

# Progress Report on Greenwashing

Response to the European Commission's request for input on "greenwashing risks and the supervision of sustainable finance policies"



## Table of Contents

Executive Summary .....	5
1 Introduction .....	8
2 Understanding greenwashing across sectors .....	10
2.1 Existing references to greenwashing .....	10
2.2 ESAs common high-level understanding of greenwashing.....	11
3 Assessing greenwashing-related financial risks .....	13
3.1 Entity- and product-level financial risks .....	13
3.2 System-wide risks and negative impacts.....	15
4 Greenwashing risks and their drivers .....	17
4.1 Characterising greenwashing along four key dimensions.....	17
4.1.1 The roles played by an actor in greenwashing .....	19
4.1.2 The topics of sustainability-related claims .....	19
4.1.3 The way in which a claim can be misleading.....	25
4.1.4 The various channels through which misleading claims can be communicated	27
4.2 Cross-cutting drivers of greenwashing .....	28
4.3 Issuers.....	32
4.3.1 High-risk areas.....	32
4.3.2 Underlying drivers of misleading sustainability claims .....	37
4.3.3 Possible remediation actions .....	37
4.4 Investment managers .....	39
4.4.1 High-risk areas.....	40
4.4.2 Underlying drivers of misleading sustainability claims .....	44
4.4.3 Possible remediation actions .....	46
4.5 Benchmark administrators .....	47
4.5.1 High-risk areas.....	48
4.5.2 Underlying drivers of misleading sustainability claims .....	50
4.5.3 Possible remediation actions .....	51

4.6	Investment services providers.....	54
4.6.1	High-risk areas.....	54
4.6.2	Underlying drivers of misleading sustainability claims .....	56
4.6.3	Possible remediation actions .....	58
4.7	Potential remediation actions to the identified greenwashing drivers and risks .....	60
4.7.1	Making the regulatory framework more robust against greenwashing risks.....	60
4.7.2	Upgrading firms' governance, processes, skills, IT systems .....	64
4.7.3	Establishing reliable, comprehensive sustainability data .....	65
4.7.4	Supporting comprehensibility for retail investors .....	67
5	High-level insights into monitoring and supervision of greenwashing .....	67
5.1	Monitoring greenwashing risks and occurrences.....	68
5.1.1	ESG-related controversies.....	69
5.1.2	Consumer complaints .....	69
5.1.3	Use of AI tools to support supervision of ESG-related disclosures.....	70
5.1.4	Next steps.....	71
5.2	Effective and consistent supervision .....	71
6	Annexes.....	73
6.1	Acronyms and definitions .....	73
6.2	ESMA's Methodology.....	77
6.3	EC's request for input on greenwashing.....	78
6.4	References to greenwashing in existing and forthcoming EU legislation.....	78
6.4.1	References in the existing EU regulatory framework.....	78
6.4.2	Other references to greenwashing outside of the EU framework .....	81
6.5	Call for evidence – supplemental presentation of main data .....	82
6.6	Securities and Markets Stakeholder Group advice.....	89
6.7	Controversies analysis – methodology and main findings .....	89

## Executive Summary

As ESG-related financial products and markets have experienced remarkable growth in the EU, National Competent Authorities (NCAs) and ESMA face expectations from stakeholders to step up in ensuring investor protection and market integrity and **maintain a trusted environment for sustainable investments**. The mismatch between growing demand for ESG products and the limited pool of assets that are deemed sustainable, in particular those in line with the high standard of the EU Taxonomy Regulation, creates a competitive drive for market participants to gain market share and revenue through bolstering their sustainability profiles, which may in some cases be misleading.

Against this background, **the European Commission (EC) issued a “Request for input related to greenwashing risks and the supervision of sustainable finance policies”** to the three European Supervisory Authorities (ESAs) in May 2022. The request seeks input on the definition of greenwashing in the financial sector, on the risks greenwashing can pose to investors and financial markets, on the implementation of sustainable finance policies aimed at preventing greenwashing, as well as on potential improvements to the regulatory framework.

This Progress Report (hereafter “Report”) aims to support a **better understanding of greenwashing** and to assess which **areas of the sustainable investment value chain (SIVC) are more exposed to greenwashing risks**. It lays the ground for effective monitoring, prevention and remediation of greenwashing risks. The Report identifies **preliminary remediation actions**, which will be further adjusted and complemented as needed. Indeed, this Report refrains from mentioning specific timeframes or laying out preferred legal forms (directives/regulations, technical standards, guidelines or other ESMA guidance) for the implementation of potential changes to the EU regulatory framework.

Building on existing references in the EU legislation, the three **ESAs developed the common high-level understanding that greenwashing is a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product or financial service. This practice may be misleading to consumers, investors, or other market participants**. The ESAs also agreed that sustainability-related misleading claims can occur and spread either intentionally or unintentionally and that greenwashing does not require investors being actually harmed. Moreover, greenwashing can occur in relation to entities and products that are either under or outside the remit of the EU regulatory framework.

This Report **assesses the risk of greenwashing - namely the risk that misleading sustainability claims occur and mislead investors in their decisions - across the SIVC**. Identifying three main roles that can be played by market participants related to greenwashing - trigger, spreader, and/or receiver of a misleading claim - helped ESMA to better understand interlinkages across the SIVC and pointed to the importance of due diligence responsibilities of each market participant. The assessment confirmed that **misleading claims may relate to all key aspects of the sustainability profile of a product or an entity** such as ESG governance and resources; ESG strategy, policies and credentials;

ESG performance metrics and targets; and sustainability impact. **Cherry-picking, omission, ambiguity, empty claims (including exaggeration), misleading use of ESG terminology such as naming and irrelevance**, are seen as most widespread misleading qualities. While regulatory documents appear less exposed to greenwashing risks than marketing materials, labels and voluntary reporting, they should not be overlooked.

Following this cross-cutting assessment, **the Report focuses on four sectors under ESMA's remit** and identifies areas more exposed to greenwashing risks and relevant potential remediation actions.

With regards to **issuers**, forward-looking information and pledges about future ESG performance appear to be particularly exposed to greenwashing risk. Enhanced transparency on underlying assumptions and parameters appears necessary to help investors make informed investment decisions taking into account the ambition and the credibility of sustainability commitments. Providing a fair, clear and not misleading view of the sustainability profile of an entity implies clear substantiation. Corporate communications need to avoid cherry-picking and inconsistencies. Enhancing the recognition of transition finance based on reliable information and defining naming conventions for financial instruments could be beneficial.

Sustainability claims that appear particularly exposed to greenwashing risks in relation to **investment managers** are those about a fund's or the manager's engagement with investee companies; ESG strategy, policies and credentials; ESG governance as well as claims on sustainability impact. Fund names, particularly important for retail investors' decisions, are also exposed to greenwashing risks. Mitigating these risks would require clarifications regarding the concept of *contribution to a sustainable objective*, standardised disclosures in particular for engagement and addressing the misuse of the Sustainable Finance Disclosures Regulation (SFDR) as a labelling regime.

**Benchmarks** are a key transmission channel for sustainability claims and data produced by issuers and ESG data providers. Areas more exposed to greenwashing risks are impact claims related to specific climate and ESG benchmarks and issues that are also common to funds like misleading naming practices, lack of transparency regarding likely holdings and ESG data methodologies. In terms of mitigation, enhancing the Benchmark Regulation's interaction with more recent pieces of the sustainable finance framework would be important as well as the introduction of a reliable label for ESG benchmarks and of naming conventions.

For **investment service providers**, particularly exposed to greenwashing risks are claims about the extent to which advice offered to retail investors takes sustainability into account and situations where an advisor may not provide suitable personalised advice when presenting the sustainability features of products. In order to mitigate these risks, the regulatory framework could be strengthened concerning the concept of *sustainability preferences*, financial advisors' expertise improved and at the same time the ESG literacy of retail investors increased.

In general, **greenwashing appears to result from multiple inter-related drivers**. While the regulatory framework is gaining in maturity, implementation challenges point to the need to enhance its effectiveness and consistency. For NCAs, supervising sustainability-related information presents challenges, for example in building sustainability expertise. Market participants across the SIVC face similar challenges in building expertise, but also in implementing the necessary governance processes, internal organisation and IT systems that effectively support the quality of sustainability disclosures and



transition efforts. In this context, market participants have difficulties in producing and accessing relevant, high-quality sustainability data. Finally, the complexity of sustainable finance, ESG literacy gaps as well as a fragmented labelling landscape limit the ability of retail investors to make informed investment decisions and participate in financing the transition according to their sustainability preferences.

To address these issues, the Report identifies a number of **preliminary remediation actions**. The **regulatory framework could be reinforced** by clarifying certain key concepts and by further expanding on transition finance, sustainability impact or engagement. At the same time, **market participants across the SIVC already have a responsibility to make substantiated claims and communicate sustainability information in a balanced manner**. Moreover, further transparency on ESG data methodologies, clarifications on the use and calculation of estimates, external verification and auditing would contribute to **enhance the reliability and comprehensiveness of sustainability data**. In order to increase retail investors' participation, the establishment of a **reliable and well-designed labelling scheme** for sustainable financial products and efforts to tackle ESG literacy gaps would be beneficial.

**In terms of the supervisory response addressing greenwashing risks**, action is already being taken. ESMA identified the topic of **“ESG disclosures” as a Union Strategic Supervisory Priority (USSP)**. This means that NCAs coordinate their supervision since end 2022 and roll out common supervisory actions which support the effective and consistent implementation of the sustainable finance framework across the EU.

Building on this Report, **the Final Report will be published in May 2024**, providing a stocktake of supervisory powers, resources and actions to address greenwashing risks. It will also consider final recommendations, including on possible changes to the EU regulatory framework.

## 1 Introduction

1. Promoting transparency and addressing greenwashing is one of ESMA's key priorities as reflected in its Sustainable Finance Roadmap<sup>1</sup> 2022-2024 and in its Strategy 2023-2028<sup>2</sup>. The EC laid down its expectations, in its Renewed Strategy<sup>3</sup> of July 2021, that supervisors play an essential role in identifying, preventing, investigating, sanctioning and remediating greenwashing. In May 2022, the EC followed up by issuing a "Request for input related to greenwashing risks and the supervision of sustainable finance policies" ("the EC's request")<sup>4</sup> to the three ESAs, asking them to deliver – separately but in a coordinated manner – a progress report by May 2023, followed by a final report by May 2024. In this request, the EC seeks input on (1) the definition of greenwashing and the forms it can take in the financial sector, (2) the risks greenwashing poses to investors and financial markets, (3) the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing and (4) on potential improvements to the regulatory framework.
2. The objective of this Report is to support a better understanding of greenwashing and its potentially negative impacts on EU financial markets and investors, to assess which areas of the SIVC are more exposed to greenwashing risks, to identify the underlying drivers, and to start laying the ground for an adequate monitoring of greenwashing risks. Importantly, ESMA expects the mapping of greenwashing risk areas to evolve over time as the regulatory framework and market practices continue to develop. Based on this assessment, the Report also sets out preliminary remediation actions. The Final Report will then map out and assess the supervisory response and will issue final recommendations, including on possible regulatory changes.
3. Remediation actions presented in this Report are preliminary. ESMA will further consider them for the final report and adjust and refine them as needed. With regards to potential changes to the EU regulatory framework, this Report does not make a proposal for specific timeframes or concrete legal forms (directives/regulations, technical standards, guidelines or other ESMA guidance) by which such changes could be implemented. While preliminary remediation actions laid down in this Report will feed into final recommendations, the Final Report will consider other aspects as needed.
4. As demand for financial products with sustainability features continues to take hold, there is a strong competitive drive for market participants (both companies and financial market participants) to improve and communicate about their sustainability profile and to propose sustainable product offerings. Sustainable finance policies are meant to ensure that this trend contributes to the EU's transition to a low carbon economy under the European Green Deal. However, there is currently a mismatch between high investor demand for sustainable

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<sup>1</sup> ESMA [Sustainable Finance Roadmap 2022-2024](#), February 2022

<sup>2</sup> ESMA [ESMA Strategy 2023-2028](#), September 2022

<sup>3</sup> EC [Strategy for financing the transition to a sustainable economy](#), July 2021

<sup>4</sup> EC [Request to esas on greenwashing monitoring and supervision.pdf \(europa.eu\)](#), May 2022

investment opportunities and the limited pool of assets that are deemed sustainable, in particular those in line with the high standard of the EU Taxonomy Regulation (TR).<sup>5</sup>

5. Regulators of securities markets face expectations from stakeholders to step up in ensuring investor protection and market integrity and maintain a trusted environment for sustainable investments. Greenwashing allegations have been growing in numbers, targeting both financial and non-financial entities, also resulting in the increasing attention of securities markets' regulators to this phenomenon. Professional investors and other industry players also seem to be sharing the concern that greenwashing risks have increased.<sup>6</sup> Retail investors as well have grown increasingly wary of the issue, as demonstrated by surveys conducted by two National Competent Authorities (NCAs).<sup>7</sup>
6. The EC's request broadly refers to "sustainability claims" setting the expectation that the ESAs' work should cover not only environment-related claims, but also claims related to social and governance aspects. EU legislation has been taking an integrated approach to environmental and social aspects in order to ensure that activities or investments labelled as sustainable do not contribute to any sustainability objectives to the detriment of another.
7. The ESAs were requested to come forward with a common high-level understanding of the key features of greenwashing and complement that with more specific sectoral definitions where relevant and necessary. ESMA has adopted a double materiality approach in this Report, with a view to addressing misleading sustainability-related claims both when they are about (1) the exposure of a product or entity to sustainability risks and (2) the impacts a product or entity has on people or the environment.<sup>8</sup> At entity level, sustainability risk claims would help understand its resilience to sustainability-related risks (e.g. a company making claims about the exposure of its activities, business model and performance to various physical risks stemming from various ESG-related hazards, and how it mitigate potential vulnerabilities). At entity level, claims about sustainability impact would typically include information related to GHG emissions to date but also forward-looking information about its commitment to future performance (e.g. net zero target, transition plan).

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<sup>5</sup> Based on Morningstar and Refinitiv Eikon data, in 2021, ESMA estimated Taxonomy-alignment of EU fund equity and corporate bond holdings is 1.4%. [Source: ESMA, [Final Report Advice on Article 8 of the Taxonomy Regulation](#), February 2021]

<sup>6</sup> In 2022, PwC found that 87% of investment professionals believed that "corporate reporting contains at least some greenwashing". In another study, 58% of the executives interviewed admitted that their organisation had "overstated their sustainability efforts." [Sources: PwC, [PwC's Global Investor Survey 2022](#), December 2022; Justin Keeble, [Report: What it will take for CEOs to fund a sustainable transformation](#), April 2022.]

<sup>7</sup> AMF/Audirep, [Finance durable, placements responsables. Etats des lieux des perceptions des Français](#); CONSOB, [Report on financial investments of Italian households](#), 2022.

<sup>8</sup> High quality reporting by issuers and asset managers on sustainability risks is necessary to inform investors about the resilience of potential investee companies vis-à-vis climate-related and other ESG risks. Complete, timely and reliable information on sustainability risks will become increasingly important for investors as the climate crisis and environmental degradation continue to worsen. Given that sustainability risks and impacts claims rely on overlapping sets of skills, expertise and data, the supervisory response to misleading claims will be more effective and consistent if it addresses both sides in an integrated manner.



8. In line with the EC's expectation that the ESAs would cover the "most relevant segments" of the SIVC under their remit, ESMA's Report focuses primarily on issuers, investment managers, benchmark administrators, and investment service providers (also referred to as "sectors").<sup>9</sup>
9. ESMA relied on a wide variety of data sources to prepare this Report, including academic articles and industry reports as well as on extensive stakeholder outreach – seeking input from market participants under its remit and from other stakeholders ranging from retail investor associations to NGOs and academia. The three ESAs conducted a Call for Evidence ("CfE") to gather input from stakeholders on how to understand the key features, drivers and risks associated with greenwashing and to collect examples of potential greenwashing practices.<sup>10</sup> ESMA also organised, in December 2022, a full-day workshop on greenwashing risk transmission channels and impacts to collect information from experts.

**Clarification of terminology used in this report:** the term **greenwashing risk** refers to the risk of misleading sustainability claims occurring and misleading investors in their decisions; the term **greenwashing-related financial risk** refers to the broader financial risks greenwashing occurrences<sup>11</sup> may pose to entities, financial markets and investors.

## 2 Understanding greenwashing across sectors

10. In its request, the EC asked the ESAs "to come forward with a common high-level understanding of the key features of greenwashing [...] to ensure that there is a common understanding and a common denominator across the sectors." This common high-level understanding builds on existing EU references and is meant to provide a shared reference point to market participants in dealing with the issue, supporting the protection of consumers, investors and other market participants. It is too early to take a position on whether and in which form the high-level understanding should be integrated into EU legislation. Further analysis is needed, in particular to ensure the effectiveness and consistency of the regulatory framework across various legislative texts (see the Annex).

### 2.1 Existing references to greenwashing

11. While references presented in the EU regulatory framework represent the starting point of the ESAs' work on a common high-level understanding of greenwashing, they do not encompass all its potential forms under the ESAs' respective remits. In particular, the definitions available in the TR, the SFDR Delegated Regulation, as well as in the amended Markets in Financial

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<sup>9</sup> ESG data and ratings providers are covered to the extent that they can play a role as a possible trigger of, or in the amplification or mitigation of greenwashing risks in the financial system, given their relevance in the SIVC.

<sup>10</sup> [ESAs joint Call for Evidence on greenwashing \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic-esas-joint-call-for-evidence-on-greenwashing-2022.pdf), 15 November 2022. The questionnaire contained a section common to the three ESAs, with cross-sectoral questions on greenwashing, and three separate sections relevant to each ESA.

<sup>11</sup> Greenwashing occurrences refers to the materialisation of greenwashing risks.

Instruments Directive (MiFID II) and Insurance Distribution Directive (IDD) Delegated Regulations are not deemed sufficient for the following reasons:

- These references are focused on the disclosure and advice of financial products, while greenwashing can occur at different stages of the product lifecycle and it can also relate to entity-level, rather than only product-level, claims. It can additionally feed into regulatory documents;
- The reference to basic environmental standards in the definition provided in recital 11 of the TR as well as in the amendments to MiFID II and IDD Delegated Regulations are not sufficient, as a product or entity could meet “basic” standards but be misleadingly portrayed as fulfilling higher standards;
- While gaining a competitive advantage could be the result of greenwashing practices, it is neither an automatic nor a systematic consequence of such phenomenon, and thus, should not be construed as a precondition for greenwashing;
- While some of these references do mention greenwashing (such as the recital 16 of the SFDR Delegated Regulation, the ESMA Sustainable Finance Roadmap), several existing references do not explicitly define greenwashing in a broad sense as encompassing all environmental, social and governance aspects.

12. The ESAs common high-level understanding addresses these limitations.

## 2.2 ESAs common high-level understanding of greenwashing

13. Based on the analysis of current references, as well as of replies received to the CfE, the ESAs understand greenwashing as a **practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.**

14. In addition, the below core characteristics help understand the scope of greenwashing:

- Similarly to the communication of other misleading claims, there are several ways in which sustainability-related statements, declarations or communications may be misleading. On the one hand, communications can be **misleading due to the omission of information** relevant to consumers, investors or other markets participants’ decisions (including, but not limited to, partial, selective, unclear, unintelligible, vague, oversimplistic, ambiguous or untimely information, and unsubstantiated statements). On the other hand, communications can be **misleading due to the actual provision of information**, that is false, deceives or is likely to deceive consumers, investors or other market participants (including, but not limited to, mislabelling, misclassification, mis-targeted marketing, and inconsistent information);

- Similarly to other misleading actions, greenwashing is a type of misconduct which may not only result in a direct claim but **in misleading actions**. Potential examples include identifying clients with sustainability preferences within the positive target market of a product that does not have any sustainability features (in the product design phase) or not taking duly into account clients' sustainability preferences in the advice phase.
- Sustainability-related misleading claims can occur and spread **intentionally or unintentionally**, whereby intentionality, negligence, or the lack of robustness and appropriateness of due diligence efforts could, where relevant, constitute aggravating factors in the context of supervisory and enforcement actions.
- Greenwashing can occur either **at entity level** (e.g., relating to an entity's sustainability strategy or performance), **at financial product level** (e.g., relating to a product's sustainability strategy or performance) **or at financial service level including advice**<sup>12</sup> (e.g., relating to the integration of sustainability-related preferences to the provision of financial advice).
- Greenwashing can occur at any point where sustainability-related statements, declarations, actions or communications are made, including **at different stages of the business cycle of financial products or services** (e.g., manufacturing, delivery, marketing, sales, monitoring) **or of the sustainable finance value chain**.
- Greenwashing may occur in relation to the application of specific disclosures required by the EU sustainable finance regulatory framework or in relation to general principles – as featured either in **the general EU financial legislation or, more specifically, in EU sustainable finance legislation**. In addition, greenwashing may occur in relation to entities that are **outside of the remit of the EU sustainable finance legislation** as it currently stands.
- Greenwashing can be **triggered by the entity to which the sustainability communications relate**, by the entity responsible for the product, by the entity providing advice or information on the product, or it can be **triggered by third parties** (e.g., ESG rating and data providers, or third-party verifiers);
- Greenwashing may or may not result in **immediate damage to individual consumers or investors** (in particular through mis-selling<sup>13</sup>) or the gain of an **unfair competitive**

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<sup>12</sup> There may be interdependencies and/or blurred lines between the product's level and the entity's level. For example, one product could be correctly presented as sustainable, but in case the communication around the product would suggest that the whole entity should be regarded as sustainable, greenwashing concerns could arise.

<sup>13</sup> EU regulations do not provide a definition of mis-selling and the concept is generally understood as encompassing different practices such as unauthorised entities providing financial services, authorised entities providing unauthorised products or services and/or authorised financial intermediaries unsuitably selling financial products or services to clients (i.e. not accounting for their actual characteristics and needs). In the case of the EC's greenwashing request for input, we are considering this latter case of market not responding properly to consumers' or investors' preferences.

**advantage.** Regardless of such outcomes, if not kept in check, greenwashing may **undermine trust in sustainable finance markets and policies.**

15. In the context of the summary statement outlined above, “entities” are understood to be financial or non-financial undertakings or financial intermediaries that manufacture, issue and/or distribute financial products; “financial product or financial service” is used to cover all financial instruments, securities and investment, banking, insurance and pension products, as well as all financial services relevant for each sector considered; “consumers” encompasses all retail and professional customers/clients of “entities”.

### 3 Assessing greenwashing-related financial risks

16. ESMA’s current understanding of how far and in which form greenwashing can pose risks in financial terms to EU financial markets and entities therein (also referred to as “greenwashing-related financial risks”) is set out in this section. The section also looks at transmission channels – the mechanisms through which greenwashing-related financial risks may spread within an entity or to the entire financial system. Greenwashing occurrences may affect both financial and non-financial entities with possible contagion via operational risks, such as legal and reputational risks<sup>14</sup> (see section 3.1). In turn, greenwashing-related financial risks at entity-level can feed into system-wide financial risks and have detrimental effects on transition efforts (see section 3.2).<sup>15</sup>
17. ESG-related financial products and markets have experienced remarkable growth in the EU over the last few years, in response to shifting investor preferences towards sustainable investing.<sup>16</sup> These developments highlight the importance of ensuring the credibility of sustainability-related claims, to protect investors and to reduce the potential scope for situations where greenwashing occurrences trigger large-scale portfolio reallocations that could destabilise EU markets (e.g., due to a market sell-off). Moreover, the emergence of new financial products and instruments with ESG features in other segments (securitisations, structured products, derivatives, etc.) may create additional complexity for investors and supervisors in verifying sustainability-related claims.

#### 3.1 Entity- and product-level financial risks

18. Academic literature and responses to the CfE support the view that the financial position or performance of entities may be affected by allegations of greenwashing concerning both entity-

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<sup>14</sup> Broadly defined, **reputational risks** refer to threats impacting the good name or standing of a firm, which can pose possible incentives for firms to act sustainably, provided that it impacts their finances or strategic position in the market. **Legal risks** describe the potential litigation issues a firm may face in relation to greenwashing accusations.

<sup>15</sup> Liquidity risk, market risk, credit risk, contagion risk, operational risk and environmental risk.

<sup>16</sup> As at the end of 2022, the share of EU UCITS fund assets managed by funds promoting environmental or social characteristics or with sustainable investment as their objective reached 55%. The EU ESG bond market experienced similar trends and stood at EUR 1.5 trillion, from EUR 500 billion in 2020. [Source: ESMA [TRV Risk Monitor, No.1,2023](#)]

level and/or product-level sustainability claims.<sup>17</sup> A majority of respondents to the CfE stated<sup>18</sup> that they have started to perceive greenwashing as a potential source of risk, with more than half saying they have started to develop a structured approach to the issue. Greenwashing-related financial risk to market participants can stem from the materialisation of reputational risk or legal risk.<sup>19</sup> For example, an entity can face reputational issues due to observed greenwashing practices, which can harm its credibility with (retail) investors. This can trigger further risks to the financial standing of the entity itself, e.g., if consumers refrain from purchasing the entity's products or when its share price drops due to declining investor interest. Notably, an entity's reputation may be negatively affected by greenwashing allegations, even where such allegations are proved groundless.<sup>20</sup>

19. Despite the above findings, according to ESMA workshop participants, it is not yet clear to what extent greenwashing occurrences trigger a material reaction by investors, implying that the long-term reputational effects from greenwashing may not be priced in. In the absence of credible and comparable ESG-related information, this may imply a distortion in market incentives since entities are not yet incentivised to prevent greenwashing, while there is strong demand for sustainable investment opportunities.
20. Based on anecdotal evidence, there is indication that investors perceive greenwashing as a potential source of financial risk; however, the reputational effects seem to remain elusive, as illustrated by investor reactions to greenwashing-related announcements.
21. In 2021, the media reported an investigation into a prominent asset manager for alleged greenwashing. The asset manager is a publicly traded company that managed, at the end of 2021, more than 900 billion euros across roughly 1,300 funds, of which more than 12% in allegedly "ESG" funds. As a result, the share price of the asset manager fell by around 13% in one day. It appears that investors immediately priced in the legal risk associated with an adverse development. This can be seen by the sudden and sustained fall in the asset manager's share price, compared with other management companies also managing funds domiciled in the same jurisdiction (see Figure below).
22. In comparison, investor subscriptions and redemptions in/out of the asset manager's funds do not appear to have been significantly affected compared with funds from other asset managers. Moreover, there is no clear evidence that the announcement had a differentiated impact on the funds managed by the management company based on their sustainability profile. These developments suggest that investor concerns around greenwashing have centred around the financial risks associated with their equity holdings of the management companies (via greater provisioning by the affected management company and, therefore, less reserves available for

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<sup>17</sup> Koelbel, F. T. Busch and L. M. Jancso (2017), [How media coverage of corporate social irresponsibility increases financial risk](#), Strategic Management Journal, Vol. 38, issue 11; Du, X. (2015), [How the market values greenwashing? Evidence from China](#), Journal of Business Ethics, Vol. 128, No.3 (May 2015).

<sup>18</sup> 21 out of 32 respondents answering to the specific question in the survey.

