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EARTH X MARKETS LEGAL SPOTLIGHT

Safe Harbors for Corporate Green Claims: Building Legal Certainty for Carbon Markets

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Part I

Unlocking Demand in Carbon Markets through Safe Harbors for Corporate Green Claims

Executive Summary

Carbon markets hold significant potential as instruments of private climate finance, but their growth is increasingly constrained by legal uncertainty. Companies making climate-related claims based on carbon credits face mounting exposure to regulatory enforcement and civil litigation, even where the underlying credits have been independently verified by leading certification programmes. This litigation risk suppresses demand for high-integrity credits and frustrates the market's core purpose.

This part of the paper focuses on the voluntary carbon market (**VCM**) and does not address compliance markets or mandatory emissions trading schemes. It also does not address Article 6 markets specifically, though many of the legal principles discussed are of potential relevance to corporate claims based on Article 6-connected credits.

Soft standards addressing both credit integrity and claim wording can provide actionable guidance ahead of statutory developments.

The paper analyses the legal architecture of safe harbor mechanisms and their application to carbon credit-based environmental marketing. The core analytical finding is that legal exposure in carbon markets arises from two distinct sources: credit integrity — the methodological and governance quality of the underlying credits — and claim integrity — the accuracy, scope, and consumer impression of the claim itself. Safe harbor mechanisms focused on credit integrity alone are insufficient. Courts have consistently held that liability may arise from the way claims are framed, independent of the quality of the credits relied upon to make these claims.

The application of safe harbor mechanisms specifically to carbon credit-based corporate claims is an emerging and largely undeveloped area of law. To our knowledge as of today, no jurisdiction has enacted such a mechanism. The sole legislative proposal of this kind which we have currently identified in the public domain is California Assembly Bill 1911 (introduced February 2026) which could create a statutory defense against misleading environmental marketing claims where the claim is based on credits from a qualifying programme. This model provides a template for future jurisdictional adoption.

This paper surveys the broader regulatory landscape governing environmental marketing claims. The EU EmpCo Directive, the FTC Green Guides, the Swiss FOEN Enforcement Aid, the ICC Environmental Marketing Framework, and the Gold Standard Claims Guidelines establish a standard of care for how climate claims should be structured, qualified, and communicated. None of these instruments is a safe harbor: they do not confer immunity from legal proceedings. However, they represent the kind of instrument that a jurisdiction could formally adopt as official guidance in the context of carbon credits, signaling that enforcement action is unlikely where a company has structured its claims in accordance with the framework's standards, representing an actionable near-term pathway that does not require legislation.

The path forward requires action on two tracks. In the near term, soft standards addressing both credit integrity and claim wording can provide actionable guidance ahead of statutory developments, and jurisdictions should be encouraged to formally adopt such standards as soft safe harbors, providing market participants with credible enforcement predictability. In the long term, a model statutory safe harbor standard — building on AB 1911 while incorporating claim-side lessons from the U.S., EU and Swiss frameworks — should be developed for adoption across jurisdictions.

Ultimately, this exercise is targeted at unlocking demand for carbon credits by designing a clear, predictable path for corporations to utilize these instruments while mitigating the legal and regulatory exposure typically associated with climate-related claims.

1. Introduction

This paper focuses on the VCM and does not address compliance markets or mandatory emissions trading schemes. It also does not address Article 6 markets specifically, though many of the legal principles discussed are of potential relevance to corporate claims based on Article 6 credits.

Carbon markets are designed as a central instrument in the global effort to limit greenhouse gas emissions. Voluntary carbon credit mechanisms enable private actors to finance real-world decarbonisation activity beyond what is required by law, and their potential contribution to the transition to a low-carbon economy is attracting growing attention from governments, investors, and companies alike.

Despite this potential, the pace of carbon market growth is slowed by mounting legal uncertainty. Corporations making climate-related claims – such as "carbon neutral", "climate positive", or "net zero" – on the basis of carbon credits - face increasing exposure to regulatory enforcement and civil litigation. Recent high-profile cases in Germany and the United States have demonstrated that environmental marketing claims based on carbon offsets can give rise to liability under consumer protection law, even where the underlying credits have been independently verified by leading certification programmes. This litigation risk acts as a significant barrier to market participation: it deters companies from communicating genuine climate action, suppresses demand for high-integrity carbon credits, and ultimately frustrates the market's core purpose of financing additional emissions reductions.

It is in this context that the concept of "safe harbor" provisions has emerged in carbon market policy discussions. The central premise is straightforward: if actors who rely on qualifying, high-integrity carbon credits could be afforded a degree of legal protection for doing so, the barrier posed by litigation risk would be reduced, demand for quality credits would increase, and the market would be better positioned to deliver on its climate mandate.

To give full context, our recent work with multinational corporations on aligning their green claims with international anti-greenwashing standards and consumer protection legislation, has highlighted the broader context of the issue. There is a significant increase in regulatory scrutiny and private litigation across the broader ESG landscape. This shift affects the core business considerations of corporate boards and financial institutions alike, as "greenwashing" risks now influence capital allocation. Consequently, carbon market actors must recognize that their activities are being integrated into a wider net of corporate accountability where transparency and substantiation are no longer optional, but foundational to institutional stability.

If actors who rely on qualifying, high-integrity carbon credits could be afforded a degree of legal protection for doing so, the barrier posed by litigation risk would be reduced, demand for quality credits would increase, and the market would be better positioned to deliver on its climate mandate.

This EARTH X MARKETS LEGAL SPOTLIGHT has been prepared with the goal of supporting the ongoing work of the IETA Legal Working Group and the Coalition to Grow Carbon Markets. It serves a dual purpose. In the long term, this paper is intended to contribute to a statutory safe harbor standard that can be adopted by states and jurisdictions. In the near term, it aims to advance a "soft" standard that can be implemented with the needed immediacy to support market growth: a framework of best practices governing how climate claims should be made and communicated, which corporations and governments can adopt ahead of formal statutory embodiment.

2. Safe Harbor: Scope and Purpose

A safe harbor is a legal provision – whether contained in a statute, regulation, or formal administrative guidance – that affords protection from legal liability or enforcement action, provided that specified conditions are satisfied.[1] Safe harbor provisions do not confer blanket immunity; rather, they create a conditional legal shield that allows parties to engage in defined activities while being protected from legal challenge, so long as they adhere to established criteria. They are typically created to encourage beneficial behaviour, reduce legal uncertainty, and promote economic activity and innovation.

Safe harbors exist in a variety of legal disciplines, including intellectual property law (where online platforms may be shielded from liability for user-generated infringing content), securities and financial regulation (where forward-looking statements made in good faith are protected from fraud liability, and where certain categories of disclosure attract protection from private litigation), competition and antitrust law (where defined categories of cooperation or standardisation agreements are treated as presumptively lawful), and environmental and natural resources law (where landowners who voluntarily improve habitats for listed species receive assurance against future liability for incidental harm).

A significant structural distinction exists between the traditional U.S. concept of a safe harbor and what is commonly described as a "soft safe harbor" in the EU context. In the United States, safe harbors are typically statutory or regulatory provisions enacted by Congress or administrative agencies that provide explicit immunity or limitation of liability where clearly defined conditions are met. In the EU, the term is sometimes applied to administrative guidance identifying conditions under which regulatory intervention is unlikely – a softer, non-binding standard that signals enforcement priorities without conferring explicit immunity.

The sections below survey representative examples from both systems before turning to their application in the carbon credit context. The structural lessons these examples offer for carbon market governance are examined in the Annex to this paper.

Safe harbor provisions do not confer blanket immunity; rather, they create a conditional legal shield that allows parties to engage in defined activities while being protected from legal challenge.

[1] What Does Safe Harbor Mean in a Legal Context?, LegalClarity, https://legalclarity.org/what-does-safe-harbor-mean-in-a-legal-context/

2.1 U.S. Frameworks

In U.S. law, safe harbors are typically statutory or regulatory provisions enacted by Congress or administrative agencies that provide explicit immunity or limitation of liability where clearly defined conditions are met. The mechanism is designed to be self-executing: once the conditions are satisfied, the protection operates as a matter of law, without requiring judicial discretion. Established examples across different legal domains — including the Digital Millennium Copyright Act (**DMCA**) and the Endangered Species Act (**ESA**) — share this common architecture: a precisely defined zone of compliant behaviour, and explicit immunity from legal proceedings for actors operating within it.

