Linklaters

Disputes and Investigations in Europe (2025) — Prepare for the unexpected

Introduction

It is with great pleasure that we unveil our publication on significant legislative and case law developments currently reshaping litigation, arbitration and investigations across the European Union.

As we look towards 2025, it is key to understand these evolving legal developments to stay ahead in an increasingly competitive landscape.

Through concise commentaries and in-depth analyses (including links to our various publications), we examine key issues and trends in each core jurisdiction.

We are delighted to offer this resource as a tool to help you identify the opportunities and challenges that lie ahead in the legal playing field.

Kind regards,

Florence Danis

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Key themes

Across the European Union, litigation, arbitration, and investigations are subject to dynamic change to reflect developments expected for 2025, to cover emerging areas of interest effectively, and to address new challenges.

Key areas of interest

We expect some disputes to be at the forefront of attention:

ESG disputes are increasingly centred on climate accountability, transparency and compliance with EU directives. Various Member States including Belgium, France, Germany, Italy, Portugal, and Spain face climate cases targeting corporate and/or state entities. Moreover, disputes related to greenwashing are coming into the spotlight against the background of new EU law. Other EU legislation, such as the CSDDD, is likely to lead to further litigation.

The reform of the **Product Liability Directive** and the implementation of the **General Product Safety Regulation** mark substantial shifts in product liability law. While the EU **AI Liability** Directive remains pending amid criticism, Member States like Italy and Poland are drafting their own AI legislation, seeking alignment with the AI Act.

In **data protection**, the private enforcement of the General Data Protection Regulation continues to evolve, with litigation activity in Spain and Germany, in particular. Moreover, **cybersecurity** is gathering a lot of interest in light of DORA and the NIS2 Directive, which has, for instance, led Luxembourg to increase corporate and personal accountability.

Competition litigation is gaining momentum in Germany, Portugal, and Spain, aided by clearer legal frameworks and the growing availability of collective redress mechanisms.

Litigation

The **Collective Redress Directive** continues to shape the European legal landscape, with many Member States experiencing an increase in collective actions driven by growing consumer organisation engagement. Several jurisdictions such as Belgium, Germany, and Portugal emerged as key players in the directive's implementation, while others including France, Luxembourg, and Spain are anticipated to adopt transposition acts soon.

In this context, the EU Commission's study on **third-party litigation funding** suggests further regulatory developments, indicating the increasing importance of third-party funding across the Member States.

Another key focus area at EU level is the forthcoming **revision of the Brussels I bis Regulation**, with consultations expected to begin at the start of 2025. This revision might influence cross-border litigation strategies for businesses significantly.

The **judicial systems in several EU jurisdictions** are undergoing significant reforms aimed at modernising civil proceedings. In Spain, this involves reorganising first-instance courts and advancing the digitalisation of civil proceedings. Germany established commercial courts and chambers using English and enacted legislation to promote video hearings. Italy reformed its civil procedure code to improve efficiency and predictability by streamlining submissions, simplifying cases, and allowing the Supreme Court to provide binding interpretations.

Arbitration

The EU's strategy on **sanctions and treaty-based arbitration** is shifting. To counter Russian parties bypassing arbitration clauses via domestic laws, the EU has imposed a transaction ban on parties involved in such actions. Furthermore, the latest sanctions package prohibits the recognition or enforcement within the EU of rulings by Russian courts under these laws. It remains uncertain whether these measures will effectively deter Russian parties from circumventing arbitration agreements.

The EU also withdrew from the **Energy Charter Treaty**, though individual states may join the modernised version. The EU's ratification of the **Mauritius Convention** marks a push towards transparency in investor-state arbitration, while recent court decisions limit enforcing intra-EU investment awards.

In addition, there have been important **developments at the Member State level**. Polish courts highlight financial constraints in arbitration, impacting party autonomy. Spain's judiciary supports arbitration, upholding awards in competition cases and showing a pro-arbitration stance. Germany's arbitration law reforms were interrupted by a Government collapse in late 2024 and are awaiting new parliamentary elections in early 2025.

Criminal law and investigations

In 2024, the EU implemented significant **sanctions packages**, marking its first direct measures against the Russian gas industry and targeting Belarus. Looking ahead to 2025, the EU aims to enforce a robust sanctions package to counteract circumventions. New EU rules on **criminal penalties** will require Member States to harmonise penalties, enhance co-operation, and possibly impose fines exceeding 5% of a company's turnover.

The proposed **Anti-Corruption** Directive, expected to be adopted in 2025, seeks to standardise rules and penalties for corruption, with substantial fines for failing to prevent bribery. The EU plans to enforce its **Anti-Money Laundering** (AML) Package, establishing a consistent framework across the Member States.

Among the developments at **national level**, Belgium's new Criminal Code, effective April 2026, is particularly worth noting as it modernises and simplifies offence categories and penalties, while pioneering initiatives such as criminalising ecocide. In addition, the Private Investigations Act overhauls the legal framework for private investigations. In France, there is a continued expansion of negotiated criminal justice mechanisms and Judicial Public Interest Agreements (CJIPs), driven by clearer prosecutorial practices, encouraging companies to self-report. In Portugal, a major trial began in 2024 involving the Espírito Santo Group, concerning significant financial misconduct from 2009 to 2014.

Key themes

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European Union

European Union

The European Union enters a new era with the new European Parliament, the von der Leyen II Commission taking office on 1 December 2024, and Poland holding the Council Presidency starting 1 January 2025. This phase ushers in forward-thinking policies, offering both opportunities and challenges for businesses.

European leaders are particularly committed to advancing climate objectives and tackling digital and green transitions, aiming to streamline legislation by reviewing the EU acquis. Further key priorities include consumer empowerment, online safety, revising the Brussels I bis Regulation for cross-border actions, impactful sanctions, and a unified anti-corruption strategy.

This chapter explores the EU's transformative initiatives, offering insights to help companies thrive globally.

Collective redress and third-party litigation funding on the rise

The EU Collective Redress Directive has been in force for nearly four years, and was required to be transposed into national law by the end of 2022. However, a significant number of Member States have yet to implement the Directive. The remaining Member States (including France, Spain, and Luxembourg) are expected to complete the legislative process in 2025 (read more in our frequently updated implementation tracker).

As a result of the transposition in various Member States, there appears to be an upward trend over the past year in the number of collective redress actions brought in the EU. We expect this rising trend to continue as consumer organisations and other NGOs become accustomed to the new regime.

In this context, third-party litigation funding is also likely to play a major role. In addition to the relevant provisions of the Collective Redress Directive, the EU Commission has initiated a broader third-party litigation funding mapping study, scheduled to conclude by the end of 2024. A follow-up report is expected to be published in early 2025, potentially prompting policy initiatives based on its findings.

In parallel, the European Court of Justice (ECJ) is preparing two key decisions which have the potential to further shape collective redress in the EU. The decision in case C-253/23 may pave the way for a unified approach to competition law infringements, potentially introducing collective redress in Member States lacking such measures in this area of law (see the Advocate General's Opinion). Case C-346/23 might empower consumer associations if the ECJ permits them to represent investor-consumers regardless of financial product type and value (see the Advocate General's Opinion). Together, these rulings could trigger a new wave of class actions going beyond the current frontrunner Member States – Belgium, Germany, Italy, the Netherlands, Spain, and Portugal – which primarily tackle issues related to consumer protection law, competition law infringements, and GDPR breaches.

Navigating new ESG rules and court challenges

Recent EU legislative developments further heighten existing regulatory enforcement risks and ESG litigation.

The scrutiny of sustainability claims remains a focus in EU regulatory enforcement and litigation. This trend is expected to intensify with the transposition of the Empowering Consumers for the Green Transition Directive (EmpCoD) into national law by 27 September 2026, as it amends the Unfair Commercial Practices Directive (UCPD) to combat greenwashing and other unfair practices (read more in our client briefing). The proposal for a Green Claims Directive (GCD), still under political discussion, aims to complement the EmpCoD by setting certain minimum criteria for claims to consumers about the environmental benefits and performance of companies' products or services, and for environmental labelling schemes. A final agreement is expected in 2025 at the earliest (read more in our blog post).

In addition, as part of the increased focus on sustainability claims, disclosure litigation risks have increased due to the upcoming phased-in entry into application of the Corporate Sustainability Reporting Directive (CSRD), beginning in 2025 for the financial year 2024 (read more on our dedicated CSRD webpage). The deadline for transposition was 6 July 2024, but many Member States are late (see our implementation tracker).

Liability for adverse ESG impacts in the value chain is another area of risk reinforced by recent EU legislative intervention, following the adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) in 2024. The transposition of the CSDDD, with its phased-in entry into application beginning in July 2027, will impose extensive environmental and human rights due diligence obligations on in-scope companies' own activities as well as those of their subsidiaries and chains of activities (read more on our dedicated CSDDD webpage).

According to the EU Commission, circular economy legislation will also be in the spotlight in 2025. 2024 already witnessed the adoption of the Ecodesign Regulation and the Right to Repair Directive, both of which may lead to litigation in the future (read more here and here).

In parallel to these legislative developments, the ongoing wave of climate litigation continues to drive shifts in thinking and behaviour among many stakeholder groups (read more in our blog post). The European Court of Human Rights' judgment in *Verein KlimaSeniorinnen Schweiz v Switzerland* may have set an important precedent for future claims challenging governments' climate ambitions and responses, especially concerning authorisations for industrial projects (read more in our blog post). Activists are likely to continue testing the extension of carbon emission reduction duties to corporates in court, including in view of the CSDDD requirements for in-scope companies to adopt and implement transition plans in line with the Paris Agreement.

European Union

A new era of product liability

With the reform of the Product Liability Directive (PLD) and the entry into force of the new General Product Safety Regulation (GPSR), EU product liability law reached major milestones in 2024.

The new PLD is a gamechanger for manufacturers, importers, distributors, and other service providers. To align the PLD with the digital age, circular economy business models, and global value chains, the reform (i) significantly broadens the scope to include more economic actors, products, and types of damages, (ii) introduces new presumptions regarding defects and/or causality, (iii) grants disclosure rights, and (iv) modifies liability exemptions as well as expiry periods for latent damages (read more in our client briefing and watch our video series). The ball is now in the Member States' court, as they have to transpose the Directive into national law by the end of 2026. In many jurisdictions, this will require fundamental changes.