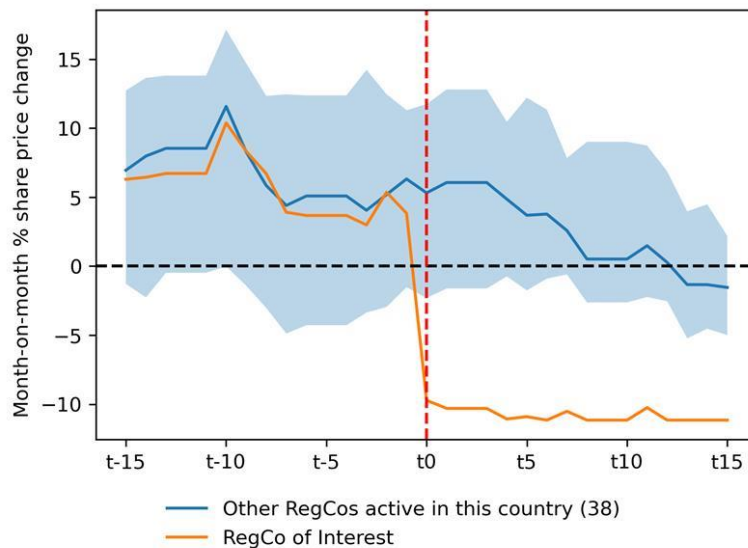
<sup>19</sup> Brown, S. (2022), [Greenwashing](#), Natural Resources & Environment; Allen & Overy (2021), [Greenwashing – key risks and issues in financial services](#); Azzouz, M, Merle, C. (2021): [Greenwashing allegations are jolting the financial industry](#), Natixis.

<sup>20</sup> Seele, P., Gatti, L. (2017), [Greenwashing revisited: In search of a typology and accusation-based definition incorporating legitimacy strategies](#), Business Strategy and the Environment, Vol.26 Issue 2.



dividend payouts). In contrast, there is no clear evidence of changes in demand for the asset manager’s funds as a result of the investigation.

**FIGURE 1. INVESTORS’ REACTIONS TO AN ALLEGED GREENWASHING CASE**



Note: Monthly change in share prices, %.  
 Sources: Refinitiv, ESMA.

23. The materialisation of greenwashing risks can also stem from product-level claims. Responses to the CfE highlighted that virtually all financial products were perceived as equally exposed to greenwashing, with almost 60% of respondents attributing a very high or high probability of greenwashing occurrence to funds, derivatives, fixed income products and benchmarks. Respondents also stressed that differentiating greenwashing risk based on the category of financial products may not adequately capture differences in level of risks within categories. For instance, with the fixed income products category, greenwashing risk may differ greatly between use-of-proceed (UoP) and conventional bonds and depends on the issuer’s ability to assess and dedicate bond proceeds appropriately.

### 3.2 System-wide risks and negative impacts

24. The cross-cutting nature of sustainability-related issues means that greenwashing may give rise to broader negative impacts in EU financial markets through various transmission channels. Table 1 below provides an illustration of the numerous ways in which greenwashing-related financial risks can be mapped out in relation to traditional risk categories when greenwashing occurrences are observed and/or sanctioned. For example, greenwashing occurrences may drive investors away and reduce demand for an entity’s equity and debt securities, impacting the liquidity of these instruments. The lack of a shared definition of greenwashing and limited understanding of its potential financial impacts increases the potential scope for strong

reactions to greenwashing occurrences, potentially leading to large market movements and possible overshooting, thus contributing to market volatility and risk.

**TABLE 1. TRANSMISSION CHANNELS OF GREENWASHING-RELATED FINANCIAL RISKS TO EU MARKETS AND INVESTORS, BY RISK CATEGORY**

<b>Liquidity risk</b>	<ul style="list-style-type: none"> <li>• Lower trading volumes or higher bid-ask spreads or longer time to unwind positions due to reduced willingness to trade with specific counterparties</li> <li>• Stranded assets</li> </ul>
<b>Credit risk</b>	<ul style="list-style-type: none"> <li>• Higher borrowing costs</li> <li>• Increased credit default swap spreads due to higher risk perceptions</li> <li>• Reduced creditworthiness, credit rating downgrades</li> <li>• Stranded assets</li> </ul>
<b>Market risk</b>	<ul style="list-style-type: none"> <li>• Lower asset valuation due to decreasing investor demand</li> <li>• Increased volatility and lower resilience to adverse market movements</li> </ul>
<b>Contagion risk</b>	<ul style="list-style-type: none"> <li>• Sell-off within the sector</li> <li>• Market losses on passive investments</li> <li>• Outflows from investment products</li> </ul>

Source: ESMA

25. Under adverse market conditions, greenwashing-related financial risks may spread to the broader financial system. When information is deficient in a high-volatility environment, an adverse selection premium can materialise for some issuers, leading to capital misallocation and impacting the entire system. Contagion channels such as within-sector contagion (e.g., due to controversies impacting an entire economic sector), cross-sectoral contagion (e.g., between banks, insurers and funds), cross-country contagion (due to entities operating in multiple countries) or changes in risk correlations (e.g., between traditional financial risks and climate-related risks, or between different types of physical risk hazards) may further lead to system-wide issues. These risks can be further compounded by insufficient transparency and data limitations when it comes to climate-related risk assessments.<sup>21</sup> In particular, deficient information on corporate transition plans, both at firm and sector-wide level, hampers the ability of public authorities to assess the resilience of the broader economy to future climate-related shocks.

26. Greenwashing may also have non-financial, system-wide, implications. The Intergovernmental Panel on Climate Change (IPCC)<sup>22</sup> highlighted that misrepresentation of climate risks leading to public misperception can lead to delayed climate change mitigation action and result in significant carbon lock-ins and stranded assets, among other additional costs. One channel through which action may be delayed is the loss of investors' trust in ESG markets, sustainable finance policies and the ability of the financial system to support the transition to a sustainable economy. While it is not clear where the "tipping point" at which investors would start divesting may be, the potential irreversible damage from greenwashing risks left unchecked highlights

<sup>21</sup> See ECB-ESRB (2021), [Climate-related risk and financial stability](#).

<sup>22</sup> IPCC (2022), [Climate Change 2022: Mitigation of Climate Change](#), WGIII, Chapters 14 and 15.

the importance of tackling the issue for financial regulators. In turn, delayed action is associated with higher system-wide financial risks. The climate scenario analyses undertaken by the ESAs in collaboration with the European Central Bank (ECB) and the European Systemic Risk Board (ESRB) confirm that delayed action is associated with higher cumulative losses for the financial system in the medium to long run, compared with an orderly transition to net-zero carbon emissions in 2050.<sup>23</sup>

## 4 Greenwashing risks and their drivers

27. This section provides an overview of the areas more exposed to greenwashing risks and the underlying drivers of these risks across the SIVC as a whole (cross-sectoral analysis presented in section 4.1 and 4.2) and for most relevant sectors of the SIVC (see sections 4.3 to 4.6). For the purpose of this report, the terms **greenwashing risk** refer to the risk of misleading sustainability claims occurring and misleading investors in their decisions, while **greenwashing occurrences** refers to the materialisation of greenwashing risks. The section also presents preliminary remediation actions to address the underlying drivers and mitigate greenwashing risks (see sections 4.3 to 4.7). Importantly, ESMA expects this mapping to evolve over time as the regulatory framework and market practices continue to develop.

28. A summary of the findings related to the areas of the SIVC more exposed to greenwashing risks is included in the form of Table 6 (section 4.6).

### 4.1 Characterising greenwashing along four key dimensions

29. Adopting a structured approach to identify areas more exposed to greenwashing risks, ESMA assessed greenwashing across four key dimensions: i) the role that an actor of a given sector may play in greenwashing, namely trigger, spreader, or receiver of misleading sustainability claims; ii) the topics on which sustainability claims are made; iii) the qualities which make them misleading such as omission, cherry-picking, etc; and iv) the channels through which such claims are communicated, such as regulatory information, marketing material, etc.<sup>24</sup>

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<sup>23</sup> ECB-ESRB (2022), [The macroprudential challenge of climate change](#), section 3 ('Climate stress and scenario analysis')

<sup>24</sup> The three sustainability topics and eight sub-topics as well as the twelve misleading qualities of misleading claims were identified based on the review of literature and greenwashing cases. These are of relevance across most sectors and mostly cross-cutting at entity and product-level. Additionally, the three main greenwashing topics should be considered independently of the misleading qualities of the actual claims, as well as of the channels through which they are transmitted. Consequently, the actual wording of the topics and sub-topics does not reference how the claims are misleading (e.g. exaggerated, inconsistent) nor the actual channel (location) of the claims.

**FIGURE 2. DIMENSIONS USED TO ANALYSE GREENWASHING RISKS**

Dimensions	Detailed parameters used to analyse greenwashing risks under each dimension		
Roles	Trigger	Spreader	Receiver
Sustainability topics (and sub-topics) about which a claim is communicated	<b>Governance and resources</b> <ul style="list-style-type: none"> <li>• <b>Board and senior management role</b> (governance-related elements of entity-level ESG policies)</li> <li>• <b>ESG resources and expertise</b> (incl. ESG dedicated staff)</li> </ul>	<b>ESG strategy</b> <ul style="list-style-type: none"> <li>• <b>ESG strategy, objectives, characteristics</b> (integration of sustainability in strategy, ESG characteristics, sustainable objectives, taking into account clients' sustainability preferences)</li> <li>• <b>Sustainability management policies</b></li> <li>• <b>ESG credentials</b> (qualifications, labels, certificates): adherence to (voluntary) reporting frameworks (e.g. UNPRI, TCFD), labels, ratings, awards, certifications</li> <li>• <b>Engagement with stakeholders</b> (proxy voting and active engagement)</li> </ul>	<b>Sustainability metrics and targets</b> <ul style="list-style-type: none"> <li>• <b>ESG performance to date:</b> ESG results, metrics for real-world impact</li> <li>• <b>Pledges about future ESG performance: ESG targets</b> (incl. net zero targets), transition plans</li> </ul>
Qualities through which the claim is misleading investors or consumers	<div style="display: flex; justify-content: space-between;"> <div style="border: 1px dashed black; padding: 5px;"> <b>Misleading through provision of information</b> <ul style="list-style-type: none"> <li>• Empty claims (exaggeration and/or failure to deliver on claims)</li> <li>• Inconsistency</li> <li>• Irrelevance</li> <li>• Outright lie (false)</li> <li>• Suggestive non-textual imagery and sounds</li> <li>• Suggestive use of ESG-related terminology</li> </ul> </div> <div style="border: 1px dashed black; padding: 5px;"> <b>Misleading through omission of information</b> <ul style="list-style-type: none"> <li>• Selective disclosure / cherry-picking</li> <li>• Omission or lack of disclosure</li> <li>• Vagueness or ambiguity or lack of clarity</li> <li>• Lack of fair and meaningful comparisons, thresholds and/or underlying assumptions</li> <li>• No proof (unsubstantiated)</li> <li>• Outdated information</li> </ul> </div> </div>		
Channels through which the claims are communicated	Regulatory information (e.g. Prospectuses, Financial statements, Mandatory sustainability disclosures, Issuers' press releases etc.)		Marketing materials (including website, social media, presentations to investors)
	Ratings (inc. ESG ratings) and Benchmarks & Labels	Intermediary/advice information	Product information (including internal classifications)
	Voluntary reporting, falling outside previous categories		

#### 4.1.1 The roles played by an actor in greenwashing

30. There are **three roles** that can be played by market players in any given occurrence of greenwashing, as described in Figure 2 above: *triggers* (i.e. initiators), *spreaders* and/or *receivers* of the misleading claim. The trigger of a greenwashing claim can be any node in the SIVC except for the end investor, who is always a receiver of a misleading claim. One simple illustration of these roles is a misleading claim triggered by an issuer which spreads to subsequent nodes throughout the SIVC. It is important to note that, in a given document, several sustainability-related misleading claims can have different triggers. For instance, the same marketing document of a passive fund or an Exchange-Traded Fund (ETF) tracking an ESG benchmark could, in theory, contain one misleading claim whose trigger is the ESG benchmark administrator, another claim whose misleading nature may be triggered by the fund manufacturer, and possibly a further misleading statement triggered by the underlying misleading claims coming from an investee company held in the passive fund or ETF. More than 70% of CfE respondents agreed with the suggested three roles. Most of the feedback received had to do with the spreader role and its implications on due diligence responsibilities of market participants, this will be further discussed in the following section 4.2. on the cross-cutting drivers of greenwashing.

#### 4.1.2 The topics of sustainability-related claims

31. Based on ESMA's assessment and CfE responses, several topics of sustainability-related claims stand out as posing a high risk of greenwashing and warranting an increased focus across sectors. These can be grouped into high-risk topics (dark orange) and medium- to high-risk topics (light orange). This mapping will be further developed for each sector in each sectoral sub-section (4.3 through 4.6) and summarised for all sectors at the end of section 4.6. in Table 2. From a cross-sectoral point of view, the first category includes high-risk claims about<sup>25</sup>: **(1) impact** (impact claims are a transversal topic hence not explicitly mentioned in Figure 2)<sup>26</sup>; **(2) ESG strategy, objectives and characteristics**; **(3) engagement**; **(4) ESG credentials**; **(5) corporate resources and expertise**; **(6) future ESG performance such as net zero or more broadly claims on financing the transition**; and **(7) present ESG performance**. The second category contains medium- to high-risk claims about: **(8) Board and senior management's role in sustainability** and **(9) sustainability management policies**. It is worth highlighting

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<sup>25</sup> Please note that these are listed above in the order of perceived risk to greenwashing from a cross-sectoral point of view and not in the order listed in Figure 2 which grouped sub-topics across the three high level pillars of Governance and resources, ESG Strategy and Sustainability metrics and targets.

<sup>26</sup> As explained and illustrated in the [ESAs Call for evidence on Greenwashing \(europa.eu\)](https://europa.eu) in section 1.2.2. of the document, claims by an entity about targeting positive impact (e.g. on climate change) can be split into its actual strategy around creating positive impact (falling under *ESG Strategy*), its governance around monitoring and implementing this strategy including dedicated staff composed of impact analysts (*Governance and Resources*), while the actual metrics referenced to measure the impact would fall under *Sustainability metrics and targets*



that all the sub-topics of claims were rated by CfE replies as relevant but the level of their relevance can vary significantly by asset class, sector and industry.<sup>27</sup>

32. In addition, ESMA's assessment is that investor protection issues may arise from misleading ESG claims irrespective of whether this is about risks or impacts, or indeed both. Information on the exposure of issuers and asset managers to sustainability risks supports investors' investment decisions by allowing them to take into account the resilience of potential investee companies vis-à-vis climate-related and other ESG risks. In the context of climate change and the degradation of the environment, information on sustainability risks is expected to become increasingly important for investors. ESMA has expressed concerns about omissions of sustainability disclosures, in particular in the form of too little information on ESG risks which *per se* further affirms the importance of clear, fair and not misleading information on sustainability risks.<sup>28</sup> The markets' perception also seems to be going in this direction, as evidenced by a recent PwC study.<sup>29</sup>

### **1) Claims about impact**

33. Misleading claims about **real-world impact** relate in particular to product-level claims in relation to investment funds, ESG securities like sustainability-linked bonds (SLBs) or green bonds and benchmarks, as well as to entity-level claims, mostly applicable to issuers, asset managers and investment service providers. The main issues regarding impact claims stem from the fact that there are currently no rules in the EU sustainable finance framework for the use of terms such as "impact", "impact investing" or other impact-related terms. Some of the most frequent misleading claims<sup>30</sup> relate to **exaggeration based on an unproven causal link between an ESG metric and real-world impact**. These often consist of implying that ESG metrics mean more than what they do and can take the following forms: (i) cases in which a fund manager or benchmark administrator ambiguously presents changes in the exposure of a portfolio to environmental features such as carbon footprint as if they corresponded to an equivalent outcome of carbon reduction in the real world; (ii) cases giving the impression that investing in the fund reduces greenhouse gas GHG emissions; and (iii) cases in which the implementation of ESG processes are presented as environmental outcomes in the real economy.<sup>31</sup>

34. One of the most frequent situations is the lack of clarity about **where exactly the impact is factored in or achieved**, for instance which part of the investment process or portfolio construction for funds and benchmarks is supposed to take into account impact and to have the expected positive environmental or social impact. Indeed, impact claims are often

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<sup>27</sup> e.g. *Governance* seen as very important for issuers, in comparison to investment management where *ESG Strategy and Metrics* play a bigger role. For issuers, industry also plays a role. For instance, 'water use' is a metric more relevant for some industries than for others.

<sup>28</sup> As spelled out for instance in ESMA's [European Common Enforcers Priorities 2022](#) and in the [2022 Corporate reporting enforcement and regulatory activities](#)

<sup>29</sup> See the latest [edition](#) of the PwC global investor survey showing that for some market players, misleading claims about sustainability risks and opportunities is already considered as greenwashing.

<sup>30</sup> Examples found in several 2° Investing Initiative publications, including 2019-Paper-Impact-washing.pdf (2degrees-investing.org).

<sup>31</sup> For instance, comparing an ESG metric of a fund or benchmark or that of a single issuer of MiFID II instrument with the market/peer average and presenting the difference as an improvement in the real economy.

ambiguous as to the impact attributable to the investment strategy and the impact of the investee companies. For instance, in the case of funds or portfolio management services, impact analysis or impact criteria can be taken into account at one or several of the below levels of the investment strategy such as definition of eligible investment universe, security selection, asset allocation, portfolio construction or post-investment ESG strategies like active ownership (proxy voting and engagement).

35. Moreover, some impact claims can lack essential information about the **main aspects of any impact** framework which **are intentionality, additionality<sup>32</sup> and impact measurement**, with additionality being the most difficult notion to prove. Regarding **measures of impact**, there are three main issues that can arise. **First, a market participant can select an inadequate measure of impact<sup>33</sup>**, either because they are not relevant for the sustainable objective in question or because the ESG metric selected is ill-suited to measure impact. **Second**, the entity might have insufficiently robust **standards** for correctly **measuring product-level impact**, for instance, not taking into account negative contributions to the UN Sustainable Development Goals (UN SDGs) and only measuring positive alignment. **Third**, even when the impact measures are plausible and well calculated, misrepresentation can occur, especially in relation to exaggeration, ambiguity and cherry-picking. For example, exaggerated graphical representations in fund factsheets or in issuer's corporate responsibility reports illustrating the actual **contribution of a company, a green bond's or a fund's underlying stream of revenues to a given UN SDG**. Additionally, investors can also be misled by the omission or lack of sufficient details about how a certain metric/chart used as evidence of impact is constructed.<sup>34</sup>

## 2) ESG strategy, objectives, characteristics

36. ESG Strategy represents a very important area of focus for product level claims for funds and benchmarks, as well as for other ESG securities. For instance, the risk of greenwashing appears higher for green bonds due to the occasional excessive leeway in use of proceeds, which are sometimes referenced in the bonds' prospectuses in a non-committal way such as "*The use of proceeds for this security might include...*"<sup>35</sup>. In the case of funds and benchmarks, one of the main issues has to do with the extent and **nature of their consideration of environmental or social characteristics or the overall sustainable objective promoted which can sometimes be vague, exaggerated or incomplete**. For instance, some exclusion policies used for funds, portfolio management services and benchmarks have ambiguities or vagueness which can create a window of opportunity for market participants to invest in, or

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<sup>32</sup> The Global Impact Investing Network (GIIN) defines additionality as "[...] the positive impact that would not have occurred anyway without the investment". (Source: [thegiin.org](http://thegiin.org))

<sup>33</sup> Frameworks currently used by some market participants include alignment with the EU Taxonomy, the UN SDGs, impact metrics taken from the The Global Impact Investing Network (GIIN) framework, original impact scores/metrics designed by asset managers

<sup>34</sup> For instance, a pie chart breakdown of an impact portfolio of a fund or benchmark by the 17 UN SDGs implying 100% of the portfolio and of the underlying revenues of investee companies are aligned to the SDGs (despite only x% of a given company's revenues being aligned to a given SDG).

<sup>35</sup> To some extent this high risk area can also be relevant to other sustainable securities such as SLBs which are not use of proceeds securities. In certain cases, while claims about ESG strategy include references to the environmental and social characteristics promoted by the key performance indicators (KPIs) linked to the security, they also – confusingly – make reference to the use of proceeds allocation to ESG projects.

provide services to, excluded companies or sectors. When an exclusion policy implemented by an asset manager, an investment firm or a benchmark administrator doesn't specify the potential trade-off<sup>36</sup> that can be made, despite the main idea of the policy, greenwashing can occur and investors may, therefore, be misled.

37. This lack of understanding of a product's actual ESG strategy can be further amplified by the **lack of transparency of typical portfolio holdings/underlying investments for funds and benchmarks** which creates a gap between an investor's expectations of a product's strategy and the actual resulting portfolio. Moreover, another important cross-sectoral issue has to do with the sometimes non-binding mention of the environmental or social characteristics, the overall sustainable objective and/or the metrics used to measure these objectives.<sup>37</sup>
38. As for **entity-level ESG strategy claims**, one of the most frequent misleading situations of greenwashing **include cherry-picking and irrelevance**. A relevant case concerning this point is a recent public example<sup>38</sup> of a financial credit institution whose advertisements mentioned the positive environmental impact of its tree planting activity but failed to reference the bigger impact of its business-as-usual financing of the oil and gas sector.
39. Moreover, misleading claims about the alignment of a company or of a product to the UN SDGs may also be facilitated by **the often loosely worded and/or non-binding mention of contribution to a given sustainable objective or to an impact framework** without this being targeted/intentional by its actual ESG strategy (i.e., solely reporting *ex post* against a given framework). It is worth noting that this is an issue that **affects all four sectors under consideration**, including, but not limited to, investment management where sustainable finance legislation provides for binding disclosures. While SFDR does require the disclosure of "binding elements of the investment strategy" in financial products' pre-contractual documentation, financial market participants falling within the remit of SFDR (hereafter "FMPs") might breach SFDR provisions and choose<sup>39</sup> not to include this information in their marketing materials or in other parts of the prospectus. This is further explained in section 4.4 as well as illustrated by the example included in section 4.1.3 about an "Ecology" fund. Lastly, another general high-risk area of greenwashing related to ESG strategy is **the confusion between a claim about an ESG process being implemented and actual progress/ESG results being achieved**.

### **3) Engagement with stakeholders**

40. Both entity-level and product-level engagement claims are seen as exposed to greenwashing risk. There are concerns that issuers or asset managers make claims about engaging with key stakeholders or investee companies with little substantiation. **A specific engagement topic**

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<sup>36</sup> E.g. between financial and ESG performance

<sup>37</sup> The issue of mentioning non binding ESG characteristics and/or objectives is further detailed in Section 4.4, Investment managers.

<sup>38</sup> Please note [the ruling of the Advertising Standards Authority \(ASA\)](#)

<sup>39</sup> Beyond being greenwashing, this would mean being in breach of Article 13 of SFDR under which marketing communications must not contradict other information disclosed under the same Regulation. Therefore, examples illustrated in section 4.1.3 look to be in breach of that obligation and deserve further scrutiny.

**that is exposed to greenwashing risks is general lobbying done by market participants – the issue being inconsistency between actual lobbying activities by the market participant and other sustainability claims promoted at entity and/or product-level (e.g., lobbying against climate change mitigation policies while promoting its net-zero commitments). Investors' attention may cover both entities' own lobbying activities and those of their trade association.**

#### **4) ESG credentials**

41. Potentially misleading claims regarding **ESG qualifications** mostly consist of **overstating the actual significance of having a given label, receiving an ESG award, ESG external rating or any other ESG credential such as being signatory to a voluntary reporting framework**<sup>40</sup>. These include overstating or cherry-picking what these ESG credentials actually mean<sup>41</sup>. Moreover, it is worth noting that some sustainability credentials can be attributed by entities that may also sell paid services while not being transparent with respect to the methodologies they adopt to attribute such credentials, nor to the way they manage potential conflicts of interest deriving from this situation.
42. Issuers also seem to be increasingly promoting their products as **climate friendly or climate neutral**. Such labels can give the impression that products are environmentally friendly when in fact these entities might be only offsetting their activities instead.

#### **5) ESG corporate resources and expertise**

43. This topic ranks high mostly for the investment management and investment services sectors, notably concerning human resources dedicated to ESG. **The related term “competence-greenwashing” has emerged to describe the misrepresentation of knowledge, skills, competences, or expertise relating to ESG-related activities.**<sup>42</sup> There appears to be a new trend of professionals relying on specific introductory-level ESG certificates to display their expertise which could be deemed neither fit nor proper. Furthermore, claims on governance and resources are presented in certain situations **as actual progress in achieving the desired strategy** such as decarbonisation. For instance, the hiring of a sustainability officer is just the input that can lead to a result but this in itself is not the actual decarbonisation result and should not be presented as such by entities.

#### **6) Pledges about future ESG performance**

44. **Future ESG performance – in particular net-zero or transition claims** - is one of the most difficult topics to substantiate given that methodologies and criteria are still in the process of

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<sup>40</sup> E.g. claims about reporting under Task Force on Climate-related Financial Disclosures (TCFD), getting an “A” UNPRI rating for asset managers.

<sup>41</sup> For example, a fund shows in its marketing material that it has 5 “sustainable” or “ESG” stars or globes (offered by a given fund Platform X) without revealing this is based on a portfolio holdings analysis relative to the peer group composed by the Platform X and/or that the X proprietary peer group considered is not relevant (e.g. misclassification) or that its investment strategy (e.g. structural preference for European Large Caps relative to the entire peer group) may contribute in part to this good rating.

<sup>42</sup> [Environmental, Social, and Governance \(ESG\) Factors and Green Productivity: The Impacts of Greenwashing and Competence Greenwashing on Sustainable Finance and ESG Investing by Kim Schumacher](#)

development and are not fully implemented. Some of the concerning observed market practices relate to voluntary reporting on net-zero claims: (i) premature commitments without full comprehension of how to achieve them and a lack of underpinning ESG pledges with concrete measures or verifiable plans to meet these objectives over short-, medium- and long-term horizons; (ii) lack of context in ESG pledges: frequently, declarations of intent focus on relative emission reductions (i.e., intensity-based targets) which, without context, do not allow conclusions to be drawn about the added value of the target; (iii) no regular progress monitoring in relation to ESG pledges with comparable data reported regularly; (iv) lack of transparency on the amount and quality of carbon credits potentially used for offsetting; (v) lack of transparency on the necessity to rely on offsets; and (vi) lack of transparency on resources allocated to accomplish the commitments or lack of consistency between the targets, the plans and the resources.

## **7) ESG performance to date**

45. The key drivers of greenwashing related to metrics include **insufficient data availability and quality, lack of audit and assurance** on sustainability disclosures. The most notable issues include ambiguity about impact metrics and the differences between impact and other ESG metrics, as well as **inconsistencies across the EU regulatory framework affecting the calculation of some ESG indicators**.

## **8) Board and senior management's role in sustainability**

46. **Solid governance around ESG** claims may act as a mitigating factor of greenwashing. Thus, elevating ESG responsibilities to the board and senior management level appears to be a good market practice for better company action on integrating ESG considerations into the corporate structure. Misleading claims about this topic mostly consist of **exaggerated or unsubstantiated statements about how internal organisation processes and practices are ESG-aware**. The internal organisation of a market participant can give rise to potential greenwashing when the **internal organisational practices are not aligned with the company's reputation**, brand, strategy and public relations campaigns or with the kind of products/services that the company provides. The board and senior management may induce greenwashing by setting targets and asking for outcomes without providing adequate means to reach the objectives. Moreover, sometimes sustainability-related qualifications seem to be lacking for senior management which leads to management not being qualified.

## **9) Sustainability management policies (including risk policies)**

47. Misleading claims about this topic usually take the form of **unsubstantiated or exaggerated claims about how sustainability risk is taken into account** mostly at entity level and is of particular relevance for investment managers and issuers.