2.2 EU Frameworks

The EU approach differs structurally. What the European Commission describes as a "soft safe harbor" — as seen in the 2023 Horizontal Guidelines on sustainability standardisation agreements and the 2025 draft framework for Licensing Negotiation Groups — does not grant automatic immunity from liability. Instead, it generally identifies conditions under which the Commission is unlikely to intervene under competition law. This distinction is significant: a soft safe harbor of the EU-type offers a predictability signal for regulatory enforcement, but does not formally constitute a defense in private litigation. It describes compliant behaviour rather than immunising actors from proceedings arising from it. This distinction between the U.S. and EU models is relevant to the design of a safe harbor mechanism for carbon markets, and informs the analysis that follows.

3. Application of Safe Harbor to Carbon Credit Related Corporate Claims

The application of safe harbor mechanisms specifically to carbon credit-based corporate claims is an emerging and largely undeveloped area of law. To our knowledge as of today, there is no enacted legislation in any jurisdiction that creates a statutory safe harbor of the kind described in Section 2 for companies making environmental marketing claims specifically on the basis of voluntary carbon credits. The field is at an early stage: policy discussions are active - including within the IETA Legal Working Group and the Coalition to Grow Carbon Markets - but legislative action remains nascent. The sole example which we have currently identified in the public domain of a purpose-built statutory proposal of this kind is California Assembly Bill 1911, which has not yet been enacted into law.

California Assembly Bill 1911 (introduced February 2026)[2] proposes to add Section 17580.7 to the California Business and Professions Code, creating a statutory defense against claims of misleading environmental marketing where a company's environmental claim is based on the voluntary use of carbon credits issued by a qualifying carbon crediting programme.
Under existing California law, Section 17580.5 prohibits businesses from making untruthful, deceptive, or misleading environmental marketing claims, whether explicit or implied, by reference to the scope of environmental claims defined in the FTC Green Guides, discussed below. AB 1911 does not authorise such claims generally; it provides a conditional defense where the claim is based on qualifying carbon credits.

A programme qualifies if it: (i) is approved by the State Air Resources Board (**CARB**) under Title 17 California Code of Regulations §95986; (ii) is approved by ICAO for use in CORSIA; or (iii) meets substantive criteria addressing methodology transparency, registry integrity, third-party verification, governance, stakeholder consultation, social and environmental safeguards, double-counting prevention, and permanence. CARB is required to publish and maintain a list of qualifying programmes.

This model reflects the U.S. structural approach: a statutory provision that, where its conditions are satisfied, explicitly immunises the company from legal proceedings under the relevant cause of action.

[2] California AB 1911 (February 2026).

4. Environmental Marketing Claims Frameworks

Domestic jurisdictions could state that where a company has structured and communicated its carbon credit related claims in accordance with such a framework, enforcement action would be unlikely.

A body of instruments establish a standard of care for environmental claims, both statutory and under guides. They do not confer immunity from legal proceedings, and compliance with them does not constitute a defense. What they do provide is a standard of care governing how climate claims should be substantiated, qualified, and communicated, thereby addressing the claim-integrity dimension of legal risk that credit-integrity safe harbors do not cover. That said, these frameworks carry meaningful legal significance in a second, distinct sense: they represent the kind of instrument that could be adopted as official guidance and designated as a "soft safe harbor" within the carbon credit context. Meaning: domestic jurisdictions could state that where a company has structured and communicated its carbon credit related claims in accordance with such a framework, enforcement action would be unlikely. While this would not establish statutory immunity, it would provide something of genuine practical value: a credible, government-backed signal that compliance reduces enforcement exposure. This pathway is one of the actionable near-term options examined in Section 6, and is particularly relevant for jurisdictions that are not yet in a position to enact legislation of the AB 1911 type.

4.1. The EU Empowering Consumers for the Green Transition Directive (Directive (EU) 2024/825)

Directive (EU) 2024/825 of 28 February 2024 (**EmpCo Directive**) entered into force on 26 March 2024, amending the Unfair Commercial Practices Directive (2005/29/EC) (**UCPD**) and the Consumer Rights Directive (2011/83/EU).[3] Member states are required to transpose it into national law by 27 March 2026, with the new rules applying from 27 September 2026. It imposes mandatory, directly enforceable obligations on traders engaging in commercial communications directed at consumers and operates through the existing enforcement machinery of member states' consumer protection authorities and courts.

The EmpCo Directive adds to Annex I of the UCPD (the "blacklist" of prohibited commercial practices), the practice of 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. This effectively means that a future statutory safe harbor, if enacted in the EU, would be constrained by the EmpCo Directive's blacklist: it could not extend to product-level offset claims falling within the Annex I prohibition and would therefore be limited to company-level claims. This is a central distinction from California's AB 1911.

4.2. The U.S. Federal Trade Commission's (FTC) Green Guides

The U.S. FTC Guides for the Use of Environmental Marketing Claims define the scope and requirements applicable to environmental marketing in the United States.[4] They require that marketers identify all express and implied claims conveyed and ensure that all reasonable interpretations are truthful, not misleading, and supported by competent and reliable scientific evidence. Qualifications and disclosures must be clear, prominent, and placed in close proximity to the qualified claim, using plain language and sufficiently large type, without distracting elements that could undercut the disclosure. Claims must not overstate an environmental attribute or benefit, directly or by implication.

The Guides expressly address carbon offset claims. They require that marketers ensure offset claims are supported by competent and reliable scientific evidence, which claims accurately reflect the nature and scope of the offset activity, and that offsets not be claimed where the underlying emissions reductions are already required by law. The Guides also note that carbon offset claims that imply a broader environmental benefit than the evidence supports — for example, asserting "carbon neutrality" without adequate qualification — are likely to be found misleading.

California's AB 1911 expressly incorporates the FTC Green Guides by cross-reference, defining the environmental marketing claims to which the safe harbor applies by reference to the same claims covered by the Guides. This structural linkage is significant: the safe harbor addresses the credit dimension, while compliance with the Guides addresses the claim dimension. Together, they provide a more comprehensive framework – though one that still leaves room for claims to be found misleading on grounds not fully anticipated by either instrument.

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[3] 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.

[4] 16 CFR Part 260 - Guides for the Use of Environmental Marketing Claims; Final Rule.

4.3. The Swiss FOEN Enforcement Aid

The Swiss Federal Office for the Environment (**FOEN**) published enforcement guidance in January 2025 interpreting the legal requirement to substantiate climate-related information on products and companies on an objective and verifiable basis, pursuant to the Swiss Federal Act against Unfair Competition (**UCA**).[5] Its key principles are:

- **Product-related climate information** may not be justified by offsetting measures – carbon credits cannot be used to substantiate climate claims about a product's own emissions profile.
- **Company-level claims:** offsetting is permissible under strict conditions, with direct emission reductions taking priority.
- **The term "climate-neutral**" is not currently verifiable and should not be used.

The FOEN guidance illustrates a national regulatory direction toward stricter standards for claim framing - particularly the prohibition on product-level offset claims.

4.4. The International Chamber of Commerce's (ICC) Environmental Marketing Framework

The ICC's Environmental Marketing Framework (2025) provides a globally applicable code of conduct for environmental claims in commercial communications.[6] It addresses claim substantiation, qualifying disclosures, the use of terms such as "carbon neutral" and "net zero", and the conditions under which offsetting can be relied upon. The Framework requires that claims be based on reliable and verifiable evidence, that offsetting be transparently disclosed as distinct from direct emission reductions, and that claims not convey an environmental benefit greater than what the evidence supports.

Compliance with the ICC Framework does not confer immunity from legal proceedings. However, it can inform a court's assessment of whether a company exercised appropriate care in formulating its environmental claims and may be relevant to defences based on reasonable reliance or good faith. More importantly, it provides operational guidance on how to structure and communicate claims in ways that reduce the risk of a court finding a misleading net impression – the very dimension that case law has shown safe harbors alone do not address.

[5] FOEN Enforcement Aid on Climate-Related Product and Company Information.

[6] ICC Framework for Responsible Environmental Marketing Communications (2025 edition).

4.5. The Gold Standard Claims Guidelines

The Gold Standard for the Global Goals Claims Guidelines[7] provide a framework governing how entities associated with Gold Standard-certified projects, including project developers, fund managers, intermediaries, and credit buyers, may communicate about certified impacts.

Of particular relevance to the safe harbor analysis is the Guidelines' distinction between three categories of carbon credit use: impact claims (describing the mitigation contribution represented by a credit, without implying offsetting); offsetting claims (asserting that an entity's emissions have been counter-balanced); and compliance use. This typology is significant because the Guidelines explicitly recognise that impact claims – framed as contributions to climate mitigation rather than assertions of neutrality – avoid the most acute legal risks associated with the "net impression" standard applied by courts. A company making a contribution claim rather than a carbon neutrality claim is less likely to be found to have created the misleading impression of complete or permanent neutrality.

