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Green claims under scrutiny

What the EU's Directive on "Empowering Consumers for the Green Transition" means for businesses

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Agenda

1. EmpCo in a nutshell
2. Recent trends in greenwashing enforcement and litigation
3. Putting into practice
4. What does this mean for businesses?
5. Questions



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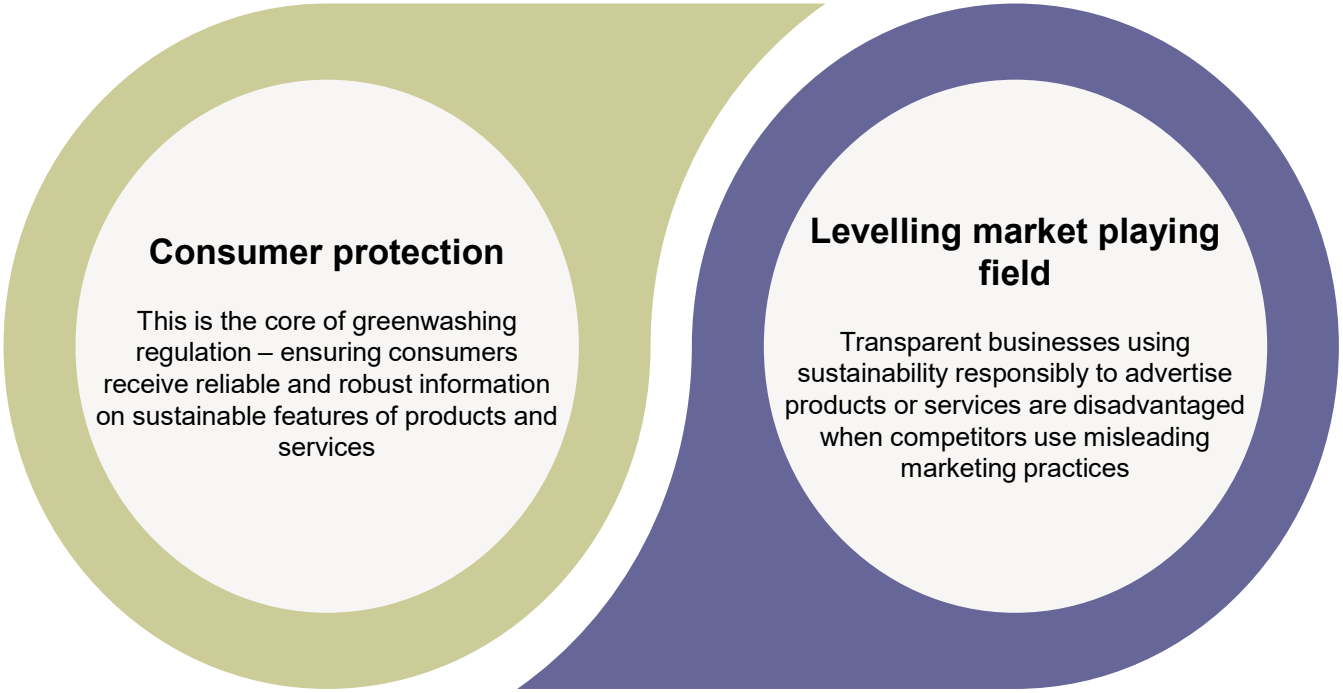