### 4.1.3 The way in which a claim can be misleading

48. **Cherry-picking, omission, ambiguity, empty claims (including exaggeration), misleading use of ESG terminology, such as naming<sup>43</sup> and irrelevance, are seen as most widespread.** More than 60% of CfE respondents rated all the twelve qualities<sup>44</sup> as relevant or very relevant in connection to greenwashing. Moreover, it is worth emphasising that a given claim can tick several misleading qualities at a time<sup>45</sup>, and that the list of misleading qualities should be considered only as an exemplificative and not an exhaustive list.
49. As the most visible item for retail investors, **naming issues are of high relevance**, in particular for investment products<sup>46</sup> but also for benchmarks. Many CfE respondents also identified naming as one of the practices that most facilitates greenwashing. There is marked interest from market participants for clearer rules of product naming at EU level including for a catalogue of ESG terminology that would clarify the use of terms such as impact, sustainable, ESG, etc. In relation to the term “sustainable”, there is widespread concern about the lack of clarity of the SFDR definition of a sustainable investment.<sup>47</sup> Some respondents also noted the high risk that “sustainable” products (when referenced as such) are assumed to be aligned with credible pathways to achieve the climate goals of the Paris Agreement and limit warming to 1.5 degrees Celsius. It is worth noting that naming-related greenwashing is well known for investment products and benchmarks, but it can also apply to names given to voluntary metrics included in sustainability reports or voluntary reporting at entity level, in particular for issuers.
50. **Selective disclosure or hidden trade-off (cherry-picking)**, which consists of suggesting a product or entity is sustainable based on a very narrow set of attributes without paying attention to other major issues, is probably the widest used greenwashing practice. One of the most frequent situations of cherry-picking leading to greenwashing has to do with **selective disclosure of the positive alignment of an entity or of a product to the UN SDGs**. Other relevant examples would be **an airport calling itself a “green airport” because solar panels were installed** on the roof of the building or green bonds issued by a bank to finance renewable energy, with the use of proceeds description also containing means of energy production and power generation that are not considered renewable<sup>48</sup>.

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<sup>43</sup> Naming issues are considered as part of the misleading quality “Suggestive use of ESG-related terminology”, listed in Figure 2. However, a case can be made that naming issues related to the naming of products (e.g. fund or benchmark names) could also be considered as part of channels of transmission of claims such as marketing materials.

<sup>44</sup> Listed in Figure 2 at the beginning of section 4.1.

<sup>45</sup> For instance, using terms such as ‘bio’ or ‘natural’ can be vague, empty, unsubstantiated and irrelevant at the same time depending on context.

<sup>46</sup> Meaning a financial instrument (within the meaning of Article 4(1)(15) of MiFID II) or a structured deposit (within the meaning of Article 4(1)(43) of MiFID II). This includes shares, bonds, funds, derivatives, etc. Thus in this report the investment products term is used to encompass all products under the scope of the issuers (shares, bonds, etc), investment managers and investment service providers sectors. Consequently, financial products is a general umbrella term that can be used to designate either investment products or benchmarks.

<sup>47</sup> The Commission’s [Q&A published on 14 April 2023](#) helps dispel the lack of clarity by confirming the transparency based nature of the SFDR framework.

<sup>48</sup> This could also be described as wrong attribution of the sustainability benefits to a whole entity rather than its part (the building in the airport instance).

51. **Empty claims (exaggeration and failure to deliver on claims)** can have one of the most detrimental effects on investor confidence. One example of such would be stating achievements that reflect compliance with legislation if these are presented as an overachievement, i.e., above competition. Overstatements of ESG claims are often accompanied by **omission and vagueness, in particular for impact claims and measuring a sustainability objective**. For instance, an “ecology” best in class fund that claims to promote an unspecified environmental objective by means of selecting the highest rated companies based on an in-house ESG rating, without explaining how the ESG ratings actually measure the attainment of the environmental objective and how this is actually monitored over time or how the fund manager adjusts its strategy if a selected company no longer meets the environmental objective. Furthermore, the actual ambition of the fund is overstated via ambiguous and inconsistent claims across regulatory and marketing materials consisting of unfounded references to impact frameworks in a fund brochure.
52. Moreover, **omission** is also seen as a source of greenwashing risk in relation to **underlying ESG data used and ESG metrics in general**. Indeed, the lack of clearly outlined **data limitations** and/or disclaimers in documentation on **underlying methodologies** pose a high risk to investor protection and deter comparisons across products and financial market participants. With regard to vagueness, ambiguity or lack of clarity, they are considered particularly relevant in relation to environmental or social characteristics or objectives promoted by an entity or a product.
53. Furthermore, misrepresentation by means of **irrelevance** often occurs in connection to ESG performance claims on items which are secondary or even negligible among the firm’s impacts (e.g., a listed bank’s “green debit card” made out of recycled plastic<sup>49</sup>).
54. **Lack of fair and meaningful comparisons, thresholds and underlying assumptions** poses greenwashing risk in particular in relation to ESG metrics like GHG emissions, carbon footprint or other SFDR Principal Adverse Impacts (PAIs) or benchmark ESG factors. Greenwashing occurs when the actual claims about an ESG metric, for instance, are true, but the comparisons/thresholds or underlying assumptions are selected in bad faith to overstate the sustainability performance of the entity or product. For instance, the carbon footprint metric of an investment product or benchmark is computed without taking into account Scope 3 emissions<sup>50</sup> and compared to an aggregate peer value that does take Scope 3 into account for the majority of the peer group members. **Furthermore, CfE replies stressed the loose**

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<sup>49</sup> Another anecdotal example of irrelevance is a voluntary marketing material such as a 10-page report on the topic of an asset manager’s approach to biodiversity where only 1 page actually contains information on biodiversity, with the majority of the report being about climate change policies, the ESG fund offering of the manager and details about their planting trees.

<sup>50</sup> The Greenhouse Gas Protocol – which provides the most widely recognised accounting standards for greenhouse gas emissions – categorises GHG emissions into three ‘scopes’. Scope 1 covers direct emissions from owned or controlled sources. Scope 2 covers indirect emissions from the purchase and use of electricity, steam, heating and cooling. By using the energy, an organisation is indirectly responsible for the release of these GHG emissions. Scope 3 includes all other indirect emissions that occur in the upstream and downstream activities of an organisation. [Briefing: What are Scope 3 emissions? | The Carbon Trust](#)

**thresholds and assumptions chosen for the SFDR Do No Significant Harm (DNSH)<sup>51</sup> test relative to the TR DNSH test.**

55. **Misleading or suggestive non-textual imagery and sounds** is considered mostly a high-risk area at entity level. For instance, an energy company with a website that pictures windmills when actually 90% of the company's energy is derived from gas. This situation of greenwashing **can also apply to products, for example, via excessive imagery** of solar panels, green technology on the website of an investment fund or ESG benchmark that does not promote any environmental characteristics or objectives.
56. Lastly, **outdated information** can be misleading if the limits of such information are not explained to the end user in a clear and transparent manner.

#### **4.1.4 The various channels through which misleading claims can be communicated**

57. Channels of transmission of sustainability-related claims in the SIVC that are not subject to uniform obligations such as marketing materials, voluntary reporting or some product information like online comparison platforms are most exposed to greenwashing, and especially those that are most influential for decisions taken by retail investors. Respondents to the CfE see **regulatory documents as less exposed to greenwashing risks than marketing materials, labels, and voluntary reporting, though they should not be underestimated or overlooked.**
58. **Labels** rank highly as they affect all products using them and have a very high and systemic impact. Indeed, retail investors may not consider (or care to read) details in information provided, but may rather rely on labels. Reliable labels may play a key role in terms of investor protection as they provide a simple way for retail investors to take decisions in line with their ESG preferences<sup>52</sup>. At a very high level, **current sustainability labels are considered to be accurate even where this is not the case**, either because they are misleading, confusing, insufficiently robust, or not comparable due to lack of transparency of the methodologies. In particular, labels pertaining to processes have the potential to mislead in a context where outcomes are expected. Moreover, issues with labelling schemes and certificates may relate to the focus they have (e.g., limited scope in terms of objectives resulting in cherry-picking of information), to the design of their criteria because of lack of ambition, ambiguity of the metrics used, etc., or to a lack of ex-post controls ensuring that products and entities remain compliant with the said criteria over time (e.g., net-zero initiatives that do not monitor the implementation of the targets).

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<sup>51</sup> The assessment of whether an investment passes the SFDR DNSH test is done with the help of principal adverse impact (PAI) indicators (PAIs). PAI indicators are a set of mandatory and opt-in environmental and social data points (for instance, carbon intensity, emissions to water and gender diversity for corporate investee entities). These metrics are pre-defined under the SFDR for several asset classes and measure the adverse impact of a product or company on sustainability factors.

<sup>52</sup> Research shows that retail investors' decision to invest in ESG products can be motivated either by "value-alignment" or by actual investment's impact. [Heeb, Florian and Kölbel, Julian and Paetzold, Falko and Zeisberger, Stefan, Do Investors Care About Impact? (January 5, 2022). Forthcoming in The Review of Financial Studies, Available at SSRN: <https://ssrn.com/abstract=3765659>; 2° Investing Initiative. [What do your clients really want?](#) May 2022.]

59. One important finding from the CfE concerns the **increasing importance of social media and the rising role of influencers**.<sup>53</sup> Influencers, which includes celebrities, might convey information which is neither accurate nor reliable to retail investors on financial products (e.g., via digital media like podcasts or tweets).<sup>54</sup>
60. Furthermore, **online comparison platforms** may be a source of risk for products like funds due to their accessibility to retail investors, where the way in which information is presented is misleading.
61. **ESG ratings** are one of the most prominent channels of transmission, also confirmed by the CfE. They present numerous shortcomings<sup>55</sup>, including a tendency to focus on the quality of disclosures (bigger issuers might have more resources to disclose what they are doing on ESG than smaller ones, hence the quality of their disclosures may be perceived as high) rather than the actual performance when evaluating issuers. As methodological choices or changes in methodologies are still not sufficiently disclosed by rating providers, investors are not in a position to understand the rationale behind the rating. A good illustration of the consequences of blackbox methodologies or diversity of approaches on investment decisions is the analysis and use of ESG controversies, whose definition, assessment and implication for ESG rating providers and investment decisions can vary immensely across the SIVC<sup>56</sup>. Moreover, **entities can cherry-pick those ESG ratings that present them in the best possible way from a sustainable standpoint**.
62. Lastly, **voluntary reporting** is considered by CfE respondents to be the most used channel for net-zero and climate-neutral claims.

## 4.2 Cross-cutting drivers of greenwashing

63. The competitive drive for market shares and revenue has led to both entity-level and product-level efforts at bolstering sustainability profiles. In a context of very low levels of Taxonomy-aligned assets, **investment opportunities for which sustainability performance appears to be beyond doubt or disagreement**<sup>57</sup> are still scarce. In this context, and as confirmed by responses to the CfE, **greenwashing risk appears to be driven by the convergence of**

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<sup>53</sup> Please note ESMA has already done work on [social media and the role of influencers and](#) is planning to look into this further in its [upcoming CSA on marketing](#).

<sup>54</sup> This is supported by the findings of the following case study [Influencers have greatest impact on consumer sustainability choices. Unilever finds | Marketing Dive](#)

<sup>55</sup> Furthermore, ESG ratings tend to focus on ESG risks and are backward-looking, while many users/readers expect them to cover impact and to be forward-looking, especially when ratings are used to substantiate sustainability claims towards potential consumers.

<sup>56</sup> There is no legal or single market-accepted official definition as each ESG rating provider or financial market participant can decide by themselves what constitutes a controversy. Thus, the assessment of ESG controversies (for instance, this can mean alleged events or practices with likely negative environmental, social or governance impacts) and their implications for **ESG ratings/scores of issuers can significantly vary across data providers**. Concretely, while an apparent controversy can be taken into account by some providers as reported on the spot, other will have processes in place that involve further investigations or an opportunity to react for the involved issuers.

<sup>57</sup> In the absence of shared, science-based frameworks that recognise transition and socially-sustainable investments opportunities, there will be uncertainty about the assets that can be considered as sustainable beyond the Taxonomy-aligned assets.

**multiple factors** (including market, regulatory, supervisory, data and methodological aspects) which may be aggravating conduct issues.

**FIGURE 3. THE MULTIPLE DRIVERS OF GREENWASHING RISKS**



64. In parallel, while the EU has adopted dedicated legislation<sup>58</sup> and created tools to help investors identify credible sustainable investment opportunities<sup>59</sup>, **implementation challenges point to the need for enhanced effectiveness and consistency of the framework.** CfE respondents have highlighted several concerns regarding the regulatory framework such as unclear, ambiguous definitions of certain concepts; lack of standardised calculation of metrics; minimum standards that fail to support the ambition level such as for climate benchmarks; and absence of regulation for certain widely used concepts such as “impact investment”. CfE respondents argue that these can be a source of potential confusion and inefficiencies in the financial system and a source of legal uncertainty for market players, with the consequence of increasing the **pressure for ESMA and NCAs to provide guidance and clarification.**

65. Several respondents to the CfE highlighted that there is currently **an enforcement gap, i.e., a lack of supervisory oversight exercised on sustainability-related claims, leading to**

<sup>58</sup> These comprise: the Sustainable Finance Disclosure Regulation (SFDR), the Taxonomy Regulation (TR), the Corporate Sustainability Reporting Directive (CSRD), the amended Benchmark Regulation.

<sup>59</sup> MiFID II provisions on the sustainability preferences of retail investors in investment advice and the integration of sustainability considerations into product governance requirements, climate benchmarks in the Benchmark Regulation and the proposal for a Regulation to create a European green bond standard (EU GBS).



**limited sanctions.** This enforcement gap, they argue, lowers the expected costs of greenwashing and of non-compliance with key provisions of the EU regulatory framework.<sup>60</sup> This may incentivise market participants to avoid the potential costs associated to allocating appropriate amounts of resources (e.g., capacity building and IT systems) and attention (e.g., due diligence processes and management oversight) needed to tackle greenwashing risks. **For them, this issue of a potential enforcement gap is compounded by potential gaps in institutional mandates and national specificities** in terms of mandates and institutional arrangements.

66. Although securities markets regulators have long-standing experience in supervising information provided across the investment value chain and to retail investors, **supervising sustainability-related information presents new challenges.** To understand and challenge sustainability-related claims, regulators need to develop new expertise and skills and to absorb a wide range of new obligations stemming from a regulatory framework that is not yet stabilised. In addition, the sustainability profile of entities and products builds on multiple pieces of mandatory and voluntary information, covering both backward- and forward-looking data, as well as longer-term horizons than financial information usually covers. This is a source of uncertainty for regulators tasked with protecting investors when they try to assess the plausibility and consistency of such claims.
67. **Market players face similar challenges** in the application of the sustainable finance regulatory framework. ESMA recognises that many of them seek to provide investors and other stakeholders with relevant and high-quality information on sustainability aspects, while ensuring compliance with a new and complex regulatory framework. As this regulatory framework gradually stabilises, market players will get a clearer view of the data infrastructure needed to comply with new disclosure requirements. However, they appear to face **a steep learning curve, with difficulties in developing the right set of skills and expertise to implement complex regulatory requirements and to develop the right IT systems and data infrastructure.** This may entrench “business as usual” cultures and inadequate incentive structures which have tended to favour short-term thinking and risk-averse attitude to changing investment strategies. These gaps in expertise and skills are compounded by uncertainty about suitable metrics and relevant methodological approaches on certain aspects.
68. In addition, it appears from replies to the CfE that market participants may also face **difficulties in implementing an internal organisation and a governance structure that effectively support their sustainability transition efforts and ensure the quality of sustainability reporting and disclosures.** Some respondents to the CfE also linked the difficulties of implementing effective sustainability governance with a potential **implementation gap**, where decisions on entity-level sustainability policies and strategies do not translate into progress in

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<sup>60</sup> In a 2020 report, the Climate Disclosure Standards Board reviewed the non-financial reporting of the 50 largest listed companies in the EU and concluded that “reporting often still fails to offer investors a clear understanding of companies’ development, performance, position and impact, as it lacks the necessary quality, comparability and coherence”. CDSB, ‘Falling short? Why environmental and climate-related disclosures under the EU Non-Financial Reporting Directive must improve’, May 2020.



terms of sustainability performance of operations (e.g., final investment decisions not in line with overall strategy decided at board level), resulting in claims becoming misleading *ex post*.

69. These internal governance issues may also lead to the occurrence of misleading claims due to insufficiently robust due diligence processes, potentially less strict than those existing for financial disclosures. **Robust and appropriate controls and due diligence efforts applied at various steps of the SIVC can play an important role in tackling greenwashing – and the lack thereof may lead to increased greenwashing risks.** Not all segments of the SIVC are subject to the same level of due diligence obligations. Respondents to the CfE expressed concerns about due diligence obligations not being fully clear and about the allocation of responsibilities across the SIVC not being effective – in particular when a market participant relies on previously audited or externally-reviewed data.<sup>61</sup> For instance, it is currently unclear for fund of fund providers if, and how far, the fund manager should be responsible for verifying the ESG information for all of the investee companies to which it has exposure.
70. **Managing the flow of data and accessing relevant, high-quality data is highlighted as a challenge** for market players. The reversed sequencing of EU legislation – e.g. with CSRD coming into force after SFDR - has led to difficulties accessing data needed by financial market participants. At the moment, users have to deal with a flow of sustainability-related data which is for the most part not audited or otherwise externally verified. The multitude of sources of information which are completed and updated on a regular basis creates an informational landscape where proper scrutiny of the information can require significant human resources. Finally, the proliferation of reporting frameworks (both regulatory and voluntary) which are not all interoperable creates data overload and may undermine comparability. Difficulties in developing internally the expertise and data infrastructure needed, has **exacerbated the reliance of certain market participants on external ESG data and ratings providers.**
71. To the extent that they **enhance comprehensibility and comparability, reliable labelling schemes can** help to mitigate greenwashing. At the same time, their misuse represents **potential sources of misleading sustainability claims.** This is **concerning given that retail investors with limited financial and ESG literacy rely on them to make informed investment decisions.** Moreover, there is fragmentation of the labelling landscape, with most labels only catering to national or intra-EU regional markets and a very wide array of design and governance schemes.

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<sup>61</sup> For example, the question could arise in the case third hand spreaders: investment managers offering a fund of fund composed of x funds with each underlying held fund having exposure to several investee companies. This example applies equally well to benchmark administrators offering benchmarks composed of funds

## 4.3 Issuers

72. **High-quality corporate-level sustainability information<sup>62</sup> is critical for the well-functioning of the SIVC.** With regards to corporate sustainability reporting, findings on greenwashing risks reflect the state of affairs under the requirements established by the Non-Financial Reporting Directive. Remediation actions however reflect the fact that a new regime is under way that will improve the quality of issuers' sustainability conduct and disclosures.<sup>63</sup>

**TABLE 2: HIGH-RISK AREAS FOR ISSUERS**

Key dimensions	High-risk areas
<b>Sustainability topics</b>	<ul style="list-style-type: none"> <li>• Board and senior management's role</li> <li>• ESG strategy, objective, characteristics</li> <li>• Sustainability management policies</li> <li>• ESG qualifications, labels, certificates</li> <li>• Engagement with stakeholders</li> <li>• ESG performance to date</li> <li>• Pledges about future ESG performance</li> <li>• Claims about impact (cross-cutting aspect)</li> </ul>
<b>Channels</b>	<ul style="list-style-type: none"> <li>• Regulatory information / voluntary reporting for non-marketing purposes</li> <li>• Marketing material (e.g. investors' presentations)</li> </ul>
<b>Misleading qualities</b>	<ul style="list-style-type: none"> <li>• Omission or lack of disclosure</li> <li>• Selective disclosure / cherry-picking</li> <li>• No proof / unsubstantiated claims</li> <li>• Inconsistency</li> </ul>

### 4.3.1 High-risk areas

73. **Pledges about future ESG performance, in particular net-zero commitments and so-called “transition plans” are exposed to greenwashing risk.** Ensuring the quality of such disclosures is key to supporting the development of transition finance.<sup>64</sup> While being an essential part of corporate sustainability reporting, **forward-looking information is particularly exposed to greenwashing risk** due to the significant reliance of this type of

<sup>62</sup> The sustainability profile of an entity covers the set of features that characterise an entity's approach and exposure vis-à-vis sustainability matters and which becomes visible to external parties through various forms of public disclosures as well as through other information sources including direct observation of an entity's actions

<sup>63</sup> In the corporate sustainability disclosure area, the regulatory context is still under development, with the CSRD only recently entering into force for application for reporting periods 2024 onwards (for financial reports published in 2025) and with the related Level 2 measures (the European Sustainability Reporting Standards – ESRS) still to be adopted by the European Commission. Therefore, ESMA considers that it will be most fruitful to await the effects of this new regime before considering further legislative intervention in the area of issuers' sustainability reporting, and the recommendations on sustainability reporting in this section are therefore limited.

<sup>64</sup> As laid out by the OECD in its October 2022 guidance on the topic, transition finance “must be grounded in credible corporate climate transition plans, in line with the temperature goal of the Paris Agreement, to be effective in mobilising investments for the net-zero transition and ensuring environmental integrity.” [Source: OECD (2022), OECD Guidance on Transition Finance: Ensuring Credibility of Corporate Climate Transition Plans, Green Finance and Investment, OECD Publishing, Paris, <https://doi.org/10.1787/7c68a1ee-en>.]

information on judgements and projections, which, when misstated, may provide misleading information. The main points of attention identified regarding net-zero commitments – and confirmed in CfE responses – are:

- (1) The lack of transparency regarding the level of uncertainty surrounding certain pieces of information (for instance, regarding assumptions underlying climate scenario analysis);
- (2) The unclear or limited scope of targets, for instance via the exclusion of scope 3 emissions (or significant scope 3 categories) or of important shares of business activities<sup>65</sup>;
- (3) The misleading presentation of the use of carbon credits for offsetting (either because the full extent to which carbon credits are used by the entity is not disclosed, because the environmental integrity risks associated with these carbon credits is not adequately represented<sup>66</sup> or because they are presented as equivalent to emissions reductions and as a means to achieve net zero targets<sup>67</sup>); and
- (4) The misleading disclosure of the level of ambition (i.e., sustainability targets presented as ambitious, while they are not aligned with the headline ambition, or even just “business-as-usual” commitments).

74. The potential **disconnect between climate disclosures of certain issuers and their actual conduct** is the source of greenwashing concerns – several CfE respondents provided examples of potential greenwashing practices related to that issue. This could be the case, for example, of companies in the fossil fuel sectors disclosing net-zero commitments while continuing to invest in expanding fossil fuel supply. An important greenwashing risk area is when inconsistencies appear or when more prominence is given to the *future* climate commitments than to the impact of *current* environmentally harmful activities.

75. With regards to **transition plans**, the main points of attention identified and confirmed by CfE responses relate to a potential credibility gap, whereby the ability of an entity to deliver on its commitments does not appear sufficiently backed up by the plan. The credibility gap may be linked to (1) the insufficient amount of resources allocated to support the plan delivery, (2) the absence of intermediary milestones and/or (3) the absence of a progress monitoring

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<sup>65</sup> For example, a diversified company, including oil and gas operations, promoting emissions reductions / net-zero commitments: the company only included scope 1 (direct emissions from owned or controlled sources) and scope 2 (indirect emissions from the purchase and use of energy) GHG emissions in scope of the target. Given that scope 3 emissions (indirect emissions associated to the up- and downstream value chain) represent the vast majority of emissions associated to fossil fuel extractions, this appears misleading for investors.

<sup>66</sup> Academic work and media reports have pointed to risks in terms of environmental integrity associated to carbon credits. A 2016 [report commissioned by the EC](#) led to the decision to limit the use of international carbon credits as part of the European Union Emission-trading system. The report concluded, at the time, that “73% of the potential 2013-2020 Certified Emissions Reductions” credits supply represented low likelihood of emissions reductions additionality and had a low likelihood of the emissions reductions not being over-estimated. More recently, a [joint investigation](#) by the Guardian, Die Welt and SourceMaterial concluded that 90% of the REDD+ carbon credits from the world's largest offsetting standard actually have no positive impact on climate change.

<sup>67</sup> As laid out in the draft European sustainability reporting standard [submitted](#) by EFRAG to the EC and in the [report](#) of the UN-led High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities: carbon credits should not be counted as means to achieve net zero targets and should be used for climate change mitigation action beyond the value chain of an entity.

framework.<sup>68</sup> Intermediary milestones and the monitoring of progress towards intermediary and final targets are crucial to ensure transparency and accountability. An additional area in which credibility gaps may emerge is with regards to the financial reporting implications of transition plans, for example, entities committed to undertaking an ambitious transition plan may need to dispose of some assets in advance compared to their previous plans which may result in accelerated depreciation or impairment of these assets. Transparent communication about those circumstances is critical for the credibility of transition plans and their incorporation into investment decision-making. These challenges featured in transition plans published by non-financial companies **may result in greenwashing for financial companies, developing their own transition plans or setting decarbonisation targets backed by investee companies' own transition plans and commitments.** In case of wrong and misleading forward-looking information or in case of non-execution by investee companies, the investment managers could prove to be unable to meet their own plans or targets.

76. Another area of potentially misleading claims are related to **contributions to the UN SDGs**, communicated as part of an overarching strategy or through specific projects/financial contributions. Misleading claims may be related to either past ESG performance or pledges about future ESG performance. Such claims appear difficult to assess when no clear logical framework is disclosed to help understand how a company or a project's specific outputs translate into an outcome and contributes to progress towards any specific SDG globally, or even whether the actions of the company are genuinely relevant regarding the selected SDG.
77. All the aforementioned issues are a source of greenwashing risk not only for sustainability reporting, but also for **disclosures in relation to the offering of securities to the public and/or admitting securities to trading on a regulated market in general**, including shares and sustainable bonds. Issues related to **unclear or insufficient ambition** may affect both UoP sustainable bonds (with projects seen as insufficiently ambitious) and SLBs (target that do not cover the main impacts of the issuer or related to non-material ESG aspects, "easy to achieve" or "business as usual" targets, ambition below the efforts expected from the sector in which the issuer operates). Regarding SLBs, concerns around the **effectiveness of the penalty mechanisms** (highlighting the potential for a "free lunch" for some issuers) have also been voiced raising questions about the role of SLBs<sup>69</sup> in financing the transition.<sup>70</sup> Scope limitations, in terms of sustainability impact and/or business lines, and the **absence of a link to a broader entity-level sustainability strategy** also introduce potential inconsistency between the sustainable label given to the financial instrument and the issuers' material impacts – with the potential to be misleading, in particular for retail investors. Further undermining comparability and credibility of sustainable bonds is the fact that issuers can identify instruments as sustainable or ESG-focused and name them accordingly, without any reference

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<sup>68</sup> In its 2022 benchmarking of financial institutions, the World Benchmarking Alliance found that, among financial institutions with long term net zero targets, "only 2% have been translated into interim targets applied across the institution's financing activities." <https://www.worldbenchmarkingalliance.org/publication/financial-system/>. This benchmarking covers 400 global financial institutions with the goal of assessing their progress to supporting a just and sustainable economy.

<sup>69</sup> ESMA. "Sustainability-linked bonds under scrutiny." *TRV Risk Monitor No. 1, 2023*. February 2023.

