Linklaters

Disputes and Investigations in Europe (2026) – Prepare for the Unexpected



Introduction

Welcome to the second edition of our **EU Litigation, Arbitration and Investigations publication**.

As we enter 2026, mastering key legal and case law developments across the European Union remains critical for anyone wishing to stay ahead.

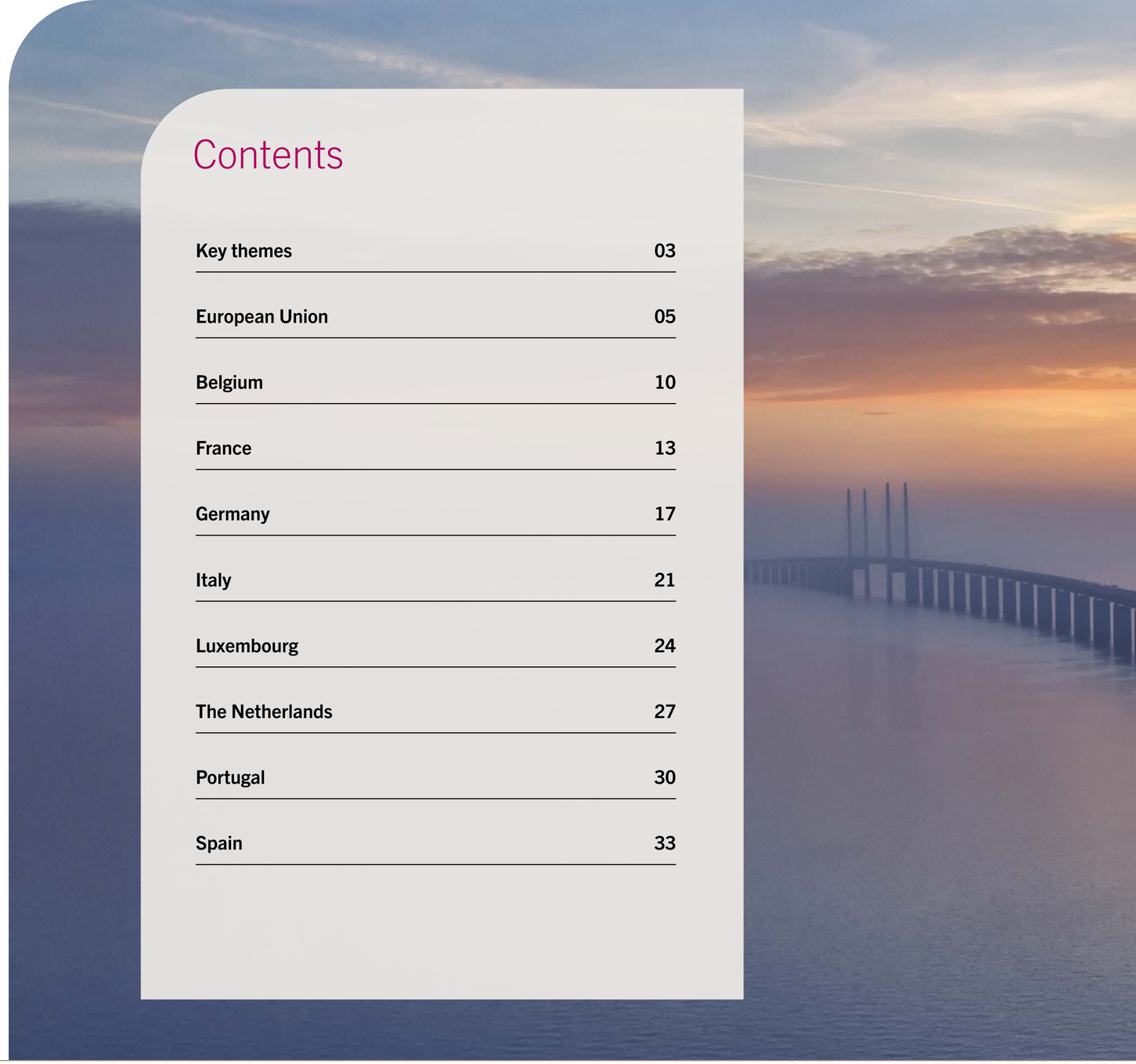
This edition provides concise commentary and focused analysis on key issues and trends in the EU and in each of our core jurisdictions, with links to our relevant publications.

We have designed it as a practical reference to help you navigate the main opportunities and risks in the year ahead.

We hope you find it useful!

Kind regards,

Florence Danis



Contents

Key themes	**03**
European Union	**05**
Belgium	**10**
France	**13**
Germany	**17**
Italy	**21**
Luxembourg	**24**
The Netherlands	**27**
Portugal	**30**
Spain	**33**

Key themes

As 2026 unfolds, the European landscape for litigation, arbitration and investigations is entering a new phase of maturity, driven by a powerful convergence of legislative, judicial and societal developments.

Key areas of interest

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

ESG litigation is intensifying across the EU, with a strong focus on climate accountability and greenwashing. Climate-related cases targeting both corporate and state entities are anticipated to become prominent in several jurisdictions. The transposition of the **Empowering Consumers for the Green Transition Directive** is expected to drive further litigation against allegedly inaccurate environmental claims.

The reformed **Product Liability Directive** is creating a more challenging landscape for economic operators, with Member States having to transpose the new rules by December 2026.

Competition litigation continues to gain momentum through private enforcement and damages claims following regulatory decisions. Evolving case law and the use of collective redress mechanisms are enabling large-scale actions. In Spain, new judicial interpretations are creating extended exposure windows for historical cartel conduct.

AI-related harm remains a major area of attention, despite the withdrawal of the dedicated **AI Liability Directive**.

The Unified Patent Court is evolving into a central forum for **international patent litigation**, a trend driven by an expansive view of its own jurisdiction.

Litigation

The transposition of the **Representative Actions Directive** across most Member States is ushering in a new era of **collective litigation**. With 77 qualified entities now able to bring cross-border actions, a significant increase in multi-jurisdictional consumer claims is expected in 2026, particularly as follow-on actions from regulatory decisions.

In parallel, **third-party litigation funding (TPLF)** is expanding rapidly. While the EU retains a monitoring approach for the moment, national courts in jurisdictions like the Netherlands and Portugal are increasing their scrutiny of funding agreements and claimant independence.

Modernisation of proceedings is a priority in several jurisdictions. Germany is likely to see its new English-language commercial courts and commercial chambers gain momentum, whereas France is actively promoting alternative dispute resolution by granting judges greater powers to encourage negotiated settlement.

Arbitration

The EU's influence on arbitration continues to expand. The adoption of **the *inter se* agreement on the Energy Charter Treaty** by all Member States except Hungary may signal a collective move towards greater predictability in these proceedings. At the same time, the risk of arbitral awards being challenged on state aid grounds remains a concern. Businesses may wish to anticipate **increased judicial scrutiny of arbitral awards** for compliance with EU public policy. This trend could apply regardless of the arbitral seat.

At a Member State level, Spain's Arbitration Court has introduced new rules effective from 1 January 2026, including a hyper-expedited procedure for non-complex disputes. In Italy, a recent ruling from the highest court provides Italian companies greater flexibility to structure dispute resolution in corporate transactions. In contrast, plans for a comprehensive update of German arbitration law have stalled.

Criminal law and investigations

The EU is strengthening its framework for financial crime and corporate accountability. The **new Anti-Money Laundering Authority** will have **consolidated supervision** under a single EU rulebook, marking a historic shift from fragmented national enforcement to unified oversight. In addition, the **upcoming Anti-Corruption Directive** will create a single, unified framework for corruption offences.

EU sanctions against Russia have entered a new phase of escalation, and Member States are transposing requirements that will introduce higher penalties and criminalise a broader range of conducts that violate sanctions.

At the national level, Belgium's new Criminal Code, entering into force in April 2026, is a key development, notably for introducing ecocide as an offence and establishing specialised environmental courts.

The investigative powers of regulators are also being strengthened. A draft bill in France proposes to enhance the financial markets authority's enforcement powers, by introducing key measures such as a leniency framework and the power to publicise ongoing investigations. Meanwhile, a CJEU Opinion concerning a referral from Portugal suggests that national competition authorities may receive greater power to seize emails during inspections without prior judicial authorisation.

Contacts



Florence Danis
Partner, Brussels
Tel: +32 2 501 90 28
florence.danis@linklaters.com

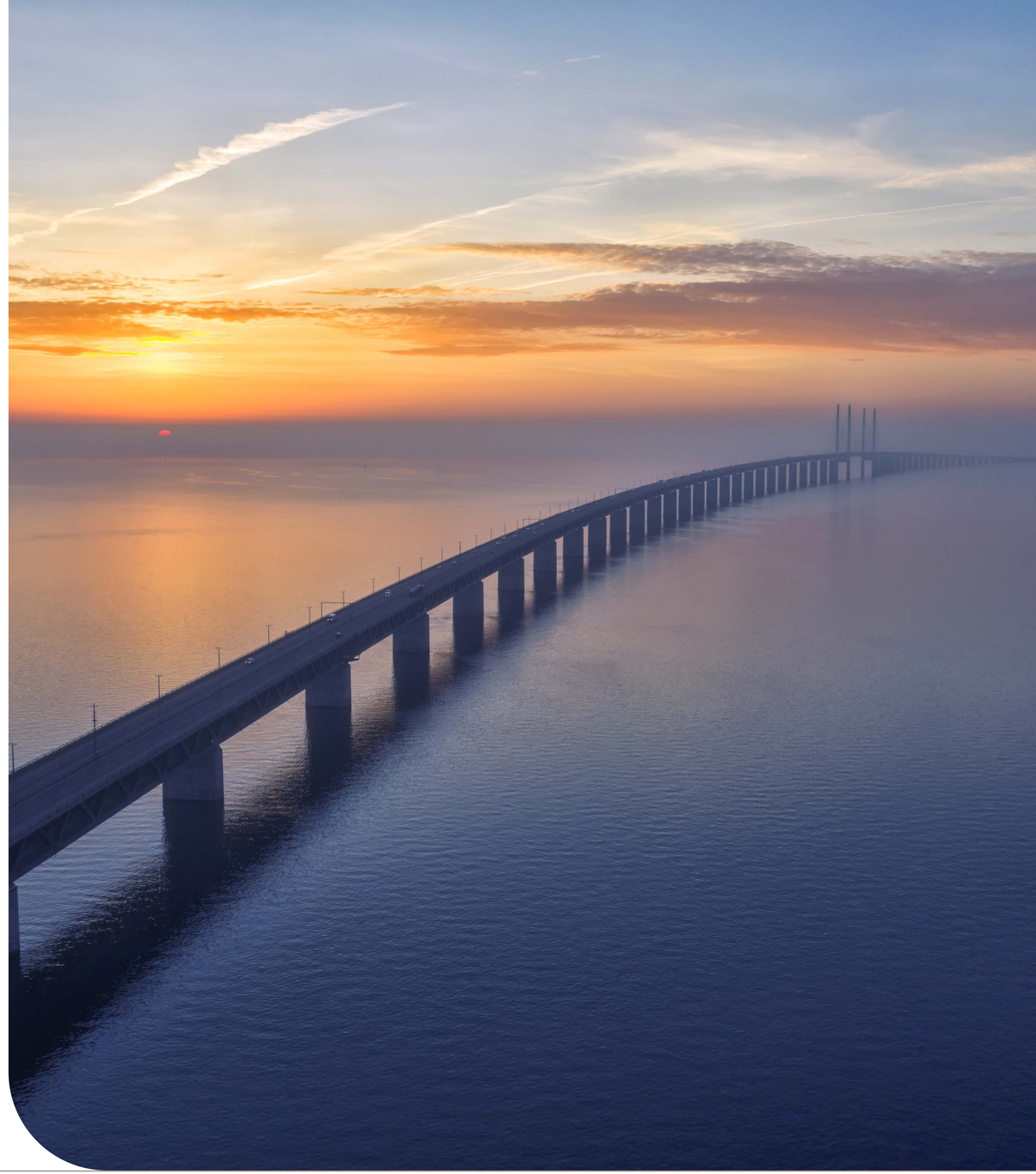
Contributor:
Alexia Kaztaridou



Christian Schmitt
Partner, Frankfurt
Tel: + 49 69 71003 261
christian.schmitt@linklaters.com



