

Green claims in focus

Automotive

23 October 2025

Speakers



Nikolas Gregor

Partner

CMS Germany

T +49 40 37630 294

E nikolas.gregor@cms-hs.com



Siobhan Kahmann

Partner

CMS EU Office, Brussels

T +32 2 896 63 25

E siobhan.kahmann@cms-cmno.com



Anna Cudna-Wagner

Partner

CMS Poland

T +48 22 520 55 29

E anna.cudna-wagner@cms-cmno.com

Agenda



- The legal landscape for green claims in the EU
- Common pitfalls and sectoral challenges
- Litigation risks
- Q & A

The legal landscape for green claims in the EU

Nikolas Gregor

The legal landscape for green claims in the EU: Car Labelling Directive

- **Directive 1999/94/EC - "Car Labeling Directive"**
 - Obligatory fuel consumption and CO2 emissions label
 - Obligatory fuel economy and CO2 emissions data in promotional materials

The legal landscape for green claims in the EU: EmpCo Directive



Official Journal
of the European Union

EN
L series

2024/825

6.3.2024

DIRECTIVE (EU) 2024/825 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 28 February 2024
amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green
transition through better protection against unfair practices and through better information

(Text with EEA relevance)

EmpCo: The most relevant provisions



Sustainability labels

Forbidden if not based on a third party certification scheme



Generic claims

Forbidden without proof of recognised excellent environmental performance



Future environmental performance

Forbidden without defined commitments, implementation plan and third party verification



Climate neutral claims

Forbidden if based on emission offsetting

Leads to adaptations of commonly used claims and advertising

The legal landscape for green claims in the EU: EmpCo Directive

Generic claims

Misleading commercial practice: *"Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim"*

- Generic claim: *"not included on a sustainability label and where the specification of the claim is not provided in clear and prominent terms on the same medium"*
- Recognised excellent environmental performance : *"compliant with Regulation (EC) No 66/2010 or other EU law or with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in the Member States"*



The legal landscape for green claims in the EU: EmpCo Directive

Claims on future environmental performance

Misleading if no

- ❖ *clear, objective, publicly available and verifiable **commitments***
- ❖ *set out in a detailed and **realistic implementation plan** including measurable and time-bound targets and other relevant elements, such as allocation of resources,*
- ❖ ***regularly verified by an independent third party expert**, whose findings are made available to consumers*

➤ Example: "Carbon neutral by 2030"



The legal landscape for green claims in the EU: EmpCo Directive

Toyota accused of greenwashing in Greenpeace complaint filed to ACCC



"Toyota is committed to becoming carbon neutral across the vehicle life cycle by 2050"

"As such, a claim of net zero by 2050 is misleading or deceptive where there are no concrete plans which would make reaching science-based targets a plausible goal. As of September 2022, Toyota has had a few of their emission reduction targets validated by the Science Based Targets Initiative (SBTi).[...] Toyota has only had their short term targets validated. This means that any overall claim as to achieving net zero by 2050 does not have a scientific basis"