<sup>70</sup> One example is the case of 'callable' SLBs where the issuer is able to repay the debt before maturity, hence before the sustainability performance targets are even measured – in this case the commitment to sustainability is never tested.

to the EU Taxonomy or to common market standards. With regards to regular reporting on the actual use of the proceeds over time, concerns have been raised regarding the lack of granularity of the reports where issuers are following a portfolio-based approach instead of a project-by-project approach.<sup>71</sup>

78. As highlighted in ESMA's most recent European common enforcement priorities<sup>72</sup>, disclosures about climate-related risks are a key area of omissions from issuers, which results in misleading information. As the risks from climate change and other environmental crises increase, it is likely that allegations about **misleading claims regarding sustainability-related risks will also become more prominent**. In addition, misleading claims about environmental impacts can lead to the underestimation of an issuers' exposure to transition risks. For instance, the **failure to disclose the underlying assumptions of the assessment performed and time horizons considered** can lead to conclusions about exposure to sustainability risks being misleading to investors<sup>73</sup>. There is growing expectation from investors and supervisors that companies clearly and fairly disclose the sustainability risks and opportunities they face and how these may affect their business performance and development. Similar disclosures are expected within prospectuses.
79. Another issue is related to **issuers' stakeholders engagement and lobbying activities**. There is growing concern about engagement and lobbying activities that are not consistent with the issuer's sustainability strategy and commitments (e.g., lobbying against climate change mitigation policies - be it by the company itself, or through their adhesion to a trade association - while promoting net-zero commitments). Investors' attention covers both companies own lobbying activities and those of their trade association.
80. CfE respondents have also identified **governance of sustainability aspects as a source of greenwashing concern**. They highlighted that long-term commitments are sometimes insufficiently backed up by short term commitments and actions for which management boards are accountable, the implementation of relevant and comprehensive progress monitoring frameworks, and incentive schemes that effectively incentivise senior management to deliver on sustainability commitments. There are also concerns about the potential overstating of the actual level of expertise gathered on management boards.
81. According to CfE responses, misleading sustainability claims may **feed into corporate communications** (e.g., advertising campaigns, non-regulatory website disclosure, social media postings, investor presentations, other voluntary reporting<sup>74</sup>, non-financial statements, financial statements and prospectuses, analyst presentations, press releases containing price

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<sup>71</sup> Under a portfolio-based approach, an issuer does not distinguish between various issuances when reporting on the use of proceeds, but rather reports across all debt issuances.

<sup>72</sup> ESMA, "[PUBLIC STATEMENT European common enforcement priorities for 2022 annual financial reports](#)" (ESMA, 28 October 2022). For instance: "Boilerplate disclosures stating that climate-related matters have been considered (for instance, in impairment tests) without further explanation as to how and to what extent it affects (or does not affect) financial statements should be avoided"

<sup>73</sup> ESMA, "[PUBLIC STATEMENT European common enforcement priorities for 2022 annual financial reports](#)" (ESMA, 28 October 2022).

<sup>74</sup> Voluntary reporting comprises the sustainability reporting of companies that are not subject to mandatory sustainability reporting or, for companies subject to mandatory sustainability reporting, any reporting that goes beyond the reporting of sustainability information required by the regulation. It is worth noting that in some cases, voluntary reporting then feeds into marketing materials.

sensitive information, etc.). **Marketing material appears to be an important channel** for greenwashing risks at issuers' level, as retail investors and consumers more generally are most likely to see an issuer's advertisements and not its regulatory documents. Furthermore, marketing material may also be misleading due to inconsistent messaging (for instance, when advertising contains a claim that is not included in a regulatory document and cannot be otherwise verified because insufficient information is provided).

82. Sustainability statements issued **by sector-wide trade associations or bodies** that are perceived or proved to be misleading can potentially tarnish the reputation of all issuers in a given sector (e.g., a voluntary initiative might get criticised for a lack of ambition or for being too lenient with the standards it upholds its signatories to when monitoring progress over time). This can, in turn, undermine the efforts and positions of members of these organisations that have more ambitious and credible commitments to sustainability.
83. One way in which sustainability claims may be misleading is when an issuer's reporting or disclosures provide a **partial, selective picture of the sustainability profile of a given entity** – cherry-picking information, omitting negative aspects while only disclosing positive aspects. In addition, an issuer may omit or give vague information about positive impacts in order to reduce potential regulatory or investors and stakeholders' scrutiny and potential greenwashing allegations.
84. With regards to pledges about future sustainability performance, as highlighted before, the **lack of clear substantiation** is often an issue – where methodologies and assumptions are not clearly set out and potential risks to delivering on the target are not identified. Moreover, stating achievements that reflect compliance with legislation can be misleading if, for example, it is presented as overachievement above legal requirements or above what could be considered as common practice in the relevant market.<sup>75</sup> The issue of **inconsistent disclosures** appears as a high-risk area and occurs at various levels. Inconsistency might first arise between various pieces of information (e.g., mandatory versus marketing/voluntary disclosures and financial versus non-financial information). Inconsistency issues might also arise within specific topics - regarding pledges about future ESG performance (consistency of scope and ambition) or regarding issuers' engagement plans (consistency with the overall sustainability strategy and objectives). Inconsistencies might also appear between information from an issuer and information about that issuer disclosed by third parties such as in ESG ratings. Contrasting the information provided by the issuers with the information provided by ESG rating providers and ESG analysts may sometimes help users of the information identify potential inconsistencies.

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<sup>75</sup> Recital 18 of the Proposal for a [Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims \(Green Claims Directive\)](#) states that "The trader should not present requirements imposed by law on products within a given product category as a distinctive feature of the trader's offer or advertise benefits for consumers that are considered as common practice in the relevant market."



### 4.3.2 Underlying drivers of misleading sustainability claims

85. One factor of the limited comparability and reliability of sustainability information has been the **absence of a requirement to publish standardised, audited corporate sustainability reporting**. Based on CfE responses, it appears that greenwashing risk is also driven by a **lack of expertise and skills on reporting and disclosures on the preparers' side, especially smaller issuers**, and sometimes by deficient understanding of the regulation. Resource constraints and unsuitable IT systems can also compound these aspects. Overall, with the regulatory framework stabilising, these issues should gradually be resolved as issuers will have a clearer view of the information to be reported and therefore will identify more clearly the skills and expertise they need to develop or onboard.
86. Other drivers cited by CfE respondents for the occurrence of misleading claims at issuers' level stems from **(1) their difficulties on gathering data from entities in their value chain, especially small and medium-sized enterprises (SMEs) and from (2) the fact that less rigorous controls may be applied to ESG disclosures, compared to financial information**. Lack of control may relate to both issuers (not on an equal footing with those in place for financial disclosures), but also external verifiers, undermining the overall quality of the corporate sustainability reporting and disclosures.
87. **Potential liability risks may be driving non-disclosure of certain forward-looking information**, particularly in prospectuses. The uncertainty around forward-looking information raises the issue of **non-execution risk** – the risk that commitments about future sustainability performance are not achieved. The further away in time such commitments are, the higher the non-execution risk, also due to the possibility that a new managing team will overturn past decisions.

### 4.3.3 Possible remediation actions

88. A new regime is underway in this area, constituted by **Directive 2022/2464/EU as regards corporate sustainability reporting (CSRD) and the European Sustainability Reporting Standards (ESRS) which should mitigate some of the issues raised above**. This new regime will start applying 1 January 2024, with first sustainability reporting published in 2025<sup>76</sup>. In parallel, the proposal for a **Directive on Corporate Sustainability Due Diligence (CSDDD)** may support the improvement of forward-looking information in this area, with large companies potentially mandated to establish so-called “transition plans” in the future<sup>77</sup>. In addition, the CSDDD proposal sets out a corporate due diligence duty to identify, prevent, bring to an end,

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<sup>76</sup> By 2028, the sustainability reporting requirements will gradually apply to an increasingly larger set of companies, including listed SMEs, to reach 50,000 companies in total.

<sup>77</sup> Under Article 19a(2)(a)(iii) of the CSRD, transition plans are described as “the plans of the undertaking, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the ‘Paris Agreement’) and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 of the European Parliament and of the Council (\*8), and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities”.

mitigate and account for adverse human rights and environmental impacts in the company's own operations, subsidiaries and value chains. Under this new regulatory regime, encompassing the CSRD and the CSDDD, the quality of issuers' sustainability conduct and disclosure is expected to improve.

89. **As highlighted in 2022 ESMA's yearly European common enforcement priorities (as well as in prior years since 2018), issuers have a responsibility to communicate in a balanced manner** about their sustainability commitments and performance, through fair, clear and not misleading claims. In the areas of corporate sustainability disclosures, **ESMA is committed to prioritise supervisory convergence work** to develop common approaches to the supervision, through discussions of supervisory cases and the development of convergence tools with the objective of mitigating greenwashing risk. As part of its 2022 ECEP, ESMA together with NCAs will pay particular attention to climate-related matters and taxonomy-related disclosures in 2022 annual financial reports. ESMA will report on its findings on these priorities as part of the annual reporting on supervisory and enforcement activities in 2024..
90. This new regime will support more specifically the availability of standardised, audited forward-looking information about emissions reduction targets and transition plans by issuers **which can support the recognition and the supply of transition finance investment opportunities**. This may help address the current mismatch between significant demand for ESG products and the limited availability of taxonomy-aligned sustainable investment opportunities, by **channelling this growing demand for ESG products towards financing the transition of the real economy**. To do so, while mitigating greenwashing risks, a robust definition of "transition investment" is critical, building on forthcoming CSRD-driven reporting. **In this context, the supervision of transition finance will deserve close and further attention. It is likely to require the design of a robust definition of transition investment at European level.**
91. In terms of the disclosures published in relation to the offering of securities to the public and/or admitting securities to trading on a regulated market, several ongoing legislative initiatives are also expected to enhance the quality of the information disclosed. The EU Green Bond Standard (EU GBS) Regulation aims to create a high-quality voluntary standard for the green bonds market. The EU GBS will also provide investors with a benchmark against which to compare other sustainable bonds segments, although it is not expected to lay out requirements regarding the use of ESG- or sustainability-related terms in the names of financial instruments falling within and outside its scope<sup>78</sup>. **In this context, to support transparency and comparability, extending the development of naming conventions (that is already being considered regarding funds) to financial instruments, might be beneficial and could be considered in the future.**

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<sup>78</sup> Once the text will come into force, three kinds of green bonds will be found on the EU market: (i) proper EU Green Bonds, that voluntarily abide by the requirements of the EU GB Standards, (ii) bonds that voluntarily opt-in for enhanced transparency stated in the EU GBS, and (iii) other green bonds as the ones that apply International Capital Market Association (ICMA) standard or Climate Bonds Initiative standard.

92. ESMA also welcomes the **Listing Act Initiative** which proposes (1) the introduction of **ESG disclosure requirements for the prospectus** of non-equity securities that are marketed based on ESG factors and (2) the inclusion of CSRD reporting in equity prospectuses. The introduction of new requirements for prospectuses will support the application of Prospectus Regulation's requirement that marketing material is consistent with the information provided in prospectuses.<sup>79</sup>

93. To address the potential non-disclosure of forward-looking information relevant to investors within prospectuses, **further consideration could be given to the extent to which liability risks make issuers uncomfortable** with including such information and to **identify potential ways to address fairly and effectively some of these concerns**.

#### 4.4 Investment managers

94. This section will focus on the most relevant high-risk areas of greenwashing related to the investment managers sector, which are briefly summarised in the table below.

**TABLE 3: HIGH-RISK AREAS FOR INVESTMENT MANAGERS**

<b>Key dimensions</b>	<b>High-risk areas</b>
<b>Sustainability topics</b>	<ul style="list-style-type: none"> <li>• Impact</li> <li>• Present ESG performance (metrics linked to impact &amp; omission of ESG data methodologies)</li> <li>• Engagement</li> <li>• Governance</li> <li>• ESG Strategy (characteristics, objectives, likely holdings, etc.)</li> <li>• ESG credentials</li> </ul>
<b>Channels</b>	<ul style="list-style-type: none"> <li>• Marketing materials (factsheets, impact reports, engagement reports)</li> <li>• Regulatory documents</li> <li>• Labels</li> </ul>
<b>Misleading qualities</b>	<ul style="list-style-type: none"> <li>• Naming</li> <li>• Cherry-picking</li> <li>• Exaggeration</li> <li>• Ambiguity and omission</li> <li>• Lack of meaningful assumptions</li> <li>• Omission</li> </ul>

<sup>79</sup> Article 22 (3) of the Prospectus Regulation states that " The information contained in an advertisement shall not be inaccurate or misleading and shall be consistent with the information contained in the prospectus, where already published, or with the information required to be in the prospectus, where the prospectus is yet to be published."

#### 4.4.1 High-risk areas

95. The highest areas of greenwashing risk apply equally to claims about funds and to entity-level claims about the ESG profile of the asset manager. Based on ESMA findings, specific high-risk areas identified include, but are not limited, to **impact claims**, statements about **engagement with investee companies**, about a fund or asset manager's **ESG strategy and ESG credentials** (such as ESG labels, ESG ratings or ESG certifications), **fund names**, and claims about **governance around ESG**. Some of the most frequent forms of misrepresentation consist of exaggeration, ambiguity, omission and lack of meaningful assumptions. The channels of transmission of the above-mentioned claims that are most exposed to greenwashing risks include prospectuses, marketing materials (factsheets, sustainability and impact reports, engagement reports) and labels.
96. **Misleading claims on impact** (also referred to by some as impact-washing) is arguably the most prominent in the investment management sector across the SIVC. The misleading qualities most frequently linked to impact claims for funds and asset managers include many, if not all, of the twelve misleading qualities.<sup>80</sup> One relevant case in point is implying an ESG result or metric is the direct result of the strategy whereas it might sometimes just be the result of the intrinsic characteristics of the investable universe or of the fund's targeted asset classes and industries.<sup>81</sup> **An example** of misleading impact claims about a fund was provided in the CfE. A **climate-focused fund's online advertisement was considered misleading** because it claimed that retail investors would be able to achieve a **calculable positive effect on their individual CO2 footprint** that depended on the amount of their investment. This was in contrast with the more detailed information brochure which stated that making quantifiable contributions to the attainment of ecological goals was merely a non-binding objective of the fund. The fund manager refused to remove these claims, so was sued by a consumer association. In early 2022, the court ruled and required the fund manager to take down the misleading claim. **Another example** of misleading impact claims relates to funds claiming to have a **low-carbon strategy** where in reality the funds' portfolios have high carbon emissions. One NCA assessed these claims against the funds' actual emissions and found large divergences in funds claiming to have a low carbon output. These example illustrate quite well the prominent **issues related to unsubstantiated, exaggerated and inconsistent fund impact claims in fund documents**. Moreover, they raise the issue of the utility for investor protection of non-binding sustainable objectives and their prominence in fund documents.

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<sup>80</sup> Some of the more widespread situations including selective disclosure (cherry picking), ambiguity, inconsistency, omission and (very important for references to the calculation of certain ESG metrics like GHG emissions or GHG intensity) lack of meaningful comparisons and thresholds.

<sup>81</sup> For instance, a global equity impact fund has an inherent structural underweight (permanent, driven by the stock-picking style of its lead portfolio manager) to carbon intensive sectors like utilities (both relative to its benchmark, a broad world equity benchmark, and to its peer group). This leads to it having one of the lowest GHG intensity and footprint metrics in its peer group. The fund boasts in its marketing material that its carbon footprint is in the top 10% of its peers without disclosing the inherent factors leading to this result and without indicating which portion (if any) of the lower GHG metrics is attributable to the actual strategy.

97. In addition, misleading fund impact claims can also stem from a **confusion about types of impact targeted by a given fund**. It can be argued that there are two main types of impact fund strategies.
98. **“Buying” impact**<sup>82</sup> (getting underlying investee company exposure) via impactful companies: In this case, fund holdings are expected to have some level of positive sustainable impact or greenness. Holdings analysis is a pertinent way to detect greenwashing. Typically, these strategies would disclose under Article 9 SFDR provided requirements related to the DNSH of SFDR and good governance are met at investment level.
99. **“Creating” impact**<sup>83</sup>: There are multiple ways for “creating” impact including financing the transition and supplying new capital by directly financing sustainable solutions. One notable example are funds buying “brown” (transitioning) companies and turning them “green”, then selling them for profit and reinvesting in other brown companies. The impact in this case is attributable to the investment strategy (e.g., successful engagement) and cannot be entirely ascertained based on a portfolio holdings analysis<sup>84</sup>. The funds would disclose under Article 8 or Article 9 SFDR, subject to their meeting of Article 9 SFDR criteria and, in particular, that related to holding sustainable investments. It is very important to note that **sound impact claims can come from such products trying to de-brown the economy and that these may confuse those who are not well versed investors**. In order to avoid greenwashing, fund documents would ideally include further transparency on the investment strategy, including on likely or expected holdings in addition to what is already required by SFDR templates<sup>85</sup>. Furthermore, it is important to emphasise that, according to current SFDR provisions, and also given the neutral nature of SFDR disclosures,<sup>87</sup> market participants should make their assessment of whether an SFDR financial product (such as a fund) should disclose either under Article 8 or 9 SFDR independently of whether they are promoting an impact strategy (and, relatedly, also independently if it targets “buying” or “creating” impact).<sup>88</sup>
100. Misleading claims about **engagement with investee companies** is another high-risk area that is particularly relevant for investment managers. These are claims in which asset managers state that, at entity level, they are engaging with issuers and/or voting on sustainability topics and that, at the fund level, as part of a bespoke engagement strategy specific to the fund, they

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<sup>82</sup> More specifically buying sustainable assets

<sup>83</sup> More specifically, investing/financing the transition of the underlying assets

<sup>84</sup> Another example of brown to green strategies would be a fund whose main investment drivers is the acquisition of burnt forest for reforestation.

<sup>85</sup> The SFDR templates already require the following : “What investment strategy does this financial product follow?” in Annex II/III, and the pre-contractual templates require commitments to (1) share of investments meeting the characteristics/sustainable investment objectives, (2) sustainable investments, (3) taxonomy-aligned investments, which can reasonably be described as “likely or expected holdings”.

<sup>86</sup> Non compliance with the templates is a breach of SFDR provisions, beyond greenwashing.

<sup>87</sup> Confirmed by the EC Q&A from July 2023 [sfd\\_r\\_ec\\_qa\\_1313978.pdf \(europa.eu\)](#)

<sup>88</sup> This is not the case in other jurisdictions where, under other approaches such as the FCA’s proposed classification system for funds [CP22/20: Sustainability Disclosure Requirements \(SDR\) and investment labels \(fca.org.uk\)](#) impact funds might be seen as more ambitious than other non-impact funds. In the case of SFDR, while some impact funds disclosing under Article 8 SFDR (e.g debrowning strategies) might be perceived by some market participants as more ambitious than some non-impact funds disclosing under Article 9 SFDR, that **should not be interpreted as reason enough for the given impact fund to disclose under Article 9 SFDR** if they do not meet the necessary conditions (e.g. if they hold investee companies that are not sustainable investemnts under SFDR).



are carrying out engagement with companies in line with their fund's specific environmental or social objective. Historically, asset managers not very advanced on their ESG journey have used engagement as an easy way to claim they were doing something about sustainability. Recent industry news items and reports<sup>89</sup> state that this **is still the case as not many asset managers claiming to vote on important environmental and social topics, or who claim to carry out meaningful engagement, actually do so**. The most frequent forms of misleading claims of this type include references to **unsubstantiated (empty) engagement strategies** that are neither consistent nor transparent, and do **not provide important details about the progress of engagement** like buy or sell decisions based on engagement specific outcomes, specific divestment triggers or the vote against Board members or financial statements as a result of an escalation process. Details about engagement policies can be found in asset managers' mandatory reporting under the Shareholders Rights Directive II ("SRD II"<sup>90</sup>), fund specific voluntary reporting such as annual impact and engagement reports but have to also be referenced by asset managers in SFDR disclosures<sup>91</sup>. The variety of approaches and level of detail in substantiating these engagement claims may lead to a lack of comparability of the quality of the engagement across funds and asset managers.

101. **Fund and benchmark naming**<sup>92</sup> **issues** came out from the CfE as one of the most important greenwashing areas to address. The use of the term "sustainable" in fund names is particularly challenging, given the definition of sustainable investment in SFDR. It is worth highlighting the fact that "sustainability" historically does not just refer to ESG, many investment funds having made references to financial sustainability, sustainable growth, sustainable business plans and so forth in their documents including in their names. As a result, some funds might still have "sustainable" or "sustainable growth" in their name without disclosing under Article 8 or 9 SFDR, even though European Commission Q&A suggest that such claims in product names should at least require disclosure under Article 8 SFDR.<sup>93</sup>
102. Regarding claims about **governance around ESG**, one example from the CfE highlighted the discrepancy between having policies requiring fund managers and research analysts to consider ESG risk and opportunity factors in their investment process and **not having a tracking system in place to evidence if this policy was complied with**. The example given was that of an asset manager which claimed it was integrating ESG across a great part of its fund offering, despite various internal assessments documenting that entire key asset

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<sup>89</sup> [ShareAction | Ranking asset managers' voting performance | Voting...; CA100+ delists BNY Mellon subsidiary over engagement failure \(responsible-investor.com\); Stewardship 'not being integrated into mandates', despite asset owner concerns \(responsible-investor.com\)](#)

<sup>90</sup> [Article 3g of SRD II](#) requires relevant asset managers to publish a shareholder engagement policy ("Engagement Policy") stipulating how they have integrated shareholder engagement in their investment strategy. "Institutional investors and asset managers shall, on an annual basis, publicly disclose **how their engagement policy has been implemented**, including a general description of **voting behaviour**, an explanation of the **most significant votes and the use of the services of proxy advisors**. They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company."

<sup>91</sup> In the PAI statement of the asset manager and in periodic reporting of PAIs under the column "Actions taken"

<sup>92</sup> fund naming rules were recently under consultation and ESMA is reflecting on next steps based on input received. CP [Consultation on Guidelines on funds' names using ESG or sustainability-related terms \(europa.eu\)](#)

<sup>93</sup> For instance, there are many [Quality-style](#) focused equity funds whose main criteria for stock-picking includes companies having a sustainable business model and who sometimes have the term 'Sustainable Growth' in their name. European Commission Q&A on this can be found on page 8 in the [July 2021 SFDR Q&A](#).



classes had no verifiable ESG integration and despite only a very small fraction of the assets under management actually applying ESG integration. This illustrates **the importance of good quality governance around ESG implementation and of sound governance checks as a mitigant of greenwashing risk at the asset manager level**. Additionally, it echoes other views collected by ESMA that **greenwashing will continue to exist as long as ESG duties** (duty to deliver on implementing an ESG policy, carrying out ESG research, and meeting clearly defined and measured ESG metrics/objectives) and the governance around monitoring them **will not be treated as importantly as other fiduciary duties linked to non-ESG elements of a fund's prospectus** like delivering on a given risk/reward profile.

103. Another key sustainability topic is a fund's ESG strategy defined by the **extent and nature of its consideration of the environmental or social characteristics it promotes** and/or its sustainable investment objective(s). That consideration can sometimes be vague, exaggerated or incomplete (i.e., omission). Greenwashing in regulatory documents is particularly relevant in the context of SFDR prospectus disclosures. One of the biggest issues identified with ESG strategy-related claims in fund documents including prospectuses **is a lack of commitment and specificity regarding the sustainable characteristics or objectives of SFDR financial products through wording** such as: "*The fund aims at contributing to [one/more sustainable objectives]*", "*The fund can contribute to the following SDG's: [a number of SDGs listed]*".<sup>94</sup> A related issue found in pre-contractual disclosures **is the reference of an excessive number of sustainable objectives or characteristics promoted by a given fund without a specified commitment to them**. Other common issues found in some funds' Article 9 SFDR prospectus disclosures include vague and non-binding statements about how funds take into account the PAIs, but also about the sustainability indicators used to measure the attainment of the sustainable objective and/or binding criteria to assess sustainable investments.

104. Moreover, some funds disclosing under Article 9 SFDR might also mislead investors by breaching SFDR provisions<sup>95</sup> when **failing to mention the share of sustainable investments** or how the non-sustainable portion of the product itself meets minimum social and governance safeguards. This was further clarified by the Commission's July 2021 Q&A<sup>96</sup> and the amendments to the previous Q&As published in April 2023.<sup>97</sup> Furthermore, with regard to Article 6, 8 and 9 SFDR classifications, **one misleading market practice** consists of funds referencing their Article 8 or 9 SFDR classification in marketing materials or on their websites **as an earned label and overemphasising what it actually means**, given the fact that this classification alone is not sufficient to help appreciate the degree of sustainability of a fund and its investments. However, it is important to note that a fund disclosing under Article 6 SFDR that does integrate ESG factors (where it goes beyond the integration of sustainability risk pursuant

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<sup>94</sup> Another case in point of ambiguity can be found in fund disclosures about Taxonomy-aligned activities in precontractual documentation that 1) the underlying investments do not significantly harm any of the sustainable objectives of the fund or; 2) that a fund contributes to TR's environmental objective 1 and 2, without any further specifications of how compliance with TR Article 3 is ensured.

<sup>95</sup> Related to SFDR templates, since they all require a commitment in the pre-contractual level to a certain degree of sustainable investments, and the periodic disclosures require the disclosure of the actual achieved level of sustainable investments. The safeguards for the non-sustainable share of investments are also requirements in the Annex III/V templates.

<sup>96</sup> [sfd/ec/ga/1313978.pdf \(europa.eu\)](https://ec.europa.eu/sfd/1313978.pdf)

<sup>97</sup> [Amendments to answers to questions on the interpretation of Regulation \(EU\) 20192088 SFDR.PDF \(europa.eu\)](https://ec.europa.eu/sfd/20192088.pdf)

to paragraph 1 of Article 6) is also guilty of misrepresentation via omission. Moreover, the same fund is guilty of breach of its legal SFDR obligations.

105. Another notable issue linked to a fund's ESG strategy is **perceived greenwashing when the companies underlying a fund are different from stakeholders' expectations of the fund's ESG strategy**. This is due to insufficient transparency about likely holdings and inherent characteristics (sectoral, market capitalisation, or likely ESG profile) of the product, as well as to an unbalanced communication on the limitation of the ESG strategy in general. In part, this perception of greenwashing stems from a lack of understanding of the EU sustainable finance framework (e.g., retail investors may wrongly believe all SFDR article 9 products must be Taxonomy-aligned), ignorance about certain funds' structural asset class<sup>98</sup> and sectoral-specific tilts.<sup>99</sup>

106. Furthermore, another high-risk area for asset managers is exaggerated and/or incomplete claims about **ESG credentials**. For instance, it is worth noting the observed market practice for an asset manager to gain membership of a **net zero alliance**, which is easily marketable, without the entity deviating from its business as usual or changing the investment process of the products it offers.<sup>100</sup>

#### 4.4.2 Underlying drivers of misleading sustainability claims

107. Some of the **current provisions of SFDR** are perceived as drivers of greenwashing. At a very high level, these relate to the **lack of clarity of certain concepts** (such as "sustainable investment"<sup>101</sup>, especially the criteria used **for the SFDR DNSH test and the contribution to a sustainable objective**) and **regulatory gaps** (lack of clear disclosure regime for sustainability outcomes such as investors' **impact and engagement**) or **inconsistency** (e.g., between SFDR, TR and BMR).<sup>102</sup> Moreover, cross-sectoral drivers such as the lack of transparency on ESG ratings methodologies and the absence of robust, credible EU-level labelling schemes, as well as the incoherent sequencing in the application of the requirements referenced in section 4. also play a prominent role for this sector.