The Guidelines further require that offsetting claims be made only where credits satisfy robust standards of additionality, permanence, and non-double-counting; that the scope of any claim be transparent; and that the temporal basis of any neutrality assertion be clearly disclosed.

Structurally, the Gold Standard Guidelines operate similarly to the FTC Green Guides and the ICC Environmental Marketing Framework: they do not confer immunity from legal proceedings but provide an operational standard of care that can inform a court's assessment of whether a company exercised reasonable diligence in formulating its environmental claims. Compliance with the Guidelines can therefore reduce, though not eliminate, legal exposure on the claim dimension.

[7] The Gold Standard for the Global Goals Claims Guidelines (Version 2.0, 2022).

5. The Real-Life Application of Safe Harbor: Evidence from Case Law

Recent case law from multiple jurisdictions illustrates that legal exposure in carbon credit-related environmental marketing frequently arises not from the quality of the credits themselves, but from how climate claims are presented and understood by consumers. Courts have focused on the "net impression" created for consumers, encompassing timing, scope, implied meaning, and the durability of the environmental benefit asserted. Safe harbor mechanisms focused on credit integrity alone may not shield companies from liability where claims are found misleading on these grounds.

5.1. Deutsche Umwelthilfe v. Apple Distribution International (Frankfurt, 2025)

The Frankfurt Commercial Court found Apple's "carbon neutral" product claim misleading under German unfair competition law.[8] The central issue was not the technical integrity of the carbon credits, but the mismatch between the consumer's reasonable expectation of durable neutrality – informed by the Paris Agreement objective of limiting warming to 1.5°C by mid-century – and the temporal scope of the offsetting measures relied upon. The eucalyptus forestry project underlying Apple's claim was subject to land leases expiring in 2029, creating a structural permanence risk that, according to the Court, Apple's argument about the Verra buffer pool could not cure.

A statutory defense modelled on AB 1911 would primarily shield companies where the credibility or methodological integrity of the carbon credits themselves is challenged. In this case, however, the flaw identified by the court concerned the representation made to consumers. Even if the Verra programme were assumed to satisfy statutory eligibility criteria, the court could still find that the marketing claim was misleading because it implied a permanence factor that the underlying mitigation activity did not guarantee. Accordingly, a credit-integrity safe harbor would likely not have prevented liability in these proceedings.

5.2. Dib et al. v. Apple Inc. (N.D. California, 2026)

The Northern District of California dismissed this complaint at the pleading stage because plaintiffs failed to present competent and reliable evidentiary support for their allegation that Apple's carbon neutrality claims were false or misleading.[9] The court applied the evidentiary framework reflected in the FTC Green Guides and false advertising jurisprudence, holding that allegations challenging environmental marketing claims must be supported by competent and reliable scientific evidence. Plaintiffs' reliance on law firm analyses using publicly available data tools, without independent scientific validation, was insufficient.

Had California's proposed safe harbor under AB 1911 been in force, AB 1911 would have provided a different, and potentially more favorable, defense framework: providing a substantive defence where the challenged claim is based on credits from a qualifying programme, rather than addressing the sufficiency of plaintiffs' evidence. If Apple's offsets originated from a CARB-approved or CORSIA-eligible programme, such as Verra, the company could potentially invoke the statutory defence. However, the safe harbor would not resolve all theories of liability – courts could still assess whether the representation itself created a broader or more durable impression than the offsets could substantiate.

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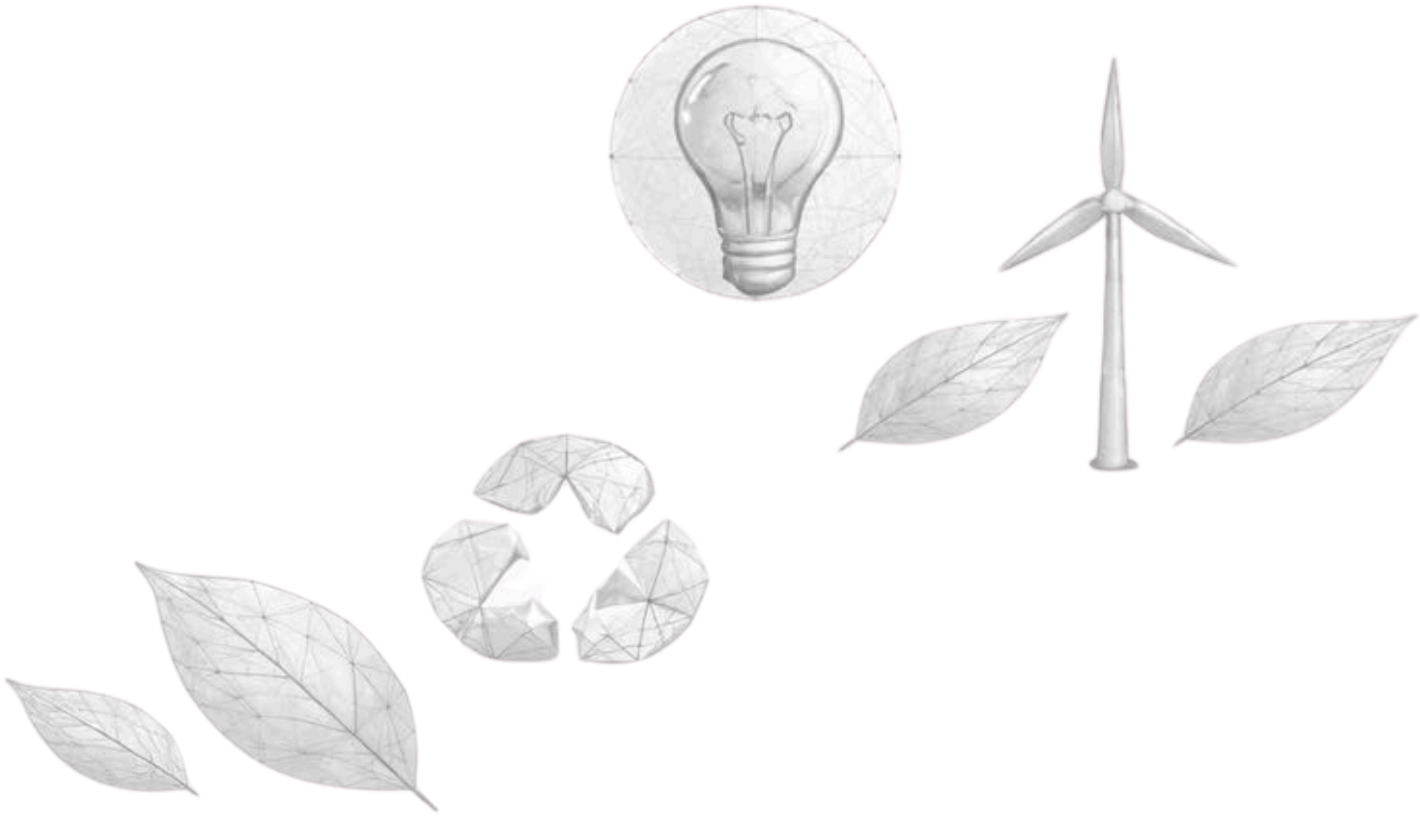
[8] Deutsche Umwelthilfe v. Apple Distribution International (Frankfurt, 2025).

[9] Dib et al. v. Apple Inc., (N.D. California, February 2026).

5.3. Berrin v. Delta Air Lines Inc. (C.D. California, 2023–ongoing)

This case represents one of the most prominent challenges to corporate carbon neutrality claims in the United States.[10] The plaintiff alleges that Delta's repeated assertion of being "the world's first carbon-neutral airline" was materially misleading because Delta relied on voluntary carbon offsets that allegedly did not produce real, additional, or permanent emissions reductions. The complaint alleges violations of California's CLRA, FAL, and UCL.

Had AB 1911 been in force when the claim was filed, it could have significantly affected Delta's defence where credits originated from qualifying programmes – potentially shifting the litigation away from a substantive debate about the scientific credibility of individual offset projects toward a threshold question of programme eligibility. However, the safe harbor would not have provided absolute immunity. Courts could still consider whether the phrase "the world's first carbon-neutral airline" conveyed a broader impression – such as complete or permanent neutrality – that offsetting alone cannot substantiate. The residual exposure arising from the framing and scope of the claim would remain.



[10] Berrin v. Delta Air Lines Inc. (C.D. California, 2023–ongoing).