The GPSR, on the other hand, sets comprehensive safety standards for consumer products available in the European market, irrespective of their origin and distribution channels. The new rules also enhance the efficiency of market surveillance authorities and refine recall procedures. The changes impact products made available on the European market from 13 December 2024 (read more in our blog post).

Another important and potentially ground-breaking product liability law project, the AI Liability Directive, was not completed in the last legislative period. Given considerable criticism from various EU institutions, Member States and other stakeholders, it remains to be seen whether the project will be realised under the new EU Commission and Parliament (read more in our blog post).

Private international law revisions and landmark ECJ rulings

Recent developments in private international law within the European Union are set to shape cross-border litigation strategies for businesses.

A key focus is the upcoming revision of the Brussels I bis Regulation. The consultation is anticipated to start at the beginning of 2025. It will notably explore the feasibility of extending this regulation to include defendants domiciled outside the EU. During its previous revision, the EU Commission had already proposed to internationalise the regulation, but Member States opposed that approach. Internationalising the Brussels I bis Regulation could give EU tribunals jurisdiction over torts occurring or contracts executed within the EU. Additionally, there is discussion about introducing specific rules for cross-border representative actions, as the Collective Redress Directive lacks provisions on international jurisdiction.

On the judiciary front, a key upcoming development is the anticipated ECJ ruling in case C-537/23, which will clarify the admissibility of asymmetric jurisdiction clauses in international contracts. These clauses give one party a right to choose the tribunal for litigation after a dispute has arisen while the other party does not have such a choice. It is likely that the ECJ will find these clauses admissible as Article 25 of the Brussels I bis Regulation lacks a prohibition similar to that included in the Hague Convention on Choice of Court Agreements. Moreover, the ECJ is expected to deliver a judgment in case C-393/23, addressing the question whether a company injured by an infringement of competition rules can sue the infringing company at the seat of its parent company in a different Member State. The Advocate General suggested that the control a parent company exercises over its subsidiary indicates a strong connection between actions against both, even if only the subsidiary is currently liable for the competition law infringement.

International arbitration in times of global geopolitical change

EU law and policy will impact the geopolitical dimensions of international arbitration, by way of the evolving sanctions regime and the EU's stance on treaty-based investment arbitration.

For one, sanction-related issues will continue to play a role in international arbitrations conducted in the EU and by EU entities. Currently, Russian parties are increasingly using a 2020 Russian law to bypass exclusive arbitration clauses, filing or threatening to file claims in Russian courts instead (see our blog post). In response, the EU introduced a transaction ban on parties engaging in or initiating such proceedings. In addition, with the latest sanctions package, the EU prohibited the recognition or enforcement in the EU of rulings issued by Russian courts under that law. Whether these measures will dissuade Russian parties from circumventing agreements to arbitrate remains to be seen. Moreover, two national courts have referred sanctions-related questions to the CJEU in November 2024. Firstly, the Svea Court of Appeal (Sweden) sought clarification on whether EU Council Regulation 833/2014 invalidates settlements of certain claims under its "no claims clause". Secondly, the French Cour de cassation inquired whether EU sanctions from 2014 prevent payments to the Yemen Oil & Gas Corporation. The implications of these late-2024 submissions are still pending. As the EU sanctions landscape will certainly evolve further in the course of 2025 (see below), so will its impact on international arbitration – be that in the enforcement of arbitration agreements and awards, the conduct of arbitrations with sanctioned parties, or investment protection as a remedy.

Furthermore, the nexus between EU law and international investment law continues to be reshaped:

- In May 2024, the EU and Euratom officially decided to withdraw from the Energy Charter Treaty (ECT). The practical impact is uncertain due to the ECT's "sunset clause", which protects existing investments for 20 years. Despite the withdrawal, EU Member States can individually join the modernised ECT, adopted on 3 December 2024. It is unclear how many States will join individually and what the consequences of their joining will be.
- Earlier in 2024, the EU acceded to the Mauritius Convention on Transparency in Treaty-based Investor-State Arbitration (read more on this Convention in our blog post), enhancing public access to documents and hearings, and involving civil society in investor-state dispute settlements. The European Parliament has consented to the EU's ratification of the Convention and the Council is expected to formally conclude the process. This is a notable step towards increased transparency in investor-state arbitration proceedings.

European Union

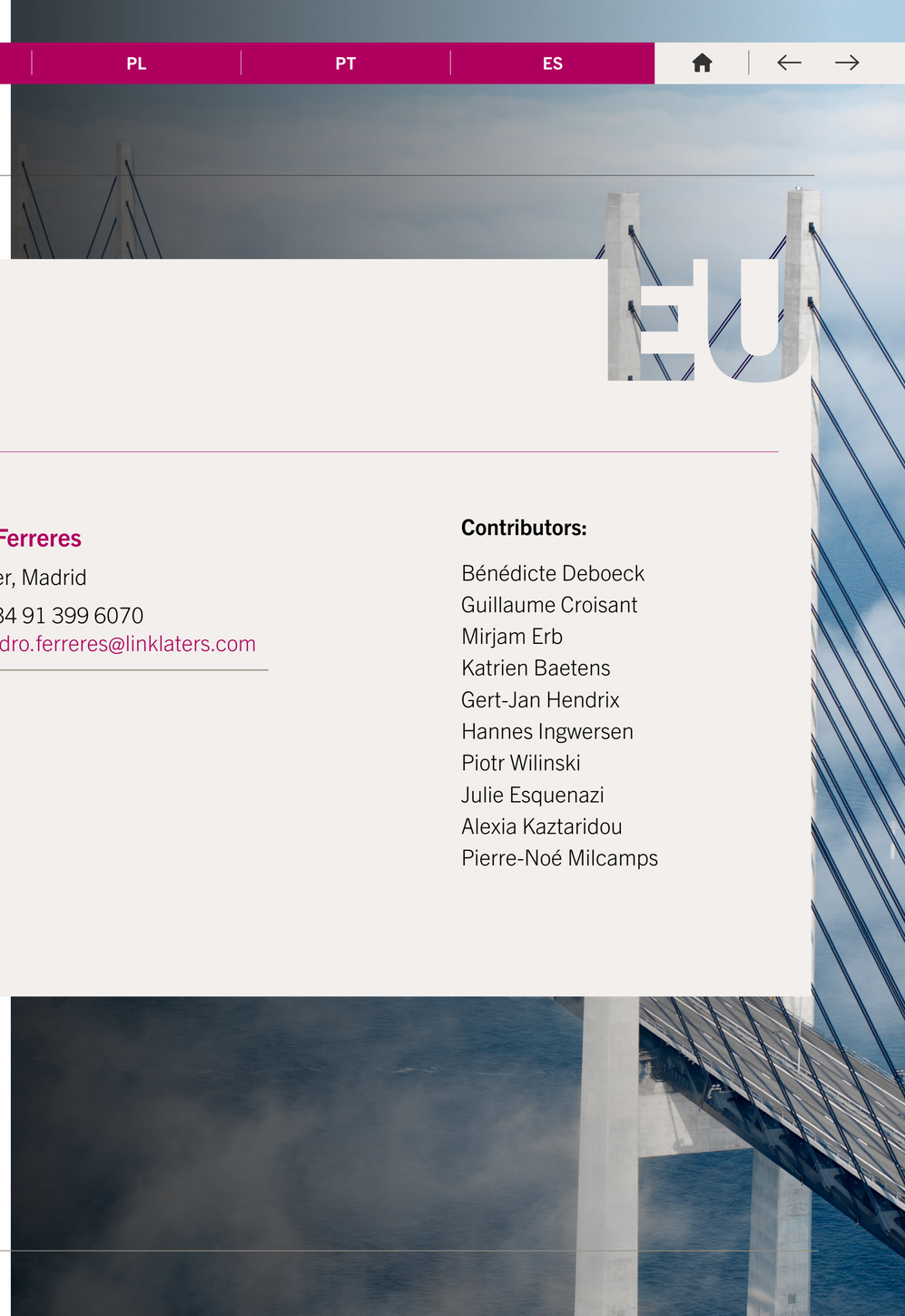
> In October 2024, the General Court of the EU issued a pivotal decision in the "Micula saga" concerning enforcement of the intra-EU ICSID award. The Court dismissed Micula's challenges against the EU Commission's decision, confirming that payments of intra-EU investment awards constitute State aid and conflict with EU law (see our blog post). This decision significantly hinders efforts to enforce intra-EU investment awards within the EU.

Towards a bolder EU criminal law framework

In 2024, the European Union adopted important sanctions packages, marking its first direct measures against the Russian gas industry and introducing sanctions targeting Belarus (read more in our updates here and here). Looking ahead to 2025, EU leaders intend to enforce a robust sanctions package specifically designed to address the circumvention of existing restrictive measures. The package targets President Putin's "shadow fleet" and key entities backing Russia's military actions including, for the first time, Chinese companies providing critical components to Russia. The sanctions expand to cover third-party vessels and introduce protective measures for European companies. In addition, the Member States will be required to transpose a new directive on criminal penalties into national law, which was enacted to strengthen sanctions enforcement across the EU, harmonise criminal offences, enhance co-operation at EU level, and possibly impose fines exceeding 5% of a company's global turnover (read more in our blog post).

The EU is also expected to move towards comprehensive anti-corruption legislation through the adoption of the proposed Anti-Corruption Directive. This initiative seeks to harmonise and update rules concerning the definition of and penalties for corruption offences. Under the proposed directive, failing to prevent bribery and corruption could result in severe financial penalties. As a high priority on the EU's agenda, this legislative file, which we explored in our blog post, is expected to be adopted in 2025.

Finally, the EU is entering a new regulatory, supervisory, and institutional era in anti-money laundering (AML) with the entry into force of the Anti-Money Laundering Regulation (AMLR), the 6th Anti-Money Laundering Directive (AMLD 6) and the establishment of the Anti-Money Laundering Authority (AMLA). The new Single AML Rulebook will become mostly applicable three years after its adoption and is designed to establish a level playing field across the Member States. For more detailed information, please refer to our client briefing.



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Belgium

Belgium

Belgium is preparing for transformative shifts in its legal landscape, setting the stage for 2025.