The legal landscape for green claims in the EU: EmpCo Directive

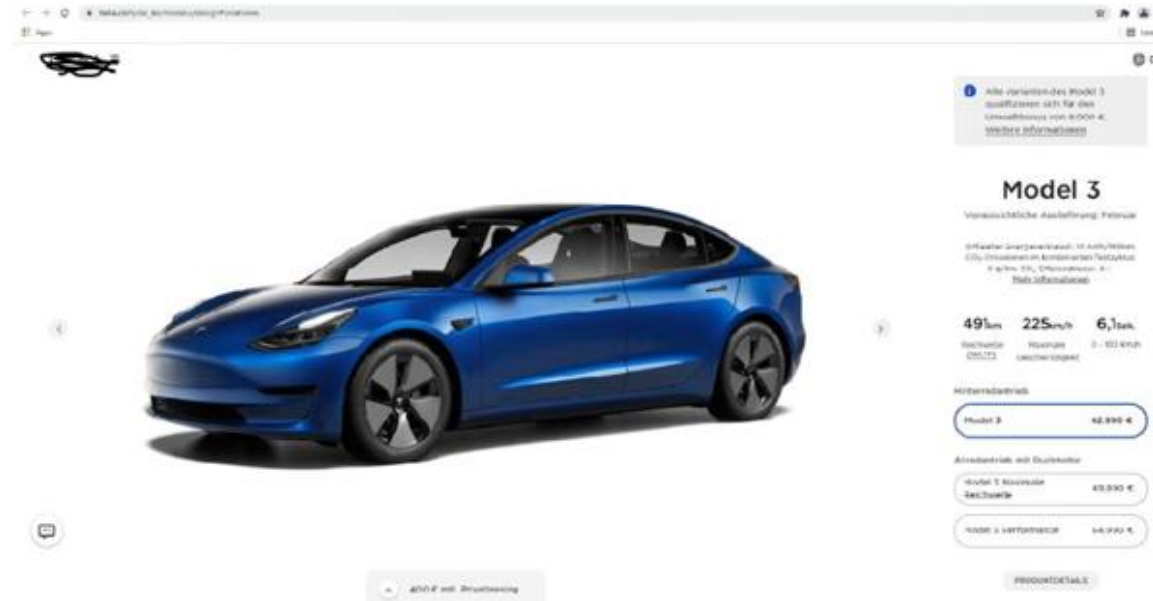
Zero Emissions Claims

*"Misleading commercial practice: Claiming, based on the offsetting of greenhouse gas emissions, that **a product** has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions"*

- 'climate neutral', 'climate net zero', 'reduced climate impact', 'limited CO2 footprint'
- Recital 9: "makes consumers believe that claims relate to product itself or to supply and production, false impression that consumption of that product does not have an environmental impact"
- "Should only be allowed when based on actual lifecycle impact of the product, and not based on offsetting of greenhouse gas emissions outside the product's value chain"

The legal landscape for green claims in the EU: EmpCo Directive

Zero emission claims



Energieverbrauch

Offizieller
Stromverbrauch
14,3 kWh/100 km

CO2-Emissionen
0 g/km

The legal landscape for green claims in the EU: Car Labelling Directive

- German Federal Consumer Association sued Tesla for misleading advertising: Company is selling emission credits to other carmakers
- Regional Court of Berlin, 21.3.2023 (52 O 242/22):
 - Information about emission trade not relevant for consumers
 - Consumers understand that "0 g/kg emissions" refers to the car when being in use; information is correct

The legal landscape for green claims in the EU: EmpCo Directive

Sustainability labels



"Misleading commercial practice: Displaying a sustainability label which is not based on a certification scheme or not established by public authorities"

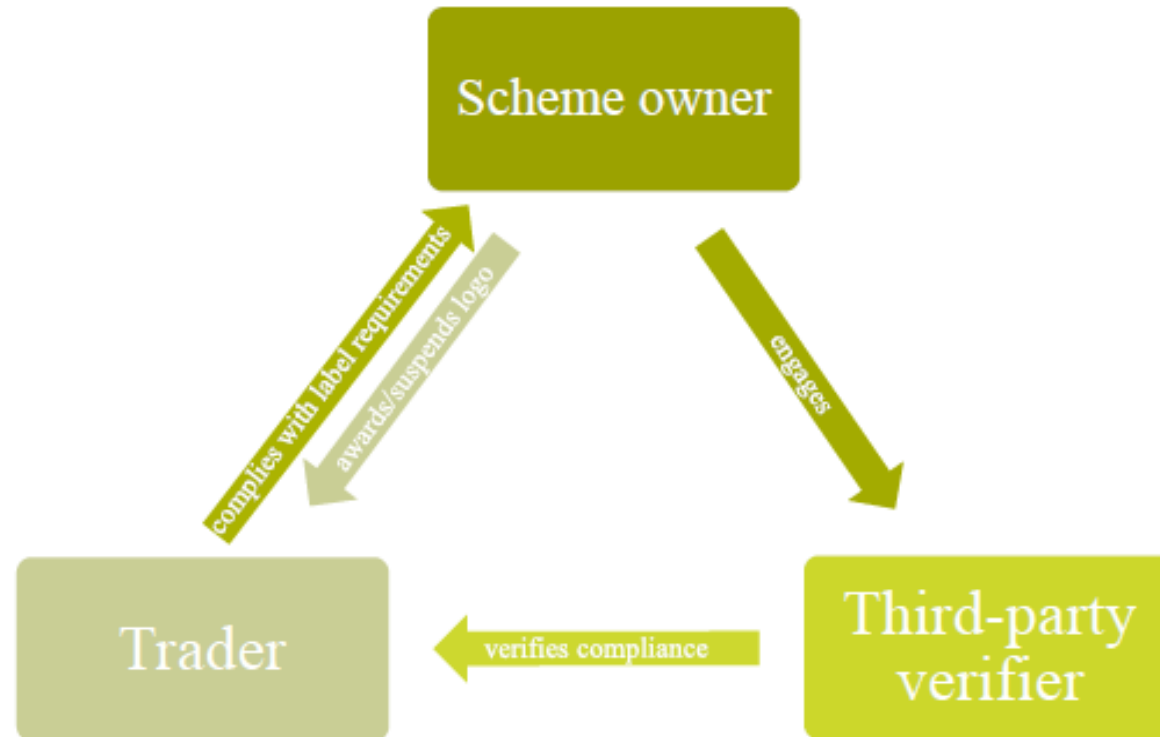
➤ Certification scheme:



- ❖ Third-party verification scheme
- ❖ Open under publicly available, transparent, fair and non-discriminatory terms
- ❖ Requirements developed by scheme owner with relevant experts and stakeholders
- ❖ Procedures for dealing with non-compliance, including withdrawal or suspension
- ❖ Monitoring of compliance by third party, independent from scheme owner and trader

The legal landscape for green claims in the EU: EmpCo Directive

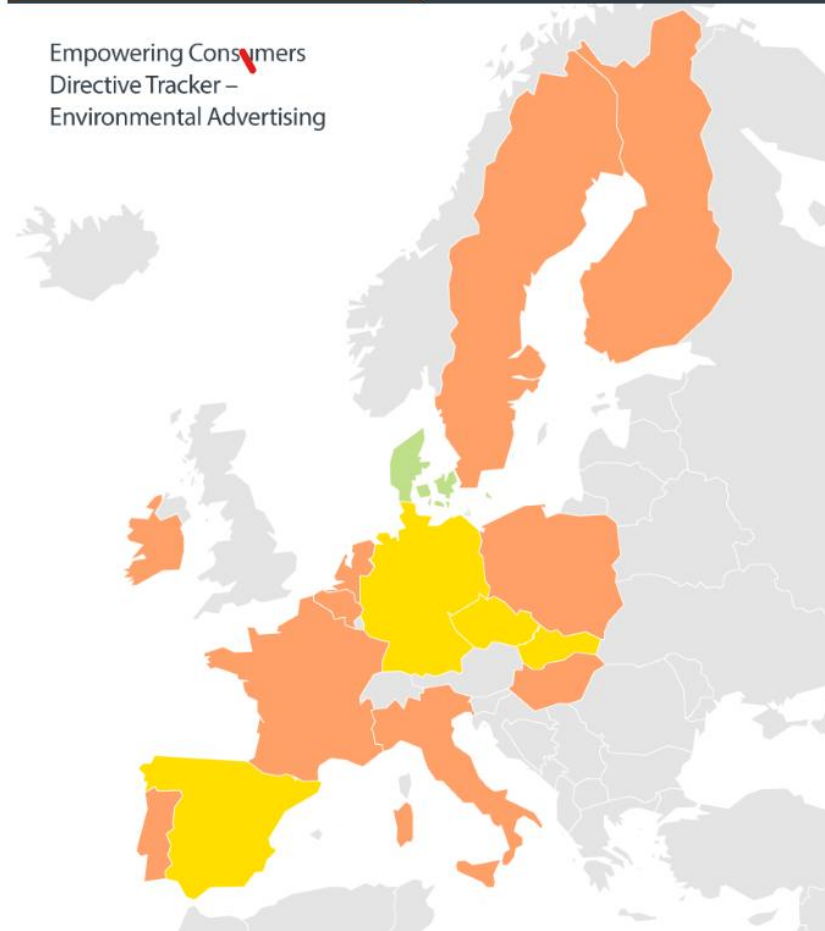
Sustainability labels



The legal landscape for green claims in the EU: EmpCo Directive

Status	
	Adoption of the national implementing act
	Publication of the proposal
	No developments