6. An Actionable Approach

The analysis above supports a two-layer framework for understanding and managing legal risk in carbon credit-based environmental marketing:

- **Carbon credit integrity** – the methodological, governance, and verification quality of the underlying carbon credits. This layer is addressed by statutory safe harbor mechanisms such as the proposed AB 1911, which condition protection on the use of credits from qualifying programmes. The Swiss FOEN guidance also operates at this layer, by defining when company-level claims based on offsets are substantively permissible.
- **Claim integrity** – the accuracy, scope, and consumer impression of the marketing representation itself. This layer is governed by disclosure requirements, claim wording standards, and consumer perception norms, as reflected in the FTC Green Guides and the ICC Environmental Marketing Framework. Case law from Frankfurt and U.S. federal courts confirms that this layer is frequently the decisive one in litigation.

An effective legal framework must address both carbon credit integrity and claim integrity. Credit integrity without claim integrity leaves companies exposed to liability arising from the manner in which claims are framed. Claim integrity without credit integrity leaves companies exposed to challenges to the validity of the offsets themselves.

In the near term, this points to an actionable "soft law" framework that addresses both dimensions in a single integrated instrument. Such a standard would, for example:

- specify minimum integrity criteria for the carbon credits relied upon, aligned with existing programme standards and regulatory approval lists;
- establish requirements for how claims are worded, qualified, and disclosed to avoid creating a misleading net impression;
- require transparency about the scope of the claim (product-level or company-level), the vintage and source of the credits, and the temporal basis of the neutrality asserted;
- distinguish clearly between direct emission reductions and offsetting, and ensure that claims do not imply a degree of permanence or completeness that the offsets cannot guarantee;
- be compatible with emerging statutory frameworks, so that compliance with the industry standard can ultimately serve as a pathway to eligibility under a formal safe harbor.

In the long term, the goal is a model statutory safe harbor standard capable of adoption across multiple jurisdictions – building on the AB 1911 template while incorporating lessons from the EU and Swiss frameworks regarding the importance of claim-side standards.

An effective legal framework must address both carbon credit integrity and claim integrity.

7. Conclusion

Safe harbor mechanisms hold genuine promise as tools for reducing the legal uncertainty that currently constrains demand in voluntary carbon markets. By providing conditional protection to companies that rely on high-integrity carbon credits, they can reduce barriers to market participation, increase demand for quality credits, and support the broader objective of channeling private finance toward verifiable decarbonisation activity.

However, as this paper has demonstrated, safe harbors focused on credit integrity alone are not sufficient. Courts have consistently found that liability may arise from the manner in which claims are framed and the consumer impression they create, independently of the quality of the underlying credits. Both the Frankfurt Apple litigation and the Delta Air Lines case illustrate that the "net impression" standard applied by courts encompasses varied dimensions – temporal scope, implied permanence, claim framing – that credit-integrity mechanisms do not address.

The path forward requires a dual approach: promoting statutory safe harbor mechanisms at the jurisdictional level, building toward a model standard capable of adoption across legal systems; and developing a near-term, soft standard that addresses both layers of legal risk. Together, these tools can provide a foundation for credible and legally robust climate claims, enabling carbon markets to function as the instruments of decarbonisation they are designed to be.

Annex

This Annex provides a comparative overview of existing safe harbor mechanisms across U.S. and EU in legal domains unrelated to green claims and carbon credits. It describes the architecture, conditions, and scope of each instrument, and identifies the structural lessons they offer for the design of a safe harbor mechanism adapted to the carbon credit context.

U.S. Frameworks

The Digital Millennium Copyright Act (DMCA)

Section 512(c) of the DMCA,[11] limits the legal exposure of online service providers for copyright infringement arising from material uploaded by users to their platforms. The provision conditions protection on the absence of actual or constructive knowledge of infringing activity, the absence of a direct financial benefit from such activity, and prompt action to remove or disable access to infringing material upon notification. This structure – immunity contingent on specified conduct – is paradigmatic of the U.S. safe harbor model.

The Endangered Species Act (ESA)

Under Section 10(a)(1)(A) of the ESA,[12] landowners may enter into voluntary Safe Harbor Agreements (**SHAs**) with the U.S. Fish and Wildlife Service, whereby the landowner agrees to undertake habitat improvements for listed species in exchange for assurances that future incidental take resulting from those improvements will be authorised. The arrangement enables conservation activity that would otherwise create liability, by defining in advance the conditions under which taking is permissible.

[11] The Digital Millennium Copyright Act of 1998, 112 Stat. 2860 - Public Law No. 105-304 (10/28/1998).
[12] The Endangered Species Act (ESA) of 1973, 16 U.S.C. §§1531-1544.

EU Frameworks

Soft Safe Harbor for Sustainability Agreements (2023 Horizontal Guidelines)

The European Commission's 2023 Horizontal Guidelines introduce a "soft safe harbor" for sustainability standardisation agreements between competitors.[13] Unlike statutory safe harbors that confer automatic immunity, the mechanism identifies six cumulative conditions under which the Commission is unlikely to treat such arrangements as restrictions of competition under Article 101(1) TFEU.

The structural distinction is important: the EU instrument is administrative guidance, not statutory protection. It signals enforcement priorities and provides legal predictability, but does not shield parties from proceedings brought by third parties or national authorities applying domestic competition law.

Proposed Soft Safe Harbor for Licensing Negotiation Groups (Draft Revised Technology Transfer Guidelines, 2025)

In September 2025, the European Commission published draft revisions to the Technology Transfer Block Exemption Regulation (**TTBER**) and accompanying guidelines, which address Licensing Negotiation Groups (**LNGs**) – arrangements in which technology implementers jointly negotiate licensing terms with intellectual property holders.[14] The proposal introduces a soft safe harbor framework modelled on the sustainability standardisation mechanism, identifying seven conditions under which LNG arrangements are unlikely to restrict competition under Article 101(1) TFEU.

This development is notable as a further example of the EU's preference for conditional, guidance-based legal predictability over the affirmative statutory immunity characteristic of the U.S. model.

[13] 2023/C 259/01 - Communication from the Commission – Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements.

[14] C/2025/5024 - Communication from the Commission – Approval of the content of a draft for a Commission Regulation on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements and a draft for Commission Guidelines on the application of Article 101 of the Treaty to technology transfer agreements.

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Part II

The Two-Dimensional Legal Framework for Carbon Credit Use: Credit Eligibility and Green Claims

Executive Summary

The first part identified two distinct dimensions of legal risk confronting corporations that use carbon credits to substantiate environmental claims: credit integrity - the methodological and governance quality of the underlying credits; and claim integrity - the accuracy, scope, and consumer impression of the claim itself. It further identified, as the central structural challenge, that no jurisdiction has yet enacted a comprehensive legal framework addressing both dimensions simultaneously.

This part addresses that gap from two complementary angles.

The first chapter examines how 9 select jurisdictions and an international compliance mechanism determine which carbon credits qualify for regulatory use. It maps the different architectural approaches - programme whitelists, bilateral agreement frameworks, project-type protocol lists, and identifies the cross-cutting eligibility requirements that are emerging as a de-facto global standard. This analysis directly informs the credit-integrity dimension of a future safe harbor: it identifies what "qualifying" credits look like in existing compliance systems, and what criteria a safe harbor mechanism should incorporate or reference.

The second chapter examines the claim-integrity dimension across 8 select jurisdictions. It distills a concise classification of key environmental marketing claims as permitted, conditional, or prohibited under existing domestic laws, providing practitioners and market participants with actionable guidance on how to structure green claims in a manner that reduces regulatory and litigation exposure.

Together, the two chapters constitute the analytical foundation for a model soft standard, one that addresses both dimensions of legal risk in a single integrated instrument, as recommended in the first part. Together, they intend to support IETA and the Coalition to Grow Carbon Markets in the next phase of this work stream: the development of a safe harbor framework for corporate green claims on the use of carbon credits.

1. Recognition of Carbon Credits in Compliance Systems and Article 6.2 Frameworks: A Comparative Analysis of Whitelists and Eligibility Criteria

The following surveys the legal mechanisms by which national and international compliance systems determine which carbon credits are eligible for regulatory use. The answers vary widely across jurisdictions, from open-registry approval lists to bilateral government agreements, to project-type whitelists. In practice, jurisdictions often combine these approaches. The following sections analyze the eligibility frameworks of the principal compliance systems, proceeding from sector-specific international mechanisms (CORSIA), to domestic ETS and carbon tax regimes, and concluding with the Article 6.2 bilateral framework.