Alex Ferreres
Partner, Madrid
Tel: +34 91 399 6070
alejandro.ferreres@linklaters.com



European Union

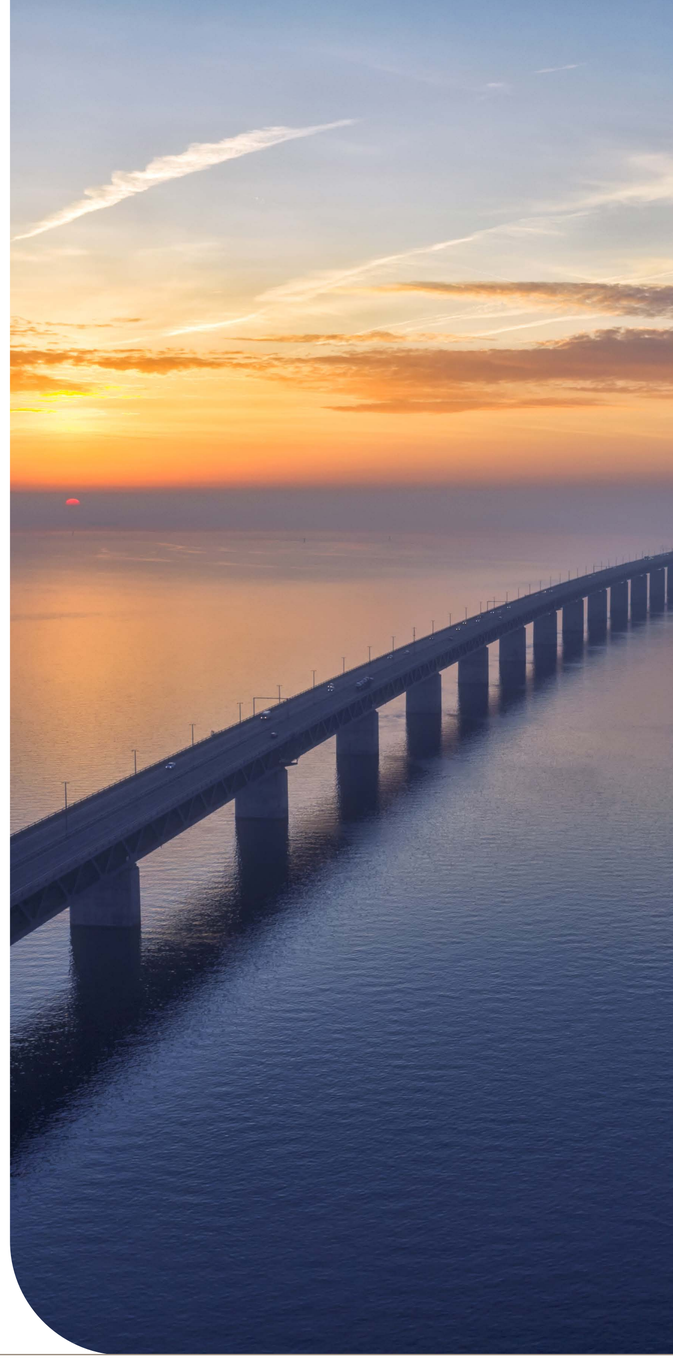
As 2026 unfolds, businesses operating across the EU face a fundamentally reshaped litigation and regulatory landscape. The convergence of new collective redress mechanisms, stricter product liability rules, and an expanding web of ESG obligations is creating unprecedented exposure to multi-jurisdictional claims and enforcement actions.

At the same time, the maturation of the UPC, the harmonisation of insolvency frameworks, and an arbitral system facing new enforcement hurdles and heightened judicial scrutiny are transforming how cross-border disputes are resolved. The interplay of these developments creates a new European legal reality, defined by the tension between top-down legislative harmonisation and the ground-up expansion of litigation risk, demanding a proactive strategy to manage the litigation exposure that follows.

The new era of funded collective litigation in the EU

The Representative Actions Directive, which required EU Member States to adopt a form of representative actions allowing qualified entities to claim redress or injunctive relief on behalf of a group of consumers, has now been transposed in most Member States. One of the key features of the Directive was the requirement that qualified entities designated in one Member State to act on cross-border actions should automatically be recognised in all other Member States. 77 entities across the EU have been designated for such cross-border actions so far, including both general consumer rights groups and those with more specific aims, such as privacy protection or the recovery of cartel damages. In 2026, we anticipate a significant uptick in the number of representative actions across the EU, with entities likely bringing the same action in multiple Member States to increase pressure on defendants. Companies which are the target of regulatory actions, be it under competition law, the GDPR, the DSA, the DMA or similar frameworks, are especially at risk, as actions following on regulatory decisions allow qualified entities to rely on findings made by regulatory authorities. In addition, early cases under the Representative Actions Directive raise jurisdictional issues. The High-Level Forum on Justice for Growth (HLF) recently identified this as a key issue and put forward the idea of revising the Brussels I recast Regulation on jurisdiction in the EU. As such, we expect that 2026 will bring developments on the jurisdictions in which representative actions can be brought.

As representative actions pose significant funding needs, we expect the use of litigation funding to rise in parallel, albeit that this is a development under close scrutiny by the European Commission. Following a comprehensive mapping study of third-party litigation funding across all Member States, the European Commission published the results. The HLF concluded that, based on participants' views, there is at this stage no demonstrated need for EU-level regulation of third-party litigation funding. Whilst the HLF report does not represent an official position of the EU institutions, it signals that the Commission has opted for a monitoring approach at this stage. For multinationals, this means the anticipated EU-level disclosure obligations will probably not materialise in the near term, though divergent national approaches remain in place, from Germany's restrictive 10% return cap to more permissive regimes in France and Spain. The market itself continues its robust expansion, with the sector estimated to have generated an additional €600 million in revenue by 2025 as penetration rates double from 4% to 8%.



Product and AI liability

A significantly more challenging liability landscape is emerging through legislative reforms and expansive court judgments.

Cross-border insolvency

The upcoming Directive will harmonise core aspects of national insolvency laws, increasing predictability and efficiency.

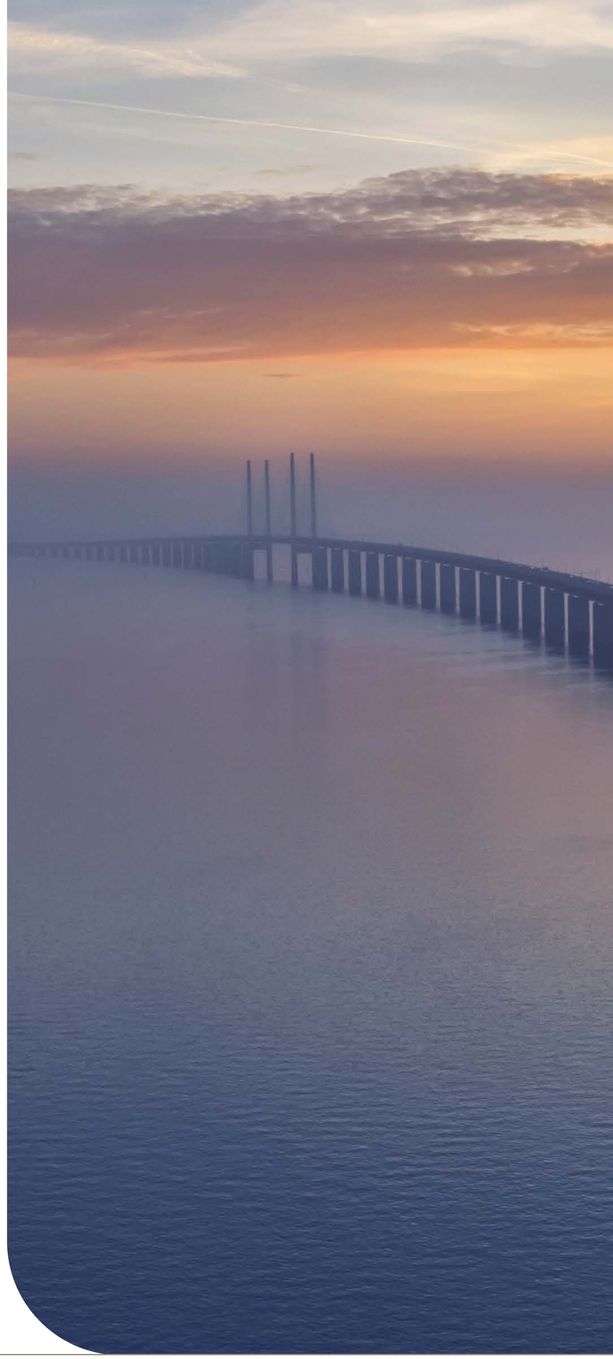
Unified Patent Court

A single forum across participating member states creates centralised enforcement opportunities and risks.

The shifting landscape of commercial litigation in 2026

2026 is set to be defined by significant litigation activity, driven by critical transformations in the following areas:

- A significantly more challenging **EU product liability framework** is emerging, driven by a convergence of legislative and judicial trends. The reformed Product Liability Directive is fundamentally reshaping the liability landscape (read more in our client alert here and see our transposition tracker here). This trend is reinforced by expansive CJEU judgments and the potential for a broader interpretation of claim expiry periods following the Advocate General's Opinion in *Sanofi*. In parallel, the risk of claims for AI-related harm remains high despite the withdrawal of the proposed AI Liability Directive, as national courts are expected to use the AI Act and the revised Product Liability Directive to adjudicate these cases. This creates an evolving risk environment for any business developing or deploying AI systems.
- With trilogue negotiations having started in September 2025, the EU's Directive harmonising certain aspects of **insolvency law** could be adopted by mid-2026, marking a watershed moment for cross-border restructuring. The draft Directive aims to harmonise key areas of insolvency: avoidance actions to maximise asset recovery, mandatory pre-pack proceedings to preserve asset value, and creditors' committees to strengthen stakeholder oversight (read more here). For multinational groups and creditors alike, this promises greater predictability and cost-effectiveness. The draft Directive ultimately seeks to remove critical barriers to investment and capital flows. While some Member States may require minimal implementation, jurisdictions with less developed insolvency frameworks will face substantial legal reforms to align with the new standards. In November 2025, negotiators reached a provisional agreement, bringing formal adoption closer.
- The **Unified Patent Court (UPC)** is rapidly evolving into a powerful central forum for international patent litigation. This trend is driven by an expansive approach to its own jurisdiction, recently demonstrated in a series of decisions. Following the CJEU judgment in *BSH Hausgeräte*, the UPC has assumed jurisdiction for infringement actions over European patents parts that are validated outside the UPC member states and expanded its jurisdiction for defendants domiciled outside the UPC system in cases such as *Mul-T-Lock*, *Fujifilm* and *Dyson*. This development presents patent holders with the strategic opportunity to enforce an entire European patent portfolio in a single court action. Conversely, it creates a significant new risk of UPC injunctions potentially covering all European business operations. This creates a tactical dynamic where parties are increasingly likely to seek cross-border injunctions from the UPC.