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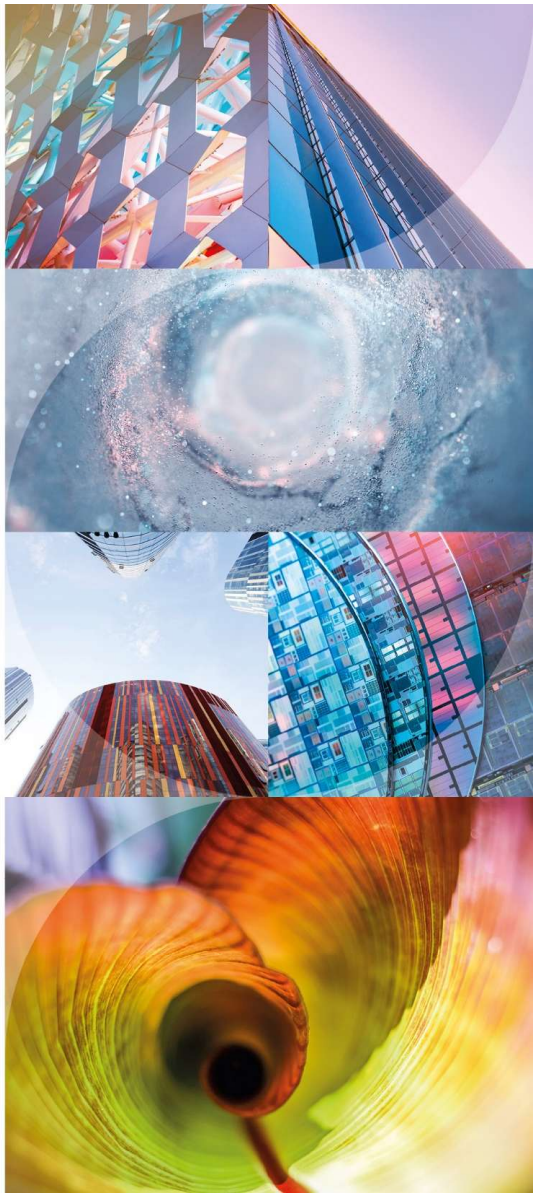


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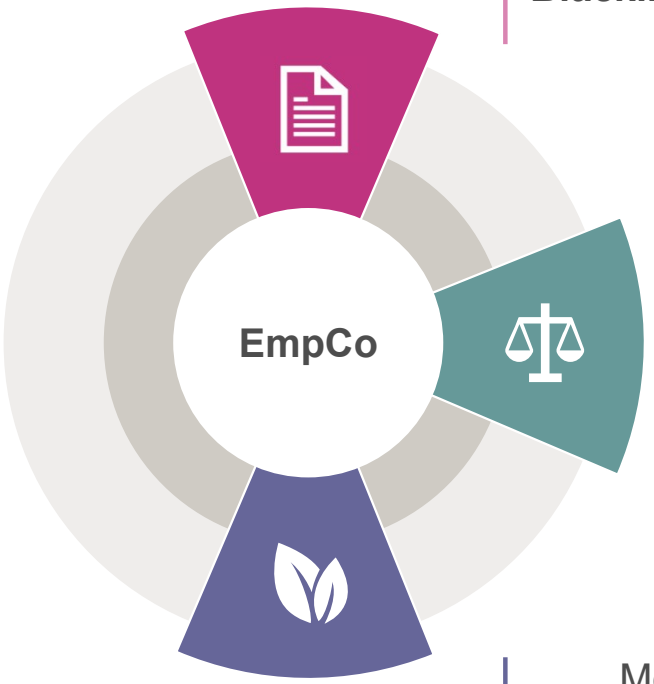
What is driving regulation in this space?



1 EmpCo in a nutshell



EmpCo: What is EmpCo?



Blacklisted claims (always considered to be misleading)

Misleading claims (case-by-case assessment)

More stringent requirements on **evidence and disclosures**

What does EmpCo apply to and where?



Focuses on acts, omissions or communications directly connected with the promotion, sale, or supply of a product to consumers (or businesses, where it has been extended to business practices) within the EU.



Amends existing EU consumer protection legislation, which mainly apply B2C but in certain Member States have also been extended to B2B.