108. The high level of **flexibility and absence of a threshold in the definition and measurement of the "contribution to a sustainable objective"** under SFDR might lead to varying degrees of ambition among Article 9 SFDR products. Indeed, there is **no quantitative threshold** for what constitutes a contribution to an environmental or social objective under

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<sup>98</sup> For instance, an UCITS equity fund invested in large capitalisations can be less likely to hold impactful companies and have high ESG credentials, since impactful companies or the potential to create impact by an actively managed fund can be more frequent in the Small Capitalisation and Private Equity and Private Debt space.

<sup>99</sup> One case in point are sectoral funds promoting environmental objectives like Water funds. By the very nature of the companies in this the sectors (e.g. Utilities), these funds might have a larger GHG emissions or GHG intensity metric than a broad market index which could, superficially, be interpreted as greenwashing.

<sup>100</sup> Another example: a manager can mention their voluntary ESG reporting to such initiatives like the UNPRI and the rating they got in a given category (e.g. B+ for integration ESG for a given asset class) and omit to mention what that means in terms of ranking relative to other UNPRI signatories (e.g. top 60%).

<sup>101</sup> The Commission's [Q&A published on 14 April 2023](#) helps dispel the lack of clarity by confirming the transparency based nature of the SFDR framework.

<sup>102</sup> These issues are further explained in this section as well as in Section 4.7.

SFDR<sup>103</sup>. Moreover, there is no clear guidance about how the contribution should be measured. As a result, it is currently possible for an asset manager to construct a product with a potentially unambitious sustainable objective where 100% of the product is sustainable under the SFDR<sup>104</sup>. Another challenge in tackling this issue is the *neutral* nature of SFDR disclosures. As stated prominently by the EC in their July 2021 Q&A<sup>105</sup>, both Article 8 and 9 SFDR are “neutral” in terms of product design, so there is no intention to “limit” how the assessment of the attainment of characteristics or objectives should be done. SFDR was not designed for specific criteria, unlike TR, but was designed to enhance transparency to enable end investors to make informed investment decisions.

109. Furthermore, despite the fact that **SFDR is a disclosure regulation, the market has been using SFDR as a labelling regime** built around three categories at product level: Article 9 products are those with a sustainable investment objective (sometimes referred to by the industry as “dark green<sup>106</sup> products”), Article 8 products are those that promote environmental or social characteristics but that do not have a sustainable investment objective (sometimes wrongly referred to as “light green products”), Article 6 products are those that do not have sustainability features (sometimes referred to as “brown products”). It is important to note that this market practice should be discouraged as it is a misuse of SFDR classification. In addition to this, it is worth emphasising that the usage of such terms as dark or light green products and related categorisations is not endorsed by regulators and supervisory authorities.
110. Moreover, the **engagement-related issues** detailed above are (in part) facilitated by a gap in the EU sustainable finance framework regarding engagement claims. These include the current SFDR pre-contractual disclosures that leave a lot of room for many entity-level and fund-level references to engagement with investee companies that are often unsubstantiated or ambiguous and can pose harm to retail investor protection. At the product level, engagement claims are a high-risk area for **funds that do not mention engagement as a binding characteristic or sustainable objective promoted**.<sup>107</sup>
111. Lastly, another important driver of greenwashing also highlighted by CfE input for the sector is the inadequately robust or effective **integration of ESG risk in the investment process**.

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<sup>103</sup> SFDR does not refer to positive contribution, only to contribution. The more important point is, not whether the contribution to a sustainable objective under SFDR is positive or negative, but whether it is significant (good) enough relative to the “significant” contribution in the TR.

<sup>104</sup> For instance, a fund disclosing under Article 9 SFDR could employ a generic external data provider’s social (S) rating (calculated measuring exposures to various social risks based on backward-looking data) to measure its positive future contribution to the Sustainable Development Goal (SDG) 1 Human poverty. Another case in point would be using an overall ESG rating to measure contribution to the climate change adaptation objective.

<sup>105</sup> [EC July Q&A, SFDR](#)

<sup>106</sup> In addition, the reference to ‘green’ can also provide an impression that a product has an environmental focus, which is not always true.

<sup>107</sup> Please note some disclosures are required for those funds mentioning engagement as a binding characteristic or objective. Article 4(2)(c) of SFDR already requires some disclosures on engagement policies from FMP complying with Article (4)(1)(a). Same at product level, see Article 35 and 48 of the RTS of SFDR.

#### 4.4.3 Possible remediation actions

112. The EC has started a comprehensive assessment of the SFDR, which will include a public consultation and industry outreach. This assessment focuses on the need for the SFDR to ensure legal certainty, its usability, and its role in mitigating greenwashing.
113. There might be merit in **additional clarification on best practices for defining the minimum contribution to a sustainable objective under SFDR**, as well as regarding selecting adequate sustainability indicators to measure it. This could be done by the Joint Committee (JC) of the ESAs and could entail giving concrete examples of what the ESAs consider to be best practices, or unreasonable/sub-optimal practices on sustainability indicators in general - and on impact measures in particular.<sup>108</sup> This would assist institutional and retail investors to challenge SFDR FMPs like asset managers on their definition of contribution and especially on their choice of metrics (sustainability indicators) to quantify it. It might also discourage market participants to resort to sub-optimal choices at the product design level. Alternative remediations for the same issue might entail changes to SFDR and, specifically, to the reference of contribution to a sustainable objective and inclusion of a reference to adequate measures for this contribution.
114. In addition to this, in order to address **the use of SFDR classifications as labels**, several solutions could be envisaged. The EU could consider **a new labelling legislation** or changes to the current EU regulatory framework to create distinct **investment product labels or categories** based on minimum standards.
115. With regard to fund naming, there could be great merit in **aligning fund and benchmark names as much as possible** in order to avoid investor confusion. One way could be to require asset managers offering passive funds and ETFs tracking a given benchmark to seek consistency in the naming convention of the funds with that of the tracked benchmarks. It is worth noting that some fund naming restrictions were recently under consultation and ESMA is reflecting on next steps based on input received.<sup>109</sup>
116. In order to address misleading claims about **engagement**, two remediations could be considered that would ideally leverage off the existing disclosure requirements under the SRD II for entity-level claims on stewardship as well, as on some of the national-level disclosure rules or best practices on engagement. To begin with, SFDR changes<sup>110</sup> could be considered in order to introduce clearer disclosures about SFDR FMPs' firm-wide and fund-specific engagement, proxy voting and general stewardship activities. These disclosures could further complement the information from existing entity-level SRD II disclosures, voluntary reporting on stewardship (engagement, stewardship outcomes and proxy voting) such as the number of meetings held with engaged companies, milestones and intermediate targets that need to be

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<sup>108</sup> Question 2 of the [European Commission's Q&As from April 2023](#) provides examples of ways to contribute and the Commission its response clarifies that a simple transition plan is not sufficient for DNSH.

<sup>109</sup> CP [Consultation on Guidelines on funds' names using ESG or sustainability-related terms \(europa.eu\)](#)

<sup>110</sup> In conjunction with the existing provisions on engagement disclosures for asset managers under the Shareholder Rights Directive II

achieved in order to keep going with the engagement, and conditions or triggers which lead to termination of the engagement process. Incidentally, it is worth noting that an EU-level stewardship code - if put in place - could apply not just to asset managers and institutional investors, but that (in principle) could be partially applicable to other entities across the SIVC such as benchmark administrators and investment service providers. This would go beyond disclosures and could leverage off stewardship codes that exist in other jurisdictions such as the UK Stewardship Code.

117. Lastly, please note that other cross-sectoral remediation actions also related to funds are included in paragraphs [139], [141] and [142] in the following section.

## 4.5 Benchmark administrators

118. While benchmark administrators can play the role of triggers of misleading claims, similar in prominence to that of investment managers (e.g., in their impact claims, in the selection of components and in the naming of the benchmarks), it is worth noting they can act as spreaders of claims triggered more generally by issuers and ESG data providers<sup>111</sup>. This is due to their key position in the SIVC not only as a channel of transmission of claims, but also given their role as underlying reference benchmarks for financial products such as investment funds (ETFs and passive funds) as well as for structured notes and securitisations. As a result, sustainability-related claims about benchmarks may feed into misleading claims about the financial products using them and, thus, pose a high risk of greenwashing.

**TABLE 4: HIGH-RISK AREAS FOR BENCHMARK ADMINISTRATORS**

Key dimensions	High-risk areas
<b>Sustainability topics</b>	<ul style="list-style-type: none"> <li>• ESG strategy (E and S characteristics, likely holdings, etc.)</li> <li>• Impact</li> <li>• ESG performance to date (metrics linked to impact &amp; omission of ESG data methodologies)</li> </ul>
<b>Channels</b>	<ul style="list-style-type: none"> <li>• Regulatory documents</li> <li>• Marketing material</li> <li>• Labels</li> </ul>
<b>Misleading qualities</b>	<ul style="list-style-type: none"> <li>• Naming</li> <li>• Exaggeration</li> <li>• Ambiguity and omission</li> <li>• Omission or lack of disclosure</li> <li>• Selective disclosure/cherry-picking</li> </ul>

<sup>111</sup> Please note the UK [FCA's letter from March 2023](#) to administrator CEOs about the risks observed and the issued identified regarding ESG benchmarks.



#### 4.5.1 High-risk areas

119. These areas relate mostly to benchmark-level claims and only to a smaller extent to entity-level claims since there is a lower expectation from market participants that a benchmark administrator is perceived as ESG-friendly. Based on ESMA findings, the misleading claims found in benchmarks' regulatory documents and marketing materials are mostly about *ESG Strategy* and *Metrics and Pledges* where the misrepresentation is the result of exaggeration, ambiguity, omission, naming and inconsistency.
120. Firstly, one sustainability-topic of concern is the benchmark-level ESG strategy **defined by the extent and nature of a benchmark's consideration of environmental or social characteristics or the overall sustainable objective which may sometimes be vague, exaggerated or incomplete**. This includes the type of ESG strategies used at the benchmark design level (e.g. exclusions for decarbonizing) and applies to both marketing materials and regulatory disclosures. Moreover, a related issue concerns ESG benchmarks that focus on certain ESG factor(s) at the expense of other ESG factor(s). The benchmark administrator may communicate satisfactorily about the former, but fail to do so for the latter.
121. Secondly, greenwashing risk can also occur in the **form of exaggerated claims made by benchmark administrators about the real-world impact of their ESG benchmarks**. These can take several forms and include claims about a benchmark's ESG performance with unsubstantiated links between a benchmark's ESG metrics or factors,<sup>112</sup> or a benchmark's strategy and real-world impact. For instance, impact claims can be misleading when benchmarks are either just applying exclusions or are constructed using backward-looking ESG ratings. The misleading qualities linked to this situation include selective disclosure (namely cherry-picking), ambiguity, inconsistency, omission and lack of meaningful comparisons and thresholds. One relevant example of such misleading impact claims is when a benchmark administrator implies that an ESG result or metric (e.g., low carbon footprint relative to a broad non-ESG benchmark) is achieved as a direct consequence of the strategy of the benchmark when it might sometimes just be the result of the intrinsic characteristics of the investable universe or of the benchmark design. An illustration of exaggeration and lack of proof is a statement such as *"Our ESG benchmark invests in environmentally innovative companies. By selecting it, you reduce greenhouse gas emissions by 25% compared to an investment in a broad market index."*
122. Thirdly, when the **actual companies composing a benchmark are different from stakeholders' expectations, this can create a perception of greenwashing**. This is due to insufficient transparency about likely holdings and the inherent characteristics of the product.

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<sup>112</sup> All benchmark providers (except for those of interest rate and foreign exchange benchmarks) administrating benchmarks have to disclose whether and how they take ESG factors into account and, in case they do, to report on a series of ESG factors. This requirement also applies to the two new categories of Climate benchmarks, namely EU climate transition benchmarks (CTB) and EU Paris-aligned benchmarks (PAB) which have to follow very clear rules in terms of alignment with the Paris Agreement and are also subject to some exclusions. Climate benchmarks also have to disclose some additional information including the degree to which the decarbonisation trajectory or objective has been achieved (see Q10.11 of the ESMA QA on BMR: <https://www.esma.europa.eu/press-news/esma-news/esma-updates-qa-benchmarks-regulation>).



This lack of transparency, also cited by CfE replies as a major issue for both funds and benchmarks, creates a gap between an investor's expectations of a fund or benchmark's strategy and the actual resulting portfolio. In part, this perception of greenwashing stems from lack of understanding about the fund or benchmark's structural sectoral tilts. According to a recent PwC study<sup>113</sup>, **the majority of benchmarks that integrate ESG present a low exposure to green industries and to transitioning companies, a high exposure to IT sector and a general large capitalisation bias.** These inherent characteristics do not necessarily correlate to the highest ESG credentials and, thus, may limit the potential of real-world impact of such ESG benchmarks<sup>114</sup>.

123. Fourthly, **benchmark naming issues** came out from CfE feedback as one of the most important greenwashing situations to address, especially since benchmark names have an impact across the SIVC given the strong link between benchmarks and other financial products linked to such benchmarks.<sup>115</sup> It is important to note that **there are currently no EU-level rules on how benchmarks should be named nor any easy way to identify them via their name.** In the particular case of EU Climate Benchmarks, the lack of naming rules leads to these benchmarks not being easily identifiable.

124. Fifthly, greenwashing can also arise from the **overall poor transparency of methodologies regarding ESG data** (e.g., assumptions and estimates used for providing ESG data points like GHG emissions) due to the use of external data providers, which is a cross-sectoral issue that is particularly relevant for benchmarks and funds. A recent study contracted by the EC<sup>116</sup> found that the variety of methodologies deployed by ESG benchmarks is accompanied by a high degree of variability in the presentation and depth of information provided in the methodology documents in relation to the ESG factors considered. Where ESG data providers are used (whether in-house or external), administrators typically reference the data provider as the source to go to for more detailed information, and so create an additional onerous layer of research for the users, hindering the overall transparency of the methodology and significantly hampering the comparability across benchmarks for a given user. This can also prevent users of benchmarks from comparing various ESG or EU Climate Benchmarks and ascertaining their respective level of ambition.

125. Furthermore, the **omission to publish the actual values of ESG metrics in regulatory periodic disclosures is identified as a risk area.** It has been observed that some providers of ESG benchmarks report "NA" values in ESG benchmark periodic disclosures and, thus, might hypothetically selectively hide certain ESG factor values from end and direct users of benchmarks.

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<sup>113</sup> [PWC](#) Feasibility study EU ESG

<sup>114</sup> This situation is similar to that of UCITS investment funds invested in large capitalisations which also are less likely to hold impactful companies and have high ESG credentials, since impactful companies or the potential to create impact by a product are more frequent in the Small Capitalisation space.

<sup>115</sup> Benchmark names play an important role in marketing materials (e.g. fund factsheets) and regulatory documents of SFDR investment products, as well as of other securities such as the prospectuses of some structured notes.

<sup>116</sup> [PWC](#) Feasibility study EU ESG

126. Lastly, EU Climate Benchmarks are not seen by certain CfE respondents **as ambitious enough in terms of design, reduction in GHG emission and broader real-world environmental impact**. These benchmarks have minimum technical standards that allow the use of portfolio construction techniques considered by some CfE respondents to have little, or even negative, climate impacts as they fail to bring about real world GHG emission cuts. Sectoral constraints (e.g., tobacco or controversial weapons)<sup>117</sup> are considered to be insufficiently granular and allow the decarbonisation requirements to be met by divestment of high-climate-impact issuers irrespective of their importance for the climate transition.<sup>118</sup> Moreover, EU Climate Benchmarks break the sectoral neutrality rule by applying an exclusion to the energy sector that represents 5% of major benchmarks. Thus, it can be argued that the carbon reductions may result from a reallocation of capital across sectors and regions, i.e., the minimum standard on the 7% yearly decarbonisation can be met by simply rebalancing the portfolio across companies, sectors and countries.
127. In addition to this, at a more granular level, **the calculation formulas** for some of the ESG metrics computed for ESG including climate benchmarks under BMR lack standardisation and are seen to lead to greenwashing based on CfE input. One such metric is the GHG intensity formula which uses Enterprise Value Including Cash (EVIC) in BMR, but can also be computed by using a revenue metric in other disclosures.<sup>119</sup> The use of EVIC as a denominator instead of revenues has certain failings which may lead to greenwashing; emissions trajectories should arguably be calculated using real economic outputs, yet EVIC introduces volatility in the measurement and rewards issuer market performance over its decarbonisation performance.

#### 4.5.2 Underlying drivers of misleading sustainability claims

128. First of all, it is essential to note that **many of the cross-cutting drivers of greenwashing detailed in section 4.2. are particularly relevant in the case of misleading claims regarding benchmarks** or triggered by benchmark administrators. These include incentives to gain commercial advantages and data infrastructure issues such as lack of comparability of ESG ratings and ESG data methodologies.
129. Second of all, other drivers of greenwashing also relate to the current provisions of the BMR that **does not contain explicit rules about information being clear, fair and not misleading, unlike MiFID II, UCITS Directive and the Prospectus Regulation**.
130. Moreover, **BMR was reviewed in 2019** while TR was adopted in 2020 and, thus, it does not contain references to Taxonomy-aligned investments, nor to transitional activities of companies present in other EU sustainable finance legislations like SFDR which are useful for investors to have in order to ascertain the level of ambition of ESG including climate

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<sup>117</sup> See Article 3

<sup>118</sup> Indeed, another shortcoming of these EU Paris-Aligned Benchmarks is perceived to be Article 12(1g) of BMR which excludes companies whose majority revenues are from high intensity electricity generation with no consideration for their revenues from low-intensity electricity generation, their related CaPex, or transition plans.

<sup>119</sup> As is the case in TCFD and SFDR.

benchmarks<sup>120</sup>. As a result, this omission may amplify the aforementioned greenwashing issues related to exaggerated sustainable characteristics promoted and may also contribute to the cross-sectoral issue of perceived greenwashing.

131. In addition to this, there is no distinction in terms of ESG disclosures depending on the level of ambition of ESG benchmarks. As mentioned in ESMA' response <sup>121</sup> to the recent EC benchmarks consultation, due to the co-existence of divergent approaches to benchmark methodologies resulting in a fragmentation of the internal market, **it is not clear to users of benchmarks what level of ambition underpins different categories of ESG benchmarks**<sup>122</sup>. For example, the **absence of clear labelling raises questions** on the inclusion of firms with a negative environmental or social impact in these benchmarks.

132. Furthermore, **concerning EU Climate Benchmarks**, there is a lack of clarity in EU sustainable finance legislation about the possible use of these more ambitious benchmarks for active (in addition to passive) strategies of investment products under Article 9(3) SFDR.<sup>123</sup> Broadening the scope to active funds could be a facilitator of greenwashing since there is proof that some non-EU funds<sup>124</sup> are using Art 9(3) SFDR as a backdoor to Article 9 SFDR disclosures. On a related note, it is worth mentioning **a recent market practice by some administrators who are marketing their benchmarks as Article 8 SFDR or Article 9 SFDR compliant benchmarks**, despite the fact that these SFDR classifications, as explained in section 4.4 are not labels and should not be referenced as such.

### 4.5.3 Possible remediation actions

133. **Several changes to BMR**<sup>125</sup> would be useful in addressing some of the above-mentioned greenwashing high-risk situations.

134. Revise the ESG factor list by including Taxonomy alignment and references to transition finance and transitioning activities<sup>126</sup> as described in the TR, and by reviewing and refining the calculation formulas of ESG factors to increase consistency with other EU sustainable finance legislations. For instance, GHG intensity metric is actually a common ESG metric under SFDR and BMR with the calculation formula in SFDR uses a revenue metric, while BMR uses EVIC

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<sup>120</sup> There might be an inconsistency in Article 12 (2) of the Commission Delegated Regulation (EU) 2020/1818. Indeed, this provision regarding the exclusion from PAB of companies found or estimated "to significantly harm one or more of the environmental objectives" introduces a link to Article 9 of Regulation (EU) 2020/852 listing these environmental objectives. In ESMA's view, a reference to Article 17 of Regulation (EU) 2020/852 about the criteria to be applied when defining "significant harm to environmental objectives" could be more relevant.

<sup>121</sup> [ESMA proposes improvements to the EU regime of third country benchmarks \(europa.eu\)](https://europa.eu)

<sup>122</sup> except for PAB/CTB

<sup>123</sup> This question has been forwarded from the JC ESG SG to the EC in the most recent batch of SFDR Q&A questions

<sup>124</sup> These do not comply strictly with Article 9 SFDR disclosures as they have exposure to non-sustainable investments as per Article 2(17) SFDR.

<sup>125</sup> For instance to be considered in the context of the upcoming planned review of BMR

<sup>126</sup> Certain aspects of the TR and its reporting requirements can also be leveraged to include support for transitioning activities/companies to be recognised under a possible new ESG benchmark label. Namely, a certain type of ESG benchmark may allow inclusion of companies, which are not Taxonomy aligned at the point of assessment, but which are reporting credible CapEx plans (alternatively called "transition plans") in their Taxonomy reporting as foreseen for type b) CapEx under the TR Article 8 Delegated Act Annex I.

for the calculation of the minimum standards of the climate benchmarks. While there are pros<sup>127</sup> and cons to using either EVIC or a revenue metric, this disparity can pose difficulty in the interpretation of GHG intensity for a given investee company or portfolio and can lead market participants to different conclusions.

135. Increase the level of **ambition of EU Climate Benchmarks** by revising the minimum standards for climate benchmarks.<sup>128</sup>
136. Make **explicit reference to “clear, fair and not misleading information”** requirements under BMR.
137. Moreover, with regard to the **omission of ESG factor values in benchmark periodic reports**, there would be merit in mandating administrators to **publish the portfolio coverage ratio**<sup>129</sup> next to the column of ESG metrics that need to be disclosed.
138. With regard to **benchmark naming rules**, in the particular case of climate benchmarks, prefixes could be used to identify the types of benchmarks more easily, as suggested by ESMA in its response<sup>130</sup> to the recent EC benchmarks consultation, with the possibility of extending these prefixes at a later stage to other types of benchmarks and other financial products using ESG terms in their names. This would reduce the risk posed by current benchmark naming practices that hint at having a strong ESG profile or being EU Climate Benchmarks while falling outside these legally recognised categories (e.g., “Paris aware”). Moreover, there would be great merit in developing these specifically for benchmarks and then aligning benchmark names with fund names as much as possible. For instance, some of the fund naming rules which were recently under consultation by ESMA and still in progress<sup>131</sup> (e.g., “ESG”, “Low carbon”<sup>132</sup>) could be applied to the names of benchmarks. However, it is worth highlighting that some challenges specific to benchmark names exist which are, in part, fuelled by differences between SFDR and BMR.
139. Moreover, in order to reduce the greenwashing risk posed by references to benchmarks across the SIVC, when mentioning the benchmarks, SFDR and Prospectus Regulation disclosures could include a link to the cited benchmark’s “Benchmark Statement”. This could be even further facilitated **by the introduction of an ESG benchmark label** which could build off the findings of the recent study contracted by the EC on the feasibility of such a label.

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<sup>127</sup> Pros consist of including a better applicability of the metric to both equity and/or fixed income investments and a smaller alleged bias for or against any particular economic sector; while the cons are EVIC being a highly volatile and sometimes unavailable metric since it cannot be computed in the absence of equity market capitalization.

<sup>128</sup> This remediation action may be further elaborated in the final report, also in conjunction with other Platform on Sustainable Finance (PSF) past or ongoing recommendations and work.

<sup>129</sup> It is important to note that some benchmark providers choose to disclose this percentage for some ESG factors, however this is not mandatory under BMR.

<sup>130</sup> [ESMA proposes improvements to the EU regime of third country benchmarks \(europa.eu\)](https://www.europa.eu)

<sup>131</sup> CP [Consultation on Guidelines on funds’ names using ESG or sustainability-related terms \(europa.eu\)](https://www.europa.eu)

<sup>132</sup> One notable example would be a benchmark provider offering a Low Carbon benchmark X and several funds similarly named “Low carbon” using this benchmark and repeating the same potentially misleading claims in their own fund documents.

140. Lastly, **despite the fact that engagement and active stewardship** has not been a high-risk area for benchmark administrators historically, as most benchmark administrators do not engage with companies as they hold no voting rights and since benchmarks are not “investable”, it could be argued (as done in the above mentioned study) that **they conceptually play a similar role to investors**, as the methodology that they use to build a benchmark determines the investments made by the funds tracking the benchmark. Thus, active engagement by the administrator (if encouraged by BMR changes) could reduce greenwashing risk and improve the overall quality of benchmarks and issuers’ sustainability-related claims in general, and in particular the quality of ESG metrics disclosed. Moreover, it is worth noting that **engaging with issuers poses certain conflict of interest issues that are specific to benchmark providers**<sup>133</sup> and that would need to be considered in any changes to BMR encouraging such active engagement on sustainability-related topics.<sup>134</sup>
141. In order to address the issue of **perceived greenwashing due to a lack of transparency** on likely portfolio holdings for funds and benchmarks, changes to SFDR and BMR could also be used to provide **more transparency on expectable or likely benchmark and fund portfolio holdings and overall exposures** (e.g., maximum x% exposure to fossil fuels), which would ideally be aligned with similar disclosures for funds disclosing under Article 8 or 9 SFDR. For instance, there might be merit in adding information about the detailed profile (sector, industry, capitalisation breakdown and ESG profile) of expectable holdings in the benchmark portfolio. Summary elements to be disclosed about typical holdings for both funds and benchmarks could include exposure to green or transitioning companies, activities or sectors including those under the scope of the TR<sup>135</sup>. Additionally, disclosures about the sources of the inherent ESG or sectoral tilts should be clearly explained by benchmark administrators and investment managers so that they can be understood and considered when analysing benchmark or fund sustainability-related claims.
142. Furthermore, in order to address the high risk area explained in section 4.1.2, paragraph [39] regarding confusing and/or excessive references to non-binding elements of a product’s ESG strategy which is particularly relevant for **product-level fund and benchmark** disclosures, market participants could be encouraged to make the distinction between a product’s **binding and non-binding** environmental, social or governance **characteristics, sustainable objectives** and indicators used to measure them when referencing these in any type of document. Moreover, they could be further discouraged from listing an excessive

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<sup>133</sup> Benchmark administrators are expected to apply their methodology objectively and, in case an issuer is no longer eligible for inclusion due to a change in their meeting an ESG or non-ESG criteria, engagement with the company might be interpreted as affecting the inclusion/exclusion decision. As a result, engagement by benchmark administrators should be targeted only to companies currently still eligible for inclusion at the date of engagement and also only on ESG topics of relevance for supporting the EU transition (not on other financial topics) so as to address any potential perception of difference in treatment applied to Issuers that are engaged with relative to those that are not engaged with by the benchmark administrator.

<sup>134</sup> For instance, engagement by benchmark administrators could be targeted only to companies currently still eligible for inclusion at the date of engagement and also only on ESG topics of relevance for supporting the EU transition (not on other financial topics) so as to address any potential perception of difference in treatment applied to Issuers that are engaged with relative to those that are not engaged with by the benchmark administrator.

<sup>135</sup> Concretely, these could include exposure to 1/ “green” sectors such as clean energy or renewable energy 2/ “brown” or sectors perceived as ESG un-friendly sectors like coal, gas, nuclear, 3/Taxonomy-aligned activities, 4/ SFDR sustainable investments once the limitations raised in section 4.4 had been addressed) 5/ EU Climate benchmark eligible companies, 6/ transitioning companies under the definition of the TR

number of sustainable objectives or characteristics in regulatory disclosures unless they have a concrete commitment to them.