1.1. CORSIA

Carbon Offsetting and Reduction Scheme for International Aviation (**CORSIA**), administered by the International Civil Aviation Organization (**ICAO**), constitutes the most globally influential credit eligibility whitelist in operation. Airlines operating international routes between participating states must offset emissions above their 2019 baseline by surrendering CORSIA Eligible Emissions Units (**CEEUs**).

Eligibility is determined through a two-stage assessment. Emissions unit programmes are evaluated by ICAO's Technical Advisory Body (**TAB**) against the CORSIA Emissions Unit Eligibility Criteria, a set of program design and carbon offset credit integrity requirements. ICAO Council approves or rejects TAB recommendations.

CORSIA operates in three phases. Credits must have vintage from 1 January 2021 onwards and must be authorized by the host country through an attestation.[15]

- **Phase 1 (2024–2026): programmes that are fully approved**: American Carbon Registry (ACR); Architecture for REDD+ Transactions (**ART TREES**); BioCarbon Fund for Sustainable Forest Landscapes (**ISFL**); Climate Action Reserve (CAR); Forest Carbon Partnership Facility (**FCPF**); Global Carbon Council (**GCC**); Gold Standard (**GS**); Isometric; Premium Thailand Voluntary Emission Reduction Program (**T-VER**); Verified Carbon Standard (**VCS**).
- **Phase 2 (2027–2029)**: Following a 2025 reassessment cycle, four programmes have been confirmed eligible: ACR, ART TREES, GS, and VCS.

Key Eligibility Conditions (in addition to the programs being fully approved as stated in sections 3.1 and 3.2):

- Credits must originate from projects commencing 2016 or later (for vintages from 2021 onwards, a host-country attestation confirming non-double counting is required).
- Credits must carry a corresponding adjustment.
- **Certain methodologies and project types are excluded within each approved programme** (the programme-level scope of eligibility document is controlling).[16]

[15] https://www.icao.int/sites/default/files/environmental-protection/CORSIA/Documents/CORSIA%20Eligible%20Emissions%20Units/CORSIA-Eligible-Emissions-Units_April-2026.pdf

[16] Id.

1.2. **Singapore**

Under the Carbon Pricing (Amendment) Act 2022, carbon-taxable facilities in Singapore may offset up to 5% of taxable emissions using eligible International Carbon Credits (ICCs) from 1 January 2024.

ICC eligibility is governed by the Carbon Pricing (Carbon Tax and Carbon Credits Registry) (Amendment) Regulations 2023. **Eligibility requires that credits be**: (i) aligned with Article 6; (ii) not double-counted; (iii) additional; (iv) real; (v) quantified and verified; (vi) permanent; (vii) no-net-harm; and (viii) no-leakage.[17]

Singapore maintains a published **Eligibility List** structured around approved host countries, each paired with specific accreditation programmes and approved methodologies. The list is subject to annual review by the Ministry of Trade and Industry (MTI). As of 2025, the approved country-programme pairings include:

Host Country	Approved Programme(s)	Methodology Scope / Key Restrictions
Ghana	GS4GG; VCS	Active methodologies published before 31 March 2023. GS4GG: excludes Land Use & Forestry; VCS: excludes Sectoral Scope 14 (with exceptions).
Bhutan	GS4GG; VCS; ACR; GCC; ART	Same scope as Ghana, in addition: ACR - All active methodologies published before 31 March 2023, except methodologies under the "Sectoral Scope 3 (Land Use, Land Use Change and Forestry); GCC - All active methodologies published before 31 March 2023, with certain exemptions; Architecture for REDD+ Transactions (ART) - All active methodologies published before 31 March 2023.
Peru	GS4GG; VCS	Selected methodologies per bilateral list.

[17] https://www.carbonmarkets-cooperation.gov.sg/environmental-integrity/overall-eligibility-list/

Rwanda	GS4GG; VCS; ACR; GCC	Selected methodologies per bilateral list.
Thailand	GS4GG; VCS; GCC; ART	Selected methodologies per bilateral list.

The Singapore Government sought to identify projects from around the world that could generate high-quality NBS carbon credits with high environmental integrity.[18] Key features of these projects include ensuring additionality, low leakage risks, permanence, and co-benefits to surrounding communities. The contracted projects must use methodologies bilaterally agreed to by Singapore and the respective host country, and secure authorisation under the relevant government-to-government Implementation Agreement (IA). To date, Singapore has signed nine implementation agreements (IAs) with Bhutan, Chile, Ghana, Papua New Guinea, Peru, Paraguay, Rwanda, Thailand, and Vietnam.

1.3. **South Africa**

South Africa's carbon tax, introduced in 2019, allows liable entities to offset a portion of their taxable emissions using "approved project" credits, based on a Registry/Standard Whitelist approach.[19] Approved projects are defined in the Carbon Offset Regulations as:

- Clean Development Mechanism (**CDM**) projects;
- VCS projects;
- GS projects;
- Any project complying with another standard approved by the Minister of Mineral Resources and Energy (open-ended future expansion).

1.4. **Korea**

Korea's Emissions Trading Scheme (**K-ETS**) permits the use of domestic offset credits and, from Phase 4 (2026-2030), also international credits meeting Article 6 requirements. The credit eligibility rules are:[20]

·Domestic offsets: Issued by entities not subject to K-ETS legal obligations, for projects that began after December 2016 (the domestic entry into force of the Paris Agreement).

·International offsets (new in Phase 4): Credits from ex-post projects complying with Article 6 of the Paris Agreement are accepted. Credits must carry a corresponding adjustment.

[18] https://www.nccs.gov.sg/singapore-will-contract-high-quality-nature-based-carbon-credits-from-four-projects/

[19] https://carbon.dee.gov.za/Documents/Docs/2019%20Carbon%20Offset%20Regulations.pdf

[20] https://icapcarbonaction.com/en/ets/korea-emissions-trading-system-k-ets

1.5. **Canada**

Canada's federal Output-Based Pricing System (**OBPS**) is a strict domestic-only system. Two categories of Offset Credits are eligible:[21]

- **Federal GHG Offset Credits**: Issued under Canada's federal GHG Offset Credit System, applicable pursuant to four published protocols: (i) landfill methane recovery and destruction; (ii) reduction of GHG emissions from refrigeration systems; (iii) improved forest management on private land; and (iv) reducing enteric methane emissions from beef cattle.
- **Recognized Units**: Credits issued by a provincial or territorial offset program under a recognized offset protocol appearing on the federal List of Recognized Offset Programs and Protocols. Must have been issued for projects located in Canada, commenced in 2017 or later, verified, and eligible under the relevant provincial pricing mechanism.
- Credits must have been issued no earlier than 2017 and for reductions occurring no more than eight years before the compliance deadline. International credits are categorically excluded. Canada thus operates a pure domestic Project-Type / Protocol Whitelist combined with a country-of-origin requirement (Canada only).

1.6. **Chile**

Chile's carbon tax, applicable to large emitters, permits offsetting using credits that must be:[22]

- Located within Chile (country-of-origin restriction);
- Certified under an approved standard: VCS, GS, CDM, BioCarbon, or Cercarbono;
- Recorded in the National Registry of Emission Reduction Projects;
- Issued with a vintage no more than three years old at the time of retirement;
- Additional, measurable, verifiable, and permanent; and
- Consistent with Chile's NDC.

Chile has developed one of the most detailed Article 6.2 regulatory frameworks in Latin America, enacted through Supreme Decree No. 32 of 24 October 2024, published in the Diario Oficial on 13 December 2025 (the **Decree**).[23] The Decree was issued pursuant to Article 15(5) of Law No. 21,455 (**the Framework Climate Change Law)**, which mandated the Ministry of Environment to regulate GHG reduction certificates arising from international cooperation under Article 6 of the Paris Agreement.

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[21] https://icapcarbonaction.com/en/ets/canada-federal-output-based-pricing-system;https://www.canada.ca/en/environment-climate-change/news/2022/06/canadas-greenhouse-gas-offset-credit-system.html;https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/output-based-pricing-system/list-recognized-offset-programs-protocols.html

[22] https://www.carbonmark.com/post/chilean-carbon-market-green-tax-offsets-and-the-voluntary-program;https://portalcompensaciones.mma.gob.cl/repositorio/

[23] https://www.diariooficial.interior.gob.cl/publicaciones/2025/12/13/44323/01/2741615.pdf

The Article 6.2 framework does not prescribe a fixed list of eligible programmes. Instead, it establishes a two-tier eligibility architecture.