- **To be adopted until 27 March 2026**
- **Applicable from 27 September 2026**



The legal landscape for green claims in the EU: Green Claims Directive



EUROPEAN COMMISSION

Brussels, 22.3.2023

COM(2023) 166
final

2023/0085(COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on substantiation and communication of explicit environmental claims (Green Claims Directive)

EU Green Claims Directive: Overview



Scope

Explicit environmental claims in a B2C context

Substantiation

Assessment to substantiate claims based on scientific criteria

Verification

Ex-ante verification of claims by independent verifier

Communication

Requirements for use of claims and for the provision of information on substantiation

Labelling schemes

Requirements for existing labels, restrictions for new labels

Sanctions

Authority actions, injunctions


Green Claims Directive: Status



???

Common pitfalls and sectoral challenges

Siobhan Kahmann



Claims about “zero-emission” vehicles

2035 ban

100% tailpipe CO₂ reduction for new cars/vans.

Narrow ZEV definition

Current focus only on tailpipe emissions – excludes lifecycle impact.

Marketing risk

From Sept 2026, new rules require substantiation for “zero-emission” claims.

Industry pushback

Feasibility challenged, regulatory review fast-tracked.

Lifecycle shift

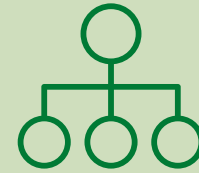
New assessment guidelines enable voluntary lifecycle emissions reporting.

Enforcement exposure

Misleading green claims risk regulatory action.



Misleading claims about vehicles' lifecycle emissions



Regulatory shift

EU lifecycle CO₂ methodology report expected end of 2025
→ voluntary reporting starts June 2026.



Global alignment

Adoption of international harmonised standards developed by UN-backed group expected March 2026.



Marketing risk

New EU directives demand verified data for environmental claims.

Carbon offsetting programmes

ETS & CBAM

- ETS allowances and CBAM certificates can be traded.
- ETS permits, not compensates, for emissions – using ETS to justify carbon neutrality claims could be misleading.
- Compliance \neq climate impact: CBAM compliance ensures import parity with EU ETS carbon pricing, but does not validate green claims.

CO₂ target ‘pooling’

- Redistribution, rather than reduction: pooling shifts emissions across companies; does not lower total emissions.
- Lawsuit from German consumer association shows risk of using pooling to support claims of overall emissions reductions.

Recyclability of vehicle components

- **New legislation proposed:** replacement for End-of-Life Vehicle Directive mandates:
 - Recycled content;
 - Design for disassembly;
 - Extended producer responsibility.
- Ongoing negotiations between European Parliament and Council to finalise.
- **Enforcement action:** DG Comp imposed EUR 458m fine in 2025 on trade association and 16 OEMs for collusion over 15+ yrs not to promote how much of an ELV can be recycled, recovered and reused, and amount of recycled material in new cars.

Use of terms like “sustainable materials”

- Stricter rules ahead:
 - **Generic** environmental banned from September 2026:
 - Claims like ‘eco-friendly’ and ‘green’ must be substantiated with recognised environmental performance; and
 - ‘Sustainable’ claims will be prohibited, unless substantiated with social, as well as environmental, characteristics.
- More rules: Green Claims Directive (as proposed) will require voluntary environmental claims to be backed **by independently verified** assessments.

The role of third-party certifications, and digital products in substantiating claims

Third party certifications

- From September 2026, ban on use of sustainability labels, unless based on recognised third-party certification scheme or established by a public authority will be prohibited.
- Future environmental performance claims require implementation plans verified by independent experts.

Digital Product Passports

- Required under new Eco-design for Sustainable Products Regulation for certain vehicle components (e.g. tyres, textiles, aluminium, steel).
- Battery passports will be required for EV batteries meeting thresholds under the EU Battery Regulation.
- Vehicle-specific passports include the proposed 'vehicle circularity passport' and the Environmental Vehicle Passport.

Litigation risks

Anna Cudna-Wagner

Case law of the Court of Justice of the European Union relevant to the automotive sector.

