can be easily consulted.

⁴⁴ the text regulates the “right of access to environmental information and participation for collaborative purposes”, providing in Article 3e that anyone, without being required to demonstrate the existence of a legally binding interest, can access information relating to the state of the environment and the landscape in the national territory.

⁴⁵ Article 5 of Legislative Decree Article 33/2013 provides for the possibility for the applicant to act against the determinations of the public authority within the terms and procedures governed by the rule (review of the person responsible for the prevention of corruption and transparency, appeal to the Ombudsman, appeal to the courts).

⁴⁶ Input received by academics from the Italian National Research Council as well as from activists of the Italian Clean Cloths Campaign.

desirable, as well as tightening penalties for planned obsolescence to discourage this practice⁴⁷. Moreover, they suggested the market of product-as-a-services⁴⁸ system to be implemented.

“Bisogna stimolare il modello del Prodotto come Servizio”

“We must stimulate the 'Product as a Service' model” (Academic, University of Ferrara).

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

The legal framework of the class action tool in Italy shall be chronologically described, according to the successive regulatory reforms⁴⁹.

In a **first phase, Law No. 244 of 24 December 2007**⁵⁰ had amended **Article 140-bis of the Consumer Code** by introducing **collective action (exclusively) to protect consumers and users**⁵¹. Art. Article 140-bis provides, in fact, for the possibility of asserting with a single action and in a single civil judgment the individual claims (compensation and reparative) with homogeneous content of consumers and users who, originating from a single unlawful conduct, require, for their assessment, the resolution of the same question (in fact and / or law) of collective relevance. The action can be carried out by representative **bodies** identified by law pursuant to paragraphs 1 and 2 of Article 140bis. The acting entity shall be the bearer of the **collective interest** of the category of consumers, participating in the action by means of an opt-in mechanism. It is an action that aims to bring out the contractual responsibility of the business vis-à-vis the consumer, who can adhere to the class action at the beginning or during the proceeding. In such cases, courts decide on liability and individual damages together. Victims' compensations are defined on a lump-sum basis.

With regard to this consumers-dedicated class action, **art. 137, paragraph 1, of the Consumer Code** states that “A list of nationally representative consumer and user associations is established at the

⁴⁷ See for instance the Draft Law on “Combating planned obsolescence of consumer goods” (*Disegno di Legge No. 615, “Modifiche al codice di cui al decreto legislativo 6 settembre 2005, n. 206, e altre disposizioni per il contrasto dell'obsolescenza programmata dei beni di consumo”*), of 9 July 2018.

⁴⁸ “Product as a service is the selling of the services or the outcomes of a product that can be offered in the form of various business models across end-use industries such as banking, manufacturing, and oil and gas. The adoption of product as a service has been driven by developments in sensor technology, data analytics, Internet of Things (IoT), cloud computing, and smartphone devices. These technologies have created the need for product as a service in order to form long-term relations with customer. The wide availability of the Internet and wireless connectivity at low costs make it feasible for manufacturers to outfit their products with sensors that indicate how a product is being used. It also allows manufacturers to determine environmental factors, such as temperature and humidity or the failure of a specific part, that affect the product’s reliability. Product manufacturers are continuously re-engineering, developing the process of innovation, optimizing processes, and minimizing costs involved in meeting the demands of consumers.” Source: [Product as a Service Market Demand and Research Insights by 2026 \(transparencymarketresearch.com\)](#)

⁴⁹ Input received by academics from Universities the Italian National Research Council.

⁵⁰ [Legge 24 dicembre 2007, n. 244](#), “Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2008)”.

⁵¹ An informative [webpage](#) on the Italian Consumer Code is available at the website of the Ministry of Economic Development.

Ministry of Production Activities". **Paragraph 2** sets the requirements⁵² the entities need to possess in order to obtain the registration on the list. The [list](#) is constantly updated on the Ministry of Economic Development website.