- First, any certification programme must be formally recognized by the Ministry of Environment by ministerial resolution and must demonstrate: (i) methodologies ensuring additionality, environmental integrity, and no double-counting; (ii) a public registry with unique serial codes; and (iii) independent third-party auditing mechanisms.
- Second, individual methodologies within a recognized programme must be separately validated by the Ministry and entered into a public catalogue of approved methodologies (catastro público). A methodology is validated if it: (i) allows demonstration of additionality; (ii) aligns with Chile's national GHG inventory parameters; and (iii) applies ambitious baseline benchmarks below historical emissions trajectories (Article 27). Any person may request validation of a new methodology, including concurrently with a project authorization application (Article 28).

A credit qualifies as an ITMO under the Decree only if it: (a) is measured in tCO_2-equivalent or another unit consistent with the NDC commitments of the parties; (b) is real, measurable, verified, additional, and permanent; (c) originates from mitigation, adaptation, or economic diversification activities; (d) represents reductions or removals achieved from 2021 onwards; and (e) has been authorized by the Ministry for international transfer (Article 11).

1.7. **Colombia**

- Colombia's carbon tax permits offsetting using credits, subject to:[24]
- Credits generated in or after 2010;
- Activities located within Colombia (domestic-only requirement);
- Minimum five-year vintage;
- Demonstrated additionality through baseline construction, validation, and verification;
- Issued under approved international standards (Verra, GS, CDM, Cercarbono, ColcX, Biocarbon Registry and GHG Clean Projects).[25]

[24] https://cdm.unfccc.int/sunsetcms/storage/contents/stored-file-20250321112059587/2.2_9_EB%20124_Market%20and%20policy%20developments_rev.pdf; https://blog.alliedoffsets.com/vcm-credits-eligible-for-compliance-tax-schemes

[25] https://www.spar6c.org/sites/default/files/downloads/resource/Carbon%20Standards%20-%20Col.pdf

1.8. **Japan**

Under the Joint Crediting Mechanism (**JCM**), Japan maintains an official, transparent and very specific list of approved methodologies for each partner country (for example, a specific methodology for installing solar panels on rooftops in Thailand or improving energy efficiency in steel mills in Indonesia).[26]

1.9. **Switzerland**

The conditions and procedure for issuing attestations are set out in Articles 5 to 14 of the Ordinance on the Reduction of CO_2 Emissions (**CO_2 Ordinance**),[27] which contain the substantive eligibility requirements. At the operational level, the "Offsetting CO_2 Emissions: Projects and Programmes" Notice (**UV-1315**),[28] constitutes the primary enforcement guidance document, and the "Process Description for Authorization and Specific Requirements for MRV of Mitigation Activities under Art. 6 of the Paris Agreement" (**V 4.4**).[29]

Eligible project types: Only project types not explicitly precluded in Annex 2 of the CO_2 Ordinance (for projects abroad) may receive attestations.[30]

- **State of the art**: A project must correspond to at least the current state of the art. For projects abroad, this is assessed primarily against local conditions in the partner country, though large companies must apply internationally recognized standards as far as possible.
- **Compliance with applicable legal provisions**: Projects abroad must comply with the legal requirements of the partner country (including environmental protection law) and with the bilateral agreement between Switzerland and the host country.
- **Additionality**: Projects must achieve emission reductions that would not otherwise be achieved. Financial additionality is specifically required: the project must not be economically feasible without income from the sale of attestations.
- **Conservativeness**: Emission reductions must be calculated conservatively. Where parameters can only be determined imprecisely, the degree of imprecision must be factored in to avoid overstating reductions.
- **No double counting**: Emission reductions may not be credited elsewhere, whether to another organization or another country. Operationalized through the corresponding adjustment mechanism under the applicable bilateral agreement.

[26] https://www.jcm.go.jp/jc/methodologies

[27] https://www.fedlex.admin.ch/eli/cc/2012/856/en

[28] https://www.bafu.admin.ch/dam/en/sd-web/hWse-MQz581O/UV-1315%20CO2-VO%20Kompensation%20von%20CO2-Emissionen%20Projekte%20und%20Programme_EN.pdf

[29] https://www.carbonoffset.admin.ch/dam/en/sd-web/4bL7ZLsRzVGC/Process%20description%20authorisation%20and%20MRV%20art.%206%20PA%20V4.3%20March%202026.pdf

[30] https://www.fedlex.admin.ch/eli/cc/2012/856/en

- **Contribution to sustainable development**: Projects abroad must contribute to sustainable development in the partner country.
- **Bilateral agreement requirement**: Only projects implemented in partner countries with an existing bilateral agreement, or where negotiations are at an advanced stage, can be deemed eligible.
- **Delimitation from NDC**: The reference scenario for projects abroad must be delimited from the host country's NDC commitments to avoid crediting reductions that the host country is already obligated to deliver.

V4.4 contains binding technical guidelines for five currently approved activity types, reflecting Switzerland's operational portfolio: Cookstoves, Rice methane reduction, Photovoltaic projects, Battery Energy Storage Systems / BESS, Electric mobility programmes.[31]

1.10. **Summary**

- Approach 1 — Program/Registry Whitelist. The most widely used approach: the regulatory body approves specific standards and registries (VCS, Gold Standard, ACR, etc.).
- Approach 2 — Project-Type / Protocol Whitelist. Canada, Singapore and Japan restrict eligibility to specific methodologies. Canada limits compliance use to four federal protocols (landfill methane, refrigerant management, private forest management, and enteric methane), while Japan maintains country-specific and technology-specific methodology lists under the JCM bilateral mechanism.
- Approach 3 — Two-Tier Bilateral Architecture (Article 6.2). Switzerland and Chile represent the most developed post-Paris frameworks. Both require: (i) a government-to-government bilateral agreement; (ii) governmental project-level authorization; (iii) a corresponding adjustment; and (iv) NDC delimitation to avoid double crediting of host-country obligations.
- Cross-cutting trends. All systems require additionality, permanence, and independent verification. The corresponding adjustment requirement has become a de-facto standard for newer frameworks (CORSIA Phase 2, Korea Phase 4, Switzerland, Chile). Geographic scope ranges from strictly domestic (Canada, Colombia) to internationally open subject to bilateral conditions (Singapore, CORSIA).

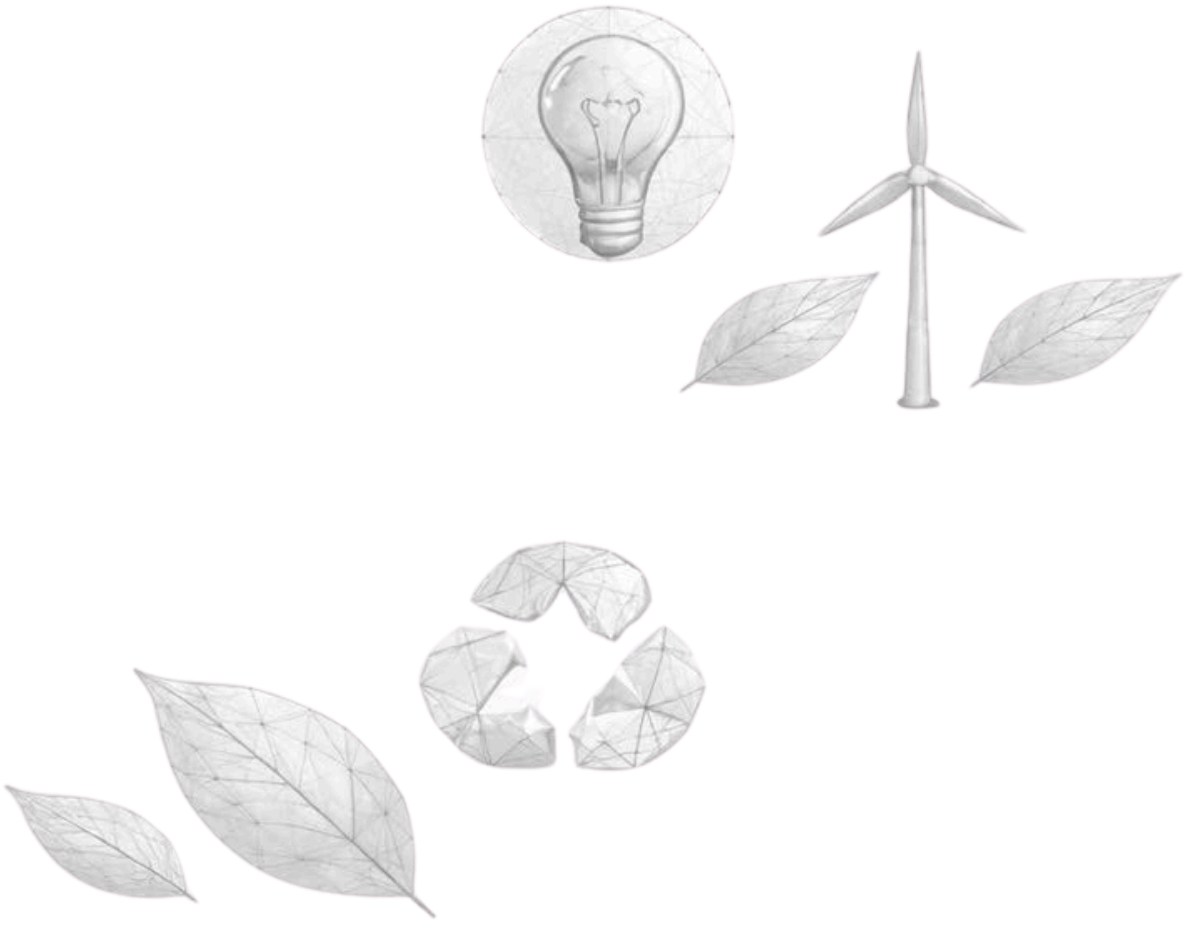
[31] See the approved activities in here: https://www.klik.ch/en/international/activities/