ESG litigation and regulatory enforcement risk remain high despite Omnibus

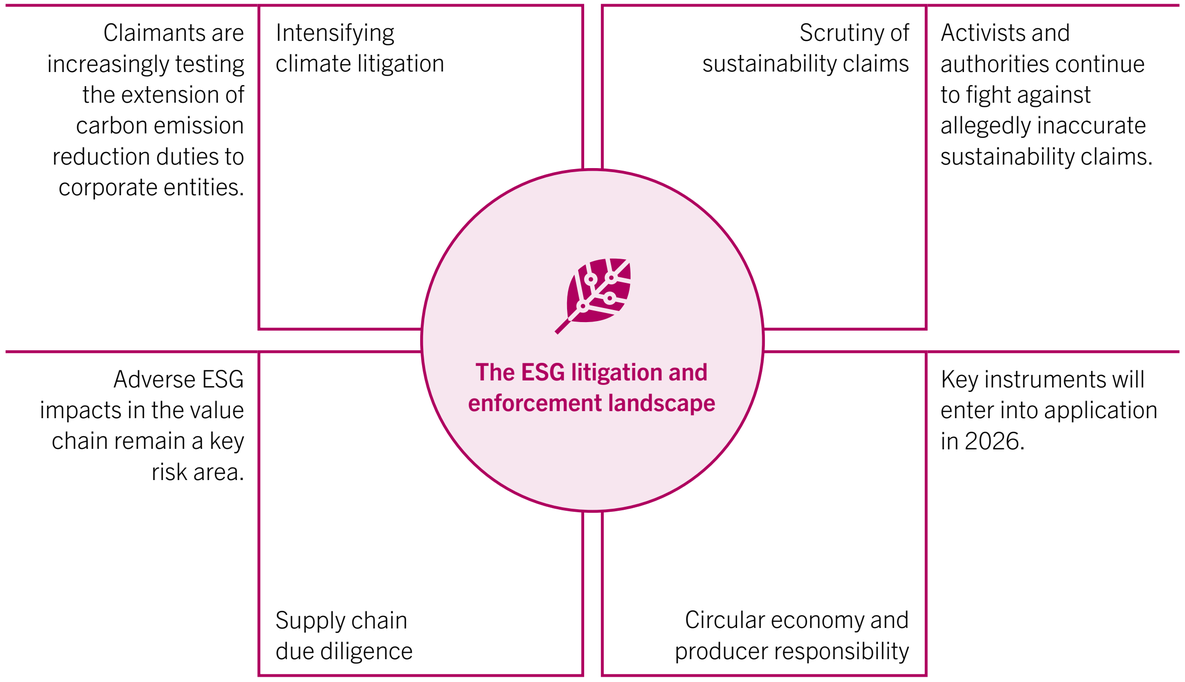
Despite the simplification, or recalibration, of flagship EU ESG instruments through the Omnibus simplification packages, sustainability-related claims and regulatory enforcement actions are likely to carry on in 2026.

Climate litigation is expected to continue intensifying, emboldened by recent international courts' opinions clarifying state obligations in relation to climate change, including the International Court of Justice's advisory opinion (read more in our blog post). These developments will likely have cascading effects, encouraging claimants to test the extension of carbon emission reduction duties to corporates and public entities. A number of activist organisations have announced the intensification of their strategic litigation efforts, in view of the withdrawal from the Corporate Sustainability Due Diligence Directive (CSDDD) of the obligations for in-scope companies to adopt transition plans. Challenges of carbon-intensive projects are also likely to remain high on the agenda, as illustrated by the ECHR judgment in *Greenpeace Nordic and Others v. Norway* (read more in our blog post).

Activists and authorities continue to focus on the accuracy of sustainability claims and the fight against greenwashing. This trend will likely intensify with national transposition of the Empowering Consumers for the Green Transition Directive (EmpCoD) by 27 March 2026 (read more in our tracker). The EmpCoD amends the Unfair Commercial Practices Directive to combat greenwashing and other unfair practices (read more in our client briefing). It remains unclear whether the proposal for a Green Claims Directive, which aims to complement the EmpCoD by setting minimum standards for environmental claims and labelling schemes, remains listed among ongoing files by the Commission, despite the previous announcement of a potential withdrawal (read more in our blog post). Despite the reduction of the scope and obligations of the Corporate Sustainability Reporting Directive, sustainability claims made in the context of corporate disclosure will also continue to be tested.

Adverse ESG impacts in the value chain remains another area of risk, despite the postponement, reduction of the scope of application, and simplification of the CSDDD (read more here) and of the Deforestation Regulation (read more here). As illustrated by the recent decision of the English High Court in the Fundão Dam case (read more here), activist organisations are expected to continue developing sophisticated strategies to seek injunctive orders and compensation before European courts, or bring their case before non-judicial mechanisms such as the OECD national contact points (read more here).

Finally, circular economy may also be in the spotlight in 2026, as the entry into application of the Ecodesign for Sustainable Products Regulation and Right to Repair Directive will likely generate enforcement actions and private litigation (read more here).



The EU's expanding influence on arbitration: navigating treaty reforms, state aid risks, and heightened judicial scrutiny

In 2026, European arbitration is entering a transformative phase, as EU treaty obligations, national practices and arbitral enforcement continue to evolve. A key area of focus remains the EU's proactive stance on intra-EU investor-state arbitration, particularly under the Energy Charter Treaty (ECT). The adoption of the *inter se* agreement on ECT by all Member States except Hungary marks a collective step towards greater consistency and predictability in these proceedings, requiring investors to reassess their treaty protection strategies within the EU.

Ongoing cases such as the pending appeals in *Micula* (C-891/24 P and C-890/24 P), where arbitral damages payments were classified as potential unlawful state aid, suggest that enforcement risks may increase for parties seeking to enforce awards involving state measures, requiring a proactive consideration of state aid implications from the beginning of a dispute.

Similarly, following the CJEU's judgment in *Seraing*, businesses should anticipate heightened judicial scrutiny over arbitration awards, particularly regarding compliance with EU public policy (read more in our blog post here). Member state courts are expected to review awards more rigorously, regardless of their seat, with implications likely to extend even to mandatory arbitration schemes like those used in sports.

Finally, sanctions will remain a prominent feature of EU arbitration, adding layers of complexity for businesses. They continue to impact both the conduct and enforceability of proceedings involving sanctioned entities or individuals. Two pending preliminary references before the CJEU brought by the Svea Court of Appeal and the French Court of Cassation are promising to bring further clarification on this challenging issue.

Sanctions, corruption and AML: the EU's multi-front approach to financial crime and corporate accountability

The EU's sanctions architecture against Russia has reached another phase of escalation, with the 19th package targeting LNG, crypto-assets and tighter transaction bans, and officials confirming this will not be the last set of measures. Political calls for qualified majority voting on foreign policy decisions and the European Parliament's legal challenge questioning the Council's listing powers add further complexity. Further, while the EU's recently agreed €90 billion loan to Ukraine is financed by capital markets, the potential future use of proceeds from immobilised Russian assets remains a key consideration. This possibility could create a significant precedent for aggressive asset deployment that corporations must monitor.

Beyond sanctions, the EU is advancing a broader agenda to strengthen its financial crime and corporate integrity framework through major legislative reforms. Following its adoption in May 2024, financial institutions and other obliged entities are preparing for the formal application of the new AML package. The AML Regulation will apply directly from July 2027, and Member States must transpose the 6th AML Directive by the same date. Meanwhile, the new AMLA has been established in Frankfurt and has started its operations (read more in our briefing here and listen to our podcast series here).

In parallel, the Anti-Corruption Directive represents an ambitious move to harmonise a fragmented landscape of national laws by creating a single, unified framework for corruption offences. Further to the provisional agreement reached among the EU co-legislators, compliance with anti-bribery and corruption rules becomes more important than ever for businesses. Businesses will face stricter penalties, including substantial fines and potential exclusion from public procurement and funding opportunities. The designation of anti-corruption as a key priority in the European Commission's work programme signals that this initiative is part of a long-term strategic focus, making it a critical area of regulatory development to monitor well beyond 2026.



> "A central tension is reshaping the EU's legal environment in 2026, as top-down harmonisation collides with a bottom-up surge in litigation risk. Collective redress mechanisms now amplify single regulatory decisions, triggering coordinated, multi-jurisdictional actions across member states. Success depends on viewing the EU as a single, interconnected ecosystem of risk and opportunity."
>
> **Alex Ferreres**, Partner, Madrid

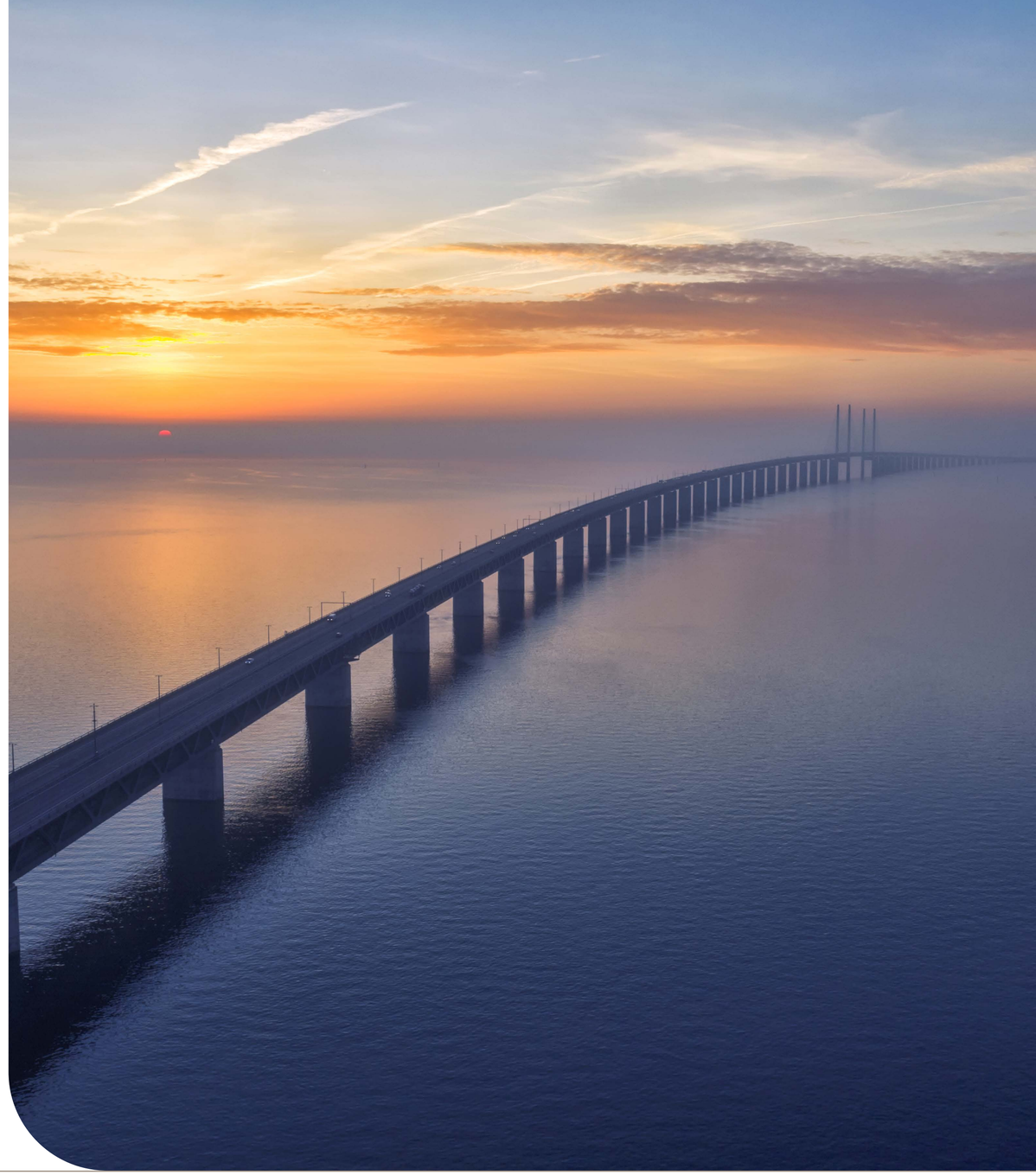
Contact



Alex Ferreres
Partner, Madrid
Tel: +34 91 399 6070
alejandro.ferreres@linklaters.com

Contributors:

Guillaume Croisant
Gert-Jan Hendrix
Piotr Wilinski
Jacqueline Engineer
Lédéa Sawadogo-Lewis
Alexia Kaztaridou
Charlotte Kieslich
Pierre-Noé Milcamps
Nicolas Vermeulen
Sara Profeti



Belgium

Belgium continues to navigate a period of significant legal transformation as it enters 2026. Key (anticipated) developments include:

- The entry into force of the new Criminal Code in April 2026, introducing, among other things, groundbreaking provisions on environmental crime and establishing specialised environmental courts.
- The maturation of Belgium's collective redress regime, with the first admissibility judgments expected under the new framework and a growing number of cross-border actions.
- New avenues for dispute resolution are opening given a landmark judicial recognition of third-party litigation funding, whilst raising questions about future regulation on the topic.
- The expected adoption of Book 7 of the Civil Code, set to modernise the law governing specific contracts and requiring strategic contractual adjustments across many sectors.