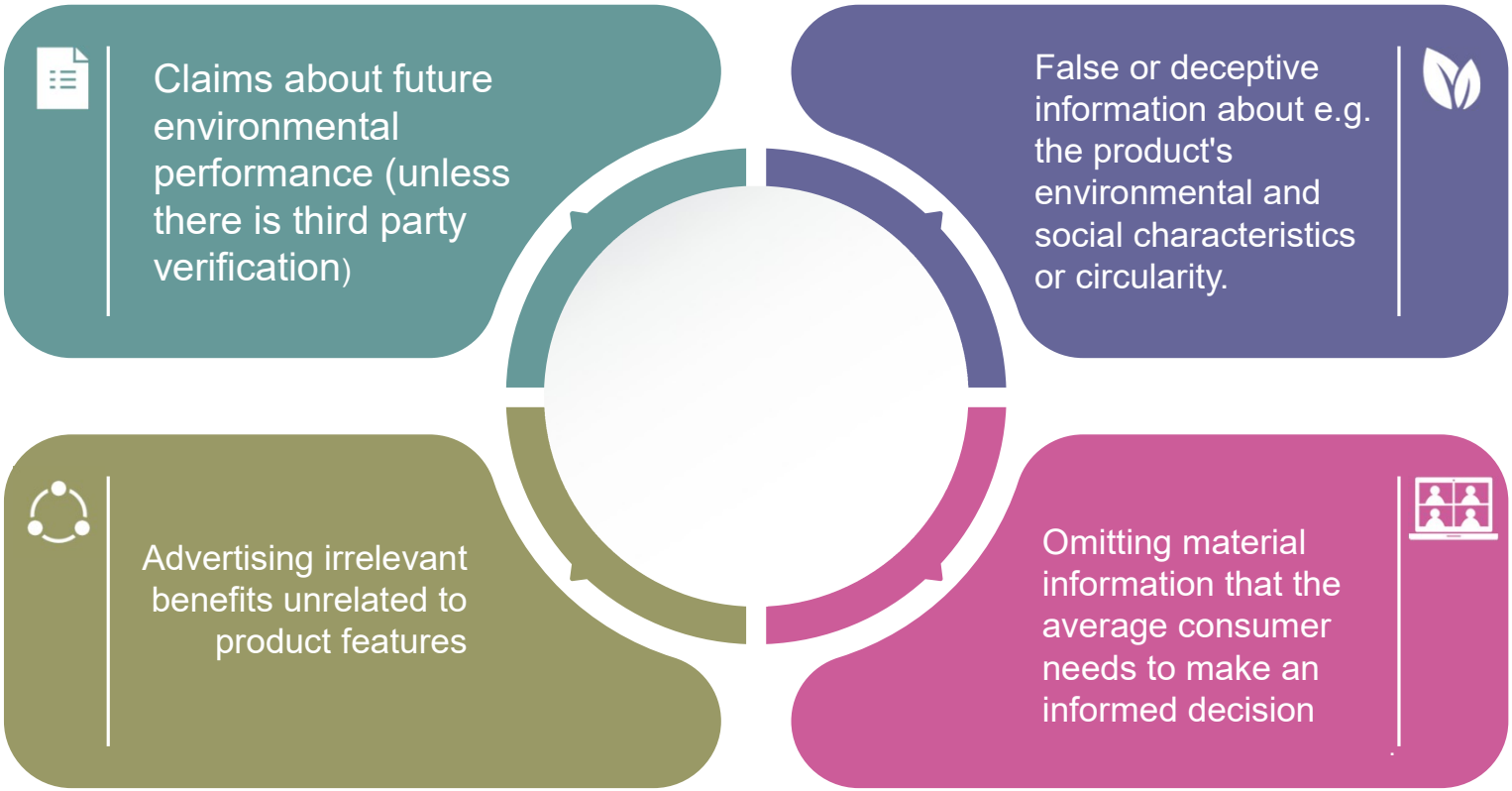


Existing EU consumer protection legislation applies to all kinds of businesses (including financial services) and EmpCo will apply in the same way.



Corporate reporting, such as annual sustainability reporting, is generally not in scope, but if a company uses information from its reporting in voluntary advertising or marketing, that information would be in scope.

What might make a statement or claim ‘**misleading**’?



What types of claims are ‘**blacklisted**’?

Generic claims

Where you are not able to demonstrate "recognised excellent environmental performance"

(e.g., “environmentally friendly”, “energy efficient”, “biodegradable”)

Overly broad claims

Environmental claims about an entire product/business when the claim only concerns a certain aspect

(e.g., “made with recycled material” when only the packaging is made from recycled material)

Offsets

If you claim, based on offsets, that a product has a neutral, reduced or positive impact on the environment in terms of GHG emissions

(e.g., “climate neutral”, “carbon positive”, “climate net zero”, “limited CO2 footprint”)

Sustainability label/certifications

Displaying a sustainability label i.e. any voluntary trust mark, quality mark or equivalent (public or private), that is not based on a certification scheme (requiring external verification) or not established by public authorities

What if you have made a misleading or blacklisted claim?