Key (anticipated) developments include:

- The adoption of a revised Criminal Code, entering into force in April 2026.
- The upcoming entry into force of Book 6 of the Civil Code, reshaping extra-contractual liability for greater legal flexibility.
- A projected increase in restructuring and insolvency cases, driven by economic challenges and new European-aligned tools.
- The evolving landscape of corporate accountability, highlighted by Belgium's first climate litigation case, which is likely to influence future legal actions.
- Forward-looking business practices driven by the B2B Law (including in the food supply chain) and the Law of 21 April 2024 on collective redress, which is expected to redefine the collective action legal framework.

Heralding a new era: introducing the new Criminal Code

On 29 February 2024, Parliament adopted Belgium's new Criminal Code as part of a sweeping legislative reform that began in 2018. The general principles of criminal law are found in Book I of the new Code and the individual criminal offences are listed in Book II.

The new Code modernises and simplifies, for example by updating the centuries-old classification of criminal offences and reducing the categories from three to two, and categorising penalties into eight severity levels to enhance predictability.

Notably, Belgium is among the first countries in the European Union to criminalise ecocide. This targets, under specific conditions, behaviours that cause serious, widespread and long-term damage to the environment.

The Code takes effect on 8 April 2026.

Clarified AML provisions in the Criminal Code

In Belgium, a key development in the AML field arises from the introduction of a new Criminal Code, as mentioned above. This revised Code includes three specific provisions on money laundering (Book II – Articles 502 to 504), primarily offering legal-technical clarifications. Notably, the new Criminal Code incorporates the recently updated regime that exempts certain money laundering offences from punishment when the predicate offence involves ordinary tax fraud.

A new dawn for civil extra-contractual liability

Looking ahead to 2025, a key development in Belgian civil law is the introduction of Book 6 of the Civil Code, effective 1 January 2025. This marks a major shift in extra-contractual liability, allowing for the concurrence of contractual and extra-contractual liability. The reform provides greater flexibility in pursuing remedies and ends the quasi-immunity of *auxiliaries* (formerly "agents"). Given that, among other things, parties can still contractually exclude extra-contractual liability and certain provisions may restrict concurrent application, the reform is likely to lead to complex legal challenges. It will require a nuanced approach to risk assessment and legal strategy in contracts.

Learn more about the ongoing reform of the Civil Code on our dedicated website.

Assessing the B2B Law: case law review

The B2B Law of 4 April 2019 bans unfair clauses and practices, as well as the abuse of one undertaking's economic dependence on another. Five years on, Belgian case law highlights the need for careful contract drafting to avoid clauses that could cause significant imbalances, as courts often sanction these.

Since its inception, the B2B Law has faced criticism, with calls for its removal or amendment, especially as newly adopted provisions (e.g. Article 5.52 of the Civil Code) could adequately protect the interests of undertakings. The fate of the B2B Law might be decided in 2025.

Find out more about the main takeaways of our case law review in our blog post.

Fair play in Belgium's agricultural and food supply chain

In spring 2024, the Belgian government took a close look at how agricultural and food supply chains operate. It found that suppliers, farmers and franchisees might face unfair treatment from dominant players such as supermarket chains.

This led to two important Royal Decrees on 20 June 2024 and 4 July 2024, focused on promoting fair business practices and contract terms. These Royal Decrees entered into force on 1 October 2024 and 1 January 2025, respectively.

The new rules aim to level the playing field, boosting transparency and balance in contracts to support weaker parties. By addressing both core and non-core obligations, these changes mark a significant move towards better protection for all involved in the agricultural and food supply chain.

Read more about the new rules tackling B2B contractual imbalances in the agriculture and food sectors in our blog post.

Belgium

Opening new avenues: Belgium's collective redress Law of 21 April 2024

The Belgian legislator has incorporated the EU Collective Redress Directive into national law with the Law of 21 April 2024.

While the existing framework already met most Directive requirements, there have been multiple notable changes. These include: (i) wider applicability, covering breaches of, for example, prospectus legislation (including MiFID rules), PRIIPS, the DMA and the DSA; (ii) a general opt-in regime; (iii) some limited constraints on litigation funding for group representative independence; (iv) cross-border collective redress actions; and (v) expedited court procedures for quicker judgments. Since the adoption of the new framework, Belgium has already seen its first cross-border collective redress action, and consumer organisations and NGOs are starting to apply for recognition to lead these actions. An increase in such cases therefore appears likely.

Read more about the Law of 21 April 2024 in our blog post.

Belgian courts navigate new restructuring tools

In 2024, the Belgian courts saw a surge in restructuring and insolvency cases, a trend likely to continue in 2025. This increase stems from an economic downturn and the adoption of new restructuring tools from the EU Directive 2019/1023. The courts have handled the first large enterprise reorganisation proceedings, now permitting cramdowns on dissenting creditors, including secured ones. Confidential processes, such as private judicial and "pre-pack" bankruptcy proceedings, are also on the rise, offering businesses the chance to quietly prepare a restructuring to preserve value and jobs. However, these new restructuring tools face criticism for potential misuse by opportunistic debtors.

ESG: Belgium's first climate litigation and future disclosure litigation risks

2024 saw what has been widely reported as the first climate litigation against a corporate in Belgium. A Belgian farmer, supported by three NGOs, started a case against an oil and gas major with the view to force the multinational company to adopt a "credible transition plan" and move away from fossil fuels. The legal basis for this action appears to be the general civil liability rules.

Read more about Belgium's first climate litigation in our blog post.

Disclosure litigation risks are likely to increase as a result of the transposition under Belgian law of the Corporate Sustainability Reporting Directive (CSRD), whose phased-in entry into application starts in 2025 for the financial year 2024.

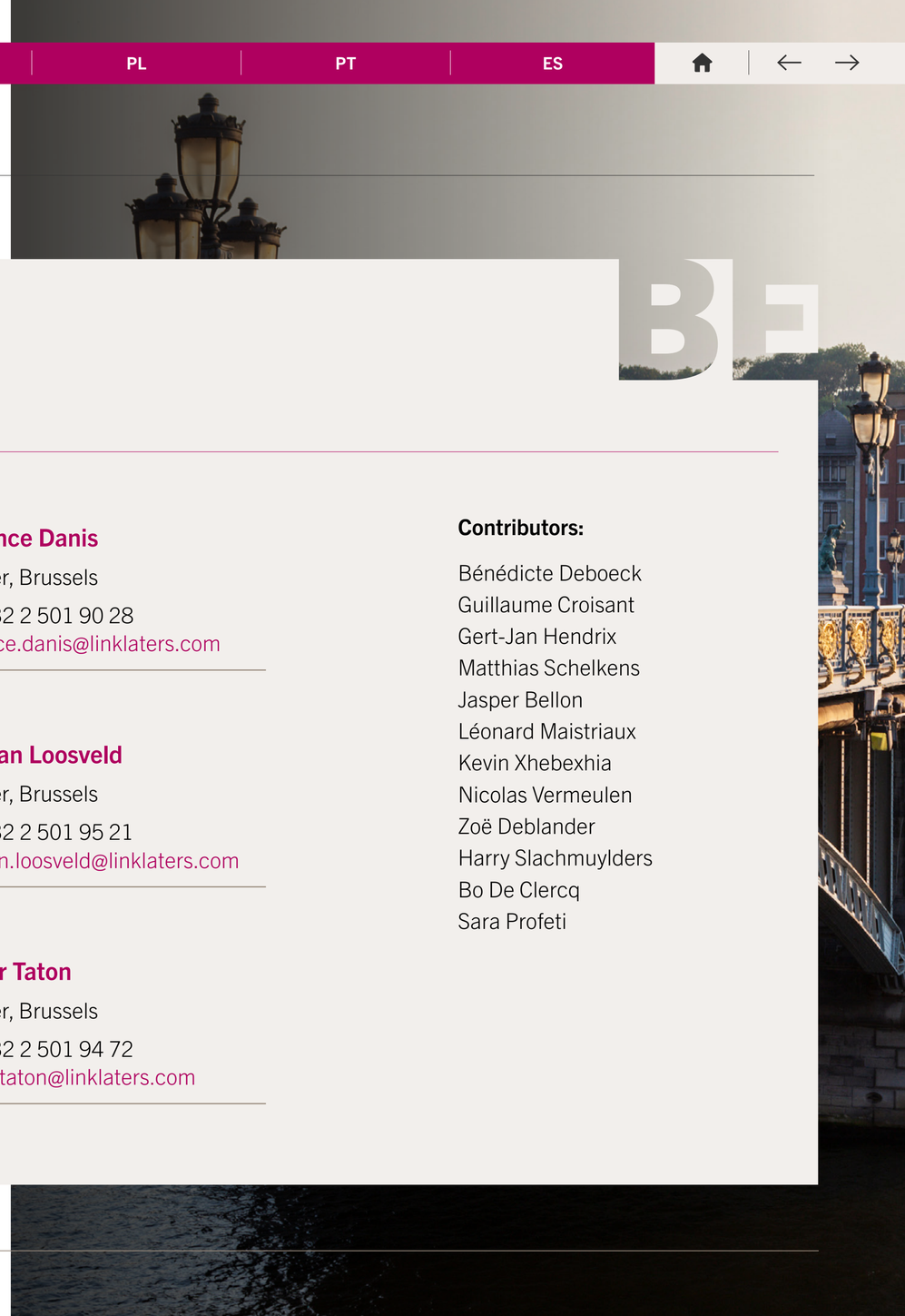
Read more about the implementation of the CSRD into Belgian law in our blog post.

Revamping Belgium's private investigations framework

On 6 December 2024, the eagerly awaited Private Investigations Act was published in the Belgian State Gazette. The Act constitutes a major overhaul of the existing legal framework governing private investigations and promises to be a game changer for businesses and private investigators alike. Key features include the enshrinement of the right for interviewees in a private investigation to be assisted by a person of their choice (for example, a lawyer or trade union representative) and a new obligation for external investigators and in-house investigation services to be licensed by the relevant authorities. Various detailed rules and procedures for conducting private investigations have also been introduced, including, for example, requirements for investigation reports and notification duties to the criminal authorities.

Read more about the Private Investigations Act in our blog post.