As for the legal practice enforcing these provisions, a relevant Italian case law must be mentioned in the framework of the well-known "Dieselgate"⁵³. Without exhaustively recalling the case details, it must be recalled that the German company Volkswagen had manipulated the engines of a pool of cars and declared lower emissions than the real ones. In Italy, this Volkswagen's misleading green claims was denounced by the civil-society organisations "ALTROCONSUMO", the biggest Italian consumers association, taking to court the Dieselgate class action in 2016. In July 2021, an historical judgment⁵⁴ condemned Volkswagen to pay more than EUR 200 million in favour of approximately 63,000 consumers involved, i.e., buyers of new and second-hand cars and previous owners, for a total of more or less 650,000 cars in Italy. Consumers were entitled to receive each up to EUR 3,300 for monetary and non-monetary damages. The German company appealed the judgment before the Court of Appeals, whose decision is pending⁵⁵. It must be noted that no other class actions are pending in Italy at the moment⁵⁶.

The **second** phase of development of the class action in Italy begins with **Law No. 31 of 12 April 2019**⁵⁷ (class action provisions), a reform that came into force in 2021. Thanks to the new **840-bis of the Code of Civil Procedure**, individual homogeneous rights can be safeguarded through class action. The reform has positively led to an **expansion of the subjects entitled to make use of the class action** in Italy. Indeed, art. 840-bis, paragraph 2 states that **non-profit organizations and associations whose statutory objectives include the protection of the homogeneous rights, or each member of the class**, may bring an action against the perpetrator of the illicit conduct in order to obtain a) the ascertainment of liability, and b) an order to pay damages and restitution (judicial civil claim). However, only organizations and associations registered in a public list established can bring the action. With regard to legal standing, significant innovations are outlined with respect to the Consumer Code. In particular, legal standing is attributed alternatively to individual class members (even if not consumer) and to associations or organisations (not necessarily "recognised"), whose statutory objectives also include the protection of homogeneous individual rights. Bodies are required to be registered in a public list established by decree of the Ministry of Justice, in agreement with the Ministry of Economic Development, registration being subject to compliance with specific criteria and requirements aimed at ensuring that the body is able to adequately represent the class.

⁵² Requirements: a) incorporation, by public deed or by notarized private deed, for at least three years and possession of a statutes that enshrine a democratic-based organisation and provide for the exclusive purpose of protecting consumers and users, without any profit-making aim; b) maintenance of a list of members, updated annually, with an indication of the fees paid directly to the association for statutory purposes; c) a number of members not less than 0.5 per thousand of the national population and presence on the territory of at least five regions or autonomous provinces, with a number of members not less than 0.2 per thousand of the inhabitants of each of them, to be certified by a declaration in lieu of affidavit made by the legal representative of the association (...); d) drawing up an annual balance sheet with an indication of the fees paid by the members and bookkeeping, (...); e) having carrying out a continuous activity in the previous three years; f) its legal representatives have not been convicted in connection with the association's activities, and they are not entrepreneurs or directors of companies in the same sectors in which the association operates.

⁵³ Popular case in the general public at national and international level.

⁵⁴ [Class action Dieselgate: Volkswagen condannata al risarcimento di 63mila consumatori in Italia \(altroconsumo.it\)](#)

⁵⁵ See ALTROCONSUMO Press Release here: [Altroconsumo contro Volkswagen | Altroconsumo](#)

⁵⁶ Last update: 28/09/2022.

⁵⁷ [Legge 12 aprile 2019, n. 31](#), "Disposizioni in materia di azione di classe".

“L’azione è esperibile sia in caso di violazioni contrattuali, sia in caso di responsabilità extracontrattuali: non solo a tutela di interessi collettivi derivanti da medesimi contratti standard, ma anche per condotte lesive di diritti fondamentali, quali il diritto alla salute o all’ambiente”

“Class action is available for both contractual violations and non-contractual liabilities: not only to protect collective interests arising from the same standard contracts, but also for conduct that infringes fundamental rights, such as the right to health or the environment”. (Researcher, National Research Council)

Furthermore, according to article 840-ter, paragraph 1 of the Code of Civil Procedure the application for class action is brought by appeal exclusively before the specialized business section having jurisdiction over the place where the respondent is located.