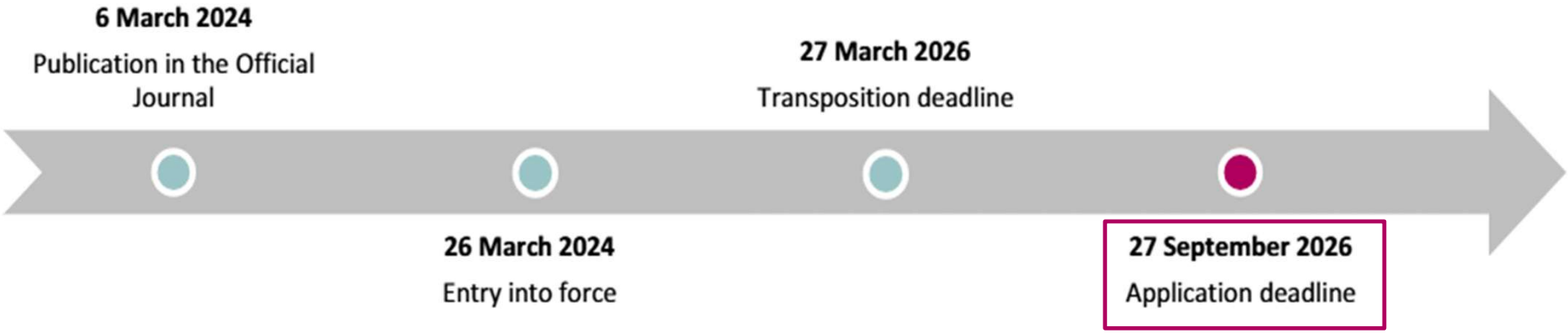
Penalties

- Penalties to be set by Member States.
  - must be "effective, proportionate, and dissuasive"
  - should include fines
- Maximum amount may be at least 4% of the company's total annual turnover in the Member State.

Enforcement

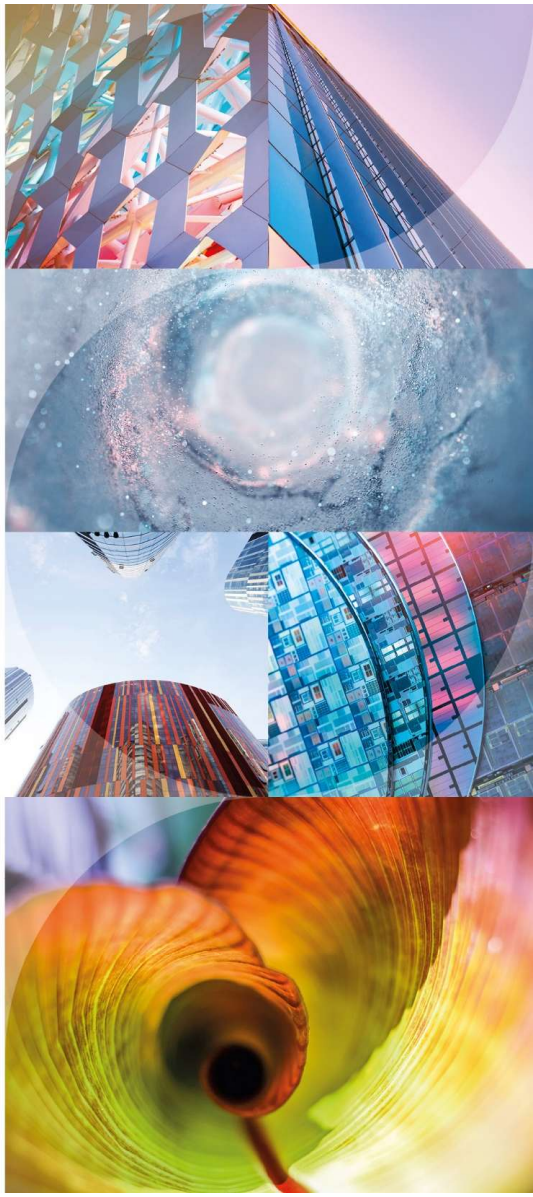
- Green claims can be pursued:
  - via a regulator (following a complaint or on its own initiative), and/or
  - through private enforcement.
- In Germany, green/sustainable claims are usually subject of civil litigation proceedings by NGOs or competitors based on the Act on Unfair Practices, in particular by means of warning letters including requests to sign cease-and-desist declarations, preliminary injunction proceedings and/or main proceedings.