New Criminal Code: developments in environmental crime

In April 2026, Belgium's new Criminal Code will come into force, modernising its substantive criminal law. A key novelty is the introduction of ecocide as an offence, applicable to both individuals and legal entities (read more in our blog post). Belgium is also establishing specialised environmental courts across the country to handle civil and criminal environmental disputes more efficiently (read more here).

Collective redress: expected first admissibility judgments under the new class action regime

In April 2024, Belgium revamped its collective redress regime to align with the Representative Actions Directive and streamline the procedure. A major novelty is the possibility of cross-border actions, allowing qualified entities from other EU Member States to bring actions for collective redress before the Belgian courts. Likewise, Belgian entities authorised by the Belgian government to bring actions for collective redress are also automatically permitted to bring such actions in other Member States.

2025 saw the first such authorisations of Belgian entities, with major players such as Testaankoop/Testachats, Euroconsumers, and BEUC being authorised by the government. It also saw the first action brought under the new regime and the first action brought by a qualified entity from another Member State.

As collective redress continues to pick up steam across the EU, we expect the number of cross-border actions brought before Belgian courts to increase in 2026. Especially at risk are companies in the tech industry, which are facing increasing regulatory pressure in the EU that can give rise to follow-on actions. We also expect the first admissibility judgments under the new regime to be issued in 2026. Those will likely be instructive as to issues of standing and class definition that are currently still unclear.

The collective redress regime's maturation

April 2024

Foundation

New collective redress regime enters into force.

2025

Activation

First Belgian entities are authorised and the first cross-border and domestic actions are filed in Belgium.

2026

Crystallisation

First admissibility judgments are expected, shaping future litigation.



A door opens for third-party litigation funding in Belgium

Whilst third-party litigation funding continues to gain prominence across the EU, Belgian law has remained largely silent on the topic – until now. In October 2025, the Brussels Court of Appeal delivered a landmark judgment addressing several key legal aspects of litigation funding.

The Court confirmed that litigation funding is permissible in principle and does not automatically undermine a party's standing to sue. It may still impact admissibility in specific contexts, such as in collective redress and injunctive actions where entities are required to demonstrate independence from non-consumer third parties, including funders. In addition, the Court held that the disclosure of funding arrangements can be ordered if relevant to the merits of a dispute.

As litigation funding remains largely unregulated in Belgium, this judgment provides welcome initial guidance whilst leaving the door open for future developments. Now that no immediate regulation appears to be forthcoming at EU level, Belgian courts and legislators will likely face increasing pressure to clarify the boundaries of permissible funding arrangements in 2026 and beyond.

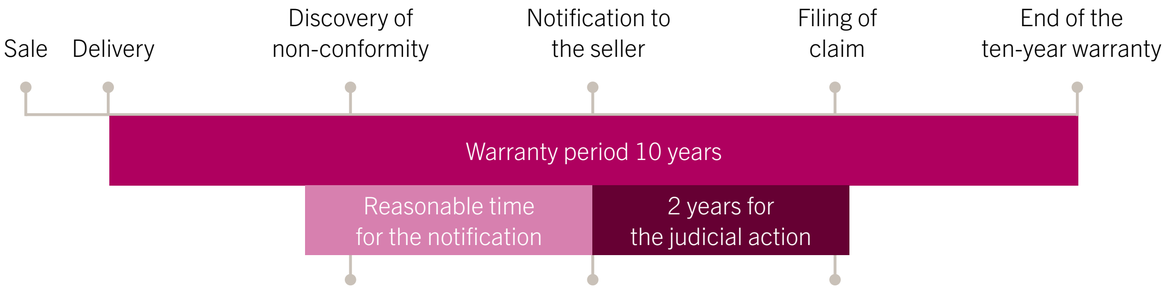
A new blueprint for specific contracts: unpacking the Book 7 reform

Book 7 of the Civil Code is expected to be adopted in 2026 and to enter into force twelve months following its publication. It will fundamentally modernise, simplify and harmonise the law governing specific contracts, including contracts of sale, lease of goods, loan for use, service contracts (including mandates, hotel deposit agreements, and real estate service contracts), aleatory contracts, sequestration and settlement agreements.

Several key legal concepts will be revised, necessitating strategic contractual adjustments. Notably:

- **Transfer of risk:** The risk associated with goods will be transferred from seller to buyer upon delivery, rather than upon transfer of ownership. This shift requires careful contract drafting concerning which party bears risk for asset loss or damage in cases where delivery, payment and ownership transfer occur at different times.
- **Direct action:** The scope of direct action is broadened to cover all service contracts. This expansion requires mapping service provider relationships, strengthening indemnification clauses for direct third-party claims, ensuring adequate liability insurance, and implementing notification protocols for direct action claims.
- **Conformity claims:** Limitation periods for bringing claims for non-conformity will be revised, ranging from two to ten years. As these changes will directly impact the duration of exposure under warranties and the timeframe for challenging defects, it will be essential to carefully structure limitation clauses and notification procedures to mitigate risk and ensure enforceability.

While the adoption timeline remains subject to change, proactive review and adaptation of contracts is strongly recommended to maintain a competitive edge. For ongoing updates and in-depth analysis of the Civil Code reform, please consult our dedicated microsite.



Contacts



Florence Danis

Partner, Brussels

Tel: +32 2 501 90 28

florence.danis@linklaters.com



Stefaan Loosveld

Partner, Brussels

Tel: +32 2 501 95 21

stefaan.loosveld@linklaters.com



Xavier Taton

Partner, Brussels

Tel: +32 2 501 94 72

xavier.taton@linklaters.com

Contributors:

Jasper Bellon

Guillaume Croisant

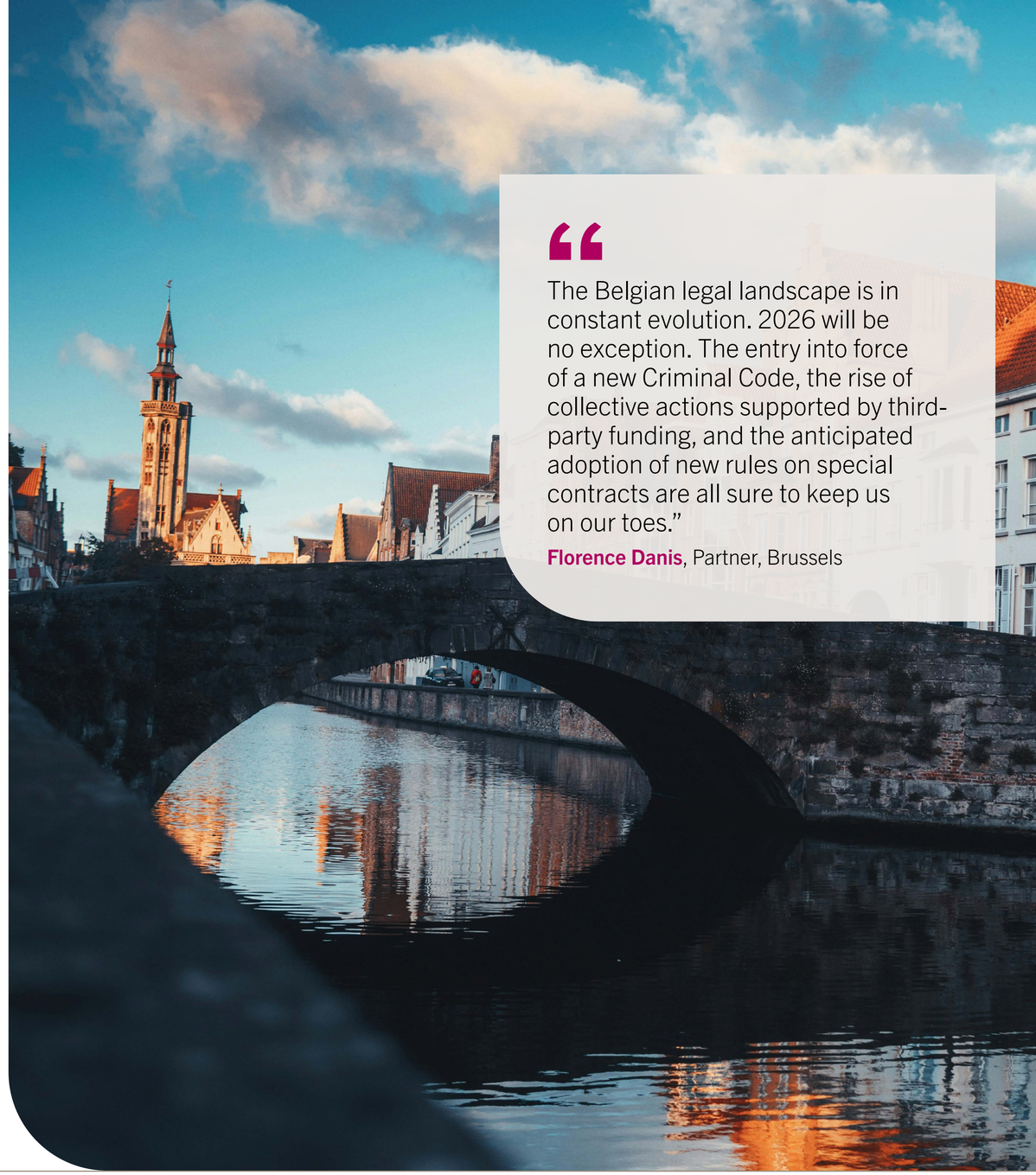
Bénédicte Deboeck

Bo De Clercq

Gert-Jan Hendrix

Matthias Schelkens

Nicolas Vermeulen



> “The Belgian legal landscape is in constant evolution. 2026 will be no exception. The entry into force of a new Criminal Code, the rise of collective actions supported by third-party funding, and the anticipated adoption of new rules on special contracts are all sure to keep us on our toes.”
>
> **Florence Danis**, Partner, Brussels

France

Despite ongoing political and legislative uncertainty in 2025, France enacted a series of significant legal reforms that will shape the litigation and arbitration landscape in 2026. Following a period of disruption and legislative delay, new legislation now strengthens collective redress mechanisms and third-party funding, while encouraging greater recourse to alternative dispute resolution in judicial proceedings. Further reforms in key areas such as regulatory enforcement are also under consideration by the French legislator. On the judicial front, there is a continuous trend towards negotiated justice in civil, criminal and regulatory matters, with French claimants also seeking to establish precedents on ESG issues through the French courts that could have broader implications across the EU.

ESG litigation: landmark decision on greenwashing

In October 2025, the Paris Judicial Court issued a landmark judgment in a greenwashing case brought by three French environmental NGOs against an oil and gas major. For the first time, the court held an oil and gas company liable for its climate-related statements on the basis of the EU-derived unfair commercial practices legislation (read more here). The majority of the claims brought by the NGOs were dismissed, as the court held that only commercial communications, meaning those directly linked to promoting, selling, or supplying a product to consumers, may fall within the scope of unfair commercial practices legislation. Conversely, the decision clarified that broader institutional climate statements are excluded from challenge under that specific legislation.