## 4.6 Investment services providers

143. This section will focus on the most relevant high-risk areas of greenwashing related to the investment service providers sector, which are briefly summarised in the table below.

**TABLE 5: HIGH-RISK AREAS FOR INVESTMENT SERVICES PROVIDERS**

	<b>High-risk areas</b>
<b>Sustainability topics</b>	<ul style="list-style-type: none"> <li>• ESG Strategy (the extent to which services take into account sustainability, E and S characteristics, PAIs considered etc.)</li> <li>• Impact</li> <li>• Present ESG performance</li> <li>• Governance</li> </ul>
<b>Channels</b>	<ul style="list-style-type: none"> <li>• Regulatory documents</li> <li>• Marketing materials</li> <li>• ESG ratings</li> <li>• Labels</li> </ul>
<b>Misleading qualities</b>	<ul style="list-style-type: none"> <li>• Inconsistency</li> <li>• Exaggeration and cherry picking</li> <li>• Omission</li> <li>• Naming</li> <li>• Outdated information</li> <li>• Lack of substantiation</li> </ul>

### 4.6.1 High-risk areas

144. For the purposes of this report, product level claims for the investment services sector refer to claims about all investment products<sup>136</sup> (shares, bonds, funds and derivatives) that can be sold to investors as well as to services offered to investors by investment firms<sup>137</sup>. **Greenwashing risks in this space occur predominantly on the product level** e.g., regarding MiFID II instruments and services, and to a smaller extent to claims made on an entity level,<sup>138</sup> the reason being that overall, there is a lower expectation from market

<sup>136</sup> This means a financial instrument (within the meaning of Article 4(1)(15) of MiFID II) or a structured deposit (within the meaning of Article 4(1)(43) of MiFID II).

<sup>137</sup> "Investment firms" (as defined in Article 4(1)(1) of MiFID II) include credit institutions when providing investment services and activities (within the meaning of Article 4(1)(2) of MiFID II).

<sup>138</sup> However, distinguishing claims about services from entity-level claims about the firms themselves can sometimes prove challenging, as some financial institutions for instance might claim they are integrating sustainability for all of their services.



participants that an entity in its function of a MiFID II distributor<sup>139</sup> or manufacturer be perceived as ESG friendly relative to those for an issuer or an asset manager.

145. The most notable situations consist of misleading claims on **ESG Strategy and Metrics and Pledges** where the misrepresentation is related to a series of misleading qualities including inconsistency (particularly relevant here), **exaggeration, ambiguity, naming and outdated information**, mostly transmitted in marketing materials and product information or via labels.
146. Claims about **the extent to which advice offered by MiFID II firms to retail investors takes sustainability into account**<sup>140</sup> are an area of concern in general. These situations mostly take the form of unsubstantiated or overstated claims in firms' marketing materials. Claims such as "When we're giving you advice, we're taking into account sustainability"<sup>141</sup> lack the type of minimum details that would be offered in a similar context to an end investor for an investment product or a benchmark claiming to take into account ESG considerations.<sup>142</sup>
147. In addition, due to the transversal nature of the sector governed by the MiFID II provisions, certain **high-risk areas identified for Issuers and Investment Management are equally prominent in this sector**. For instance, **misleading impact claims** found in marketing materials of a fund<sup>143</sup> or of an SLB<sup>144</sup> can be passed along by financial advisors to retail investors. However, it is worth pointing out that there are also **some aspects of misleading impact-claims that are specific to this sector, in particular in the context of the suitability assessment**. A recent report referencing a 2022 mystery shopping exercise<sup>145</sup> indicates that not all financial advisors are currently well-suited to address some clients' preferences investing with impact, nor capable of clearly explaining the different types of impact or ESG aspects of a product<sup>146</sup> that can be achieved by investing in a certain ESG fund or other type of security (in other words, distinguish between investor impact and company impact). It is important to emphasize these assessments were conducted in 2022 very shortly after the entry into application of MiFID II provisions on the suitability assessment of sustainability preferences and

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<sup>139</sup> It is however not the case for MiFID II discretionary portfolio management.

<sup>140</sup> Part of the sustainability topic *ESG Strategy*.

<sup>141</sup> For instance, in the case of portfolio management, ideally the MiFID II distributor would clarify where exactly sustainability is integrated in the service (e.g. in the security selection or in portfolio construction phase).

<sup>142</sup> As a matter of fact, such claims are not in line with the related MiFID II requirement set out in Article 52(3)(c) of the MiFID II Delegated Regulation "Investment firms shall provide a description of: [...]where relevant, the sustainability factors taken into consideration in the selection process of financial instruments".

<sup>143</sup> A 2° Investing Initiative (2DII) Report 'EU Retail Funds Environmental Impact Claims Do Not Comply with Regulatory Guidance' mentions a survey conducted among retail investors that showed that the carbon footprint calculation which was wrongly presented as a quantification of the impact generated by a fund managed to deceive retail clients. As close to 70 % of the respondents understood the claim as ensuring that "The more money invested in the fund, the more CO2 reduction activities are developed, the greater your environmental impact."

<sup>144</sup> A sustainability-linked bond (SLB) focused on the gender diversity ratio targets a future increase of the issuer's gender diversity ratio in the future. There is a greenwashing issue in case of any unsubstantiated claim indicating that by investing in the SLB, the retail investor will contribute positively to gender diversity practices (i.e. more women will be included on boards) in the real-world.

<sup>145</sup> [Integrating sustainability preferences of clients - 2DII \(2degrees-investing.org\)](#) [Integrating sustainability preferences of clients - 2DII \(2degrees-investing.org\)](#)  
[STUDY MYSTERY SHOPPING III NOVEMBER 2022.pdf \(asufin.com\)](#)[STUDY MYSTERY SHOPPING III NOVEMBER 2022.pdf \(asufin.com\)](#)

<sup>146</sup> AMF (2023): "Mystery shopping campaign to bank branches: progress made in the questioning to client, improvements needed in the information provided", <https://www.amf-france.org/en/news-publications/news-releases/amf-news-releases/mystery-shopping-campaign-bank-branches-progress-made-questioning-client-improvements-needed>

before ESMA Guidelines had even been published. So, some of the results and conclusions about ESG illiteracy should, therefore, be read with caution keeping in mind that this situation may have since improved.

148. Another noteworthy situation that may occur at the point of sale between retail clients and financial advisors can take the form of **an advisor not providing fair, non-misleading or suitable personalised advice when presenting the sustainability features of products recommended to clients** which should be in line with their sustainability preferences. It is important to note that all the issues and situations listed in this paragraph would be in breach of current MiFID provisions on the suitability assessment of sustainability preferences. A relevant scenario is where no financial instrument meets the sustainability preferences of the client, and the client does not adapt their sustainability preferences. If the advisor still recommends one of his (unsuitable) instruments to the investor, that would constitute greenwashing. A less dire scenario would be that the advisor chooses to cherry-pick or overstate the product sustainability information presented to clients in order to convince them to attribute a higher allocation to a given financial instrument that would not otherwise be possible by taking into account the actual ESG credentials of the instrument.
149. The most relevant misleading qualities for this sector is **inconsistency in the ESG claims that can be found across various disclosures and communications** under the scope of several EU sustainable finance legislation. Sometimes this can take the form of manipulation of length and content of product information.
150. In addition, it is worth noting the risk of greenwashing linked to the **internal classifications** of ESG-flavoured products (e.g., funds and securities) **that financial advisors may use in their advice**.<sup>147</sup> A relevant case in point <sup>148</sup> would be a government bond fund which is classified or labelled as an “ethical” fund by a MiFID II distributor and sold as such to a retail client with a preference for ethical products, although no such claims are made by the asset manager offering the bond fund, and no analysis pertaining to the ethical practices of the government in question was actually conducted by the advisor. It is worth noting this would constitute a violation of MIFID Product Governance provisions, since, within the relevant framework, the distributor must review the manufacturer’s target market identification and distribution strategy in light of the requirements of the distributors’ own clients.

#### 4.6.2 Underlying drivers of misleading sustainability claims

151. **ESG knowledge deficit** is a notable driver of greenwashing, especially given the effect of some financial advisors’ insufficient knowledge of ESG concepts in the context of their client facing role. Indeed, based on the CfE input and other literature review findings, investment

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<sup>147</sup> An intentional mis-selling would be an unsuitable investment advice and clear violation of Article 54 (2) MiFID II.

<sup>148</sup> Inspired from <https://scmdirect.com/wp-content/uploads/2019/11/SCM-Direct-Greenwashing-Report.pdf>

service providers seem to lack sufficient expertise to offer appropriate advice on sustainability or climate compatibility.<sup>149</sup>

152. Furthermore, it is worth noting a **general ESG illiteracy issue for retail investors** which can generally take the form of a lack of understanding of ESG considerations and, in particular, of the main concepts of the EU sustainable finance framework and which does not facilitate the task of financial advisors in their suitability assessment.
153. Moreover, **governance around ESG is particularly relevant** for this sector. The use of misleading sustainability-related claims may be mitigated or monitored by the top management of the firms providing investment services by, for instance, ensuring controls are in place to allow for the provision of proper advice to retail clients. In the absence of such controls, greenwashing may become structural and affect all stages of the product and the professionals involved.
154. **Gaps in ESG disclosures for certain financial products also raises concerns.** Indeed, existing EU legislation provides specific ESG disclosures as well as ESG classification methodologies for funds, benchmarks, securitisations, and for certain securities like green bonds, **but leaves out other MiFID II instruments like derivatives.**
155. This creates an unlevel playing field among financial instruments, between those that must apply some requirements, for instance, those that are financial products within the meaning of Article 2(12) SFDR, on the one hand, and, on the other hand, everything else. As an example, the former must calculate and disclose their share of investments in economic activities aligned with the EU Taxonomy in accordance with the provisions of SFDR and TR, while no requirements apply to others that are left to calculate their degree of alignment to the EU Taxonomy as they wish.
156. Furthermore, the above-mentioned gaps also affect the assessment of the **sustainability preferences**<sup>150</sup> of retail clients within the suitability assessment process. The current concept of sustainability preferences is perceived **as lacking clarity**. It makes references to financial instruments which can fall into three categories. The first two categories reference existing ESG disclosures in the EU sustainable finance framework. The third one makes a broad reference to financial instruments promoting other PAIs<sup>151</sup> which are not strictly linked to the SFDR PAIs and can **thus be construed to include any ESG metric or any environmental, social or**

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<sup>149</sup> As evidenced by the mystery shopping reports including the ones cited in footnotes 145 and 146.

<sup>150</sup> The concept of sustainability preferences is supposed to ensure that only financial instruments that have some level of sustainability-related materiality are eligible for recommendation to clients who express sustainability preferences. It is defined as follows: **'sustainability preferences' means a client's or potential client's choice as to whether and, if so, to what extent, one or more of the following financial instruments shall be integrated into his or her investment:** (a) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of [the TR]; (b) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of [SFDR]; (c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client.

<sup>151</sup> Category c) explained in the footnote above.

**governance characteristic,<sup>152</sup> thus causing a level of confusion** among market participants about the differences in ambition across the three categories.<sup>153</sup>

#### 4.6.3 Possible remediation actions

157. To improve ESG knowledge of some financial advisors, it might be useful to **build on ESMA's guidelines on suitability<sup>154</sup> and certification requirements in certain Member States that require certification of staff** providing investment advice and/or portfolio management, or equivalent systems, to ensure a proper level of knowledge and expertise of staff involved in material aspects of the suitability process. Such certification for financial advisors could be expected across the EU.<sup>155</sup> Moreover, it is worth noting the importance of finding related practical measures to increase the ESG literacy of retail investors<sup>156</sup> (see section 4.7.4).

158. To tackle the issues detailed above about **sustainability preferences, it is worth noting that a good starting point is ESMA's aforementioned guidelines on suitability.<sup>157</sup>** There would also be merit in further clarifications on good and bad practices regarding financial instruments that fall into the third category since the current MIFID II legislation **opens the door to the use of any random, even non-binding or immaterial ESG information linked to a product or an entity.** For instance, one possible illustration of a bad practice would be financial advisors hypothetically identifying financial instruments that are not meaningfully considering a retail client's preferred PAI in question (e.g., water intensity) either because the given PAI is linked to a non-binding characteristic promoted by a given product or because that PAI is immaterial for the issuer linked to the security (e.g., a bond issued by a tech company or a technology equity fund for which water intensity is not a meaningful PAI nor part of their binding ESG strategy).

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<sup>152</sup> As stated by the EC on page 5 of [mifid-2-delegated-act-2021-2616\\_en.pdf \(europa.eu\)](#) [mifid-2-delegated-act-2021-2616\\_en.pdf \(europa.eu\)](#) category c) was intended by the EC as a way to give freedom and flexibility to financial advisors to recommend financial products outside of the scope of first two categories that consider reducing negative externalities and harm. " The rules also incentivise the recommendation of financial instruments that consider and reduce material negative externalities caused by those investments, i.e. principal adverse impacts."

<sup>153</sup> Indeed, an instrument falling under this third category might not be as ambitious as those meeting the requirements of the previous two and could be interpreted to open the door to financial advisors to include almost any financial instrument as long as some superficial case can be made they are promoting a PAI like controversies on weapons or good governance.

<sup>154</sup> [esma35-43-3172 final report on mifid ii guidelines on suitability.pdf \(europa.eu\)](#), paragraphs 105-106.

<sup>155</sup> [L'AMF renforce les exigences de certification professionnelle en matière de finance durable | AMF \(amf-france.org\)](#)

<sup>156</sup> The Joint Committee of the ESAs will focus its work on financial education on sustainable finance for 2023 (see the [2023 Work Program](#) of the Joint Committee).

<sup>157</sup> [esma35-43-3172 final report on mifid ii guidelines on suitability.pdf \(europa.eu\)](#), paragraphs 105-106. [esma35-43-3172 final report on mifid ii guidelines on suitability.pdf \(europa.eu\)](#), paragraphs 105-106.

**TABLE 6. AREAS OF THE SIVC MORE EXPOSED TO GREENWASHING RISKS**

159. The table below provides an overview of the high-risk areas identified. Areas that are highlighted in dark orange indicate major high-risk areas of greenwashing, while areas highlighted in light orange are considered to pose a medium to high risk of greenwashing. White cells designate a lack of greenwashing risk. The text inside each cell identifies the channels and misleading qualities observed in relation to these greenwashing risk areas.

Topics of claims	Issuers	Investment Managers	Benchmark administrators	Investment service providers
<b>Governance and resources related to sustainability considerations</b>				
Board and senior management's role in sustainability				
ESG resources and expertise				
<b>ESG strategy</b>				
ESG strategy, objectives, characteristics				
Sustainability management policies				
ESG qualifications/labels/certificates (or 'ESG credentials')				
Engagement with stakeholders				
<b>Sustainability metrics and targets</b>				
Present ESG performance: ESG results, metrics for real-world impact				
Pledges about future ESG performance: ESG targets, transition plans				
<b>Transversal topics</b>				
Impact				
<b>Legend</b>				
High-risk areas				
Medium- to high-risk areas				
Areas of lower risk				

## 4.7 Potential remediation actions to the identified greenwashing drivers and risks

160. Based on the assessment done in previous sections of this report to identify the main drivers of greenwashing, as well as the areas in the SIVC that are more exposed to greenwashing risks and issues, both at cross-sectoral and sectoral levels, this section describes ESMA's current and preliminary thinking in terms of remediation actions. This section has to be read in conjunction with the potential remediation actions described in sections dedicated to the various sectors – issuers, investment managers, benchmark administrators and investment service providers.
161. Remediation actions presented in this Report are preliminary. ESMA will further consider them for the Final Report and adjust and complement them as needed. With regards to potential changes to the EU regulatory framework, this Report does not make a proposal for specific timeframes or concrete legal forms (directives/regulations, technical standards, guidelines or other ESMA guidance) with which such changes could be implemented. ESMA will build on them to provide final recommendations as part of its Final Report. Furthermore, it is worth noting that some of remediations listed below may not be feasible from a cost-benefit analysis point of view as they might entail, in their totality, new requirements that should be carefully balanced to avoid excessive burdens on market participants.
162. The below remediation actions also seek to highlight actions market participants across the SIVC should take in order to mitigate greenwashing risks.

### 4.7.1 Making the regulatory framework more robust against greenwashing risks

163. While possible regulatory enhancements to address greenwashing risks that are sector-specific are covered previously, the following section focuses on cross-cutting areas of the regulatory framework that need to be reinforced in order to make it more robust against greenwashing risks. In this context, fostering interoperability, consistency across various regulatory frameworks and international standardisation are key. The below remediation actions seek, on the one hand, to further clarify several key concepts laid out in the sustainable finance regulatory framework and, on the other, expand the regulatory framework to provide more regulatory certainty on a few key concepts and tools that have become important building blocks of market practices in the field of sustainable finance.

#### 1) Clarifying central concepts

164. First, clarifying what qualifies as “**sustainable investment**” is a crucial point in mitigating greenwashing risks. As explained in section 4.4., the SFDR definition of sustainable investment is characterised by a high level of flexibility and absence of shared, predefined metrics and threshold for an investment's contribution to a sustainable objective, as opposed to the definition of environmentally sustainable activities in the TR, which uses science-based and clear Technical Screening Criteria (TSC). To address this issue, in addition to the short-term



remediation actions included in section 4.4 related to investment managers, additional fixes could include rewording of references to “contribution”<sup>158</sup> and additional disclosures on how the contribution is defined and measured; adding a new requirement for the values of the sustainability indicators to be accompanied in periodic reports by the corresponding values for a pertinent peer group of the investment product; as well as additional guidance on adequate measures of contribution to a sustainable objective. The latter could be later used for other references to impact metrics across the EU sustainable finance framework where relevant such as BMR, the broader PAIs referenced by MiFID II under the sustainability preferences concept. Considering the Commission’s Q&A on sustainable investments published on 14 April 2023,<sup>159</sup> which confirms the transparency-based nature of SFDR disclosures of sustainable investments, the fixes described above may need to be considered in a separate criteria-based framework, such as financial product labels.

165. Second, and closely linked to the definition of sustainable investments, is the need for further clarifications as to **the DNSH principle and differences in DNSH criteria** and tests across the EU sustainable finance framework, in particular in SFDR, BMR and TR. The lack of alignment among these legislative texts regarding what might constitute<sup>160</sup> a **significantly harmful activity or investment**<sup>161</sup> is the cause of confusion among market participants as well as conducive to greenwashing. As explained in Section 4.5, these inconsistencies are particularly relevant in the case of Article 9(3) SFDR products tracking EU Climate Benchmarks as it is currently possible and common for these benchmarks to have holdings that do not qualify as sustainable under SFDR. For instance,<sup>162</sup> it is currently possible for an equity PAB benchmark to have a negative impact on the mandatory social board gender diversity SFDR PAI.<sup>163</sup> Additional remediation actions to address this issue could include changes to BMR and SFDR. BMR could require all climate benchmark holdings to meet the SFDR definition of sustainable investment, SFDR could be modified so that the same exclusions are referenced as currently applicable for climate benchmarks<sup>164</sup>. Touching upon both BMR and SFDR, for overlapping ESG metrics like GHG intensity which appear in both benchmark exclusions<sup>165</sup> and in the list of mandatory PAIs, the calculation formulas would ideally be perfectly aligned.

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<sup>158</sup> For example, by clarifying whether the contribution should be meaningful, or by adding terms like “non-negligible” or “meaningful” or “significant” before “contribution” to a sustainable objective.

<sup>159</sup> [https://www.esma.europa.eu/sites/default/files/2023-04/Answers\\_to\\_questions\\_on\\_the\\_interpretation\\_of\\_Regulation\\_%28EU%29\\_20192088.PDF](https://www.esma.europa.eu/sites/default/files/2023-04/Answers_to_questions_on_the_interpretation_of_Regulation_%28EU%29_20192088.PDF)

<sup>160</sup> SFDR doesn’t define significantly harmful activities. Its Article 2(17) requires that the investment must not significantly harm environmental or social objectives.

<sup>161</sup> For example, tobacco producers are currently excluded from climate benchmarks, but tobacco is not included in any of the SFDR mandatory PAIs. Hence a tobacco company might not be considered to be doing significant harm by an asset manager. The ESAs are proposing to include tobacco as a new PAI indicator in the consultation paper on the SFDR Delegated Regulation (JC 2023 09).

<sup>162</sup> Another relevant case in point would be an asset manager offering a fund disclosing under Article 6 or 8 SFDR which has exposures to non-sustainable investments under SFDR and whose investment universe is similar to that of a given CTB benchmark. Assuming the asset manager approached the disclosure in bad faith and wanted to keep their exposure to non-sustainable investments and at the same time market their fund as Article 9 SFDR, there is a way they could attempt this.

<sup>163</sup> Since no board gender diversity ESG data point is considered in the BMR exclusions.

<sup>164</sup> The ESAs are currently consulting on adding tobacco as a PAI indicator (JC 2023 09), which would effectively exclude tobacco from sustainable investments due to the DNSH link. [JC 2023 09 Joint Consultation Paper on the Review of SFDR Delegated Regulation regarding PAI and financial product disclosures \(europa.eu\)](#)

<sup>165</sup> Companies that derive 50 % or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO<sub>2</sub> e/kWh should be excluded from climate benchmarks.

166. Regarding the **differences between the SFDR and TR DSNH tests**, the former is not only quite different<sup>166</sup> from the latter, but also allows for more discretion from FMPs. This issue was highlighted in the ESAs' joint consultation paper on the SFDR Delegated Regulation<sup>167</sup> and confirmed by the Commission's Q&A published on 14 April 2023. Thresholds, or tolerance levels for the SFDR DNSH test may be selected in bad faith and may lead to greenwashing and to notable inconsistencies among financial products. This flexibility, while understandable given the fact that SFDR is a disclosure regime<sup>168</sup>, may lead to some bad faith attempt<sup>169</sup> to classify investments as sustainable under SFDR and, thus, construct Article 8 or 9 SFDR products making sustainable investments while potentially still causing harm to environmental or social objectives. For instance, an asset manager might construct a product where 100% of the product meets the SFDR DNSH assessment criteria assuming a very loose interpretation of how the PAI indicators are taken into account. In the short term, it is worth noting that this issue is the object of the ongoing work conducted by the JC of the ESAs as part of their review of the PAIs. In the longer term, in order to further discourage FMPs from unambitious or bad faith assumptions or thresholds for the SFDR DNSH tests, changes might be considered that would require the values of the mandatory product PAIs to be accompanied in periodic reports by the corresponding values for the product's reference benchmark and/or pertinent peer group.
167. Thirdly, another key concept of the EU sustainable finance framework that requires further consideration are social factors. Indeed, one of the main EU sustainable finance framework gaps also highlighted by the CfE input was the lack **of an EU-level golden standard for measuring positive and negative impact on social factors** as currently exists for climate (and soon other environmental) factors at the economic activity level under the form of the EU Taxonomy. The consideration of social factors needs to be further explored with a robust methodological approach. One important reference for this endeavour is the draft report on a potential social taxonomy by the EC's Platform for Sustainable Finance<sup>170</sup>. The development of a social taxonomy would not only help tackle this gap but also contribute to addressing the abovementioned issues regarding DNSH since a uniform taxonomy-based system could be used not only in SFDR and BMR but also across the entire EU sustainable finance framework.

## **2) Complementing the EU regulatory framework**

168. First, **enhancing the recognition of transition finance** is critical to ease the mismatch between high demand for ESG products and limited taxonomy-aligned investment opportunities and, therefore, to help address greenwashing. At the same time, mitigating transition-specific greenwashing risks, a clear and robust framework is needed to support transition finance –

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<sup>166</sup>Key differences between the SFDR and TR DNSH tests include the level at which the DNSH test is done (investee company versus underlying economic activity level) and the actual criteria used (mandatory PAIs) which can pose several difficulties to market participants and facilitate greenwashing.

<sup>167</sup>[JC 2023 09 Joint Consultation Paper on the Review of SFDR Delegated Regulation regarding PAI and financial product disclosures \(europa.eu\)](#)

<sup>168</sup>As stated prominently by the **EC in their July Q&A**, SFDR is "neutral" in terms of product design", so there is no intention to "limit" how the assessment of the attainment of characteristics or objectives should be done.

<sup>169</sup>It is important to note that the list of mandatory PAIs also includes some indicators which are exclusionary – e.g. PAI 4 which restricts exposure to fossil fuels, or PAI 14 which restricts exposure to controversial weapons. These are less likely to be treated loosely by financial market participants offering SFDR products that make sustainable investments.

<sup>170</sup>[Platform on Sustainable Finance's report on social taxonomy \(europa.eu\)](#), June 2022.

covering both the demand and the supply side – including a credible definition of “transition investment”. Developments in relation to labelling schemes and naming conventions for sustainable bonds or benchmarks should also take on board transition finance.

169. The application of CSRD provisions is expected to increase the **supply of standardised, audited forward-looking ESG information** for the emission reduction targets and transition plans (on climate and biodiversity) by issuers, which are key elements supporting investors and financial intermediaries in the identification of credible transition investment opportunities, consistent with their own transition objectives and plans. Building on EC’s efforts to support transition with companies, investors and market participants, ESMA may consider the opportunity to provide guidance on the supervision of transition finance. In order to support future policy interventions and to assess any greenwashing risks, ESMA may also consider the need to expand its monitoring of market developments supporting transition finance as part of its ESG market monitoring framework.
170. Second, consideration needs to be given to the evolution of the EU framework in relation to information provided on **impact**. It would be useful to<sup>171</sup>: (1) define what “impact” means and where exactly the impact is factored in or achieved; (2) distinguish between types of impact, clarifying to what extent additionality, materiality and measurability are considered; and (3) clarify acceptable and unacceptable practices.
171. Third, a clearer substantiation of **engagement** efforts is needed in sustainable finance disclosures, whether at entity or product level, to which the existing disclosure requirements under SRD II<sup>172</sup> would be used as a starting point and minimum standard of granularity. These could further be complemented with typical information found in the current voluntary reporting of investment managers and funds on stewardship, such as the number of meetings held with engaged companies and milestones and intermediate targets that need to be achieved in order to pursue the engagement.
172. Regarding inconsistency between an entity’s ESG claims and its **lobbying activity**, it is essential that influential financial institutions and other market participants do not subvert progress on environmental and social issues through lobbying and trade association memberships, but rather support it consistently with the sustainability claims made elsewhere.

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<sup>171</sup> For the purposes of clarifying impact claims for investment managers and benchmark administrators sectors, additional disclosures about the fund or benchmark strategy might cover aspects such as which is the actual impact that the product aims to achieve; what indicators are used to measure such impact; for Investment managers sector, what is the difference between an impact investment and an SFDR sustainable investment in general.

<sup>172</sup> [Article 3g of SRD II](#) requires relevant asset managers to publish a shareholder engagement policy (“Engagement Policy”) stipulating how they have integrated shareholder engagement in their investment strategy. “Institutional investors and asset managers shall, on an annual basis, publicly disclose **how their engagement policy has been implemented**, including a general description of **voting behaviour**, an explanation of the **most significant votes and the use of the services of proxy advisors**. They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares. Such disclosure may exclude votes that are insignificant due to the subject matter of the vote or the size of the holding in the company.”

A consistency check between an entity's lobbying position and stated ESG goals is important, especially given the CfE input collected on an increased market appetite for such checks<sup>173</sup>.

173. More broadly, ESMA may consider issuing guidance to set minimum expectations on sustainability claims, building on the existing requirements in relation to information being fair, clear, and not misleading.