- **Procedural issues in the jurisprudence of the CJEU:** jurisdiction and burden of proof
- **Procedural issues:** representative actions
- **Substantive law issues:** liable party, exemption from liability
- **Duty of consistent interpretation in the jurisprudence of the CJEU**

Procedural issues: jurisdiction

Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters



Case number: **C-81/23**

- ❖ Lawsuit filed **by a purchaser** of a vehicle equipped with an defeat device
- ❖ **Judgment dated 22 February 2024:** Jurisdiction lies with the courts of the Member State in which the damage occurred (namely where the vehicle was delivered to the purchaser)

Case number: **C-343/19**

- ❖ Lawsuit filed **by a consumer organization to which the claims of individual consumers had been assigned**
- ❖ **Judgment dated 9 July 2020:** Jurisdiction lies with the courts of the Member State in which the damage occurred (namely where the consumers occurred to consumers)

Case number: **C-34/24**

- ❖ **Class action** brought by a qualified entity
- ❖ **Opinion of the Advocate General:** a qualified entity bringing a collective action may rely on jurisdiction based on the place where the damage occurred to consumers
- ❖ Judgment not delivered yet.



Procedural issues: burden of proof

Case No. C-175/25 (Volkswagen, Austria)

- ❖ In Case C-175/25, the Austrian court asks how the burden of proof is allocated under EU law in a dispute between a vehicle purchaser and the vehicle's manufacturer
- ❖ Similar questions have been raised by German courts in Cases C-308/23, C-751/23, C-801/23, C-182/25, and C-251/25

Procedural issues: Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers («RAD«)

Qualified entities – who can bring representative actions?

- Consumer organizations and/or public bodies listed in registries maintained by the local consumer protection authorities in EU Member States or – in case of cross-border representative action – by the EU Commission.
- qualified entities must meet specific criteria (incl. statutory purpose aimed at protection of consumer interests and a non-profit-making character).

Remedies – what measures can be awarded?

- redress measures such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid
- Injunctive measures concern cessation or prohibition of a practice that harm or may harm the collective interests of consumers.
 - ✓ Filing a claim for an injunctive measure does not require assembling a group of consumers.

Evidence disclosure

- Upon the qualified entity's request, the court may order the defendant and/or a third party to disclose the evidence which is in their possession.



Substantive law issues: liable party

Case number: C-100/21

- ❖ Judgment dated **23 March 2023**:
 - Framework Directive 2007/46/EC and Regulation No 715/2007 on type-approval must be interpreted as **protecting, in addition to the public interest, the specific interests of the individual purchaser of a vehicle vis-à-vis the manufacturer of that vehicle**
 - **National law** determines the rules governing compensation for damage suffered
 - EU law requires only that the **compensation be commensurate with the harm suffered**

Cases pending before the CJEU: C-438/25 and C-408/25

- The engine manufacturer is not the vehicle manufacturer. In such a case, **against whom does the vehicle purchaser have a claim?**