In addition, the court interpreted the current unfair commercial practices legislation in light of the Empowering Consumers for the Green Transition Directive, which must be transposed into national law by EU Member States by March 2026 (read more here) and expands the list of commercial practices that are deemed unfair within the meaning of the legislation to greenwashing. As such, this decision offers one of the first interpretations of this Directive and is likely to influence future cases brought under it, both in France and across the EU.

Looking ahead, companies operating in France should expect increased scrutiny of climate-related information included in their marketing materials.

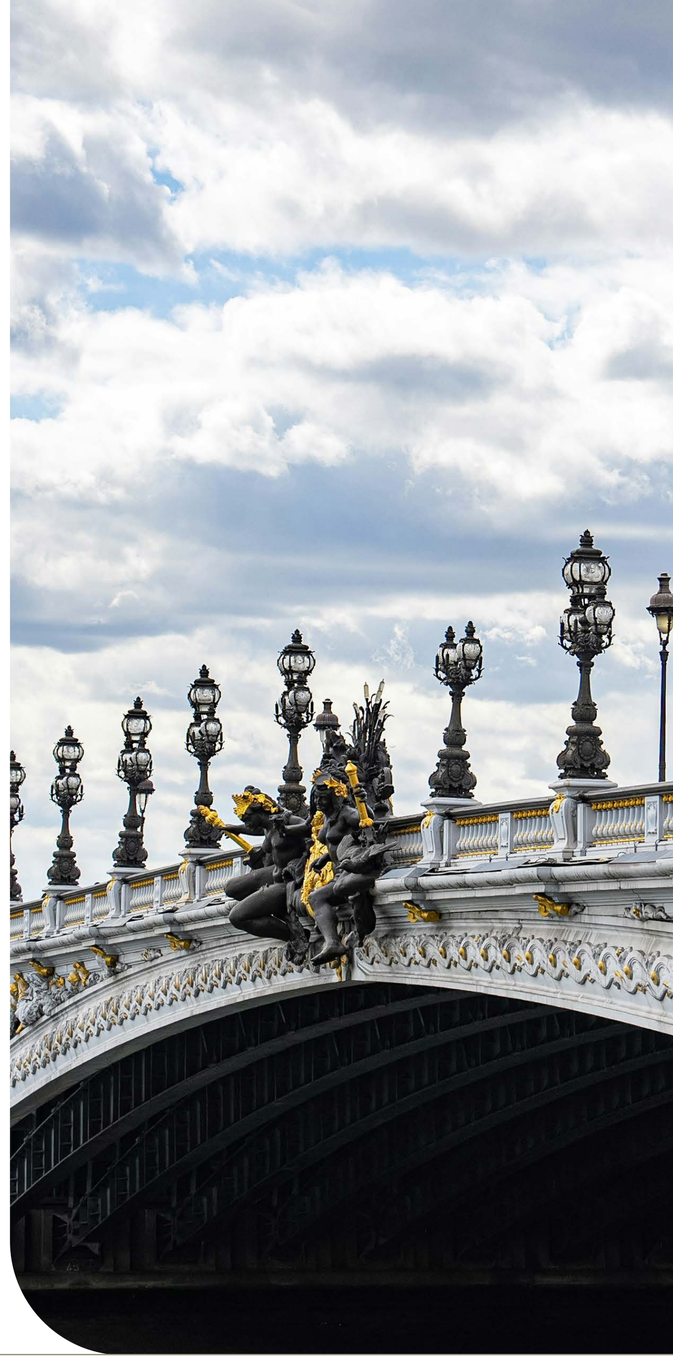
Application of unfair practices legislation

✓ Commercial communications (directly linked to promoting, selling, or supplying a product)

✗ Institutional climate statements (notably established for informational purposes)

by March 2026

Should include transposition of the EU Empowering Consumers for the Green Transition Directive





Collective redress and third-party funding: new unified and modernised class actions framework

France finally transposed the Collective Redress Directive, creating a unified regime for class actions across all sectors and replacing previous sector-specific legislation. The new law notably introduces, for the first time under French law, a legal framework for third-party financing. Although it is still early to observe a clear impact, there appears to be potential for the expansion of collective redress mechanisms in France.

Despite remaining limitations, particularly the restriction of legal standing to non-profit government-accredited associations that meet specific criteria to ensure transparency and reliability, the new law addresses several structural barriers that had previously hindered the development of collective redress in France, by broadening the scope of eligible claims and remedies and streamlining procedural requirements. In parallel, public awareness regarding collective claims is likely to grow as the law provides for the creation of a public register of pending class actions, which is yet to be published, and is likely to prompt greater media attention.

Finally, the new legislation introduced in the French Civil Code a new 'serial damages' civil penalty that may be imposed by French courts in all types of proceedings (even outside of class actions) against professionals who have caused serial damages by intentionally breaching their contractual or legal obligations to obtain undue profits or savings.

Previous regimes		New unified regime
Sector-specific legislation	Scope of class action	All sectors
Not regulated	Third-party financing	Permitted and regulated
Only individuals	Possibility to join the class	Individuals and legal persons

ADR: decree of 18 July 2025 promoting ADR mechanisms

The decree adopted on 18 July 2025 marks a new chapter in the French civil justice system's efforts to encourage amicable dispute resolution, in line with the President of the Paris commercial court's ambition to triple the proportion of cases resolved amicably rather than through litigation.

Under this decree, applicable to new proceedings initiated from 1 September 2025, judges are granted enhanced powers to promote alternative dispute resolution. Notably, judges may require parties to meet with a conciliator or mediator and sanction any unjustified refusal with a fine of up to €10,000. Except in labour matters, judges may also refer cases to an amicable settlement hearing before another judge (*audience de règlement amiable*) aimed at achieving a negotiated outcome. In particular, judges may impose this referral after seeking the parties' views, without needing their consent. To further encourage settlements, the decree also clarifies important aspects, including the confidentiality of documents produced during the procedure, and introduces new means for agreements reached to become enforceable.

These changes are expected to make alternative dispute resolution mechanisms a much more prominent feature of civil litigation in France from 2026 onwards, with judges both willing and empowered to actively promote negotiated settlements.

Proposal for a reform of the French Financial Markets Authority's investigative and enforcement powers

In September 2025, a draft bill aimed at combating financial fraud and strengthening financial security was submitted to the French National Assembly. It proposes to grant the French financial regulator (AMF) enhanced enforcement powers, reflecting longstanding advocacy by its Chair.

The bill introduces several key measures to reinforce AMF's powers. Most notably, it proposes to include a leniency framework allowing AMF to exempt or reduce sanctions for those providing information that helps identify persons involved in misconduct or establish the existence of such misconduct. The bill also proposes to empower AMF to issue injunctions coupled with penalty payments and to require regulated entities to conduct external audits inspired by the UK FCA's 'Skilled Person' reviews. In addition, the bill proposes to authorise AMF to communicate publicly about ongoing investigations or enforcement proceedings, a significant shift that could expose companies to reputational risk before any final determination.

Whilst no date has yet been set for examination by French MPs, it is possible that AMF is given strengthened supervisory and enforcement powers in the upcoming months, resulting in increased regulatory scrutiny.

> "As we look ahead to 2026, France is expected to experience an increased number of class actions, driven by the new unified collective redress regime and regulation of third-party funding. In parallel, French courts remain at the forefront of ESG litigation, with growing focus on greenwashing statements which are set to become significant sources of litigation risk for businesses operating in France. French courts will also continue to actively promote settlements."
>
> **Eléonore Hannezo**, Partner, Paris



Contacts



Eléonore Hannezo
Partner, Paris
Tel: +33 1 56 43 56 68
eleonore.hannezo@linklaters.com



Jean-Charles Jaïs
Partner, Paris
Tel: +33 1 56 43 58 00
jean-charles.jais@linklaters.com



Roland Ziadé
Partner, Paris
Tel: +33 1 56 43 28 34
roland.ziade@linklaters.com

Contributors:

Ariane Clément

Eléonore Champierre de Villeneuve

Marine Noret

Lisa Khazar



Germany

The evolving geopolitical landscape, combined with ongoing EU legislative developments, continues to shape Germany's approach to dispute resolution, commercial law, and regulatory compliance. As we enter 2026, businesses operating in Germany face a period of significant change as modernisation efforts across the judicial system, new collective redress mechanisms, and enhanced compliance requirements create both opportunities and challenges. This dynamic environment requires careful navigation as traditional legal frameworks adapt to contemporary commercial realities and emerging regulatory demands.

Modernisation of civil proceedings

The new government has not yet taken up its predecessor's plans for a comprehensive update of German arbitration law (read more here), but targeted amendments to German civil procedure law are anticipated to lead to a welcome modernisation of civil proceedings.

The Commercial Courts and Commercial Chambers introduced in 2025 in various federal states are likely to gain momentum. These courts offer English-language proceedings and other attractive features for certain B2B disputes, even though the varied implementation across the states will result in a fragmented landscape requiring careful analysis.

Meanwhile, the legislator is advancing further initiatives to prepare German courts for current challenges, including the introduction of online proceedings for monetary claims at district court level and adjustments to court jurisdiction and appeal thresholds.

Collective redress: navigating a challenging environment

New legislation and recent case law created a complex landscape where businesses must navigate multiple potential collective redress routes, each with distinct requirements and uncertainties.

In 2026, the so-called assignment model is expected to gain further traction. Under this controversial approach, claims vehicles bundle multiple parties' claims into one action by way of assignment. The CJEU's ASG2 judgment confirmed its validity for competition law disputes subject to strict conditions (read more here). However, legal uncertainty persists pending further rulings on the practical application.

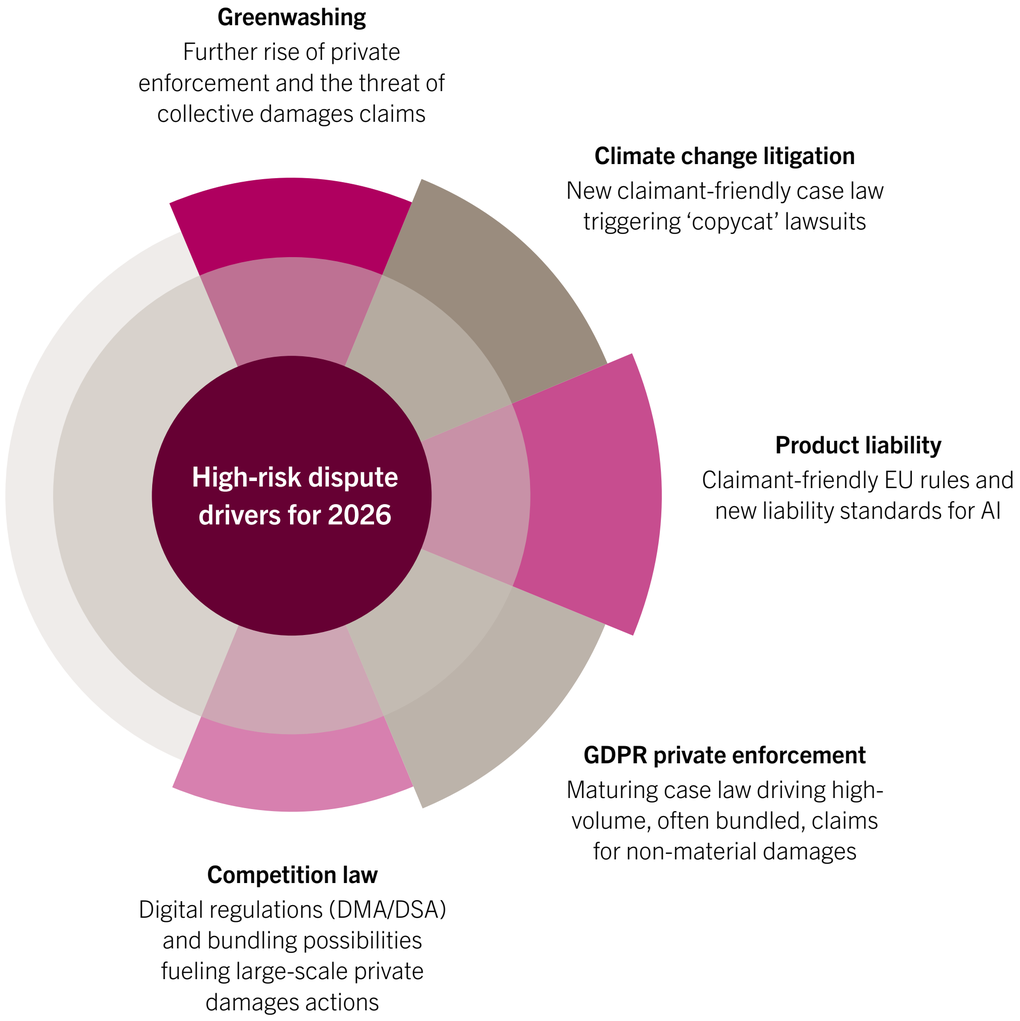
Meanwhile, the new representative actions continue falling short of initial expectations. This is primarily due to restrictive litigation funding rules that limit funders to a maximum 10% recovery and narrow standing requirements imposed by EU law that restrict actions to qualified associations with typically limited resources. However, in certain scenarios with high numbers of affected consumers and significant public interest, the number of representative actions is expected to increase.