When does it come into force?



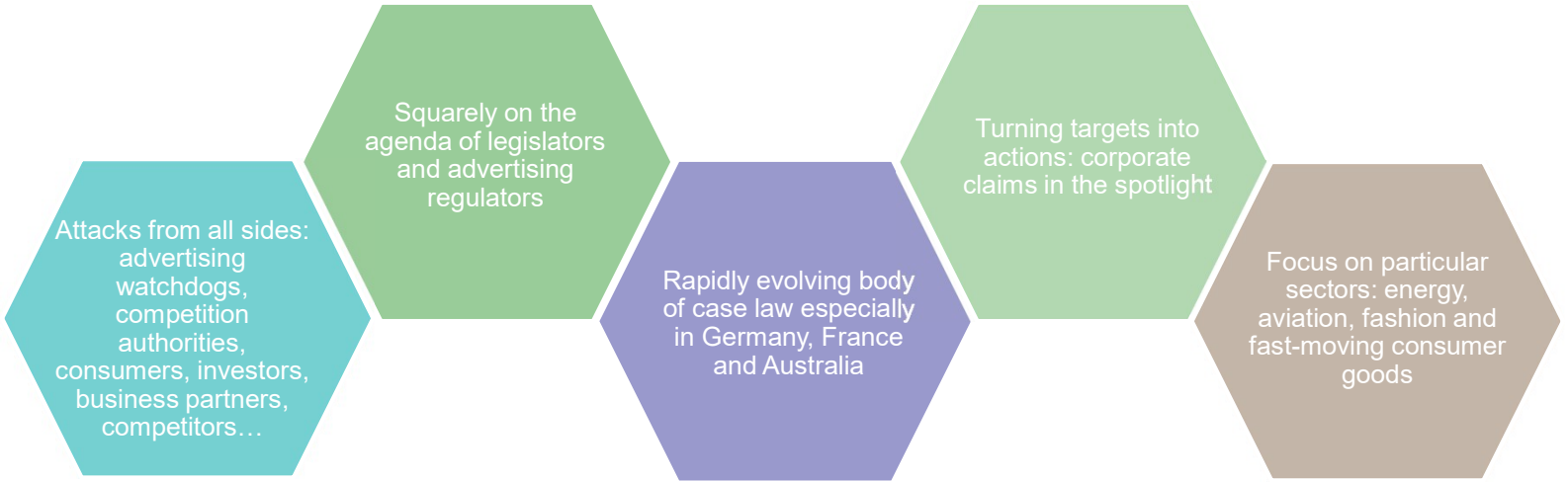
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Recent trends in greenwashing enforcement and litigation



Recent enforcement and litigation trends

The existing landscape shows there is a heightened scrutiny and focus on sustainability and environmental claims wherever and however they are made – including in contexts not currently regulated by new regimes.