“Non ho mai sentito parlare di applicazioni pratiche della nuova azione di classe. Pare che, nonostante gli sforzi del Parlamento, sia ancora molto barocca e complessa da azionare”

“I have never heard of any practical application of the new class action. It seems that, despite the efforts of Parliament, it is still very baroque and complex to activate.” (Lawyer specialised in B&HR and the Environment)

The **Directive 2020/1828** of 25 November 2020 on representative actions for the protection of the collective interests of consumers **has not been transposed** yet in Italy. While the final transposition is still **pending**, this is mentioned by the Italian “European delegation Law 2021” (Annex A) passed on 2 August 2022. A dossier⁵⁸ drafted by the Italian Parliament’s study department, released on the 11 July 2022, mentions its enforcement status, clarifying that this will happen **by the 25 December 2022**. Indeed, **Law No. 31/2019** mentioned above introduced an organic **regulation of collective civil proceedings** (the so-called class action), absorbing and redesigning the actions for injunctions and class actions already provided for in Articles 139, 140 and 140-bis of the Consumer Code, which have been simultaneously repealed. The law’s scope of application is wider than the one of the Directive, since the latter regulates only the class actions aimed at safeguarding the rights of consumers and professionals. Still, this law **does not regulate the cross-border infringements** which are regulated by the Directive. A **further reform is therefore needed** in order to overcome this gap.⁵⁹

4. Due diligence and reporting obligation

⁵⁸ Senato della Repubblica - Servizio Studi, Camera dei deputati - Servizio Studi, Dipartimento affari comunitari, [Legge di delegazione europea 2021 – Dossier 11 luglio 2022](#), pp. 177-178.

⁵⁹ Input received by academics from Universities.

In Italy, at the moment, **it does not exist any explicit human rights and environmental due diligence law**⁶⁰. The Italian Government is waiting for the release of the EU Directive on corporate sustainability due diligence⁶¹, whose proposal was released in early 2022⁶².

Considering the lack of policy initiatives, a strong raising awareness campaign entitled “Impresa 2030-Diamoci una regolata”⁶³ for a European directive requiring companies to respect human rights and the environment has been promoted by ActionAid Italia, Equo Garantito, Fair, Focsiv, Fondazione Finanza Etica, Human Rights International Corner (HRIC), Mani Tese, Oxfam Italia, Save the Children Italia e WeWorld Onlus. Without quoting the entire petition, “the associations and NGOs (...), together with the citizens who support it, call on the institutional representatives of the Italian and European people to (...) champion a new business culture, a new economy and a new finance, in line with the 2030 Agenda and the Paris Climate Agreements.”⁶⁴ The “Campagna Abiti Puliti”⁶⁵ raising awareness campaign, Italian platform of the international Clean Clothes campaign, goes in the same direction focusing on the textile sector. These campaigns, still far from reaching the general public, nevertheless testify to an increased awareness of business and human rights issues in Italy, and a growing demand for the Public Authorities to deal with them at national and EU level.

Under its first and second **National Action Plan (NAP) on Business and Human Rights**, the Italian Government already committed to review its existing legislation to introduce human rights due diligence for companies. In particular, while no specific section is dedicated to consumers rights, the environmental protection objectives are specifically clarified in detail (pp. 34-40). However, a few parts of the Italian NAP have been implemented into hard law so far.

“L’unico strumento in Italia è il Piano d’Azione Nazionale, che è strumento di soft law con valore politico ma purtroppo implementato in pochissime parti”
“*The one and only tool in Italy is the National Action Plan, which is a soft law instrument with political value but unfortunately implemented in very few parts.*” (HRIC, President).