Key trends in commercial disputes

In terms of substantive law, the following areas will likely drive significant litigation activity in 2026:

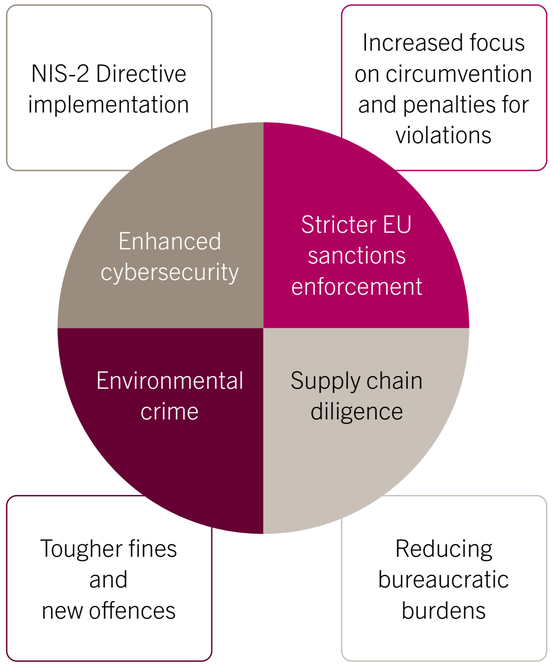
- The implementation of the Empowering Consumers Directive (read more here) will further accelerate private enforcement against alleged **greenwashing** practices. Whilst cease and desist orders have so far been dominant, claimants might also launch claims for damages based on greenwashing, possibly also making use of collective redress.
- **Climate change litigation** is also back in the spotlight. In the prominent Peruvian farmer case (read more here), an appellate court held for the first time in Germany that large companies that release GHG may, in principle, be sued even for effects felt thousands of kilometres away. Although the German Federal Court of Justice has not yet had a say, and the appellate court emphasised that the 'theoretical' risk of liability is subject to stringent limitations and eventually dismissed the claim, the ruling has already triggered copycat lawsuits.
- The introduction of claimant-friendly assumptions through the implementation of the Product Liability Directive, in connection with the rise of cross-border collective redress, is likely to increase interest in **product liability actions**. The legislator aims at a one-to-one transposition of the Directive by way of a complete overhaul of the Product Liability Act. For German law, the new disclosure obligations, as well as the alleviations of the burden of proof, will be particularly challenging. Another focus point will be AI liability, which is expected to be dealt with under the national rules and the existing EU legal framework after the proposed EU AI Liability Directive has been withdrawn (see EU chapter).
- The courts are progressively resolving key issues in **GDPR private enforcement** (including questions around non-material damages). This development encourages additional litigation and, considering the substantial number of potentially impacted consumers and heightened public awareness, frequently results in collective actions.
- **Private enforcement of competition law** continues to be on the rise, in particular with a view to infringements of the DMA and the DSA. The clarification of various legal issues, coupled with the trend of rising damages awards, attract further cases. Following the CJEU's ASG2 judgment (see above), we expect proceedings to be further bundled by way of assignment since competition claims are less suitable for representative actions given their complexity.



New compliance challenges ahead

Businesses face evolving compliance landscapes in 2026, driven by legislative amendments implementing EU law. This particularly applies to the following areas, in addition to traditional compliance topics:

- Germany's implementation of the NIS-2 Directive will introduce significantly enhanced **cybersecurity** requirements for critical infrastructure operators. Companies in sectors such as energy, healthcare, and digital services will face stricter protective measures and mandatory incident reporting obligations. Affected businesses should prepare for increased compliance costs and operational adjustments for the implementation.
- The transposition of EU sanctions requirements is set to introduce, *inter alia*, substantially higher penalties and to criminalise additional types of conduct that violate **sanctions**. Companies must enhance monitoring capabilities and response procedures to manage this heightened enforcement environment.
- Similar considerations apply to Germany's ongoing efforts to implement the **Environmental Crime Directive**. Key aspects include new criminal offences, the recognition of the need to protect 'ecosystems', and significantly increased fines. Companies should assess potential compliance implications as the bill progresses through the legislative procedure.
- With regard to obligations under the **Supply Chain Due Diligence** Act (*Lieferkettensorgfaltspflichtengesetz*), the legislator attempted to reduce bureaucratic burdens, though the current initiative maintains core obligations and only eliminates annual reporting requirements and reduces sanctionable offences (read more here). Whilst this is a welcome relief, it is not a significant breakthrough, and in scope companies should remain vigilant and compliant and monitor further developments relating to the CSDDD (see EU chapter).



"Germany's legal landscape in 2026 is marked by converging litigation risks across five major areas – greenwashing, climate change litigation, product liability, GDPR enforcement, and competition law – driving unprecedented commercial litigation activity amplified by expanding collective redress mechanisms. Navigating this environment successfully demands strategic anticipation of enforcement trends, proactive dispute risk management, and an adaptive approach to compliance."

Julia Grothaus, Partner, Frankfurt



Contacts



Julia Grothaus

German Head of LAI, Frankfurt

Tel: +49 69 71003 523

julia.grothaus@linklaters.com



Rupert Bellinghausen

Partner, Frankfurt

Tel: +49 69 71003 470

rupert.bellinghausen@linklaters.com



Christian Schmitt

Partner, Frankfurt

Tel: + 49 69 71003 261

christian.schmitt@linklaters.com



Kerstin Wilhelm

Partner, Munich

Tel: +49 89 41808 506

kerstin.wilhelm@linklaters.com



Mirjam Erb

Senior Associate (KH), Frankfurt

Tel: +49 69 71003 611

mirjam.erb@linklaters.com



Italy

As Italy enters 2026, the country's legal infrastructure is undergoing a significant transformation driven by three converging forces: the operationalisation of EU's first comprehensive AI regulatory framework, a surge in collective accountability mechanisms that is reshaping corporate risk profiles and evolving judicial interpretations that are redefining the boundaries of cross-border dispute resolution. For multinational corporations operating in or through Italy, the question is how swiftly an organisation can adapt its dispute prevention and resolution strategies to navigate this new terrain. From AI governance protocols to climate liability exposure, and from arbitration clause architecture to collective redress preparedness, the decisions made in 2026 will determine competitive positioning for years to come.

Managing AI liability risk in Italy's new regulatory era

Italy is the first Member State to adopt national legislation that coherently complements the EU's AI Act (read more in our blog post here). Further to the adoption of the Law No. 132 of 2025, the critical question facing corporate decision-makers is how Italian courts will interpret liability when AI-assisted decisions go wrong. Early judicial signals are unambiguous: technology does not dilute responsibility, it amplifies it. Forward-thinking companies need robust governance structures, active liability mapping, and competitive positioning.



Strategic arbitration design: new flexibility for cross-border disputes

For the first time, Italy's highest court confirmed that Italian companies may validly select foreign arbitral seats and invoke foreign procedural laws compatible with the 1958 New York Convention, whilst maintaining one mandatory safeguard: compliance with the heteronomous appointment mechanism for arbitrators under Article 34 of Legislative Decree No. 5/2003. For commercial operators and investors, this decision affords significant new flexibility in structuring dispute resolution in corporate transactions.

Navigating Italy's maturing funding market

Following four Supreme Court decisions in 2024 confirming third-party litigation funding (TPLF)'s legitimacy from both civil and regulatory perspectives, the market is experiencing rapid expansion, with investments reaching €185 million in 2025 and projected to hit €325 million by 2027. As 2026 progresses, TPLF is expected to become increasingly prevalent in areas such as competition law and environmental litigation. For businesses operating in Italy, the practical imperative is clear: integrate TPLF considerations into dispute strategy from the outset, whether evaluating funding for your own claims or anticipating funded opposition in defending proceedings.





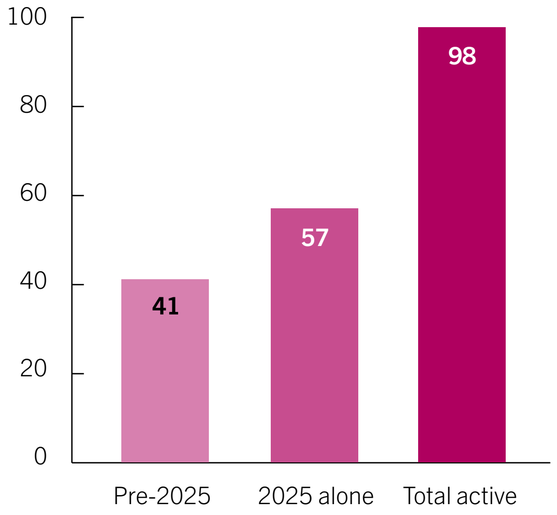
Preparing for Italy's ESG litigation wave

Italy's Supreme Court landmark ruling confirming that both an energy corporation and the Italian State as shareholder can be held liable for climate-related damages has fundamentally expanded the risk landscape for businesses operating in carbon-intensive sectors (read more in our blog post here). This landmark ruling positions Italy at the forefront of European climate litigation, signalling that 2026 will see increased NGO-driven accountability actions. For corporations, active exposure mapping, meticulous corporate governance, and proactive stakeholder engagement become non-negotiable elements of risk management.

Managing mass claim exposure in 2026

Italy's collective redress mechanisms are experiencing unprecedented levels of use, with ninety-eight active proceedings as of October 2025, including fifty-seven initiated in 2025 alone. This exponential growth shows no signs of abating as 2026 begins. The 2019 Reform introduced two powerful tools: the general opt-in class action (operational since 2021), and the consumer representative action (introduced in 2023), both of which are now being deployed with increasing sophistication. For businesses, this surge creates multifaceted exposure in previously underutilised areas. For instance, competition law damages claims are emerging as a primary growth area and environmental litigation is similarly expanding.