Belgium



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France

France

In 2024, France experienced notable political and legal developments. The dissolution of the National Assembly in June 2024 disrupted several legislative processes, including bills related to collective redress and the legal privilege of in-house counsel opinions. The political instability is expected to persist for several months, delaying the enactment of these critical legislative measures.

On the judicial front, there was a significant increase in the use of negotiated justice across various sectors, including civil and criminal matters, as well as regulated financial sectors. This trend is expected to continue into 2025. Additionally, French courts have been particularly active regarding ESG issues, demonstrating a strong commitment to sustainability and corporate accountability, and aligning with EU directives.

At the forefront of ESG litigation

France is at the forefront of ESG litigation, with about 15 active cases before its courts. NGOs are challenging businesses across various industries, scrutinising operations and projects. While litigation was previously centred on procedural matters, there is now a shift towards substantive rulings. Significant developments are expected in 2025, notably following the declaration of admissibility of two cases against major corporations in 2024 (read more here).

The establishment of specialised chambers at both the first instance and appellate levels indicates more substantial developments ahead for businesses.

For further insights, listen to our podcast.

Vigorous regulatory enforcement by the Financial Markets Authority

The French regulator is the most active within the EU, accounting for nearly 70% of fines related to the Market Abuse Regulation by amount. The trend of imposing substantial fines is expected to continue, as illustrated by the €5.7m penalty levied against securitisation professionals issued in November 2024. However, recent case law highlights the high burden of proof required to establish insider dealing, illustrated by the acquittal of 12 individuals in a single case.

Looking ahead, the Chair of the Financial Markets Authority (*Autorité des Marchés Financiers*) is notably advocating for the introduction of a leniency programme similar to those employed by competition authorities and for the power to issue injunctions with penalty payments.

Reintroduction of legal privilege for in-house counsel?

In July 2024, the Senate resubmitted a draft bill concerning the legal privilege of legal opinions drafted by in-house counsel, following its interruption due to the dissolution of the National Assembly. If adopted, the bill will afford a broad protection to privileged documents, ensuring that they cannot be used against the employing company or the affiliated companies within its group, except in criminal or tax proceedings. Once the text is adopted by both Chambers, it will enter into force at a date set up by decree.

This new proposal reintroduces legal privilege in a form similar to a previous attempt. The initial text was struck down by the Constitutional Council in 2023 for technical reasons.

Progress and challenges in implementing collective redress and third-party funding regulations

France has yet to implement the EU Collective Redress Directive, with completion expected in 2025. Two bills aimed at transposing the Directive are currently under discussion before the National Assembly.

The first bill, introduced in December 2022, aims to unify and enhance existing collective action laws, while addressing the Directive's requirements. While it was adopted by the National Assembly in March 2023 (read more here), the Senate introduced significant changes which are pending a second review by the National Assembly (read more here). In October 2024, the French Government introduced a separate bill with a much narrower scope, which only aimed at transposing the Directive with respect to cross-border class actions. Both texts confirm the opt-in system currently in force in France. Future discussions within the Parliament will notably clarify the legal standing of approved entities, as well as the possibility and conditions for third-party funding, which is currently unregulated. A critical point of discussion concerns the introduction of a civil penalty.

Evolving admissibility standards: unfairly obtained evidence in civil proceedings

The French Supreme Court (*Cour de cassation*) has ruled that unfairly obtained evidence can be admissible in civil proceedings if specific conditions are met. Such evidence must be crucial to the case, for instance when no other evidence is available. Any infringement on the other party's rights, such as privacy violations, must be strictly proportionate and necessary for the effective presentation of the evidence.

French judges will apply a proportionality test to balance these conflicting interests, ensuring that the right to evidence does not undermine the overall fairness of the proceedings. This new position aligns with French case law in criminal matters and the European Court of Human Rights case law.

Expansion of negotiated criminal justice mechanisms and CJIPs

In 2024, the expansion of negotiated criminal justice mechanisms and Judicial Public Interest Agreements (CJIPs) continued. This growing trend is expected to persist into 2025.

France

This growth is largely driven by the increased clarity and predictability of prosecutorial practices, nearly two years after the publication of guidelines by the French prosecutor in charge of financial matters. In this context, companies are becoming more inclined to self-report to mitigate potential sanctions, making internal investigations a more strategic tool than ever for managing legal risks.

The authorities have also demonstrated a strong commitment to developing this tool. The recent case known as "Sotec CJIP" illustrates the French authorities' intent and capacity to exercise extraterritorial jurisdiction. This case marked the first sanction imposed on a foreign company with no operations in France for bribing foreign officials abroad. Additionally, a new law enacted in June 2024 permits the confiscation of assets seized during investigations, which were previously allocated to cover public interest fines.

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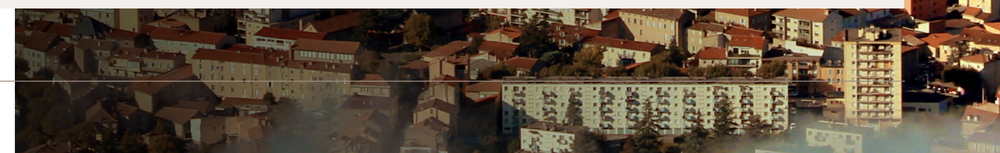


Germany

Germany

Germany has witnessed very dynamic developments in many areas of law. In addition to important case law, a number of legislative projects have recently been completed that have the potential to shape the years to come. Beyond this, legislative activity has largely come to a standstill with the collapse of the Government, and it appears unlikely that all of the relevant outstanding projects will be adopted by the time of the elections for a new Parliament. It remains to be seen whether and in what form the new Government and Parliament will pick them up again.

Variety of collective redress mechanisms

While German law does not allow for "US-style" class actions, various collective redress mechanisms have been developed to tackle mass litigation (read more here). This trend has continued in the recent past.

The introduction of collective redress actions with the Consumer Rights Enforcement Act in 2023 was groundbreaking (read more here). The first actions were brought in 2024, covering various sectors such as communications and energy. The outcome of these and subsequent proceedings, as well as their impact on the future of this new type of proceeding, still remain to be seen.

More recently, Germany introduced a so-called preliminary ruling procedure at the Federal Court of Justice aimed at enabling an early decision on fundamental legal questions that arise in a large number of parallel proceedings (read more here). Just one day after it came into force, the Federal Court of Justice made use of this new procedural tool in a data protection case, with the lead decision following very shortly after in late 2024. This demonstrates the Federal Court of Justice's level of interest in the new tool, which could lead to high usage and effectiveness. In addition to data protection disputes, cases involving general terms and conditions and product liability, in particular, could also be considered for the new lead decision procedure.

While the new tools are, in principle, also applicable in more complex cases, we expect that more traditional mechanisms will be applied in such scenarios. For example, cartel damages claims are likely to continue to be enforced through the so-called assignment model, which has been approved by the German courts (read more here) and for which further guidance from the ECJ is expected shortly. In this context, it is also worth noting that the Capital Markets Model Case Act, which allows a claimant in an appropriate capital markets dispute to apply for specific factual and legal issues to be clarified before the Higher Regional Court, was reformed in 2024, thus paving the way for further disputes to be heard under this special procedure.

Irrespective of the mechanism used, we expect litigation funding to have a significant impact on collective redress. So far, this is only regulated for actions under the Consumer Rights Enforcement Act (in a very restrictive way), but the German legislator may receive further guidance from the EU in the near future (read more in the EU chapter).

Key trends in commercial disputes

In terms of substantive law, far-reaching developments are on the horizon in various areas, some of which are influenced by EU law. In particular, the following areas are likely to be in the spotlight:

- **ESG disputes:** Following the landmark ruling by the Federal Court of Justice on advertising with the term "climate-neutral" in 2023 (read more here), greenwashing litigation continues to be at the centre of attention. The implementation of the new Empowering Consumers for the Green Transition Directive is pending, with further EU requirements likely to follow through the planned Green Claims Directive. With the tightened regulations, further waves of lawsuits by NGOs, competitors and consumers are to be expected and claimants might also start pursuing claims for damages based on greenwashing.

  Another focus will be on the Supply Chain Due Diligence Act and its enforcement, the future of which is, however, uncertain as it is currently being attacked by politicians due to the high bureaucratic burden for in-scope companies and their business partners. There are calls for its abolition, but this would give companies only a short-term break with view to the CSDDD and its implementation. From a litigator's point of view, it will be particularly interesting to see how the German legislator will implement the CSDDD provisions on private enforcement.

  Other EU-driven focus areas include the implementation of circular economy initiatives such as the Ecodesign Regulation or the Right to Repair Directive that will give rise to disputes.

  Read more on the above-mentioned EU legislation in the EU chapter.

Germany

- **Product liability:** The transposition of the brand-new EU Product Liability Directive by the end of 2026 will result in significant changes to product liability law that will cover more market players and expose in-scope companies to additional risks. Further EU legislation on AI liability also seems possible (read more in the EU chapter).
- **GDPR litigation:** Both the ECJ and the Federal Court of Justice continue to settle important questions regarding the private enforcement of the GDPR (e.g. with regard to immaterial damages). This may spark further debate and more (probably often collective) proceedings.
- **Competition litigation:** The same applies to private enforcement of competition law, where various court rulings have increased legal certainty and courts repeatedly underline that they want to become more pragmatic, which is likely to attract further cases. This trend is likely to expand further with the growing availability of collective redress mechanisms and the increased appetite of litigation funders for large-scale claims.

Strengthening courts for the global and digital age

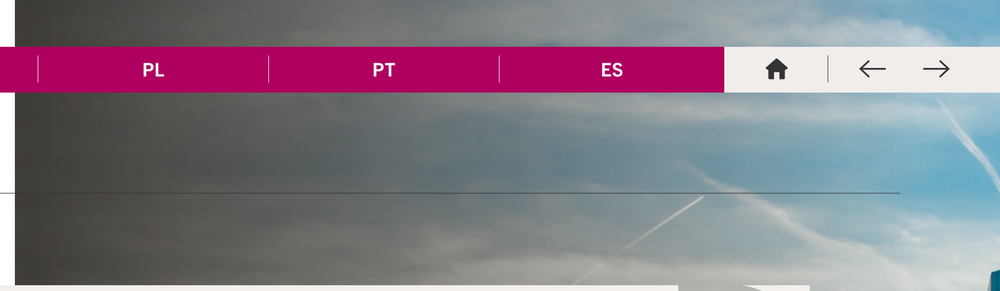
In addition to collective redress, the litigation focus is currently on two further procedural aspects aimed at modernising the civil judicial system. After decades of discussion, so-called commercial courts at the higher regional courts and commercial chambers at the regional courts were allowed in late 2024, which, among other things, can conduct proceedings in English and which, similar to arbitration law, have new tools at their disposal to make proceedings more efficient (read more here). Another new piece of legislation facilitates video hearings, so that in the next few years they may no longer be the exception but the rule.