According to a trend of the Italian legal doctrine, an example of national mandatory due diligence regulation could be found in the Legislative Decree No. 231/2001 which sets a due diligence process covering both specific human rights violations and specific severe impacts on the environment under the Italian **criminal law**⁶⁶. The Legislative Decree indirectly safeguards consumers rights and the environment, since it is aimed at granting that the corporations comply with all the relevant provisions with respect to these matters.

⁶⁰ Point of view shared by all interviewees.

⁶¹ Input from the OECD Italian NCP Public Official and the AGCM Public Official consulted.

⁶² [Proposal](#) for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.

⁶³ Access the webpage of the campaign [here](#).

⁶⁴ The entire petition is accessible [here](#).

⁶⁵ Access the page of the campaign [here](#).

⁶⁶ [Decreto Legislativo 8 giugno 2001, n. 231](#), “Disciplina della responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni anche prive di personalità giuridica, a norma dell’articolo 11 della legge 29 settembre 2000, n. 300”. English translation available [here](#).

Another stream of literature, focusing on Italian **labour law** provisions, examines the interplay between due diligence and liability allocation techniques within the value chains that can be found in the domestic legal system⁶⁷.

In Italy, the **Directive 2014/95/EU** has been enforced through the **Legislative Decree n. 254/2016**⁶⁸. No judicial enforcement mechanism is foreseen by the law. However, the **Consob** (National Commission for Companies and the Stock Exchange) is competent in this case, with the task to Consob verifies that non-financial declarations have been filed by all Italian companies falling within the scope of the directive, as well as on the adoption of a certified reporting criteria (but not on the accuracy of these information). Consob is as well responsible for the enforcement of these rules, with the power of inflicting administrative pecuniary sanctions referred to in this decree, if necessary. Consob annually reports about the effects of the introduction of the non-financial reporting in Italy⁶⁹.

No case law has been detected so far.

Business panorama

According to the sixth edition of the Business Sustainability Risk & Performance Index Report⁷⁰ by rating agency Ecovadis, Italian companies are increasingly committed to ESG issues: more than 65% of organisations scored 'good' or above (up from 50% in 2017).

The Index is based on sustainability performance data from over 83,000 EcoVadis assessments between 2017 and 2021 of nearly 53,000 companies in 800 supply chains. Organisations are assessed on 21 sustainability criteria across four themes: Environment, Labour & Human Rights, Ethics and Sustainable Procurement.

The latest findings show that while the focus on 'Labour' and 'Human Rights' is confirmed, 'Sustainable Purchasing' shows an upward trend for the first year. Indeed, although the score for 'Sustainable Purchasing' has historically been declining, this year the theme increased by 1. points compared to 2020 (38.8 vs. 37.6 respectively).

The survey also showed that the performance in the area of Labour and Human Rights was the highest of all themes, with an average score of 52.2, despite the fact that deficiencies in human rights due diligence persist in some areas. In 2021, only 11% of companies conducted a supplier assessment and 5% an internal child and forced labour risk assessment.

The number of industries exceeding the 50-point threshold is increasing. While no industry group had scored above 50 in 2017, five industries have since passed this threshold: companies in the Finance, Legal and Consulting sector (53.4) jumped to the top of the industry rankings thanks to their excellent

⁶⁷ Silvia Borelli; Daniela Izzi (2021). *L'impresa tra strategie di due diligence e responsabilità*. Rivista Giuridica del Lavoro e della Previdenza Sociale, No. 4/2021, pp. 553-579.

⁶⁸ [Decreto Legislativo 30 dicembre 2016, n. 254](#), "Attuazione della direttiva 2014/95/UE del Parlamento europeo e del Consiglio del 22 ottobre 2014, recante modifica alla direttiva 2013/34/UE per quanto riguarda la comunicazione di informazioni di carattere non finanziario e di informazioni sulla diversità da parte di talune imprese e di taluni gruppi di grandi dimensioni".

⁶⁹ The Report on the Non-Financial Reporting of Italian Companies is annually published at this [webpage](#).