UK regulatory landscape

Competition and Markets Authority ("CMA")

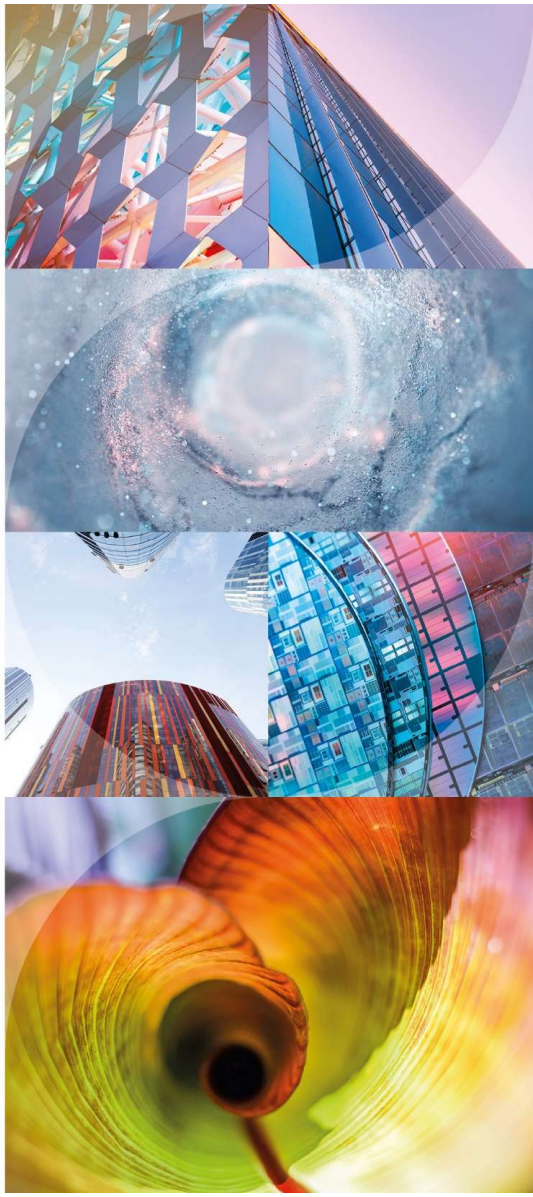
- Primary enforcement agency for greenwashing in the UK.
- Active in fashion, FMCG and home heating sectors.
- In April 2025, the CMA received new powers to fine companies up to 10% of global turnover for consumer law breaches.

Advertising Standards Agency ("ASA")

- Works collaboratively with the CMA.
- Operates without fines.
- Increasingly proactive, including through the use of AI tools to scan for ads in "high priority areas".

In essence, greenwashing is a misleading action covered by unfair commercial practices regulation.

3 Putting it into practice



Example 1 – Greenwash or not?

You are the legal adviser and have been asked to look at wording on your product/adverts. Could any of the following be a problem, and if so, why?

1

A company making nappies from bamboo and publising the following claims on its website:

> Images of nappies with a “sustainable” tagline and described as “"biodegradable“, “made from sustainable, plant based materials”; or

> Nappies with packaging which says “sustainable bamboo” and describes this as being “kinder to the planet”.

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A

Claims brought by a competitor against two different companies. ASA banned claims in both cases:

> "sustainable“: insufficiently quantified with evidence on full life cycle of product.

> "kinder to the planet“: comparative claim that lacked any explanation

> “biodegradable”: created inaccurate impression (only biodegraded by approximately 80% over 122 days at 25°C)

Example 2 – Greenwash or not?

You are the legal adviser and have been asked to look at wording on your product/adverts. Could any of the following be a problem, and if so, why?

2

A shoe company making the general claim that it would be "climate neutral by 2050" and that it is "committed to a number of ambitious goals that will pave the way to climate neutrality along [the] entire value chain in 2050".

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A

Claim was found to be misleading by German court under UCPD for the following reasons:

> The term "climate neutrality" is ambiguous without further explanation (and therefore potentially misleading)

> Company did not clearly state whether climate compensation measures would be used to achieve this goal

Example 3 – Greenwash or not?

You are the legal adviser and have been asked to look at wording on your product/adverts. Would any of the following be a problem, and if so, why?

3

An **appliance company** marketing its home boilers as "hydrogen-blend ready" and able to run on a blend of 20% hydrogen and natural gas.

Example 3 – Greenwash or not?

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An **appliance company** marketing its home boilers as "hydrogen-blend ready" and able to run on a blend of 20% hydrogen and natural gas.

A

Claims investigated by the CMA but undertakings agreed by company, so no findings made.