Arbitration law reform

The legislator was not solely focused on litigation: German statutory arbitration law was also set for a significant modernisation (read more here) when the Government collapsed in late 2024. At this time, it is still open whether the reform package will go through, or whether the project will be resumed once the new Parliament is elected in early 2025.

Future developments in criminal law

The planned Combating Financial Crimes Act might share the same fate, as it also seems possible that this piece of legislation will not be adopted before the upcoming elections. Other developments in the area of commercial criminal law are shaped by the EU (read more in the EU chapter).



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Italy

Italy

Italy has recently undergone a series of profound changes in its legal system. These include reforms of its insolvency, criminal and civil procedure laws, as well as innovative initiatives such as the draft law on AI (envisaged as a domestic regime complementing the AI Act). Additionally, new case law trends on litigation funding and collective redress, along with the rise of ESG and consumer protection litigation, are positioning Italy as an increasingly significant player in the EU in these areas.

Potential change of wind regarding limits on consumer follow-on collective actions?

Collective redress mechanisms in Italy are now available in various forms. These include a general opt-in class action and the recently introduced representative actions for consumers' protection, as outlined in the Collective Redress Directive.

These collective remedies have predominantly been used and are expected to continue to be applied in the context of "follow-on" actions. Consequently, the relationship between independent authorities' decisions (and any subsequent appeal judgments by administrative courts) and collective civil proceedings forms a crucial component of the system. This is exemplified by recent case law, such as the non-antitrust claims addressed in the Court of Turin's decision on the "Pandoro Gate" case dated 5 May 2024.

The delicate interplay between public and private enforcement, particularly concerning certain consumer protection aspects, may be further clarified by the Italian Supreme Court in 2025. Order No. 2592/2024 seems to challenge the Court's earlier pro-consumer position, as reflected in ruling No. 23655/2021.

Litigation funding: Supreme Court paves the way forward

Third-party litigation funding is not specifically regulated in Italy, leading to several uncertainties regarding applicable legal provisions and potential implications for lawyers' code of conduct. However, two recent decisions by the Italian Supreme Court, issued in March and June 2024 respectively, have clarified some crucial and controversial aspects. Firstly, the Court ruled that funders are not required to register as financial intermediaries under the Consolidated Banking Act. Secondly, the Court confirmed that litigation funding is a lawful activity from both a civil law and a regulatory perspective. These clarifications will certainly have a significant impact in the coming years on the currently limited Italian litigation funding market.

Novelties on negotiated composition of the crisis procedure

Legislative Decree No. 136 of 13 September 2024 has amended the Italian Crisis and Insolvency Code.

Key changes include that, within the negotiated composition of the crisis procedure (*composizione negoziata della crisi*), debtors may request protective and/or special interim measures against creditor actions. These measures aim to ensure negotiation success and may concern the impact of restructuring measures and the implementation of related decisions. This amendment aligns with recent court decisions, which hold that precautionary measures may also include staying creditors from enforcing third-party guarantees.

In addition, auditors are now required to report to the company's board about conditions for beginning a negotiated crisis composition.

These changes took effect from 28 September 2024 and are expected to further increase the effectiveness and use of negotiated composition, thus allowing a debtor to preserve more business value in distress situations.

The Commission's comments on the draft AI law

In early December 2024, the European Commission issued an opinion C(2024) 7814 on the recent Italian draft law on AI, which is currently under discussion in the Parliament. The Commission highlighted potential inconsistencies between the draft law and the AI Act.

Specifically, the Commission urged Italy to avoid proposed restrictions and other – direct or indirect – excessive limitations on the use of AI. It also recommended eliminating overlapping concepts and sanction regimes, and aligning with the definitions used in the AI Act.

A parliamentary commission has already proposed amendments in line with the Commission's opinion. However, further developments and the law's final approval are anticipated in 2025.

ESG litigation developments

On 26 February 2024, the Court of Rome dismissed the first Italian climate lawsuit, known as the "Universal Judgment", filed by 24 NGOs and over 200 citizens against the Italian State. The lawsuit addressed critical issues regarding the State's efforts to combat climate change and included proposals for ambitious greenhouse gas emissions reduction targets. However, the Court declared the case inadmissible for lack of jurisdiction by Italian civil courts. The decision has been appealed by the NGOs (read more in our blog post).

Italy

In a separate lawsuit against Eni, Italy's largest integrated energy company, and the Italian State as a shareholder of Eni, the involved NGOs have sought a jurisdictional ruling from the Supreme Court of Cassation. They aim to establish whether Italian civil courts have jurisdiction over environmental climate disputes. A decision is anticipated in 2025.

With the CSDDD now in force (read more in our EU chapter), increased scrutiny from both NGOs and Italian courts regarding the supply chain of companies subject to the CSDDD is expected.

Changes in civil procedure rules

Legislative Decree No. 149/2023, which entered into force on 28 February 2024 and was recently amended slightly by Legislative Decree No. 164/2024, significantly reformed the Italian Code of Civil Procedure to enhance procedural efficiency and decision predictability.

Key changes include requiring all substantive submissions before the first hearing, introducing simplified procedures for straightforward cases, and granting the Supreme Court authority to provide binding legal interpretations. Additionally, enforcement processes now include electronic asset searches and allow debtors to sell foreclosed properties directly under certain conditions.

These novelties will enhance the trust of investors and businesses in Italian civil justice and in the Italian legal system in general, strengthening Italy's prospects as one of the key EU jurisdictions for investment.

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Luxembourg

Luxembourg

Luxembourg is gearing up for significant changes in its legal framework, setting the stage for 2025. The expected adoption of the collective redress law in 2025, following years of debate, will reshape the litigation landscape entirely. Additionally, in response to the European Commission's initiation of infringement procedures against Luxembourg for not fully transposing the Corporate Sustainability Reporting Directive (CSRD), it is anticipated that Luxembourg will adopt its current draft law to achieve compliance. These developments are increasingly crucial for financial institutions and are likely to result in ESG-related litigation and collective redress actions involving Luxembourg-based funds. Moreover, regulatory authorities are stepping up enforcement by imposing significant fines. This trend is expected to intensify as further regulations, such as the implementation acts relating to the Digital Operational Resilience Act (DORA) and the NIS2 Directive, are adopted.

Enhanced creditor protection under the revised Financial Collateral Law

The Financial Collateral Law of 2005 has been amended to affirm that financial collateral and netting arrangements under the Law are immune from the effects of insolvency or similar proceedings. This immunity covers both European and non-European insolvency-related proceedings, reconfirming Luxembourg's position as a creditor-friendly jurisdiction. With the current economic outlook, it can be expected that restructuring and insolvency activities will be on the rise and enforcement under the Law will increase in 2025.

Strengthened cybersecurity regulations

DORA has been transposed into national law and the implementation act enters into force on 17 January 2025. This legislation, along with the anticipated transposition of the NIS2 Directive, will impose enhanced regulatory obligations on financial entities. Companies will need to thoroughly understand and review the various legal requirements and practical implications for their IT infrastructure, policies and contracts. The new legislation also increases the responsibility of both companies and individuals, including the personal liability of board members and responsible persons, imposing fines of up to €5m for individuals and up to €5m or 1% of the annual turnover for entities. Consequently, with the implementation of the NIS2 Directive and DORA, cybersecurity will become a central concern in boardroom discussions and an integral element of corporate governance strategies.

Heightened CSSF oversight on international sanctions compliance

An intensification of the Luxembourg Financial Sector Supervisory Commission (CSSF)'s oversight of supervised entities' compliance with their obligations regarding international sanctions is anticipated in 2025. In 2024, the CSSF imposed several administrative sanctions on professionals within the financial sector for failing to conduct daily name screening controls. This failure constitutes non-compliance with the obligation to promptly identify persons, entities, and groups subject to restrictive financial measures.

Stronger consumer protection against unfair contractual terms

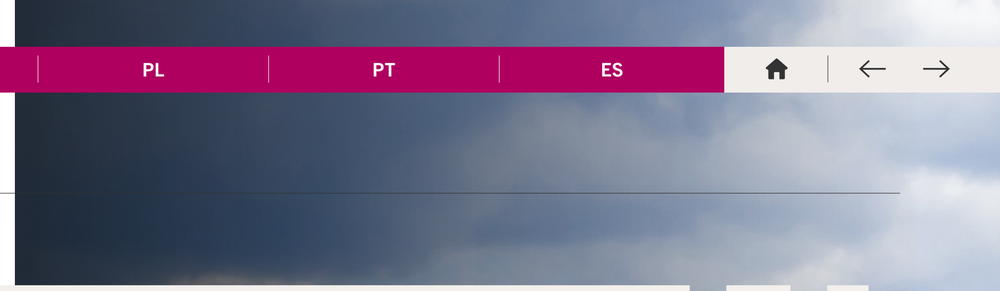
The Law of 27 August 2024 significantly strengthens consumer protection by amending the Consumer Code to more effectively address unfair contractual terms. It deems the unfair terms listed in Article L. 211-3 of the Consumer Code as irrefutably unfair and broadens the list of unfair terms to include clauses that impose disproportionate penalties or allow a professional to terminate a contract without reasonable notice. To bolster protection against these unfair terms, the law requires judges to automatically invalidate such provisions, thereby enhancing the efficiency of judicial proceedings.

Consequently, companies will need to review their B2C contracts to ensure compliance with these changes, avoiding the invalidation of their clauses.