The following table provides a comparative overview of the credit recognition frameworks examined in this chapter. For each jurisdiction, it sets out the type of eligibility mechanism applied (whether a programme whitelist, a bilateral agreement framework, or a domestic protocol system), the standards or programmes currently recognized, whether Article 6 alignment and corresponding adjustments are required as a condition of eligibility, and the principal substantive restrictions applicable to credits used for compliance purposes.

Jurisdiction	Mechanism Type	Eligible Programs / Standards	Art. 6 / CA Requirement	Key Restrictions
CORSIA (ICAO)	Program Whitelist	ACR, ART TREES, GS, VCS (Phase 2: 2027-2029)	Corresponding adjustment required; host-country attestation	Vintage ≥ 2021; projects from 2016+; methodology exclusions per program; Phase 2 narrows to 4 programs
Singapore	Country-Program Eligibility List (bilateral + annual MTI review)	GS4GG, VCS, ACR, GCC, ART (varies by host country)	Article 6-aligned; CA required; government-to-government Implementation Agreement	Up to 5% of taxable emissions; active methodologies before 31 March 2023; LULUCF exclusions vary by program
South Africa	Registry / Standard Whitelist	CDM, VCS (Verra), Gold Standard; + Minister-approved standards	Not explicitly required (pre-Article 6 framework)	Applicable to liable entities under carbon tax; percentage offset limit applies
Korea (K-ETS)	Domestic offsets (own system); Article 6-compliant credits (Phase 4+)	Domestic: K-ETS issued credits; International (Phase 4): Article 6-compliant credits	Corresponding adjustment required for international credits	Domestic: projects post-Dec 2016, entities not subject to K-ETS; International: ex post, Article 6 compliant

Jurisdiction	Mechanism Type	Eligible Programs / Standards	Art. 6 / CA Requirement	Key Restrictions
Canada (OBPS)	Protocol/Project -Type Whitelist (domestic only)	Federal GHG Offset Credits (4 protocols); Recognized Units (provincial programs)	N/A – international credits excluded	Issued no earlier than 2017; reductions within 8 years of compliance deadline; 4 federal protocols: landfill methane, refrigerants, forest mgmt., enteric methane
Chile	Standard Whitelist + Article 6.2 bilateral framework (Decree No. 32/2024)	VCS, Gold Standard, CDM, BioCarbon, Cercarbono; Article 6.2: Ministry-recognized programs + validated methodology catalogue	ITMO framework: Ministry authorization required; vintage ≥ 2021; CA implied	Vintage ≤ 3 years at retirement; NDC-consistent; Article 6.2 requires programme recognition + per-methodology validation
Colombia	Standard Whitelist (domestic)	Verra, Gold Standard, CDM, Cercarbono, ColcX, Biocarbon Registry, GHG Clean Projects	Not required (domestic carbon tax framework)	Credits from 2010+; min. 5-year vintage; domestic only; additionality via baseline construction
Japan (JCM)	Country-specific Methodology Whitelist (bilateral)	JCM-approved methodologies per partner country (e.g., solar PV in Thailand, efficiency in Indonesia)	Bilateral crediting mechanism; credits counted toward Japan's NDC and CA by design	Highly granular per-country, per-technology methodology lists; no general standard approval

Jurisdiction	Mechanism Type	Eligible Programs / Standards	Art. 6 / CA Requirement	Key Restrictions
Switzerland	Project-Type Whitelist + Bilateral Agreement Requirement (CO_2 Ordinance + UV-1315 + V4.4)	5 approved activity types: cookstoves, rice methane, PV, BESS, electric mobility	Corresponding adjustment via bilateral agreement; NDC delimitation required	State-of-the-art standard; financial additionality required; conservativeness in calculations; sustainable development contribution required; partner country legal compliance



2. Permitted Green Claims on Corporate Use of Carbon Credits

The following provides guidance on which green marketing claims are legally permitted when a company uses carbon credits (voluntary or compliance), and under what conditions. The analysis draws on the following sources:

- EU Directive 2024/825 (Empowering Consumers for the Green Transition / EmpCo)
- Swiss FOEN Enforcement Aid UV-2561 (January 2026, under UWG Art. 3(1)(x))
- French Decree No. 2022-539 of 13 April 2022 (Loi Climat et Résilience)
- California Assembly Bill No. 1305 (AB 1305, effective 2024)
- UK CMA guidance on environmental claims on goods and services (CMA146, 2021)
- Australia Making environmental claims A guide for business (ACCC, December 2023)
- Spain Guide to Sustainable Communication (Ministry of Social Rights, 2024)

The table below summarises the regulatory status of key green claims across the jurisdictions reviewed. "Carbon credits" refers to voluntary carbon market credits (VCM) unless otherwise specified.

Claim / Term	Carbon Credits?	Key Conditions
Climate/Carbon Contribution Claim	**Permitted**	Company finances GHG reductions outside its value chain without quantitatively netting them against its own emissions. Must clearly state it is a contribution, not a compensation. Safest formulation available in all reviewed jurisdictions (Swiss FOEN §2.4; EU EmpCo recital 12).[32]
We support / invest in carbon projects	**Permitted**	Permitted in all reviewed jurisdictions as long as the communication does not imply that such support constitutes direct compensation for the company's or product's own emissions. Must be presented as a climate contribution, not a neutrality claim. (EU EmpCo recital 12; Swiss FOEN §2.4).

[32] In Australia, where offsetting is used for only part of operations, the claim must specify precisely which emissions have been offset and place this in the context of total emissions. A claim implying company-wide offset where only a fraction of emissions are covered will be misleading (ACCC, pg. 18).

Claim / Term	Carbon Credits?	Key Conditions
Net Zero [Year] (company-level)	**Conditional**	Must be accompanied by a credible, publicly available reduction roadmap with measurable interim targets. Under Swiss FOEN, Future-state must be clearly communicated (Swiss FOEN §2.4; EU EmpCo Art. 6(2)(d)).[33]
CO_2-Neutral / GHG-Neutral (company-level)	**Conditional**	Permitted only for company-level claims (not products). Requires: (1) maximum in-chain reductions, (2) residual hard-to-abate emissions offset exclusively by negative emissions (ITMOs or national certificates). Standard VCM avoidance credits are insufficient (Swiss FOEN §2.4). Product\Company Level - under Swiss FOEN – Product is prohibited, Company Level is conditional.
50% Offset / Partially Offset	**Conditional**	Permitted for company-level claims where the quantitative scope is clearly stated and the underlying credits meet applicable quality standards (Swiss FOEN §2.3: additionality, permanence, no double counting, independent verification). Product-level use is restricted.

[33] In Australia baseline emissions assessment must use established methodologies; claims must clearly state which emission sources are included and excluded; offsets used must be verified, listed on a recognised registry, and annually cancelled/surrendered with public reporting. Future net-zero claims require existing board-approved investment plans, not aspirational intent alone (ACCC p. 24–25).