⁷⁰ The report is accessible [here](#).

performance on labour and human rights and ethics. This was followed by Construction (51.5), Food & Beverage (51.4), Heavy Manufacturing (50.5) and Light Manufacturing (50).

Small and medium-sized enterprises (SMEs) - which account for more than 70 per cent of global supply chains - are improving their performance faster than large companies, which improved at a rate about 2 points below that of SMEs.

Case study: TIM

According to the interview released by the Coordinator of the due diligence on Business and Human Rights carried out in the TIM Group, who was as well author of the first TIM Policy on Human Rights, the TIM Group was a pioneer in this field in Italy.

TIM was the first Italian company to grant customers the possibility of an internal complaint mechanism of conciliation as an alternative instrument to the judicial channel. This channel has been positively received and has become a must. These conciliations take place at the so-called 'corecoms', centres located throughout the country and therefore close to the customer, which can also be activated for disputes over small amounts.

On the environmental side, there are projects underway, all of which are reported in the 2021 non-financial report⁷¹ publicly available on the website together with the economic-financial report. It should be noted that TIM has been doing this non-financial reporting exercise since 1997.

The reasons for this sensitivity on the part of management are as follows: audits are conducted by specialised third-party companies; the issues has a moral suasion impact towards the giants of the electronics/mobile phone sector; the reputation of the company can be impacted by the issue, as even if consumers still maintains the primary focus of his or her choice on pricing, TIM is trying to develop marketing campaigns based on the value of sustainability, with the purpose to educate their clients.

“La nostra azienda fa reporting non-finanziario dal 1997 ed è stata la prima azienda italiana a concedere ai propri clienti la possibilità di una conciliazione paritetica alternativa alla corsia giudiziale. Il nostro valore sta nella somma tra l'impegno economico e l'impegno del rispetto delle regole, ed “è la somma che fa il totale”

“Our company has been doing non-financial reporting since 1997 and was the first Italian company to grant its clients the possibility of a joint conciliation as an alternative to the court track. Our value lies in the sum of the economic commitment and the commitment to compliance, and 'it is the sum that makes the total'.” (TIM, CSR Manager).

5. Conclusions and ways forward

In order to draw conclusions from this research, a **summary of findings** obtained will be firstly described. Secondly, **best promising practices** will be outlined. Finally, **suggestions** for promoting environmental protection through enforcement of consumer rights in the EU and Italian legal system will be listed, based on desk research and stakeholders interviews.

⁷¹ The 2021 Non-Financial Report is accessible [here](#).

Summary of findings

Types of claims to promote the environmental protection through Italian consumer law have been analysed, enhancing the provisions of the Italian Consumer Code on unfair commercial practices and the enforcement role of the Italian Competition Authority (AGCM). Case law by AGCM have been selectively listed.

Material and procedural requirements for enforcing consumer and environmental rights were explored as well, making reference to provisions of the Italian Environment Code with regard to the remedying of environmental damage, and to provisions of the Italian Consumer Code with regard to product liability.

Possibility to submit claims in the general interest in Italy has been detected as well, on the one side, with the judicial action for compensation for environmental damage brought by the Minister of Ecological Transition (Env. Code), and on the other side, with the class action mechanism. While a consumers-dedicated class action was already provided for in the Consumer Code, a recent reform of the Civil Procedure Code introduced an “extended” class action, allowing to non-profit organizations and associations whose statutory objectives include the protection of the homogeneous rights allegedly violated, or each member of the class, to make use of it. Moreover, a few dispositions of the Directive 2020/1828 which do not appear yet in domestic law will be transposed by December 2022. In addition, a reference to the specific instances to the OECN Italian NCP shall be quoted.

The ratification and implementation of the Aarhus Convention in Italy have been described, as well as new individual rights and judicial and non-judicial remedies provided for accessing environmental information.