New legal framework for NPL transfers

Looking ahead, the Law of 15 July 2024 on the transfer of non-performing loans (NPLs) will establish a progressive legal framework for the transfer of NPLs, introducing credit servicers as a new category of professionals in the financial sector. This law is set to play an important role in enabling credit institutions to offload burdensome NPLs from their balance sheets, thereby boosting financial stability and paving the way for renewed lending opportunities. Key features include the requirement for credit institutions to provide comprehensive information to purchasers before NPL transactions and for purchasers to appoint specialised entities to manage credit servicing for consumer-related NPLs.

Luxembourg



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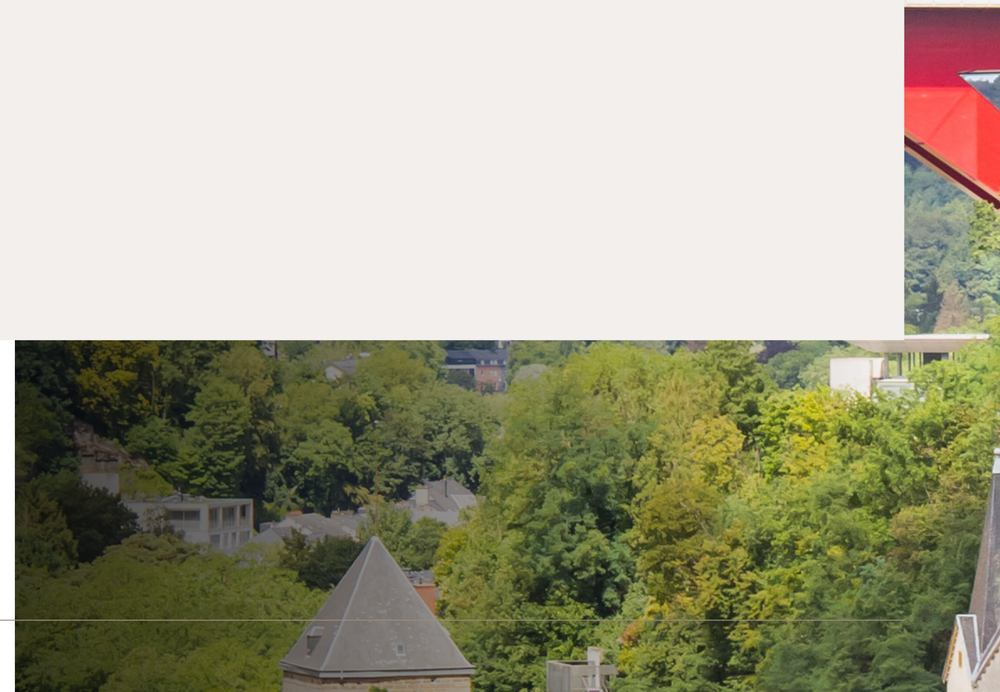

The Netherlands

The Netherlands

Following the parliamentary elections, the Netherlands successfully formed a new government in 2024 after extensive negotiations due to political fragmentation.

Key political issues influencing the election outcome include the tension between the demand for renewable energy and infrastructure and policies aimed at environmental preservation, juxtaposed with pressures on agriculture and urban planning. These issues are expected to remain pertinent in 2025 and beyond. Additionally, the rapid digitalisation of society and the rise of AI present both opportunities and new challenges, such as increased exposure to potential data breaches and increasingly sophisticated cyberattacks.

In this evolving landscape, there is an anticipated continued rise in the use of legal mechanisms by individuals and claims organisations to hold government institutions and businesses accountable and to shape policies and governance, particularly concerning ESG, human rights and privacy-related issues.

The impact and future of the Collective Mass Claims Act (WAMCA)

WAMCA introduced a significant shift by enabling claims organisations to pursue damages through the Dutch collective redress mechanism (read more here and here). To prevent commercial motivations from dominating these claims, WAMCA imposed stricter admissibility requirements on claims organisations regarding their governance, financing and representativeness. Simultaneously, WAMCA granted courts the discretionary authority to exempt organisations from these requirements if their actions primarily serve public interests with minimal financial interest.

In 2024, several judgments addressed both the stricter admissibility requirements and the exceptions applicable to public interest actions. In the context of public interest actions, courts have demonstrated a willingness to apply these exceptions generously, reflecting a favourable stance towards claims focused on idealistic pursuits. In contrast, the stricter admissibility requirements in damages claims actions have sparked considerable debate. Notably, cases with fundamental issues concerning financing and representativeness tend to face permanent inadmissibility. However, claims organisations have generally managed to rectify relatively minor governance shortcomings during appeals, which primarily resulted in delays and additional costs.

Looking ahead, it is too early to draw definitive conclusions, partly because the Dutch Supreme Court has yet to rule on WAMCA's admissibility requirements. WAMCA is set for legislative evaluation in 2025, which is expected to address several key issues. A central topic will be the differing interpretations by Dutch courts of what qualifies as "sufficiently representative". Political advocacy is expected either for relaxing or tightening the criteria for representativeness. Additionally, there will likely be discussion on whether full recovery of legal costs should be available in cases involving idealistic claims. Monitoring the evaluation will be crucial to anticipating potential future changes to the WAMCA regime.

Rising trends in class action litigation: ESG, human rights and privacy

Under the new regime, the number of class actions has increased significantly, with 76 WAMCA actions currently recorded in the public collective actions register. A notable driver of this increase has been the involvement of third-party funders, who have supported 27 out of the 33 cases where damages have been claimed under WAMCA.

A substantial proportion of collective redress actions is focused on ESG issues, alleged human rights infringements and privacy-related claims against companies and the government. Noteworthy cases include Milieudefensie's action against Shell, where, in November 2024, the Hague Court of Appeals overturned the first instance court's decision, dismissing all claims. This judgment, however, may be appealed before the Dutch Supreme Court until 12 February 2025. Greenpeace has also initiated two class actions against the Dutch State, alleging insufficient measures to mitigate climate change consequences in one case and insufficient actions to reduce nitrogen emissions in the other. In the latter case, the District Court of The Hague ruled on 22 January 2025 that the Dutch State is obligated to meet its previously established nitrogen emission reduction targets for 2030. Deviating from the usual presumption that the Dutch State would voluntarily comply with judicial decisions, the court imposed a penalty of €10,000,000 should the State fail to meet these goals by 2030.

Looking to the future, several factors suggest continued growth in class action litigation in the Netherlands. The evolution of the third-party litigation funding industry is likely to further fuel the frequency and complexity of mass damages claims. Additionally, resourceful NGOs and plaintiff-focused law firms are anticipated to drive more innovative and complex class actions. Furthermore, the expansion of legal frameworks, such as the CSRD and the CSDDD, underscores the trend of addressing ESG and human rights obligations through collective redress (read more in the EU chapter).

The Netherlands

Arbitration shifts: new Netherlands Arbitration Institute (NAI) rules and sustained asset protections

The 2024 NAI rules bring significant advancements aimed at enhancing the efficiency of dispute resolution. These rules introduce a secure digital arbitration platform, emphasising sustainability, diversity and inclusivity. They also strengthen the independence of arbitrators through new reporting requirements, including on third-party funding. Efficiency is further enhanced through NAI's direct appointments of arbitrators, expedited arbitration procedures and early determination processes. The rules also allow for arbitration-related court proceedings in English at the Netherlands Commercial Court. Quality enhancements involve the introduction of "balanced" scrutiny of draft awards and cost sanctions to deter misconduct, promoting a modern approach to arbitration.

Alongside its progressive legal changes, the Netherlands is expected to uphold a regime that protects foreign state assets, despite its 2024 ratification of the United Nations Convention on Jurisdictional Immunities of States and Their Property (read more in our blog post). This treaty sets standards for immunity from enforcement against state assets, pertinent to investment arbitral awards. While this ratification is a critical legal development, it is unlikely to immediately impact the enforcement of arbitral awards in the Netherlands, partly because the Convention is not yet in force. Importantly, the ratification includes a reservation allowing the use of a "commercial purpose" exception for pre-judgment attachments, a rule favourable to arbitration award creditors. Although this exception is already recognised by Dutch case law it lacks universal application in other jurisdictions.

Anticipating change: the implementation of the Simplification and Modernisation of Dutch Evidence Law

In 2025, we will witness the first applications of the Simplification and Modernisation of Dutch Evidence Law. This new legislation, effective from 1 January, aims to streamline existing pre-trial measures to enhance the efficiency of evidence collection before cases are officially filed, potentially reducing costs and accelerating legal proceedings.

A key aspect of this legislation is the integration of the right of inspection into the procedural framework. This enables parties to independently assess their rights to information and their obligations regarding information requests. Consequently, the right of inspection may shift from being a last resort to a primary and cost-effective method for evidence collection. Additionally, the introduction of conservatory measures, along with the option for courts to authorise a bailiff's statement of findings to preserve evidence, aims to promptly secure critical evidence while upholding confidentiality. Previously, such measures were applied exclusively in intellectual property cases.

The extent to which the new legislation will bring about substantive changes in the collection and evaluation of evidence in civil proceedings remains to be seen. As case law with regard to the new Dutch Evidence Law begins to emerge this year, we expect the first contours of its impact to become apparent during 2025.

Strengthening mediation: the establishment of a Central Mediator Register

Mediation is gaining prominence, as highlighted by a recent Dutch Supreme Court decision confirming that the mediation component of multi-tier arbitration clauses may be binding upon the parties. This decision provides much-needed clarity and reinforces mediation as a viable alternative for resolving business disputes.

Additionally, efforts are underway to establish a Central Register of Mediators, soon to be governed as an independent public body. This register will document mediators and their specialisations, with design and entry requirements based on the existing MfN quality register. The objective is to align the registration process with that of legal professionals.

The Netherlands

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Poland

Poland

The legislative landscape in Poland for 2025 is expected to be significantly shaped by developments initiated in 2024. These developments follow the appointment of new codification commissions tasked with reviewing and reforming civil law, civil procedure law, business law and criminal law.

Key legislative changes include an amendment to the Group Proceedings Act, reforming collective redress procedures. Efforts are also underway to conform with European AI standards in safety, ethics, and rights protection, with legislation expected in 2025. Consumer Procedure Rules from 2023, favouring consumers over businesses, have sparked criticism and calls for repeal. To address FX-indexed mortgage disputes, new legislation aims to streamline judicial processes and provide better borrower protection. Lastly, there has been an increase in fines, driven by stricter enforcement from the Competition and Consumer Protection Office and the Polish Financial Supervision Authority (PFSA), particularly concerning violations of AI regulations.