#### 4.7.2 Upgrading firms' governance, processes, skills, IT systems

174. **Market participants across the SIVC have a responsibility to communicate sustainability information in a balanced and substantiated manner**, in line with requirements on the provision of "fair, clear and not misleading information". Findings in this report generally show that market participants need to invest in capacity, expertise, IT systems and to adapt their governance and certain processes to live up to the challenges posed by the sustainability transition.

175. Beyond announcements concerning resources and targets, it is crucial to implement **monitoring systems and report regularly on progress**. It also appears key to implement ESG risk management systems and to make sure outputs/outcomes are aligned. Market players should address greenwashing-related financial risks by **deploying global risk management systems and controls** across all operational teams dedicated to risk monitoring. Targeted governance structures, involving senior management, including through **dedicated committees and internal guidance on measuring sustainability risks** are perceived as useful mitigants, which are sometimes already in place.

176. Respondents to the CfE and participants to the ESMA workshop likewise stressed the **role of third-party providers in offering independent and objective verification**, but a few stressed the importance of due diligence processes when making use of these reviews. Market participants should have the internal resources and expertise to assess and verify that external ESG data is updated, reliable and sufficiently robust. Extra due diligence should be implemented when one identifies data inconsistencies. Institutional investors, in particular, could reduce the risk of being misled, by **conducting increased due diligence on the ESG resources** of asset managers or issuers and by focusing on spotting inconsistencies between the strategy of a given entity or product and its allocated resources to implement the strategy.

177. Moreover, while **due diligence obligations apply across the SIVC**, there is room to further clarify due diligence responsibilities of some market participants in the value chain (e.g., asset managers offering funds of funds, benchmark administrators and financial intermediaries) in order to mitigate unintentional spreading of misleading claims. Furthermore, market participants should fulfil **due diligence responsibilities on ESG data** with the same ambition and care as

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<sup>173</sup> Firstly, in relation to the climate credentials of companies, initiatives such as CA100+ now include in their net zero benchmark *Disclosure Indicator 7 – Climate Policy Engagement* under which CA100+ assesses whether companies have a Paris-aligned climate lobbying position and corresponding expectations for the trade associations of which they are members. Secondly, it is worth noting an increasing institutional investor appetite for details about the ESG lobbying activity of a given issuer or asset manager.

they currently do for financial data and to avoid overreliance on external ESG data sources and information. Indeed, market participants would need to treat the assessment and use of external estimated ESG data with the same level of due diligence and importance as applied to external financial research.<sup>174</sup>

#### 4.7.3 Establishing reliable, comprehensive sustainability data

178. Below are a number of remediation actions which could contribute to the reliability and comprehensiveness of sustainability data available across the SIVC. First, it is important to note that the gradual implementation of new reporting and disclosure requirements under the sustainable finance regulatory framework, and the establishment of the European Single Access Point, will generally facilitate the access to sustainability data across the SIVC.
179. With regards to sustainability commitments/pledges, increasing **the recourse to external validation or assessment** of the ambition and credibility of these pledges taking into account how they are translated into action and strategy (with tools such as the Science-Based Target initiative (SBTi)<sup>175</sup> or the Assessing Low-Carbon Transition (ACT) methodology<sup>176</sup>) may help mitigate greenwashing in relation to forward-looking information. The quality and reliability of sustainability disclosures may also be improved through increased recourse to external verification and auditing. From that perspective, a stock take of the existing option to audit Taxonomy-alignment disclosures under SFDR could be carried out in order to inform future regulatory provisions regarding the role of auditors in the supply of sustainable finance related data and information more broadly.
180. In order to address misleading claims about ESG metrics indicating past or present ESG performance sometime reliant on estimates, there would be merit for **clarifications on ESG data methodologies; on use and calculation of estimates for ESG data** points, as most of these are not fully comparable across EU sustainable finance legislative texts, ESG data providers or market participants. These remediations, if considered, would ideally also seek consistency with the CSRD and with the ESRS prepared by EFRAG.
181. **On ESG data methodologies**, specific transparency is needed for the ESG metrics disclosed by a product or entity which would enable fund investors and benchmark users to compare different funds or benchmarks claiming to have a strong ESG profile. The biggest challenge occurs when investment managers or benchmark administrators rely on third-party ESG data providers that do not publicly disclose their methodologies. Thus, in order to facilitate

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<sup>174</sup> In the context of the design and management of a financial product making sustainable investments or of a benchmark that takes into account ESG, the use of ESG metrics requiring estimations is not completely dissimilar to the use of external financial information like sell-side financial analysis research offered by investment firms (e.g. forward looking Price to Earnings ratios or estimated future stock prices). Moreover, similarly to ESG data providers offering ESG ratings for instance, sell-side investment firms which offer financial research are not always transparent about the methodologies behind their estimation models (e.g. stock valuation models). It is important to note that this does not prevent financial market participants from buying sell side research and use it in their investment decision process.

<sup>175</sup> SBTi provides guidance for companies to estimate, set and disclose GHG emission targets; provides an assessment and validation of targets.

<sup>176</sup> ACT tool meant to assess a company's transition and GHG emission targets based on reported data, sectoral pathways and disclosure frameworks



and efficiently implement the above remediation, ESG data providers should publicly disclose their methodologies, in line with the International Organisation of Securities Commissions (IOSCO) standards.<sup>177</sup> ESMA already communicated<sup>178</sup> on the importance of “reliable and transparent data sources”. Otherwise, market participants such as asset managers or benchmark providers having confidential access to third-party ESG data methodologies might not be able to disclose public links or details of these methodologies and would, thus, unwillingly prevent comparability.

182. On **estimates for ESG data**, there are currently no clear rules about what constitutes robust (or less robust) estimates, which leads to differences regarding the use of estimates under SFDR, BMR and TR. In order to address this, future changes to the TR, SFDR and BMR **might entail referencing the same definitions** of equivalent information and/or **of various types of estimates to be applied across the entire EU sustainable finance framework**. These changes would ideally also **include comparable requirements for disclosures of the methodologies used in estimating certain key ESG data points** such as scope 3 GHG emissions<sup>179</sup> and consistent requirements for when estimates are, or are not, allowed in the calculation and disclosure of certain ESG metrics. Moreover, **minimum standards for the quality of estimates of ESG data could be defined** requiring these standards be met by market participants under SFDR and BMR for all mandatory ESG metrics, as well as by ESG data providers. First, it would first be useful to decide how to potentially qualify and classify the quality of estimates. Ideally all estimates of ESG data points would meet a minimum threshold of acceptable robustness. There could be a superior level of quality which could be defined to designate the better estimation methodologies meeting high standards of granularity for equivalent information.

183. To tackle the confusion between a claim about an ESG process being implemented and actual progress/ESG results being achieved, there would be merit in requiring **clarifications regarding the level of ambition of a given claim** related to an ESG strategy or process at entity level or product level. This could be achieved by distinguishing, for instance, between claims that promise or strongly suggest that a certain outcome will be achieved or guaranteed versus claims that commit to a certain process being applied (obligation of results vs. obligation of means). Such measure, if implemented across the EU sustainable finance framework, would help reduce greenwashing across the SIVC.

184. To address the market practice of **investment managers possibly cherry-picking those ESG ratings** that present them and their funds in the best possible way from a sustainable standpoint, **decisions** on which/how many data vendors to contract with should be clearly **documented** by market participants and should depend on multiple factors (i.e., covered

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<sup>177</sup> [IOSCO Guides on Oversight of ESG Ratings and Data Product Providers \(moodysanalytics.com\)](#) [IOSCO calls for oversight of ESG Ratings and Data Product Providers](#)

<sup>178</sup> [esma30-379-423\\_esma\\_letter\\_to\\_ec\\_on\\_esg\\_ratings.pdf \(europa.eu\)](#)

<sup>179</sup> See for instance the current consultation on the RTS of SFDR conducted by the ESAs that suggests referring to the Partnership for Carbon Accounting Financial (PCAF) methodology.



investment universe, technical interoperability and costs) and be subject to a strategic determination by the given market participant.

#### 4.7.4 Supporting comprehensibility for retail investors

185. A **labelling scheme for sustainable financial products in the EU** could potentially provide a comprehensible tool supporting sustainable finance and participation by retail investors in particular.<sup>180</sup> EU-wide labels could reduce market fragmentation by facilitating the comparison of financial products for (retail) investors and by reducing the cost of seeking labellisation in various national markets. They could facilitate the distribution and marketing of financial products and increase competition. In developing a labelling scheme, important aspects to be addressed include: (1) striking the right balance between “stringency” and “feasibility” of the requirements for attribution of the labels; (2) establishing controls to guarantee that the requirements in question are respected over time; and (3) avoiding opportunities for arbitrage between different products or barriers to financial innovation and product differentiation. Furthermore, the design of a labelling scheme would have to account for, and be consistent with, ongoing and forthcoming regulatory developments.

186. In parallel, there is a need to **tackle financial and sustainability literacy gaps among retail investors**<sup>181</sup>. Several CfE respondents have highlighted that one way to address such gaps would be to provide contextual disclosures (e.g., the overall share of the economy that is Taxonomy-aligned next to the disclosure of a fund’s share of Taxonomy-aligned investments), in order to offer retail investors with reference points to help informed decisions. The use of aspirational language in advertising may need to be curbed or at least to be accompanied by complementary information, in order to avoid misleading retail investors. As highlighted before, financial product names are a key piece of information used by retail investors in making their decisions. Therefore, and in the absence of an EU labelling scheme of financial products and while taking into account the proposals for labels for funds and ESG benchmarks included in Sections 4.4 and 4.5, certain additional minimum safeguards could be applied to products using ESG- or sustainability-related terms in the product names, to avoid misleading investors about the ESG or sustainability ambition of the product.

## 5 High-level insights into monitoring and supervision of greenwashing

187. In parallel to the evolution of market practices and the stabilisation of the regulatory framework, regulators of securities markets will build on their long-standing experience in dealing with misleading information to roll out effective and consistent supervision of sustainable finance policies in the EU. Addressing greenwashing effectively requires regular

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<sup>180</sup> In October 2022, the UK FCA [introduced](#) a proposal for sustainable investments labels which offers an interesting approach to help retail investors navigate the market for sustainable financial products.

<sup>181</sup> The JC of the ESAs will focus its work on financial education on sustainable finance for 2023 (see the [2023 Work Program](#) of the Joint Committee).

monitoring of the issue and, most importantly, refining the regulatory and supervisory toolkit. This section first provides a stocktake of what has been done in terms of monitoring greenwashing and what is contemplated to facilitate the monitoring of greenwashing and related financial risks at EU level in a consistent manner. Second, this section provides a brief update on supervisory actions. While several supervisory initiatives and actions have already been launched, ESMA took a two-step approach by keeping the focus of the progress report on developing an in-depth understanding of greenwashing. Building on this work, as a second step, ESMA will undertake a more extensive stocktake of NCAs' supervisory response in the final report.

## 5.1 Monitoring greenwashing risks and occurrences

188. Monitoring greenwashing is essential to assessing where monitoring and intervention by regulators of securities markets is needed. As part of its risk assessment mandate, ESMA is in the process of expanding its monitoring framework to better identify and address greenwashing risks from ESG investing that are relevant to EU markets and investors.<sup>182</sup> In addition, ESMA wishes to support NCAs in their own monitoring of greenwashing. NCAs are in the front line of supervision of most actors in the SIVC. Tools built by ESMA should help NCAs prioritise supervisory action, in a context of resource constraints.
189. Clarifying the concept and the different forms greenwashing can take is crucial in this context<sup>183</sup>. Given the absence of a shared, EU-wide understanding of greenwashing, the exact scope of greenwashing monitoring is as of yet a challenge. This is why the high-level understanding of greenwashing provided in Section 2 constitutes a key step towards building an effective and consistent framework EU-wide, including common risk indicators, for the monitoring of greenwashing risks and greenwashing-related financial risks in the future.
190. Against this background, ESMA is assessing the usefulness of different datasets and tools to operationalise the monitoring of greenwashing in the future, including (1) data on ESG-related controversies; (2) data on greenwashing-related complaints collected by NCAs at product and entity level; and (3) product-level data on mandatory and voluntary disclosures compared with the underlying sustainability profile of the product. Controversies and complaints-related data can provide indications of the occurrence of greenwashing allegations. Each dataset can on its own provide distinct information related to greenwashing risks but they can also contribute to the development of an aggregate view on greenwashing across sectors in the SIVC or product categories. To complement this, the systematic use of product-level information can support the work of supervisory authorities by enabling the identification of misleading sustainability-related claims, forming part of NCAs' supervisory response. The combination of greenwashing monitoring tools at product and entity level should further help to

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<sup>182</sup> This would build on the integration of an environmental risk category to ESMA's Trends, Risks and Vulnerabilities report, in 2022. The set of greenwashing-related new indicators would be updated and published twice a year as part of ESMA's TRV report. See ESMA TRV Risk Article (2022), [Monitoring environmental risks in EU financial markets](#).

<sup>183</sup> Gatti L, P. Seele P. and L. Rademacher (2019), [Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR](#), International Journal of Corporate Social Responsibility Vol.4.

build a comprehensive assessment of greenwashing-driven financial risks in EU financial markets, feeding into its risk assessment framework.

### 5.1.1 ESG-related controversies

191. Monitoring may first be done using quantitative indicators based on financial market data, with a view to quantifying the frequency of potential greenwashing occurrences through the monitoring of greenwashing allegations. One possible avenue is the use of data on ESG-related controversies, which are used as input by some ESG data providers in their ESG rating products, or used as separate input data by asset managers. Firms have increasingly come under public scrutiny regarding their sustainability statements and objectives, as consumers and investors are taking an interest in understanding if sustainability claims clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial service. Against this background, data shows an increase in the occurrence of ESG-related controversies (understood as accusations of misleading sustainability-related claims put forward by various stakeholders and shared via local or international media) in recent years.<sup>184</sup> Controversies may relate to both entity-level and product-level claims communicated through various channels, including but not limited to, advertising.

192. The use of ESG controversies presents some limitations when it comes to assessing greenwashing-related financial risks. Indeed, entities may be involved in greenwashing controversies in very different ways, which will have implications on the potential financial risks they face. A firm's involvement in an incident sometimes stems from the way a whole sector operates, or from individual country policies (e.g., differences in environmental protection rules). In turn, these incidents can reverberate on the reputation of individual firms operating in the sector or country. Such nuances are not immediately visible in financial data on controversies, implying that further filtering is necessary to understand the potential reputational and financial implications for these firms. The indirect involvement issue can be particularly challenging for the financial sector, where financial institutions often provide financing to firms involved in controversies beyond their immediate control. Similarly, controversies may relate to a firm's own operations or to its value chain. Large group structures and the existence of multiple subsidiaries can further limit a firm's ability to have a comprehensive overview of its operations, yet firms are increasingly expected to act responsibly throughout the value chain.

### 5.1.2 Consumer complaints

193. If a consumer is dissatisfied with a financial product or service, they may make a formal complaint either to the firm that provided it or to the relevant supervisory authority. As part of

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<sup>184</sup> See in Annex for more on the methodology and results of an ESMA analysis of controversies occurrences and financial impacts, building on a dataset provided by RepRisk.

its monitoring mandate, ESMA traditionally works closely with NCAs to collate data on complaints on a quarterly basis.<sup>185</sup>

194. Building on this experience, greenwashing-related complaints were also looked at with NCAs in 2022 with the conclusion that NCAs received either no or very few greenwashing complaints. Several challenges explain this situation, such as the difficulty for investors to identify greenwashing cases, which can require extensive research and assessment from experts, the relatively recent regulatory landscape in the area of sustainable finance with certain rules still under development, or the absence of a common definition of greenwashing. However, there was broad support across NCAs to developing a coordinated approach for greenwashing-related complaints collection.

### **5.1.3 Use of AI tools to support supervision of ESG-related disclosures**

195. Building on the substantial information already available in regulated documents, advertising and through ESG data providers, tools using natural language processing (NLP) techniques can support supervisors in the detection of potential greenwashing practices, across product categories and various segments of the financial system. Such tools can also then feed into a framework to monitor greenwashing on a regular basis, even as these individual product assessments and the outcomes are only intended for internal supervisory follow-up and shall not be made public.

196. NLP-based tools leverage on the idea that greenwashing reflects the fact that disclosures regarding an entity or a product communicated through regulatory documentation or marketing material (“the image”) do not represent the underlying sustainability profile of that entity or product (“the reality”) in a fair, clear, and not misleading way. On this basis, with respect to investment funds, ESMA has been collecting a large amount of information to build a set of language-based quantitative indicators for the image that fund managers aim to project. NLP techniques are used to assess the language used in funds names, financial product documentation, including prospectuses, key information documents (KIDs), advertising, and periodic publications. In parallel, funds’ underlying sustainability profiles are assessed primarily based on the underlying investments of the product.

197. Both the image- and reality-based indicators are then used to create standardised measures, representing the potential discrepancy between the image and the reality, identifying outliers. These measures are subsequently aggregated for each fund, to construct a score for the image and for the outcomes of each investment fund. This enables a distribution to be derived for supervisory purposes, and an effective ranking of EU investment funds from the perspective of potential greenwashing activity. Both image- and reality-based indicators will evolve in the future alongside market and regulatory developments.

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<sup>185</sup> The availability and comparability of complaints-related data across NCAs create however some challenges for monitoring purposes. For further details on the process and limitations, see Harris, A. (2017), *Monitoring retail markets via complaints data*, ESMA Report on Trends, Risks and Vulnerabilities, No.1, 2017.

198. NLP techniques allow massive amounts of text to be screened, thus saving substantial time for supervision, but cannot substitute for human intuition. There is a need for supervisory follow-up which can still be resource intensive in the case of non-standardised documents. Nevertheless, in light of the substantial concerns related to greenwashing and the vast amount of information both available and necessary for internal supervisory assessments, such quantitative risk-based ranking approaches, and the IT tools enabling such efforts, are definitely worth exploring further. As part of the 2023 EU Technical Support Instrument<sup>186</sup>, ESMA will collaborate with participating NCAs to support the development of supervisory tools and methodologies to detect potential greenwashing practices by supervised financial market participants.

#### 5.1.4 Next steps

199. To facilitate the monitoring of greenwashing and related financial risks at EU level in a consistent manner, the following next steps are critical:

- First, progress in the development of machine-readable information,<sup>187</sup> in regulatory documents, is critical to facilitate documents screening.
- Second, greater accessibility of documents — in particular via the forthcoming European Single Access Point — will ensure that the supervisory community has easier access to the raw material necessary for assessments. Certainty will help regulators to work more effectively and build their own internal assessment systems on the basis of a stable platform.
- Third, a common approach to identifying, categorising and treating greenwashing-related consumer complaints would ensure convergence across countries.

## 5.2 Effective and consistent supervision

200. In line with the EC's request, the Final Report due in May 2024 will provide a stocktake of the supervisory response to greenwashing by NCAs and of convergence activities initiated by ESMA. In light of the importance of ensuring adequate and comprehensible ESG disclosures and a level-playing field in the EU, ESMA identified the topic of "ESG disclosures" as a new Union Strategic Supervisory Priority (USSP). USSPs are an important tool through which ESMA coordinates supervisory action with NCAs and provides a structured and comprehensive response at EU level to address specific risks. NCAs need to take these priorities into account when drawing up their own work programmes.

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<sup>186</sup> See 2023 work programme for the Technical Support Instrument under Regulation (EU) 2021/240 of the European Parliament and of the Council, [https://commission.europa.eu/system/files/2023-03/C\\_2023\\_1786\\_1\\_EN\\_annexe\\_acte\\_autonome\\_nlw\\_part1\\_v2.pdf](https://commission.europa.eu/system/files/2023-03/C_2023_1786_1_EN_annexe_acte_autonome_nlw_part1_v2.pdf)

<sup>187</sup> For a definition of machine-readable format, see Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, Article 2(13).

201. Concretely, through this USSP, ESMA wishes to gradually promote increased and consistent scrutiny on ESG disclosures across the SIVC. The USSP will also foster an integrated approach to supervision across the SIVC by considering the most relevant sectors (issuers, investment managers and investment service providers) and the interlinkages among them. Over a horizon of around three years, the USSP is expected to support an increased ability for retail investors to invest in suitable sustainable investments and participate in financing the transition according to their ESG preferences. The USSP is expected to bring positive outcomes in terms of effective ESG disclosure and decreased occurrence of greenwashing, enhanced investor ability to understand sustainable investing and increased knowledge of financial advisors on ESG factors.
202. A number of supervisory actions will be carried out by NCAs in parallel across the EU, starting in 2023. Several Common Supervisory Actions (CSAs) are in the process of being launched in 2023 on supervision of marketing material including sustainability claims, sustainability disclosures and risks in investment management. The end outcome of these workstreams is to enhance transparency and comprehensibility of ESG disclosures, with a view to protecting investors and further supporting the development of a credible ESG market. These will feed into the Final Report to the EC on greenwashing.



## 6 Annexes

### 6.1 Acronyms and definitions

2DII	2° Investing Initiative
AMF	<i>Autorité des marchés financiers</i>
BMR / Benchmark Regulation	Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014
CA100+	Climate Action 100+
CapEx	Capital Expenditure
CfE	Call for Evidence on Greenwashing
CONSOB	Commissione Nazionale per le Società e la Borsa
CP	Consultation Paper
CSA	Common Supervisory Action
CSDDD	Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937
CSRD	Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
CTB	Climate Transition Benchmark
CWG	Consultative Working Group
DNSH	Do No Significant Harm
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EIOPA	European Insurance and Occupational Pensions Authority

ESA	European Supervisory Authorities
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ESRS	European Sustainability Reporting Standards
ETF	Exchange-Traded Fund
EU	European Union
EU GBS	EU Green Bond Standard
EVIC	Enterprise Value Including Cash
FMP	Financial market participant under the scope of SFDR
GHG	Greenhouse Gas
GIIN	Global Impact Investing Network
Guidance on the Unfair Commercial Practices Directive	Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market
IDD	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution
IDD Delegated Regulation	Commission Delegated Regulation (EU) 2021/1257 of 21 April 2021 amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products
Investment product	A financial instrument (within the meaning of Article 4(1)(15) of MiFID II) or a structured deposit (within the meaning of Article 4(1)(43) of MiFID II). This includes shares, bonds, funds, derivatives, etc. This term encompasses all products under the scope of the issuers (shares, bonds, etc), investment managers and investment service providers sectors.
IOSCO	International Organisation of Securities Commissions
IPCC	Intergovernmental Panel on Climate Change

JC	Joint Committee
KID	Key Information Document
KPI	Key Performance Indicator
kWh	Kilowatt-hour
Listing Act	Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
NCA	National Competent Authority
NGO	Non-Governmental Organisation
NLP	Natural Language Processing
NFRD / Non-Financial Reporting Directive	Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups
OECD	Organisation for Economic Cooperation and Development
PAB	Paris-Aligned Benchmark
PAI	Principal Adverse Impact
Paris Agreement	Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015
PEPP	Pan-European Personal Pension Product
PRI	Principles for Responsible Investment
PwC	PricewaterhouseCoopers
RTS	Regulatory Technical Standards
SBTi	Science-Based Targets Initiative
SDG	Sustainable Development Goal

SFDR / Sustainable Finance Disclosure Regulation	Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector
SFDR Delegated Regulation	Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports
SG	Sub-Group
SIVC	Sustainable Investment Value Chain
SLB	Sustainability-Linked Bond
SME	Small and Medium-Sized Enterprise
SMSG	Securities and Markets Stakeholder Group
SSC	Sustainability Standing Committee
FINMA	Financial Market Supervisory Authority (Switzerland)
TCFD	Task Force on Climate-Related Financial Disclosures
TR	Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088
TRV	Trends, Risks and Vulnerabilities
UCITS	Undertakings for the Collective Investment in Transferable Securities
UCPD / Unfair Commercial Practices Directive	Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market
FCA	Financial Conduct Authority (United Kingdom)
UN	United Nations

UoP	Use of Proceeds
USSP	Union Strategic Supervisory Priority

## 6.2 ESMA's Methodology

203. Multiple sources of information were used in order to inform the content of this Report and, ultimately, the input provided herein. These include, on the one hand, academic articles, news articles and industry reports. A growing body of academic literature has started exploring the issue of greenwashing. However, this is still a relatively new and incomplete field of research. The literature discusses greenwashing definitions, relationship with firm value and/or environmental and social outcomes, or ways to detect greenwashing.<sup>188</sup>
204. On the other hand, ESMA carried out extensive stakeholder outreach. This sought input from financial entities under ESMA's remit and from other stakeholders ranging from retail investors and consumers' associations to NGOs and academia. The most notable example of such outreach is the CfE on greenwashing, published by the ESAs on 15 November 2022, to gather input from stakeholders on their understanding of the key features, drivers and risks associated with greenwashing across the SIVC and to collect examples of potential greenwashing practices.<sup>189</sup> The CfE, to which there were 138 responses in total, was split into 4 sections (the joint section followed by sections pertaining to the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, respectively). In this light, ESMA evaluated the data received from all respondents to the joint section and those to the ESMA-specific section (to which there were 91 responses). The valuable feedback received through the CfE feeds into the various sections of this report and preparatory work for the Final Report. More details on the replies received may be found in this Annex (section 6.5).
205. Furthermore, ESMA organised a full-day workshop in December 2022 on greenwashing-related financial risk transmission channels and impacts to collect information from experts active in the area of sustainable finance, including NCAs, industry and investor representatives, as well as academics and think tanks. The topics included greenwashing-related financial risks posed to retail investors and financial markets, and transmission channels both in the financial and non-financial sectors. There were 102 participants in total, of which 36 were industry representatives or experts from international organisations.

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<sup>188</sup> Gatti L, P. Seele P. and L. Rademacher (2019), [Grey zone in – greenwash out. A review of greenwashing research and implications for the voluntary-mandatory transition of CSR](#), International Journal of Corporate Social Responsibility Vol.4. Ghitti M., G. Gianfrate and L. Palma (2022), [The Agency of Greenwashing](#), EDHEC Risk Institute, February 2022. Du, X. (2015), [How the market values greenwashing? Evidence from China](#), Journal of Business Ethics, Vol. 128, No.3 (May 2015). Fatica S. and R. Panzica (2020), [Green bonds as a tool against climate change?](#) JRC Working Papers in Economics and Finance, 2020/10. Amenc, N., F. Goltz, and V. Liu (2021), [Doing good or feeling good? Detecting greenwashing in climate investing](#), EDHEC Business School, August 2021. Michaely, R., G. Ordonez-Calafi and S. Rubio (2022), [Mutual funds' strategic voting on environmental and social issues](#), Finance Working Paper No. 774/2021, European Corporate Governance Institute, February.

<sup>189</sup> [ESAs launch joint Call for Evidence on greenwashing \(europa.eu\)](#).

206. ESMA also leveraged the expertise of its Sustainability Standing Committee Consultative Working Group (SSC CWG) and bilateral outreach both before and after the CfE. The purpose of such outreach prior to the CfE was primarily to take stock of the challenges faced in implementing the sustainable finance framework from members of the SSC CWG. Following the CfE, further outreach took place with industry associations to give them an opportunity to elaborate on their responses to the CfE. All in all, 15 interviews were conducted, of which 12 took place with members from the SSC CWG.