With regard to due diligence obligations, at the moment, no human rights and environmental due diligence law exists in Italy. The Italian Government is looking at the EU-level legislative procedure around the Proposal for a Directive on corporate sustainability due diligence. As for non-financial reporting obligation, EU Directive 2014/95/EU has been enforced through the Legislative Decree n. 254/2016. No judicial enforcement mechanism is foreseen by the law. However, the administrative and sanctioning competence is assigned to the CONSOB (National Commission for Companies and the Stock Exchange).

Best promising practices

A few promising practices are quoted below but already described in the report:

- The AGCM competence in sanctioning the unfair commercial practices and relevant case law as described above.
- The “Made green in Italy” Label as described above.
- The Italian “Diselgate class action” filed by the CSO “ALTROCONSUMO”.
- The “Extended” class action described above, which is a promising tool with no case law yet.
- The raising awareness campaigns “Impresa 2030-Diamoci una regolata” and “Campagna Abiti Puliti” promoted by NGOs and associations at national level.

Two additional examples can be provided.

An interesting example of a case law⁷² dealing with the environmental impact of business activities – with the direct involvement of citizens and civil-society organisations – is the Ikebiri community against ENI and NAOC lodged before the Ordinary Court of Milan in 2017 and dismissed by the same Court in 2019, due to a confidential agreement signed by local communities with NAOC. The incident occurred in Nigeria and the role of an international NGO, Friends of the Earth (FoE), proved to be crucial. First of all, the NGO – due to its long-standing experience and expertise in the field – immediately collected the complaints, communicated with the community, and negotiated with its members the most effective litigation strategy to obtain compensation from the company. In this respect, the NGO suggested resorting to the Italian justice system, and contacting the interviewee. Moreover, the NGO shouldered all costs incurred by the lawyer to travel to Nigeria, as well as for evidence-gathering activities. The NGO also covered 100% of costs related to the tests necessary to prove that the river was still polluted because of the spillage that had occurred.

Another interesting practice worth mentioning is the soft law “National Programme for the Assessment of the Environmental Footprint” (*Programma Nazionale per la valutazione dell'impronta ambientale*) of the Italian Ministry of the Environment⁷³. The Programme was introduced in 2010, and it is aimed at promoting voluntary commitments by companies to assess environmental performance and reduce greenhouse gas emissions, identifying better 'carbon management' criteria and supporting the implementation of low-emission technologies and good practices in production and consumption processes throughout the life cycle of products/services. Over the years, the programme has involved around 200 actors, including companies, municipalities and universities. Companies that join the programme, following the signing of a Voluntary Agreement with the Ministry of Ecological Transition, complete their journey with certification by a third independent party. Examples of this kind of voluntary commitments concerned well-known companies such as [Lamborghini](#), [Lactalis Italia](#) and [Exe.it](#).

Suggestion for improvement

Proposals on how to improve environmental protection through consumers' rights will be listed below, without ambition of exhaustiveness. EU-level harmonising mechanisms would be welcome in this framework.

Each environmental law, as well as each regulation of the supply chain, the production of goods and the provisions of services, shall include a mechanism of consumers control and shall recognize them the possibility to raise claims. Empowering consumers by entitling them with the right of verifying that products and services comply with the “environmental requirements” enables a widespread and ancillary monitoring.

As for a more direct consumers' contribution to the environmental protection, policymakers shall focus on the prioritization of repair over replacement of defective or obsolete products, even encouraging/obliging producers to supply spare parts free of charge or at a low price and (online and offline) sellers to provide collection points. Increasing the warranty time, limiting the right of withdrawal for regret, including the durability index in the labelling of products would be desirable, as well as tightening penalties for planned obsolescence to discourage this unfair practice. Introducing

⁷² Detailed information on the case law is available in English at the [website](#) of the legal firm that dealt with the case in Italy.

⁷³ Information on the Programme is available at the [website](#) of the Ministry of Ecological Transition.

incentives for the circular economy and “eco-design” as well as stimulating the market for “product as a service” would be advantageous.