Collective redress proceedings in Italy



> "The litigation landscape is no longer defined by isolated disputes but by systemic shifts: technology that amplifies liability, funding that sustains claimant persistence, and collective mechanisms that scale individual grievances into enterprise-wide exposure. Success in 2026 demands proactive governance, sophisticated dispute architecture, and early strategic engagement across all risk dimensions."
>
> **Alessandro Villani**, Partner, Milan

Contacts



Alessandro Villani

Partner, Milan

Tel: +39 02 88 393 5221

alessandro.villani@linklaters.com



Alessandro Salvador

Counsel, Milan

Tel: +39 02 88 393 5206

alessandro.salvador@linklaters.com



Francesco Amatori

Managing Associate, Milan

Tel: +39 02 88 393 5344

francesco.amatori@linklaters.com

Contributors:

Micol Fossati

Ania Temis Galliano

Niccolò Morlacchi

Beatrice Porcellato



Luxembourg

Luxembourg enters 2026 facing significant shifts across its legal and regulatory landscape. The long-awaited collective redress law, adopted in late 2025, marks a fundamental transformation in consumer litigation. Simultaneously, the financial sector continues to experience increased cybersecurity threats, with phishing incidents on the rise. Against this backdrop, businesses must navigate enhanced regulatory obligations imposing strict incident reporting timelines and substantial potential penalties. Meanwhile, economic pressures are driving corporate distress, with the new judicial reorganisation framework seeing growing utilisation as businesses seek alternatives to traditional insolvency proceedings. These developments underscore the need for businesses to adopt proactive compliance strategies, robust cybersecurity measures, and careful risk management throughout 2026.

Collective redress: a new chapter for consumer litigation

Luxembourg's collective redress law was adopted on 20 November 2025. This landmark legislation will fundamentally reshape the litigation landscape by enabling consumers affected by the same or similar harm to bring a single collective action seeking compensation, cessation or prohibition of the breach, or both.

The law's scope aligns with the Representative Actions Directive framework, with particular relevance for sectors, including financial services (banking and insurance), energy, telecommunications, health, and the environment. The three-phase process (admissibility assessment, substantive examination with sample analysis of individual circumstances, and liquidator-supervised implementation) encourages mediation whilst filtering out manifestly unfounded or abusive claims.

Financial institutions and other businesses operating in covered sectors should prepare for this new litigation avenue by reviewing their consumer-facing practices, contractual terms, and dispute resolution procedures. The law's emphasis on mediation and judicial oversight of settlements, requiring court approval of any mediated agreement, presents opportunities for early resolution. However, companies must be ready to defend against collective actions and manage the reputational risks associated with such proceedings.

STEP 1

Admissibility

Court assesses if the claim is admissible, filtering out unfounded or abusive actions

STEP 2

Substantive examination

Court examines the merits of the case

STEP 3

Implementation

A liquidator supervises the implementation of the judgment or court-approved settlement



Cyberfrauds: managing cyber risk in an era of regulatory multiplication

Luxembourg faces an escalation in cyberattacks, with the financial sector being one of the most heavily targeted industries. Despite the sharp increase in cybercrime, recovery of misappropriated funds remains often illusory, with perpetrators typically remaining unidentified and convictions for cyberfraud offences being rare.

The regulatory response has been equally significant: DORA entered into application on 17 January 2025, imposing strict incident reporting timelines and potential penalties reaching €5 million or 10% of total annual worldwide turnover for serious infringements. The anticipated transposition of the NIS2 Directive will layer additional obligations, with penalties of a maximum of at least €10 million or up to 2% of total annual worldwide turnover for essential entities. GDPR compliance remains equally critical, carrying potential penalties up to €20 million or 4% of total annual worldwide turnover.

Beyond regulatory exposure, businesses face multifaceted civil liability risks including director liability for mismanagement, contractual liability for breach of obligations (including those caused by subcontractors in outsourcing arrangements), breach of confidentiality obligations, breach of data security warranties, and failure to comply with insurance requirements. In 2026, businesses must prioritise comprehensive cybersecurity strategies encompassing governance and compliance, technical controls, insurance and risk transfer, operational resilience, third-party risk management, and addressing the human factor through training and awareness programmes.

Regime	Maximum fixed fee	Maximum percentage of worldwide annual turnover
DORA	€5m	10%
NIS2	€10m	2%
GDPR	€20m	4%

Judicial reorganisation: a growing response to corporate distress

The Law of 7 August 2023 on judicial reorganisation, which entered into force at the end of 2023, has emerged as an increasingly important tool for businesses facing financial difficulties, with a clear trend of growing utilisation by practitioners since its introduction. The procedure allows financially distressed companies to restructure their debts and operations under court supervision whilst continuing their business activities, providing breathing space to negotiate with creditors and implement recovery plans. However, the framework has shown practical limitations in handling situations where continuation of the business is no longer a viable option, highlighting the need for careful assessment of whether judicial reorganisation is the appropriate remedy.

Looking ahead to 2026, evolving market conditions will continue to test business resilience across various sectors. Prudent financial oversight and timely engagement with available legal mechanisms can preserve strategic options for companies facing transitional challenges. For creditors, understanding the nuances of these proceedings and their implications for recovery strategies becomes increasingly important. The framework's growing adoption signals a welcome shift towards early intervention and proactive financial stewardship, enabling businesses to address difficulties whilst meaningful solutions remain available.

> “Luxembourg in 2026 presents a convergence of legal transformations: collective redress opens new litigation avenues, cyber-regulatory multiplication imposes unprecedented compliance burdens, and judicial reorganisation offers restructuring alternatives for distressed businesses. For businesses, this is the moment to strengthen consumer trust, enhance operational security, and embrace proactive financial stewardship.”
>
> **Guy Loesch**, Partner, Luxembourg

Contacts



Guy Loesch

Partner, Luxembourg

Tel: +352 2608 8212

guy.loesch@linklaters.com



Louis-Eudes Giroux

Senior Managing Associate, Luxembourg

Tel: +352 2608 8290

louis-eudes.giroux@linklaters.com



The Netherlands

As we look towards 2026, multinational corporations operating in or through the Netherlands face a convergence of regulatory shifts that will fundamentally reshape liability exposure and compliance priorities. Following national elections in late October 2025, the centre-left party D66 emerged as the winner with the right-wing Freedom Party losing ground. D66's high-level policy priorities include social responsibility obligations for managers of large companies, intervention against excessive market power, action against greenwashing through strengthened standards and penalties, and greater focus on liability and handling of climate damage.

The collective action paradox: preparing for divergent regulatory futures

The Dutch Ministry of Justice's five-year WAMCA evaluation evidenced that stakeholders are sharply divided: business groups cited approximately one hundred cases and €88 billion in claims, urging tighter rules, whilst claimant organisations noted that not a single damages action has been fully resolved. The evaluation report, which was published in November 2025, confirms that admissibility disputes and organisational challenges have often extended the initial stages of proceedings, sometimes for more than two years before substantive hearings begin. Recommendations made in the report aim to address these issues, including proposals for more flexible waiting periods, clear requirements for litigation funding, and deeper tests for an organisation's representativeness. While these measures could improve efficiency and the quality of collective redress, they indicate continued evolution and some areas of ongoing uncertainty. Meanwhile, the Representative Actions Directive enables foreign EU entities to bring representative actions in Dutch courts, potentially increasing case volume regardless of WAMCA reforms. This creates a paradox for corporate strategists: the system may become simultaneously more restrictive (through tighter admissibility) and more accessible (through cross-border claimant expansion). Operationally, this means stress-testing settlement reserves against multiple regulatory futures and ensuring governance frameworks can adapt quickly.

Restrictive

- Tighter admissibility criteria
- Reduced domestic case volume
- Lower settlement exposure

Expansive

- Representative Actions Directive implementation
- Cross-border EU claimant entities
- Increased case volume



The litigation magnet effect: strategic opportunities in funding transparency

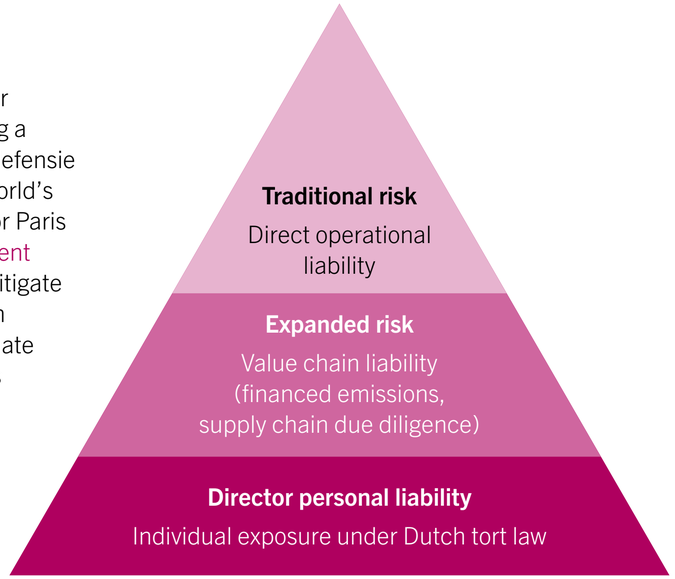
Dutch courts are increasingly scrutinising funding contracts at certification in collective actions, questioning high success fees and conflicts of interest. Despite emerging scrutiny, the combination of the existing WAMCA framework and the developments in ESG and product liability, as described below, suggest that the Netherlands is likely to strengthen its reputation as a 'litigation magnet', driving further growth of the third-party funding market and the number of collective actions brought before Dutch courts.

Businesses facing funded claims should monitor funder involvement closely, as courts' heightened scrutiny of funding arrangements may create strategic opportunities for early settlement or challenges to certification. Operationally, this means conducting early due diligence on funder identity, fee structures and potential conflicts when collective actions are filed, information that may prove valuable in certification challenges or settlement negotiations.

2026: when climate due diligence becomes director risk

The Netherlands is emerging as ground zero for climate litigation innovation, with 2026 marking a critical inflection point. In March 2025, Milieudefensie sued ING Bank over financed emissions, the world's first case targeting a bank's lending portfolio for Paris Agreement alignment. The Shell appeal judgment confirmed Dutch companies' duty of care to mitigate climate change, with a Supreme Court decision expected in 2026. These cases signal that climate accountability is migrating from direct emitters to financial intermediaries and across entire value chains.

Looking ahead, the Dutch government has confirmed a 'no gold-plating' approach for the CSDDD. The Netherlands Authority for Consumers and Markets will supervise compliance and may impose fines up to 5% of global annual turnover, creating dual enforcement pressure through both administrative sanctions and civil tort claims. Energy companies, banks, pension funds and multinationals must treat ESG governance as a board-level priority, with directors potentially facing personal liability under existing Dutch tort law if due diligence failures cause actionable harm.



First-mover jurisdiction: the Netherlands as Europe's product liability laboratory

The Netherlands is one of the first Member States to take steps towards early transposition of the Product Liability Directive. Dutch courts will likely be amongst the first to interpret the reformed regime, meaning early case law will likely influence approaches across the EU. For businesses, this makes the Netherlands a critical jurisdiction to watch and potentially a strategic venue for test litigation. The revised regime represents a marked departure from the current landscape (read more in the EU chapter). Businesses should conduct product safety audits, particularly for software and AI-enabled products, strengthen documentation practices to address expanded disclosure obligations, and assess insurance coverage against the broader scope of liability and extended limitation periods.

> "As collective actions, climate litigation and product liability reforms converge in 2026, the Netherlands is becoming Europe's litigation laboratory. For multinationals, this means early case law developed in Dutch courts will likely set precedents that ripple across the EU – making defensive positioning in this jurisdiction a strategic priority, not just a local compliance matter."
>
> **Daniella Strik**, Partner, Amsterdam

Contacts



Daniella Strik

Partner, Amsterdam

Tel: +31 20 7996 338

daniella.strik@linklaters.com



Laurens Prins

Senior Practice Development Lawyer, Amsterdam

Tel: +31 20 7996 283

laurens.prins@linklaters.com



Portugal

As we enter 2026, the newly elected Portuguese government continues its efforts to modernise the justice system, increasing the State budget for justice. In an effort to enhance the efficiency and speed of judicial processes, these endeavours focus not only on the digitalisation of legal proceedings but also on upgrading key infrastructure, such as courts, prisons, and judicial police facilities. The implementation and effectiveness of these measures remain to be seen. As these are long-term initiatives, a true assessment of their success will only be possible over the coming years. Meanwhile, Portugal's dispute landscape is being reshaped by active consumer enforcement, evolving questions around litigation funding, significant regulatory developments in competition and patent law, and a marked rise in ESG-related challenges.