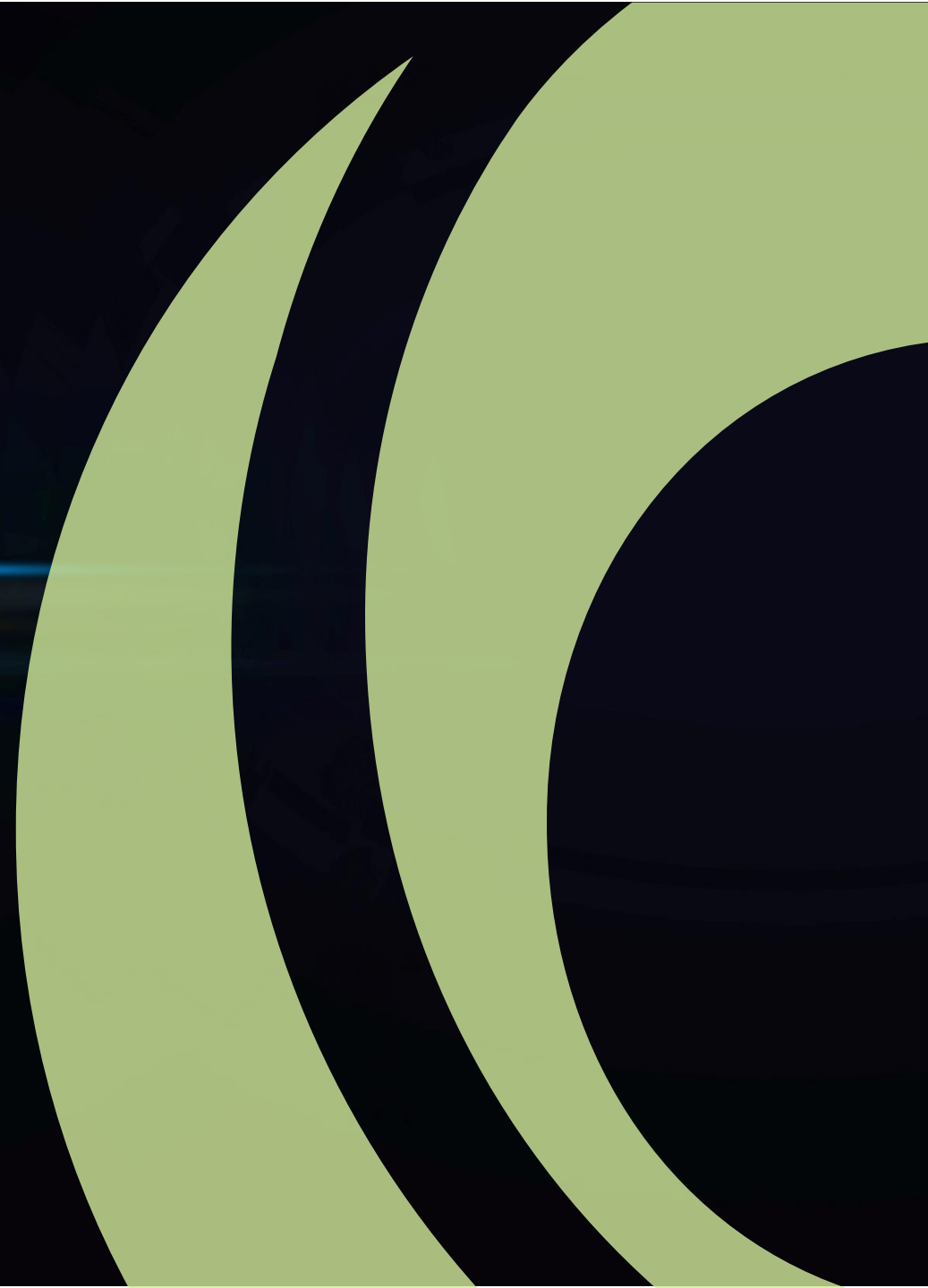
Substantive law issues: exemption from liability

Case number: **C-666/23**

- ❖ Preliminary question whether a vehicle manufacturer may rely, as a basis for exemption from liability, on **EC type-approval** granted by a national authority
- ❖ **Judgment dated 1 August 2025:** *A vehicle manufacturer cannot be exempted from its liability for an unlawful defeat device on the grounds that an EC type-approval has been granted*

Duty of consistent interpretation

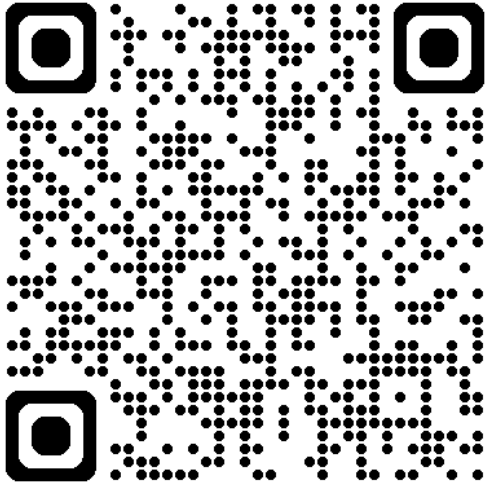
- ❖ Upon expiry of the transposition period for a directive, regardless of whether the national legislature has implemented it, the national court is obliged to **interpret national law so far as possible, in the light of EU law and, without, however, interpreting those national provisions *contra legem*** (Whiteland Import Export, C-308/19, Volvo and DAF Trucks, C-267/20 and Heureka, C-605/21).
- ❖ Before the transposition period expires: a “**duty to refrain**” (Inter-Environnement Wallonie, C-129/96 and Adeneler, C-212/04)