Claim / Term	Carbon Credits?	Key Conditions
Carbon Neutral (product-level)	**Conditional/ Prohibited**	Prohibited under the EU (EmpCo) and Switzerland (FOEN) when based on offsets. Permitted in France only with full lifecycle GHG report (ISO 14067), annual reduction trajectory, and detailed offset disclosure (Decree 2022-539). Permitted in California with full website disclosure under AB 1305. In the UK, where offsetting is used, the scheme must be based on recognised standards and capable of objective verification (CMA Guidance, §3.72–3.73). In Australia product-level carbon neutral claims based on offsets require disclosure of the specific offset projects used, verification that abatement has not been double-counted across registries, and annual cancellation records. A "carbon neutral product" claim that is opt-in (e.g., consumer pays a premium) must make this clearly apparent and not imply it is a default feature (ACCC p. 24–25). In Spain, communications based on CO_2 equivalent offsets must "avoid creating the false impression among the public that the consumption of these products has no environmental impact from a climate point of view". The Guide identifies "climate neutral product" and "climate offset product" as examples of claims that run this risk (Spain's Guide to Sustainable Communication §4).
Climate-Friendly / Climate-Conscious	**Conditional/ Prohibited**	Permitted regarding products and company level if the claim is substantiated with specific, verifiable evidence and is not based solely on external compensation measures. Generic use without specification is prohibited under EU EmpCo (Annex I, no. 4a) and equivalent Swiss rules.

Claim / Term	Carbon Credits?	Key Conditions
Climate Neutral (company or product)	**Prohibited**	Not verifiable under current scientific standards, which would require accounting for all non-GHG climate effects (condensation trails, albedo, etc.). Prohibited in Switzerland (FOEN UV-2561 §2.4). Not recommended in any jurisdiction reviewed.
CO_2 Positive / Carbon Positive	**Prohibited**	Same rationale as "climate neutral" - not currently verifiable. Prohibited in Switzerland (FOEN UV-2561 §2.4). Prohibited as product-level claim under EU EmpCo.
Reduced CO_2 Footprint / CO_2-Reduced	**Prohibited**	Permitted when reduction is real, measurable (absolute or relative), within the value chain or product lifecycle, and not based on external offsets. Must specify baseline, metric and magnitude of reduction (e.g., "30% fewer emissions vs. 2020 baseline"). (Swiss FOEN §2.4).

Conclusion

This part of the paper has examined the legal landscape governing corporate use of carbon credits from two complementary angles: the eligibility frameworks that determine which credits qualify for regulatory use, and the green claims frameworks that govern how those credits may be communicated to consumers and the public. Both analyses are oriented toward a single objective: providing the analytical foundation necessary to design a comprehensive safe harbor mechanism for corporate green claims based on carbon credits.

The comparative analysis of credit eligibility frameworks across 9 select jurisdictions and CORSIA reveals a field in active convergence. While the architectural approaches differ: programme whitelists, bilateral agreement frameworks, and project-type protocol lists, the substantive eligibility conditions that underpin them are increasingly uniform.

Additionality, permanence, independent verification, and the prevention of double-counting appear across every system surveyed, regardless of jurisdictional context or regulatory philosophy. The corresponding adjustment requirement, though absent from pre-Paris frameworks, has become a near-universal feature of systems established or revised since 2021. This convergence is significant for safe harbor design: it demonstrates that a model eligibility standard, one capable of functioning as the credit-integrity condition of a safe harbor mechanism, can be derived from existing regulatory practice without requiring jurisdictions to depart from established approaches. The groundwork, in other words, is already laid.

The analysis of permitted green claims across 8 jurisdictions reveals a more fragmented landscape, but with a discernible directional trend. Regulatory frameworks are converging around a clear hierarchy: contribution claims are the most widely permitted formulation; company-level neutrality claims remain conditionally available but are subject to increasingly stringent substantiation requirements; and product-level offset claims face outright prohibition or near-prohibitive conditions in the majority of jurisdictions reviewed. For safe harbor purposes, this hierarchy is directly instructive: it identifies the claim formulations to which a safe harbor can realistically extend protection, and those to which, given the EU EmpCo blacklist and equivalent national prohibitions, it cannot. A safe harbor that does not account for this hierarchy risks conferring protection that courts and regulators may not recognize.

Read together, the two reaffirm the structural insight that animated the first part of this paper: credit integrity and claim integrity are legally distinct dimensions, governed by different instruments, assessed by different standards, and addressed by different enforcement bodies. Both dimensions must be addressed within a single, integrated safe harbor instrument. The eligibility frameworks surveyed in the first part supply the credit-integrity component; the claims classification in the second supplies the claim-integrity component. A safe harbor that incorporates both - conditioning protection on the use of credits meeting convergent eligibility standards and limiting its scope to claim formulations that are permissible across the relevant jurisdictions, is both legally coherent and practically achievable.

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ABOUT HERZOG

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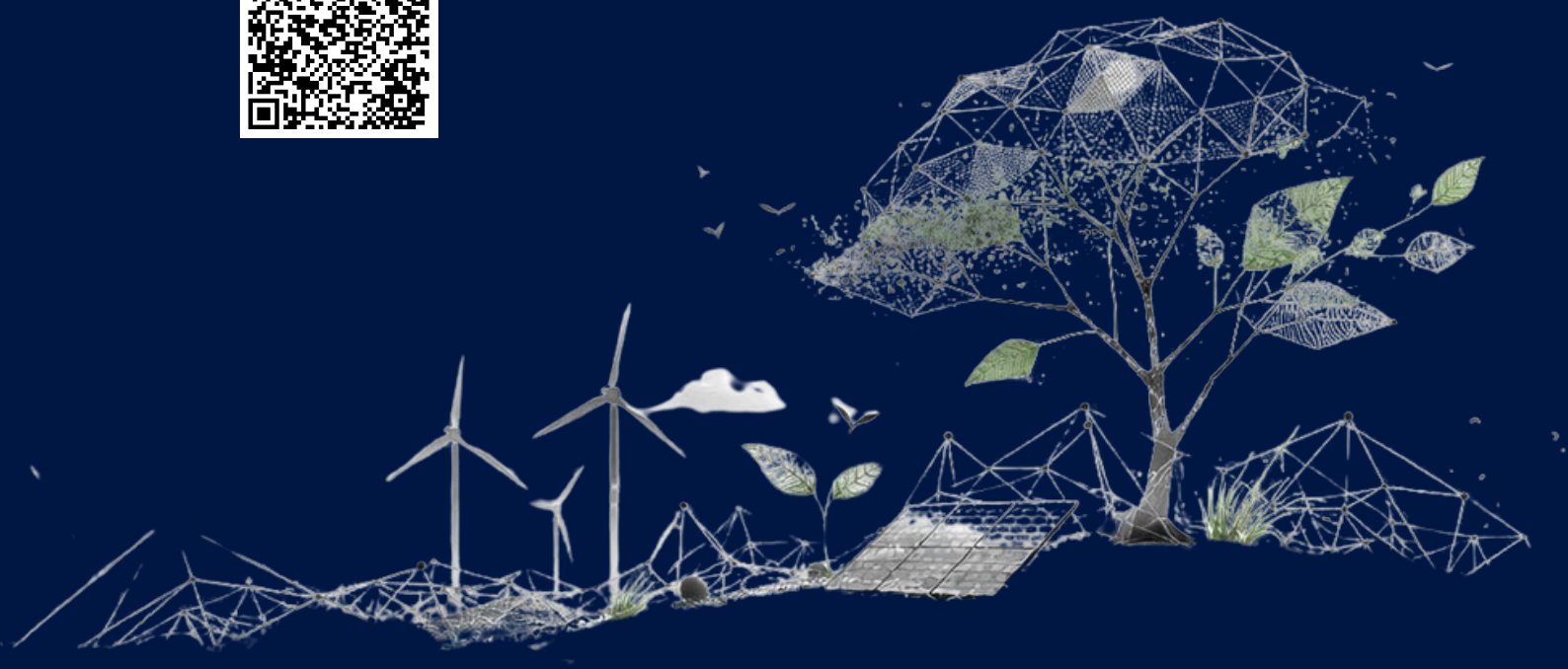
The Environment and Climate Change practice at Herzog Law offers its clients tailored regulatory and transactional advice on a broad range of innovative environment and climate change issues. Over the course of two decades, Herzog Law has consecutively been named a top-tier firm in the field of environment and climate change by both domestic and international rankings, including Chambers and Partners. Herzog Law works closely with clients on leveraging innovative sustainable finance tools to fund corporate decarbonization journeys and climate-tech projects. The team advises a multitude of leading domestic and multinational corporations and climate-tech companies, in a wide range of technology sectors, on carbon offsetting projects and transactions, global climate policy developments, legislation and regulation, and advises financial institutions and investment funds on environment and climate policy, risk management and transactional strategies. The practice is involved in both national and international forums developing carbon market tools and policies and is regarded globally as having exceptional practical expertise in the field.

Find out more about Herzog Law's Environment and Climate Change Practice

For more information:



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