Investigation launched as claims could give consumers the impression that this was a special feature of the boilers but in fact all boilers in the UK had been legally required to operate this way.

4

What does this mean for businesses?



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Key takeaways

EmpCo will tighten the regulatory landscape - claims need to be considered claims on a case-by-case basis with context and audience front of mind

Underestimating the impact of recent developments can carry material consequences – financial penalties, operational costs, reputational damage and private litigation

Governance and internal controls are key – companies need to maintain coherent approaches that work across jurisdictions and adapt to different business/service lines

Practical steps to mitigate greenwashing risk

- Avoid using “blacklisted” wording – avoid generic or overly broad claims and be extra careful when referring to offsets or using sustainability labels/certificates
- Ensure claims that are made can be well substantiated
- Ensure claims are sufficiently specific (avoid generic terms like “environmentally friendly”, “green”, “biodegradable”)
- Map all labels and marks and ensure those that reference environmental or social characteristics are based on recognised schemes.
- Think carefully about your audience and how they will perceive/understand your claims - context is everything
- Make sure claims are assessed consistently across relevant business and legal functions
- Monitor transposition of EmpCo and enforcement priorities across key jurisdictions.

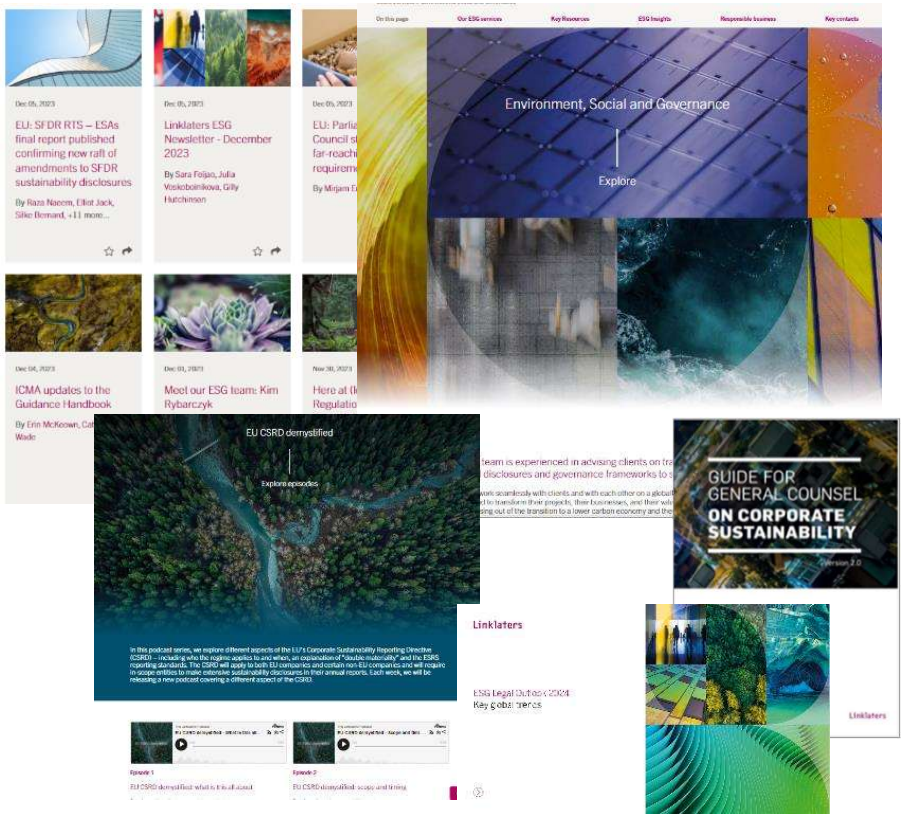
Where to find more information

While ESG is of critical importance we know that the pace of change and volume of new information in this area can pose a real challenge.

We regularly produce a variety of materials covering the wide range of ESG topics to help you stay up-to-date in this rapidly developing area. These include a dedicated sustainability blog, podcasts, videos, client notes and webinars.

We also provide a monthly ESG Global Newsletter and a quarterly ESG Disputes Bulletin.

- *For real-time ESG updates, explore our Sustainable Futures blog*
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