Private enforcement by consumer associations: trends and key developments

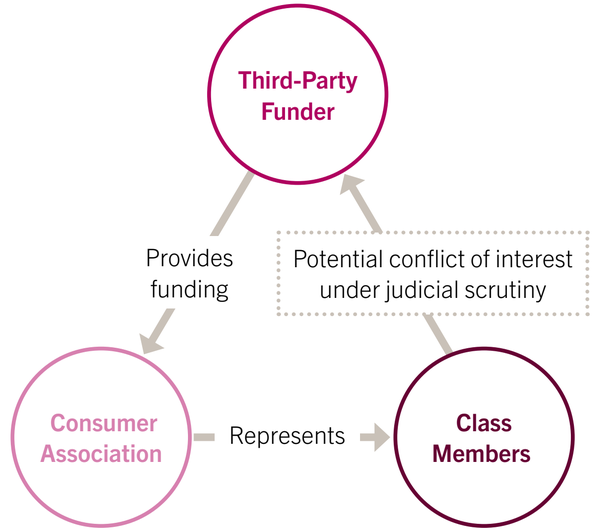
Consumer associations are expected to remain active in private enforcement, though the volume of new claims remains uncertain.

These actions, typically concerning breaches of competition and consumer law, are generally brought against banks and technology companies, with increasing activity targeting distribution and pharmaceutical sectors. The exemption from court fees enjoyed by consumer associations, combined with Portugal's opt-out regime for class actions, continues to make Portuguese courts attractive venues for these entities. Significant developments are expected in ongoing actions, particularly concerning the definition of the represented class and the standing of consumer associations to file collective claims involving third-party funding. These issues may substantially impact damages claimed.

Third-party funding and claimant independence under increasing judicial scrutiny

The Competition Court is paying increasing attention to claimant independence in collective actions, particularly where consumer protection associations rely on third-party funding. Following arguments raised by defendants, the court has undertaken factual inquiries into association independence, including evidentiary hearings. In certain instances, the court has ordered amendments to funding agreements to ensure independence is preserved.

In at least one case, the court has considered making a preliminary reference to the CJEU to clarify whether it is compatible with EU law for a funder's remuneration to depend on compensation ultimately awarded but not claimed by class members. The court appears concerned that this remuneration model may not meet independence requirements established under the Representative Actions Directive, as the funder's interests may diverge from those of class members. Further developments and clarifications on that are expected throughout 2026.



Email seizures in competition investigations: implications for pending and future cases

Following the Advocate General's Opinion in joined cases C-258/23 to C-260/23 (referred from the Portuguese Competition Court), a final CJEU ruling is possibly expected in 2026. The Opinion suggests that national competition authorities may search and seize emails during inspections without prior judicial authorisation, provided a strict legal framework exists with adequate safeguards. The Opinion may already impact pending cases where admissibility of evidence obtained through seized emails is under discussion. If the CJEU judgment follows the Opinion, this would enhance national competition authorities' investigative powers. However, investigated companies will retain scope to contest evidence by demonstrating specific violations of proportionality or the absence of appropriate procedural safeguards.

UPC patent enforcement: future implications for generic market entry

A recent UPC decision clarified that under Portuguese law, the mere submission of a marketing authorisation application by a generic company does not amount to imminent patent infringement. Similarly, the granting of such authorisation does not, in itself, create an infringement. However, the UPC established that early completion of administrative pricing and reimbursement procedures, significantly ahead of patent expiry, may constitute imminent infringement where no effective safeguards prevent commercialisation. This ruling carries significant implications for generic companies preparing market entry and for patent holders enforcing their rights. The decision involved a Portuguese judge who also serves at the Lisbon Court of Appeal, potentially influencing that court's case law. With the UPC maintaining a local division in Portugal, patent holders may feel encouraged to request preliminary injunctions directly from the UPC going forward.

The sustained rise of ESG-related litigation

ESG-related litigation continues to rise in Portugal, with large-scale infrastructure and energy projects facing increased legal challenges rooted in environmental concerns. This trend is expected to intensify through 2026, as civil society organisations and affected communities become more proactive in holding project developers accountable.

Portuguese courts are increasingly willing to scrutinise ESG claims, and proactive risk management and robust stakeholder engagement will be essential for organisations seeking to navigate this evolving legal landscape successfully.

The Portuguese State itself is likely to face further pressure from climate litigation. Following the first lawsuit brought against the State, a group of young citizens, who previously filed a landmark case against thirty-three countries at the European Court of Human Rights, has indicated plans to seek a court order compelling the government to strengthen its climate policies. Both private and public actors in Portugal should expect sustained ESG litigation risks in the near future.



Contacts



Nuno Ferreira Lousa

Deputy Regional Managing Partner Europe, Lisbon

Tel: +351 21 864 0044

nuno.lousa@linklaters.com



Ricardo Guimarães

Partner, Lisbon

Tel: +351 21 864 0018

ricardo.guimaraes@linklaters.com

Contributors:

Raquel Galvão

Constança Borges Sacoto

Carmina Campos Pina

Francisca Antunes



> “Portugal’s legal landscape in 2026 is defined by converging transformations: heightened consumer enforcement, evolving litigation funding scrutiny, anticipated CJEU guidance on Portuguese competition investigations and the UPC’s growing influence on Portuguese patent jurisprudence. In this evolving legal landscape, strategic awareness and adaptability will be key differentiators.”
>
> **Ricardo Guimarães**, Partner, Lisbon

Spain

As regulatory frameworks evolve and courts adapt to new commercial realities, 2026 presents both challenges and opportunities for corporations navigating European dispute resolution. Spain's delayed transposition of the Representative Actions Directive continues to shape the collective redress landscape into 2026. Whilst formal collective mechanisms remain constrained by procedural prerequisites, multi-case schemes dominate mass litigation practice, creating mounting pressure on judicial resources. Simultaneously, emerging competition law case law is quietly reshaping the risk environment, setting the stage for a potential wave of mass claims.

Latest trends in class actions for competition law infringements

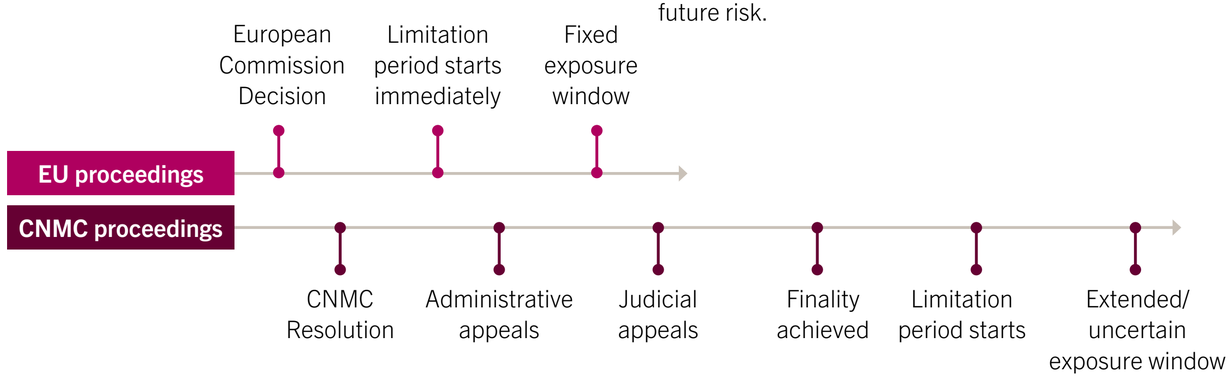
Two critical developments are reshaping the Spanish competition litigation landscape in 2026, creating both extended exposure windows and heightened financial liability for defendants.

For follow-on actions, CJEU jurisprudence, particularly the *Heureka* and *Nissan* decisions, has fundamentally altered time-barring dynamics. The critical distinction: European Commission decisions trigger limitation periods immediately upon issuance, whilst National Competition Authority resolutions require finality before the clock starts. For corporations facing Spanish Competition Authority (CNMC) proceedings, this creates strategic uncertainty. With CNMC resolutions potentially facing years of administrative and judicial appeals before achieving finality, defendants confront an indeterminate exposure period. The practical implication: claims previously considered time-barred may suddenly revive, requiring companies to reassess historical cartel exposure and reserve adequacy.

For stand-alone actions, Spanish courts are pioneering a 'hybrid' approach that blurs traditional evidentiary boundaries. Judges increasingly rely on non-final CNMC resolutions as instruments of conviction to establish infringements and presume damages, effectively shifting the burden from claimants.

Recent awards illustrate the financial stakes: Commercial Court No. 14 of Madrid quantified the alleged 'milk cartel' damages at 9.4% based on a non-final CNMC resolution, with limited consideration of defence expert reports. This judicial evolution means damage awards may substantially exceed existing provisions.

For 2026 and beyond, corporations must anticipate: (i) revival of previously time-barred cartel cases; (ii) accelerated damages quantification with reduced evidentiary thresholds; and (iii) increased legal uncertainty due to extended liability periods. The strategic response requires enhanced crisis management protocols during investigations, robust financial provisioning for historical exposure, and proactive compliance frameworks to minimise future risk.







Restructuring in Spain: is a restructuring expert necessary for all non-consensual plans?

A practical question with strategic implications has divided Spanish courts: must non-consensual restructuring plans approved by a simple majority of creditor classes include a restructuring expert's valuation report? Whilst the Spanish Insolvency Act's language suggests mandatory appointment in all non-consensual scenarios, judicial interpretation varies, even within the same district. Some courts deny approval without expert reports; others proceed regardless.

For multinational corporations managing Spanish restructurings in 2026, this divergence creates unnecessary risk. The prudent approach: appoint restructuring experts for all non-consensual plans, regardless of approval pathway. This provides certainty and eliminates grounds for creditor challenges or judicial rejection, which is critical when timing and stakeholder confidence are paramount.

Changes to the rules of the Spanish Arbitration Court

The Spanish Arbitration Court's new rules, effective 1 January 2026, introduce two mechanisms that parties should consider for their dispute resolution strategies:

- The hyper-expedited procedure offers genuine speed for non-complex disputes: a sole arbitrator, fifteen-day pleading cycles and awards within three months of filing. Parties must expressly agree in advance and procedural formalities are minimised. For commercial disputes requiring immediate resolution, such as supply chain disruptions or time-sensitive contractual breaches, this pathway delivers efficiency that traditional litigation cannot match.
- Parties may now opt into an internal challenge mechanism, allowing review of draft awards for manifest legal errors or factual assessment mistakes before finality. Once challenged, the draft award will only become final if the court dismisses the challenge application or rejects the challenge. From that moment, the final award has *res judicata* effect and enforcement power and is subject to annulment proceedings. However, this option requires a pre-appointment written agreement and court admission, strategic decisions best made during contract negotiation.

	When	Action
Hyper-expedited procedure:	Non-complex, time-sensitive disputes	Express agreement required; 3-month award timeline
Internal challenge mechanism:	For the correction of clear legal or factual errors before the award becomes final	Pre-appointment written agreement + court admission needed

Contacts



Alex Ferreres

Partner, Madrid

Tel: +34 91 399 6070

alejandro.ferreres@linklaters.com



Laura García

Associate, Madrid

Tel: +34 91 399 6188

laura.garcia@linklaters.com



Laura López

Junior Associate, Madrid

Tel: +34 91 399 6059

laura.lopez@linklaters.com



> “Spain’s litigation environment in 2026 demands proactive strategies. Whilst we await legislative clarity on collective redress, judicial innovation is already rewriting the rules on competition damages, limitation periods and evidentiary standards. Multinational corporations that embed dynamic risk assessment and enhanced governance frameworks will be best positioned to navigate both the challenges and opportunities ahead.”
>
> **Alex Ferreres**, Partner, Madrid

linklaters.com

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2026

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of the LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers. Please refer to www.linklaters.com/regulation for important information on our regulatory position. LIN.GBR.599.25