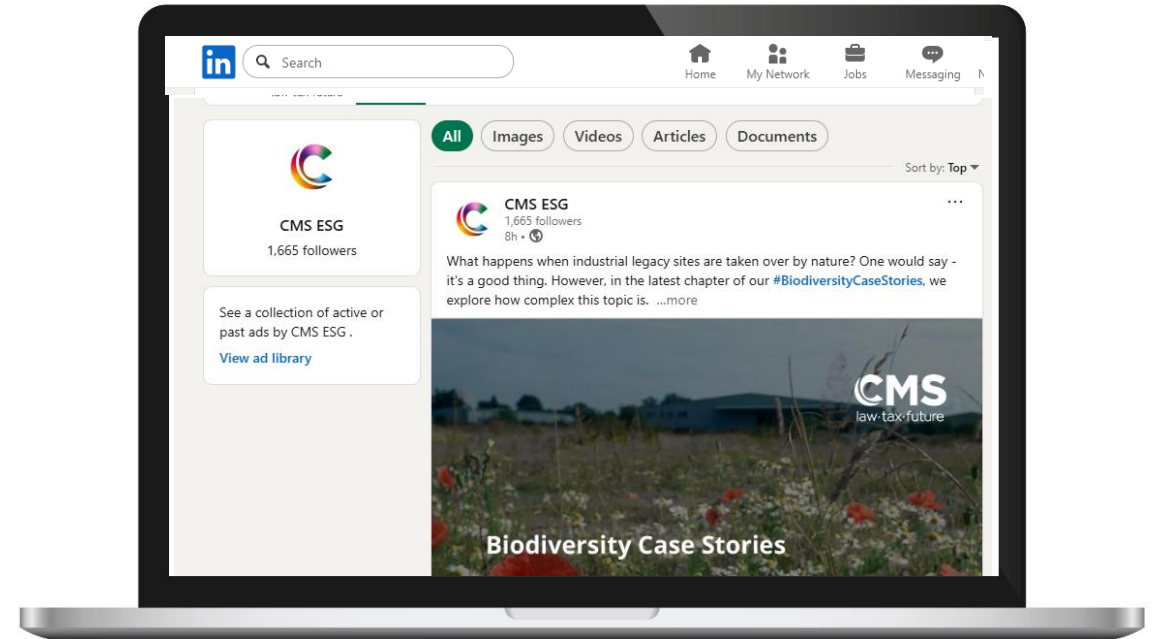
Thank you for your attention!

F

Keep up-to-date with us!



Upcoming webinar
**Green claims in
focus – financial
institutions.**



Follow our LinkedIn
[CMS ESG](#) profile





Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS is an international organisation of independent law firms ("CMS Member Firms"). CMS LTF Limited (CMS LTF) is a company limited by guarantee incorporated in England & Wales (no. 15367752) whose registered office is at Cannon Place, 78 Cannon Street, London EC4N 6AF United Kingdom. CMS LTF coordinates the CMS Member Firms. CMS LTF provides no client services. Such services are solely provided by CMS LTF's CMS Member Firms in their respective jurisdictions. CMS LTF and each of its CMS Member Firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS LTF and each CMS Member Firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the CMS Member Firms or their offices; details can be found under "legal information" in the footer of cms.law.

CMS Locations

Aberdeen, Abu Dhabi, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Bengaluru, Bergen, Berlin, Bogotá, Bratislava, Brisbane, Bristol, Brussels, Bucharest, Budapest, Casablanca, Chennai, Cologne, Dubai, Dublin, Duesseldorf, Ebene, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Gothenburg, Gurugram, Hamburg, Hong Kong, Hyderabad, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Liverpool, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Maputo, Mexico City, Milan, Mombasa, Monaco, Mumbai, Munich, Muscat, Nairobi, New Delhi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, São Paulo, Sarajevo, Shanghai, Sheffield, Silicon Valley, Singapore, Skopje, Sofia, Stavanger, Stockholm, Strasbourg, Stuttgart, Sydney, Tel Aviv, Tirana, Vienna, Warsaw, Zagreb and Zurich.

Further information can be found at **cms.law**