New legislation on collective redress

In August 2024, an amendment to the Group Proceedings Act came into force, enabling registered consumer organisations to pursue claims on behalf of consumers in group proceedings against entities violating consumers' general interests. These consumer groups will operate on an opt-in basis and will have to comprise at least 10 persons. Consumer organisations within the banking sector, in particular, are expected to frequently utilise this new instrument.

Read more in our client alert.

New legislation on AI

A draft bill on AI systems, published by the Ministry of Digital Affairs, is currently being developed to facilitate the implementation and enforcement of the AI Act in Poland. The bill proposes the establishment of a supervisory body, the implementation of complaint mechanisms, and the imposition of administrative fines. These fines align with the amounts specified in the AI Act, reaching up to €35,000,000 or 7% of the total worldwide annual turnover.

Administrative liability of entities supervised by the PFSA

In recent years, the PFSA has intensified its efforts to impose administrative sanctions on supervised entities and members of their authorities. In September 2024, the Supreme Administrative Court (SAC) issued a final judgment upholding sanctions imposed on an investment fund management company operating in Poland. The SAC determined that supervised entities bear strict liability. According to the Court's decision, liability remains unaffected by the influence of third parties on the occurrence of violations of law. The judgment could significantly impact the PFSA's practice of initiating sanction proceedings against supervised entities, their directors and members of supervisory boards.

Ineffectiveness of arbitration clauses due to inability to bear arbitration costs

In January 2024, the Polish Supreme Court ruled that an arbitration agreement might be unenforceable if a party is unable to afford the associated arbitration costs. This decision highlights that restricting judicial protection based on financial constraints could effectively deprive parties of their access to justice. In March 2024, the Court reaffirmed this position, emphasising the impact of financial circumstances, as well as life and health factors, on the feasibility of bearing arbitration costs.

These rulings challenge the principle of party autonomy and the freedom to choose arbitration, as financial situations may impose limitations on parties. The courts' future application of these standards remains uncertain, with arbitration users urging caution.

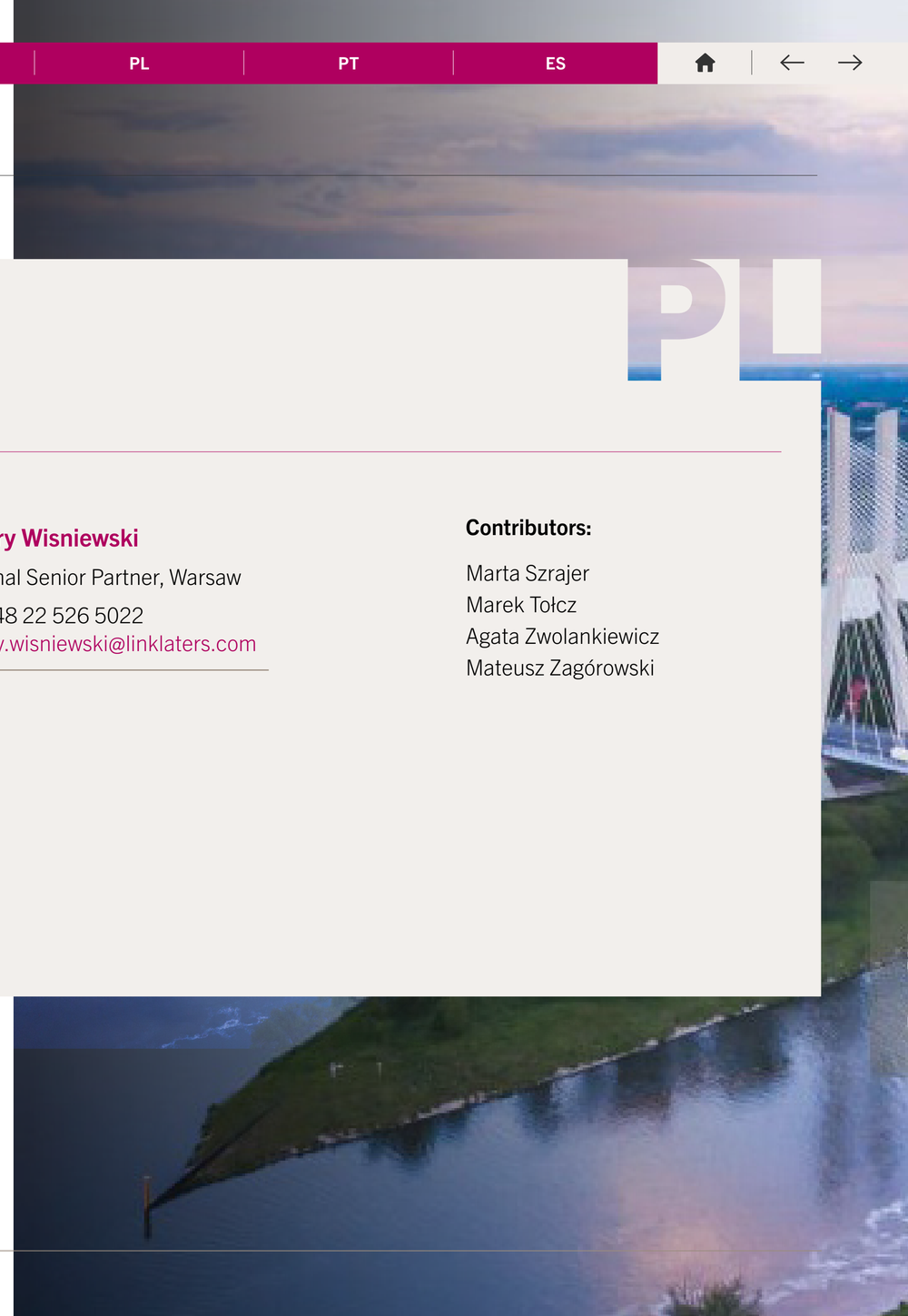
New case law on disputes over FX-indexed mortgages

The Supreme Court has adopted a resolution aimed at unifying case law on significant issues concerning disputes involving FX-indexed mortgages. According to the resolution, if the indexation provisions are deemed unfair, the loan agreement becomes null and void in its entirety. Consequently, both parties acquire mutual claims for the return of benefits. The limitation period for these claims commences on the day the borrower challenges the agreement based on unfair provisions. Notably, the Supreme Court has ruled out any possibility for the parties to claim remuneration for the use of capital.

Development of disputes against WIBOR-based mortgages

Consumers are initiating legal action against banks to invalidate mortgage loan provisions that tie interest rates to the WIBOR rate. They allege that banks have influenced rate formulation and have not fulfilled their information disclosure obligations. Despite these claims, current case law generally favours the banks. A preliminary question on this issue has been submitted by a Polish court and is awaiting a decision from the Court of Justice of the European Union.

Poland



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Portugal

Portugal

Since April 2024, Portugal's political landscape has undergone significant shifts, with the current Government not achieving a parliamentary majority. This development presents challenges, particularly in passing measures that require majority approval. Consequently, several legislative initiatives remain stalled, contributing to heightened uncertainty about future governance and policy implementation.

In the judicial sphere, primary concerns revolve around boosting the prevention and prosecution of corruption, achieving comprehensive digitalisation of legal proceedings, and improving the efficiency and speed of judicial proceedings, particularly in large criminal cases. Public opinion identifies substantial delays, especially in criminal cases, as a major weakness of the Portuguese justice system.

The implementation of the EU Collective Redress Directive: a balance of the first year of enforcement

December 2024 marks one year since the Decree-Law implementing the EU Collective Redress Directive to protect consumer rights entered into force. A significant feature retained at the domestic level is the opt-out regime, which has significantly enhanced its appeal to consumer associations. Additionally, the allowance of third-party funding for claimants has positioned Portugal as an attractive venue for testing collective actions related to consumer rights. In the second half of 2024 alone, over 40 class actions were filed in Portuguese courts, a noteworthy figure by any standard. It remains to be seen whether this growing trend will continue into 2025.

Current state of art of private enforcement of competition law

Since the implementation of the EU Cartel Damages Directive in 2018, the number of private enforcement claims has risen significantly. Furthermore, the intense sanctioning activity of the National Competition Authority in recent years has been a major catalyst for this trend. One of the most prominent ongoing private enforcement cases stems from a sanctioning decision against 12 Portuguese banks. In 2024 alone, four actions were filed, with anticipated damages expected to exceed €5m.

The birth of the Portuguese ESG litigation

In 2024, a group of NGOs filed a groundbreaking class action against the Portuguese State, arguing that the State's current efforts to reduce greenhouse gas emissions fall short of its commitments. The plaintiffs are seeking a judicial declaration that the Portuguese State has failed to implement the necessary political and legislative measures to cut greenhouse gas emissions, as well as a court order mandating the Portuguese State to implement comprehensive measures to reach that target. This case stands out as the first instance of climate litigation directed at the Portuguese State. The NGOs have announced their intention to expand their legal challenge to include major private sector actors in the oil, gas, and industrial sectors.

The trial of one of the most significant and complex criminal proceedings

In October 2024, the trial began for one of the most complex and significant criminal proceedings in Portugal's recent history involving the Espírito Santo Group, one of the country's largest financial entities. This group, which included Banco Espírito Santo, was central to a landmark banking resolution at the European level in 2014. The proceedings involve 18 defendants, predominantly directors and senior managers of the Espírito Santo Group, facing charges for over 300 crimes allegedly committed between 2009 and 2014. The investigation phase spanned approximately six years, leading to an indictment issued four years ago, and followed by an extensive pre-trial phase. The trial is set to hear testimony from over 700 witnesses. According to the Public Prosecutor's Office, the collapse of this financial group is estimated to have resulted in losses exceeding €11.8bn.

Portugal

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Spain

Spain

The current political situation in Spain, characterised by a weak Government coalition, is significantly impacting developments in many areas of law. Several important legislative initiatives with the potential to shape the years to come remain incomplete due to the collapse of the Government coalition in Parliament. It appears unlikely that all pertinent legislative projects will be finalised before the forthcoming elections for a new Spanish Parliament.

Failure to transpose the Collective Redress Directive

Spanish procedural law, enacted in 2000, includes limited regulation on collective redress, proving insufficient for practical application. Although it suggests the existence of an opt-out mechanism, plaintiffs have struggled with its implementation. Consequently, collective actions have predominantly been restricted to injunctions, mainly against Spanish financial entities concerning unfair contractual terms with consumers.

In March 2024, the Spanish Government approved a draft law to transpose the Collective Redress Directive into Spanish law. This proposed regulation, sent to Parliament, sought to facilitate collective redress and its funding through third-party litigation funds. Key features include a pure opt-out system, allowing consumer associations with minimal representativity standards to act as litigation vehicles, and no limitations on third-party funders to support actions and obtain a *quota part* of awarded amounts. Additionally, consumer associations would manage compensation payments when defendants are ordered to pay a lump sum (read more in our blog post).

However, the collapse of the Government coalition led to a withdrawal of the draft law from the constitutional bill, which remains under discussion. Before its withdrawal, potential amendments were considered, such as mandatory opt-in for claims exceeding €3,000, capping third-party funders' returns to 30% of awards (limited to twice their investment), and restricting legal standing to select consumer associations with strict representativity criteria.

The Government is expected to present a revised proposal to Parliament as separate legislation or to transpose the Collective Redress Directive through a Royal Decree-Law, citing the urgency of transposing the Directive. Convincing former coalition parties to approve the new regulation is likely to require simplifying the proposal to an opt-in system with severe restrictions on litigation funding.

Notable developments in commercial disputes

Major changes are expected in several fields, with EU law playing a significant role in some instances. These areas are set to gain considerable focus:

- **Competition litigation:** Private enforcement of competition law remains highly active in Spain. Although cases have been mainly brought under multi-individual claims models, claims by several claimants have often been consolidated into a single proceeding. This consolidation is either a result of plaintiffs' lawyers seeking efficiency or due to the courts' procedural orders with the same objective. Moreover, third-party funders are increasingly involved in competition litigation. Recent rulings relating to the "trucks cartel" and the "car cartel", along with several ECJ decisions, have favoured plaintiffs' claims, which are likely to encourage further cases. This trend is expected to continue, supported by the expanding availability of collective redress mechanisms and the increased appetite of litigation funders for large-scale claims.
- **ESG disputes:** ESG litigation is still in its early stages in Spain, with only two cases reported to date:
  (i) In September 2020, Greenpeace and other NGOs sued the Spanish Government for failing to take adequate action on climate change and breaching its obligations under the Regulation on the Governance of the Energy Union and Climate Action. In July 2023, the Supreme Court dismissed the claim, ruling that the National Energy and Climate Plan did not breach any legal obligations. Subsequently, in June 2024, the plaintiffs filed an application for *amparo* with the Spanish Constitutional Court as a remedy for protecting constitutional rights.
  (ii) In February 2024, Iberdrola filed a claim against Repsol, accusing the oil company of "unfair competition and deceptive advertising through greenwashing". The trial began on 21 November 2024, centring claims that Repsol misrepresented the sustainability of its operations and products regarding advanced biofuels, renewable hydrogen, and energy connections. The case has garnered significant media attention, and its outcome may influence future greenwashing-related litigation (read more here).

  However, ESG litigation is expected to increase substantially following the transposition of several EU regulatory proposals into Spanish law.

Spain

Very recently, the Spanish Government unveiled its plan to transpose the Corporate Sustainability Reporting Directive (CSRD). Although the CSRD has not yet been transposed and the final European Sustainability Reporting Standards (ESRS) are pending, the National Securities Market Commission and the Accounting and Auditing Institute have published a joint statement recommending that sustainability reports for the fiscal year 2024 be prepared on the basis of the CSRD, the draft ESRS, and specific elements of the currently applicable non-financial information statement. This lack of concrete guidelines for sustainability reporting could lead to future litigation.

The (pending) implementation of the Empowering Consumers for the Green Transition Directive and anticipated requirements from the Green Claims Directive may lead to future greenwashing-related lawsuits by NGOs, competitors, and consumers.

The upcoming transposition of the Corporate Sustainability Due Diligence Directive (CSDDD) will certainly also trigger further ESG litigation. Historically, the Spanish Governments included additional sustainability requirements further to those foreseen in an EU legislative act when transposing it into Spanish law. It remains to be seen whether this trend will continue with the transposition of the CSDDD, considering the political controversy about the CSDDD in light of the significant bureaucratic burden for in-scope companies and their business partners.

Other EU legislative initiatives, such as the Ecodesign Regulation or the Right to Repair Directive could also lead to disputes (read more in the EU chapter).

- **Product liability:** By the end of 2026, the transposition of the new EU Product Liability Directive will bring substantial changes to product liability law, extending its reach to more market players and increasing risks for companies within its scope. In particular, the Directive will introduce legal presumptions on the defectiveness of products and on the causal relationship between the defect of the product and the damages. Additionally, new provisions will allow plaintiffs to claim immaterial damages arising from product liability, potentially expanding the use of collective redress mechanisms in this field. Further EU legislation on AI liability also seems possible (read more in the EU chapter).
- **GDPR litigation:** The ECJ and Spanish courts are actively addressing key issues related to the private enforcement of the GDPR. This progress is paving the way for consumer associations to file collective actions under the procedural framework.

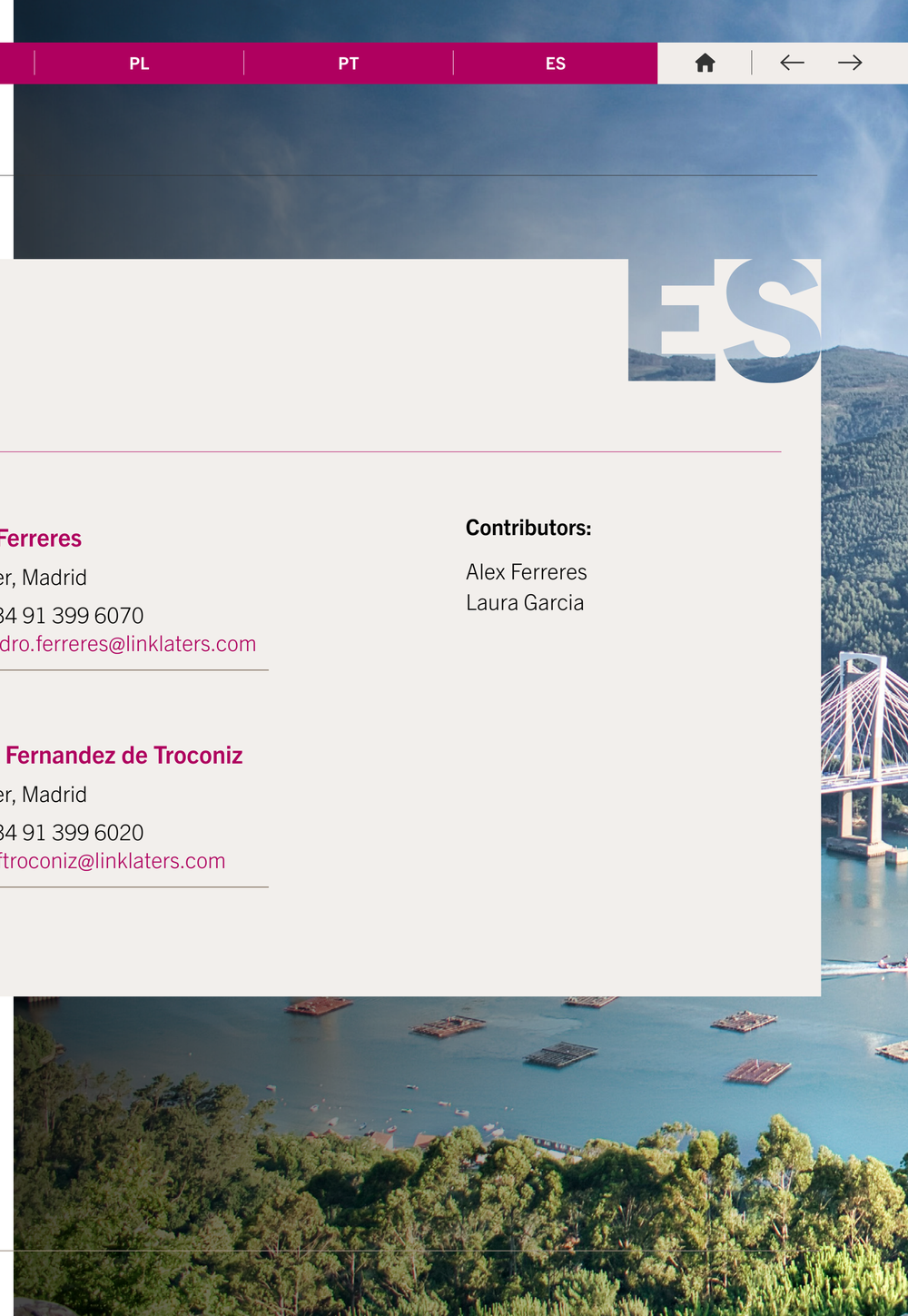
Modernising the civil judicial systems

Two additional procedural elements are at the forefront of modernising the civil judicial system. First, there is the reorganisation of first instance courts, which will now be established as first instance tribunals in each local jurisdiction. This aims to ensure a more balanced distribution of workloads among courts and provide a more consistent judicial response to similar legal conflicts. Second, regulations to complete the digitalisation of civil proceedings in Spain, which is already well developed, are pending enactment as part of the aforementioned constitutional bill.

Enhancing arbitration proceedings

The judiciary continues to facilitate the growth of a robust arbitration practice within the country, showing the utmost deference towards arbitrators in line with a clearly pro-arbitration stance. A notable recent example is the decision by the Spanish Constitutional Court confirming the validity of an arbitration award in a competition case involving Cabify and one of its former business partners. Initially, the judiciary invalidated the arbitration award on the grounds that the arbitrators had not applied competition law in accordance with ECJ and Spanish case law. However, the Constitutional Court overturned this decision on the basis that arbitration awards should be upheld and can only be invalidated in rare cases where the “legal public order”, a concept to be interpreted very narrowly, has been evidently violated by arbitrators.

Spain



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