### 6.3 EC's request for input on greenwashing

207. On 23 May 2022, the ESAs received a request for input from the EC relating to greenwashing risks and supervision of sustainable finance policies. The EC's full request is accessible here: [European Commission Request for input related to greenwashing risks and supervision of sustainable finance policies, 23 May 2022.](#)

### 6.4 References to greenwashing in existing and forthcoming EU legislation

#### 6.4.1 References in the existing EU regulatory framework

##### *Definitions in the broader economy*

208. The concept of greenwashing is not only used in the financial sector, but also in the context of the wider transition towards a sustainable economy. In its Green Deal, the EC stated that “reliable, comparable and verifiable information” plays an important part in “enabling buyers to make more sustainable decisions and reduces the risk of ‘green washing’”.<sup>190</sup>

209. The European Parliament also used the term in several resolutions, stating that “whereas there is a need to tackle misleading environmental claims and to address ‘greenwashing practices’ through effective methodologies, including on how to substantiate such claims”;<sup>191</sup> and emphasising “the right of consumers to more precise, harmonised and accurate information about the environmental and climate impacts of products and services throughout their lifecycle”; calling “for measures against greenwashing and false environmental claims relating to products offered both online and offline”; strongly supporting “the Commission’s intention to make proposals to regulate the use of green claims...”; and stressing “the need to enforce the recently amended Directive 2005/29/EC through proactive measures tackling green claims”.<sup>192</sup>

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<sup>190</sup> COM(2019) 640 final COMMUNICATION FROM THE COMMISSION The European Green Deal <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>

<sup>191</sup> European Parliament Resolution of 25 November 2020 Towards a more sustainable single market for business and consumers (2020/2021(INI)) [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0318\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0318_EN.html), para V.

<sup>192</sup> European Parliament Resolution of 10 February 2021 on the New Circular Economy Action Plan (2020/2077(INI)) [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0040\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0040_EN.html), para 28.



210. In its new Consumer Agenda on strengthening consumer resilience for sustainable recovery, the EC defined greenwashing as follows: “consumers need to be better protected against information that is not true or presented in a confusing or misleading way to give the inaccurate impression that a product or enterprise is more environmentally sound, called ‘greenwashing’.”<sup>193</sup>
211. The EC notice providing guidance on the interpretation and application of Directive 2005/29/EC (Guidance on the Unfair Commercial Practices Directive)<sup>194</sup> states in part 4.1.1: “The expressions ‘environmental claims’ and ‘green claims’ refer to the practice of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services. This may be due to its composition, how it has been manufactured, how it can be disposed of and the reduction in energy or pollution expected from its use. When such claims are not true or cannot be verified, this practice is often called ‘greenwashing’.” It is then elaborated that “‘Greenwashing’ in the context of business-to-consumer relations can relate to all forms of business-to-consumer commercial practices concerning the environmental attributes of products. According to the circumstances, this can include all types of statements, information, symbols, logos, graphics and brand names, and their interplay with colours, on packaging, labelling, advertising, in all media (including websites) and made by any organisation, if it qualifies as a ‘trader’ and engages in commercial practices towards consumers...” Finally, it is specified that the “UCPD does not provide specific rules on environmental claims. However, it provides a legal basis to ensure that traders do not present environmental claims in ways that are unfair to consumers. It does not prohibit the use of ‘green claims’ as long as they are not unfair. On the contrary, the UCPD can help traders investing in the environmental performance of their products by enabling them to communicate these efforts to consumers transparently and by preventing competitors from presenting misleading environmental claims.”

#### *Definitions in the financial sector*

212. There is currently no generally applicable and binding definition of greenwashing available in the EU financial regulatory framework. However, several regulatory instruments refer to greenwashing in specific contexts.
213. The TR<sup>195</sup> states in its recital 11: “In the context of this Regulation, greenwashing refers to the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met.”

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<sup>193</sup> Brussels, 13.11.2020 COM(2020) 696 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL New Consumer Agenda Strengthening consumer resilience for sustainable recovery - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0696&from=EN>.

<sup>194</sup> [Guidance on the interpretation of the Unfair Commercial Practices Directive](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005D0029&from=EN)

<sup>195</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0852>

214. SFDR Delegated Regulation<sup>196</sup> contains the following:

- In its explanatory memorandum: “Disclosure obligations and the assessment of sustainability preferences support the policy objective of reducing the occurrence of greenwashing, a form of mis-selling.”
- In its recital 16: “It is therefore necessary to address concerns about ‘greenwashing’, that is, in particular, the practice of gaining an unfair competitive advantage by recommending a financial product as environmentally friendly or sustainable, when in fact that financial product does not meet basic environmental or other sustainability-related standards.”

215. MiFID II Delegated Regulation<sup>197</sup> clarifies the following in its recital 7: “It is necessary to address concerns about ‘greenwashing’, that is, in particular, the practice of gaining an unfair competitive advantage by recommending a financial instrument as environmentally friendly or sustainable, when in fact that financial instrument does not meet basic environmental or other sustainability-related standards. In order to prevent mis-selling and greenwashing, investment firms should not recommend or decide to trade financial instruments as meeting individual sustainability preferences where those financial instruments do not meet those preferences. Investment firms should explain to their clients or potential clients the reasons for not doing so, and keep records of those reasons”.

216. IDD Delegated Regulations<sup>198</sup> state the following: “It is necessary to address concerns about ‘greenwashing’, that is, in particular, the practice of gaining an unfair competitive advantage by recommending an insurance-based investment product as environmentally friendly or sustainable, when in fact that insurance-based investment product does not meet basic environmental or other sustainability-related standards. In order to prevent mis-selling and greenwashing, insurance intermediaries and insurance undertakings distributing insurance-based investment products should not recommend insurance-based investment products as meeting individual sustainability preferences where those products do not meet those preferences.”

217. Recital 2 to CSRD<sup>199</sup> does not give a definition but makes a reference to greenwashing: “greenwashing of financial products that unduly claim to be sustainable.”

218. In addition, other definitions have been put forward in the EU framework:

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<sup>196</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1288>

<sup>197</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1253>

<sup>198</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1257>

<sup>199</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464>

- The EC “Strategy for financing the transition to a sustainable economy”<sup>200</sup> states that greenwashing is the “use of marketing to portray an organisation's products, activities or policies as environmentally friendly when they are not”.
- The ESMA Sustainable Finance Roadmap<sup>201</sup> defines greenwashing as “market practices, both intentional and unintentional, whereby the publicly disclosed sustainability profile of an issuer, and the characteristics and/or objectives of a financial instrument or a financial product either by action or omission do not properly reflect the underlying sustainability risks and impacts associated with that issuer, financial instrument or financial product. The greenwashing phenomenon could be generally identified as a misrepresentation, mislabelling, mis-selling and/or mis-pricing phenomenon”.

## 6.4.2 Other references to greenwashing outside of the EU framework

### *Financial market supervisors*

219. In its 2018 Discussion Paper on climate change and green finance<sup>202</sup>, the UK FCA referred to greenwashing as “marketing that portrays an organisation’s products, activities or policies as producing positive environmental outcomes when this is not the case”.
220. In Guidance<sup>203</sup> published in 2021, the Swiss FINMA referred to greenwashing as “the risk that investors and clients will be consciously or unconsciously misled about the sustainable characteristics of financial products and services”.

### *International organisations*

221. In a Call for Action<sup>204</sup> published in November 2022, IOSCO updated its previous definition of greenwashing,<sup>205</sup> referring to it as the “practice of misrepresenting sustainability-related information, practices or features throughout the investment value chain”.

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<sup>200</sup> [Strategy for financing the transition to a sustainable economy](#)

<sup>201</sup> [Sustainable Finance Roadmap 2022-2024 \(europa.eu\)](#)

<sup>202</sup> <https://www.fca.org.uk/publication/discussion/dp18-08.pdf>

<sup>203</sup> [Investor protection: preventing greenwashing | FINMA](#)

<sup>204</sup> [CALL FOR ACTION \(IOSCO GOOD SUSTAINABLE FINANCE PRACTICES. For Financial Markets Voluntary Standard Setting Bodies and Industry Associations\)](#)

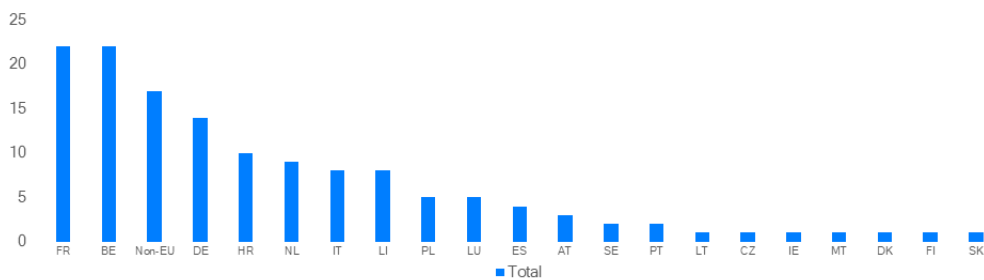
<sup>205</sup> [FR08/2021 Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management \(iosco.org\)](#)

## 6.5 Call for evidence – supplemental presentation of main data

### Respondent information

222. A total of 138 respondents participated to the CfE, spanning across 20 EU Member States in addition to non-EU countries (17 respondents). France, Belgium and Germany are most represented EU Member States among respondents.

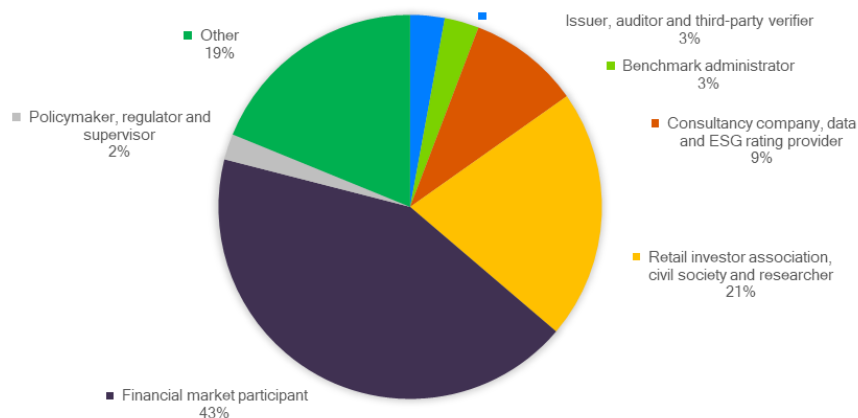
**FIGURE 3. DISTRIBUTION OF RESPONSES BY COUNTRY**



Note: Distribution of respondents by jurisdiction, n = 138.  
 Sources: Responses received to the ESMA public Call for Evidence on Greenwashing, ESMA

223. Respondents were asked to select the stakeholder categories to which they belonged (multiple answers were possible).<sup>206</sup> The most represented organisation types were “financial market participant” (43%), “retail investor association, civil society and researcher” (21%) and “consultancy company, data and ESG rating provider” (9%).

**FIGURE 4. DISTRIBUTION OF RESPONSES BY ORGANISATION TYPE**



Note: 33 respondents chose multiple responses for this question but, for the purposes of aggregating responses, only one organisation type was taken into account.  
 Sources: Responses received to ESMA’s public Call for Evidence on Greenwashing, ESMA

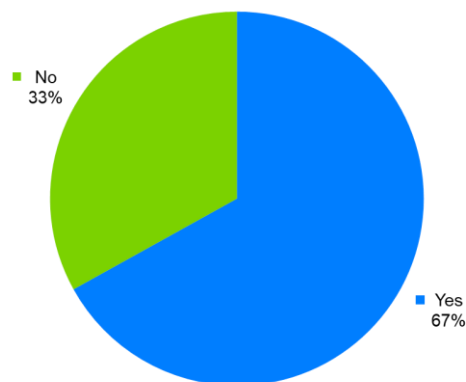
<sup>206</sup> 33 respondents chose multiple stakeholder categories. For the purposes of data analysis, respondents were aggregated into broader categories by reference to what was best suited to their characteristics. Note that “Other” includes market participants not under ESMA’s remit: bank association and market association, payment service providers, Pan-European Personal Pension Products (PEPPs) and others. The “financial market participant” category includes credit institution, institutional investor and investment manager, insurance intermediary and insurance undertaking, investment firm, pension fund and occupational pension scheme(s) provider.

Overview of main data received under the joint ESA section <sup>207</sup>

224. In order to identify areas of financial markets more exposed to greenwashing risks, the CfE questionnaire asked for feedback on greenwashing risks based on four key dimensions: 1) the role market participants can play in greenwashing, 2) the actual topics on which the sustainability-related claims are made, 3) the misleading qualities of a sustainability-related claim, and 4) the channels through which the sustainability-related claims are communicated. The below figures present results collected for these four dimensions.

225. Respondents were asked to state whether they agreed or not with the three possible roles laid out in the CfE questionnaire. 67% of respondents said they agreed.

**FIGURE 5. AGREEMENT OF RESPONDENTS WITH THE ROLES OF MARKET PARTICIPANTS IN GREENWASHING**

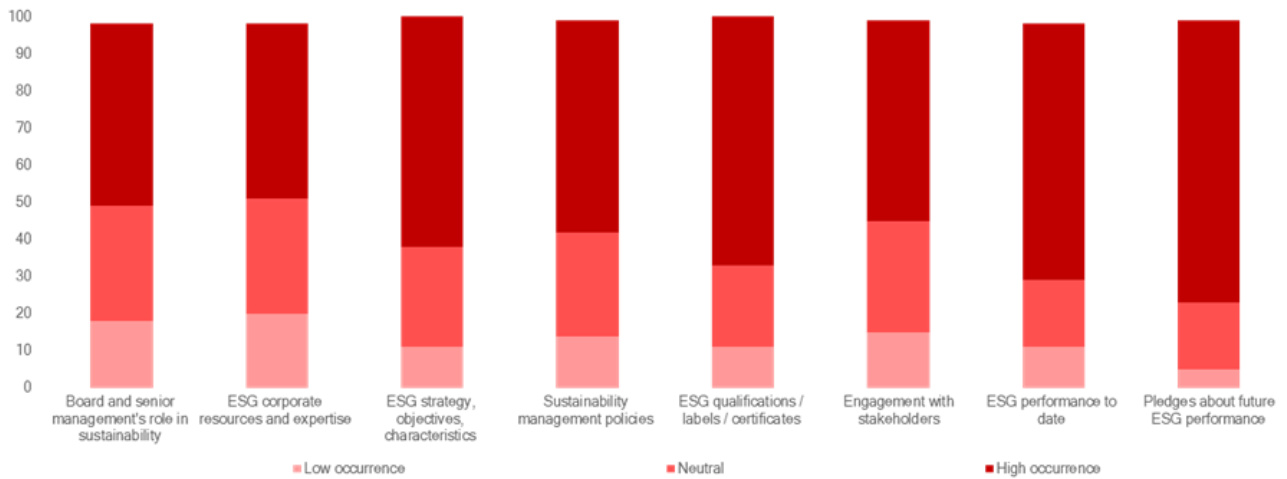


Note: This question asked respondents to agree or disagree with the roles (trigger, speaker and receiver) of greenwashing. 121 responses were received for this question.  
Sources: Responses received to the ESMA public Call for Evidence on Greenwashing, ESMA.

226. Respondents were asked to rate the extent of greenwashing risk for each sustainability sub-topic. With respect to each topic, around half of respondents or more considered the risk of greenwashing to be high. Concretely, the vast majority (77%) considered that pledges about future ESG performance have a high risk of greenwashing. On the other hand, the topic with the lowest risk (48%) of greenwashing recorded was with respect to claims concerning ESG corporate resources and expertise.

<sup>207</sup> In the CfE, respondents were given 5 answer options (1 = very low to 5 = very high). For the purposes of simplifying the demonstration of the data, options 1 = very low and 2 = low were aggregated, along with 4 = high and 5 = very high.

**FIGURE 6. THE EXTENT OF GREENWASHING RISK WITH REGARD TO EACH SUSTAINABILITY SUB-TOPIC**

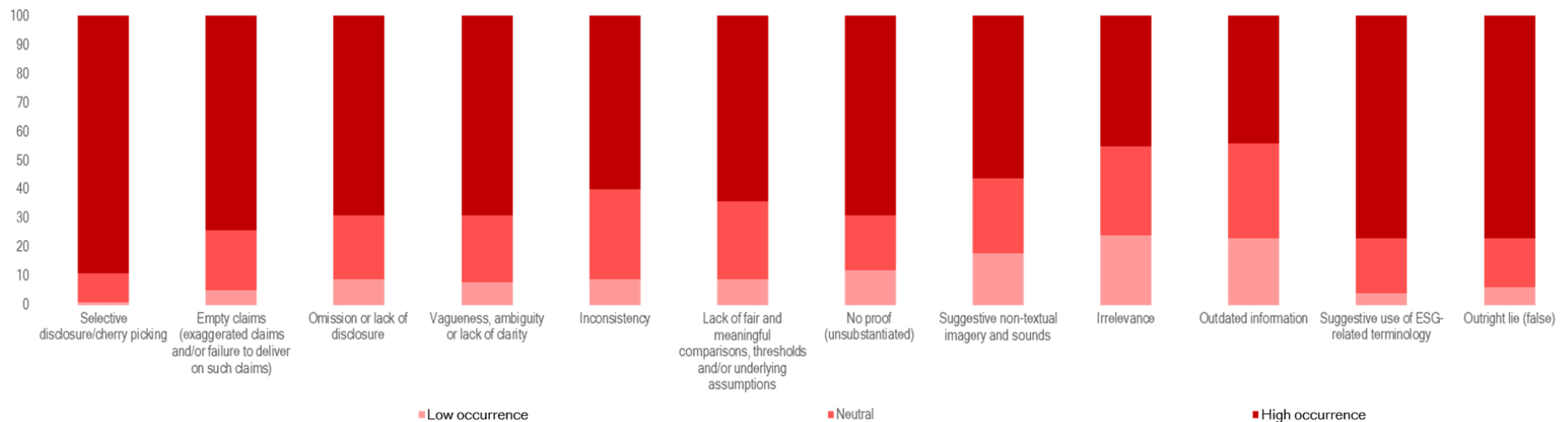


Note: This question asked respondents to rate the greenwashing risk of each topic. Between 98 and 100 responses were received to the elements of this question. Sources: Responses received to the ESMA public Call for Evidence on Greenwashing. ESMA



227. Respondents were asked to indicate the extent to which a range of misleading qualities of a sustainability-related claim are relevant with regard to greenwashing practices. Selective disclosure/cherry picking is seen to be the most relevant misleading quality in the context of greenwashing (with 90% of respondents rating it as “high occurrence”).

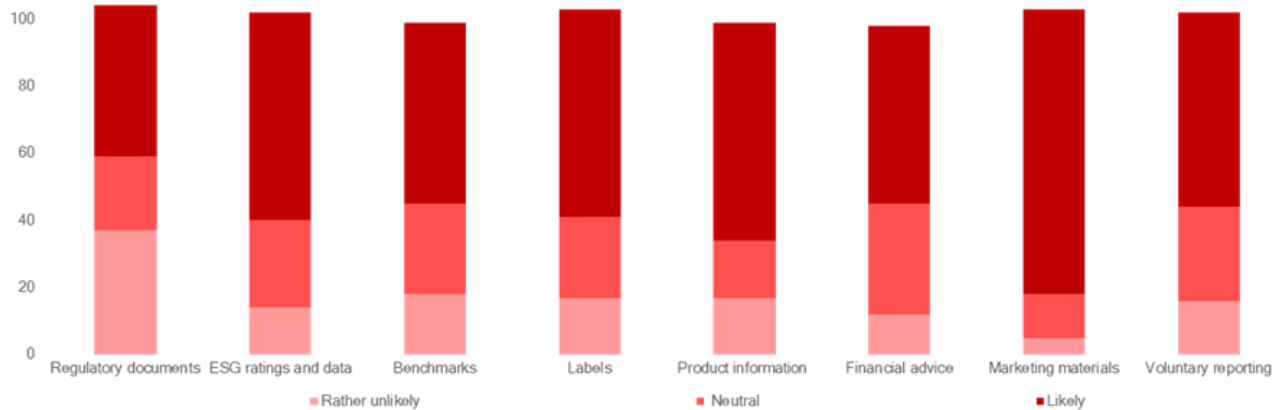
**FIGURE 7. RELEVANCE OF MISLEADING QUALITIES OF SUSTAINABILITY-RELATED CLAIMS**



Note: Respondents were asked to indicate the extent to which they found each of the misleading qualities of a sustainability-related claim listed below relevant to greenwashing practices. Between 102 - 105 responses were received to the elements of this question. Sources: Responses received to the ESMA public Call for Evidence on Greenwashing ESMA

228. Respondents were asked to identify the risk of each channel serving to communicate misleading sustainability claims made at entity level and/or at product/service level. Marketing materials came out significantly in the lead in this respect (73%). On the other hand, regulatory documents were perceived as the channel carrying the least risk for greenwashing (43%).

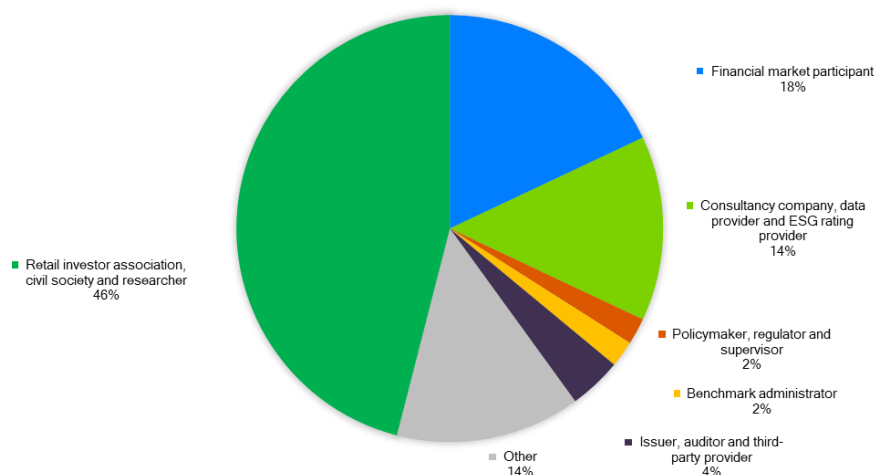
**FIGURE 8. THE RISKS OF GREENWASHING WITH REGARD TO THE CHANNELS**



Note: Respondents were asked to rate the risk of each channel serving as a transmission channel for greenwashing. Between 98 and 104 answers were received to the elements of this question. Sources: Responses received to the ESMA public Call for Evidence on Greenwashing, ESMA.

229. Respondents were invited to provide what they considered as examples of potential greenwashing practices. A total of more than 80 examples were provided by 50 respondents. Almost half of the respondents that provided examples are part of the “retail investor association, civil society and researcher” stakeholder category.

**FIGURE 9. SHARE OF ORGANISATION TYPES THAT PROVIDED EXAMPLES**

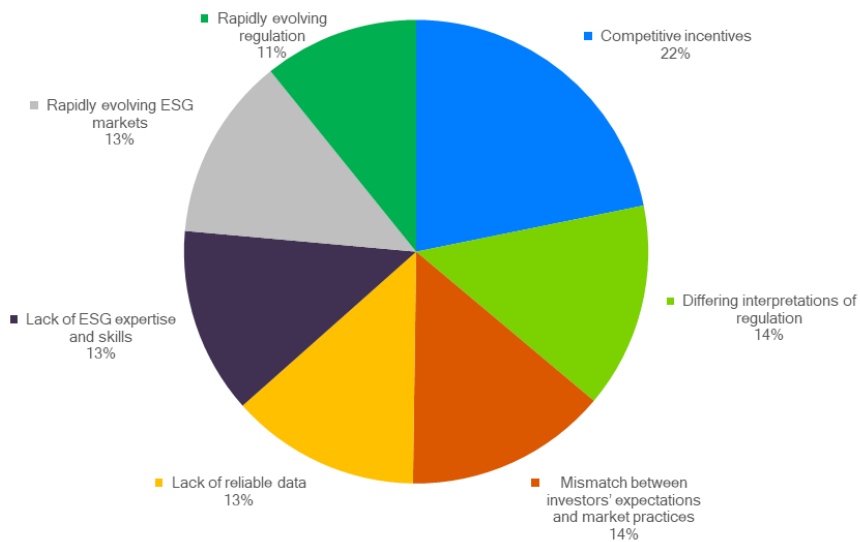


Note: Share of organisation types that provided examples. 50 respondents were able to provide at least one example of greenwashing. Sources: Responses received to ESMA's public Call for Evidence on Greenwashing, ESMA.

Overview of main data received under the ESMA section

230. Respondents were asked to identify the main drivers of greenwashing. It can be seen that the elements listed are generally considered equally important drivers (as they range from 11% - 14%), with one driver (“competitive incentives”) coming out as the top driver at 22%.

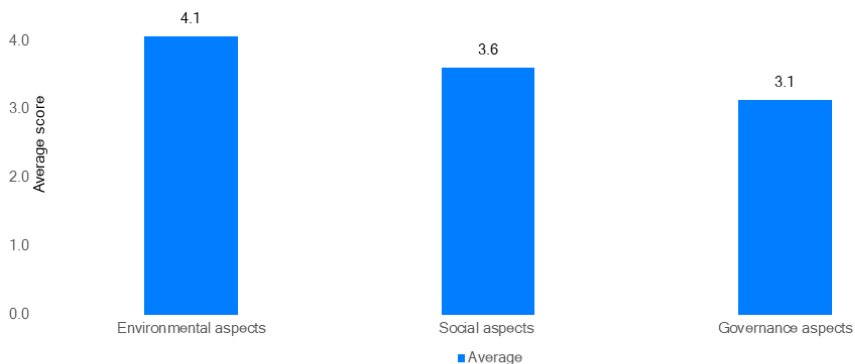
**FIGURE 10. MAIN DRIVERS OF GREENWASHING**



Note: Respondents were allowed to choose multiple responses to this question. 90 responses were received for this question.  
 Sources: Responses received to ESMA's public Call for Evidence on Greenwashing, ESMA.

231. When asked about the greenwashing risks pertaining to each aspect of the ESG spectrum, it was observed that respondents mostly associated greenwashing risks with the environmental aspect, followed by the social aspect. However, respondents also shared their view that not only environmental aspects, but also social and governance aspects, entail greenwashing risks.

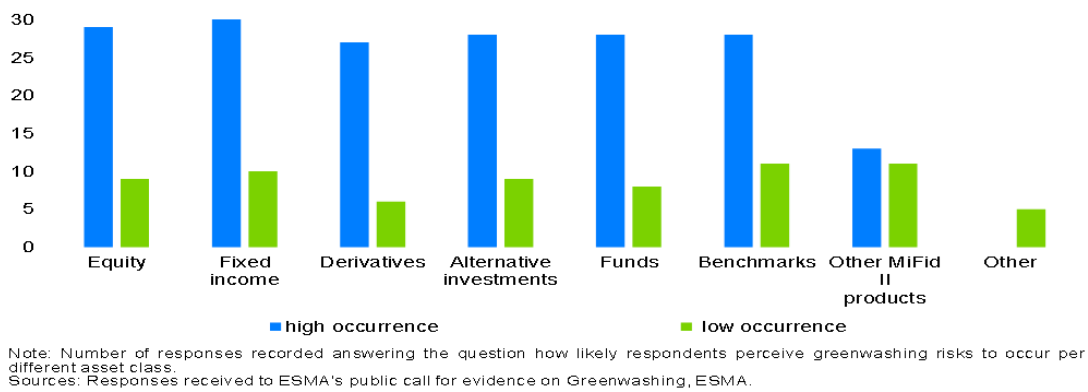
**FIGURE 11. EXTENT OF GREENWASHING RISK FOR EACH ASPECT OF THE ESG SPECTRUM**



Note: Respondents' view of the greenwashing risks pertaining to each aspect of the ESG spectrum. Between 73 and 74 responses were received to the elements of this question. The (mean) responses range from 4.1/5 to 3.1/5, as respondents were asked to rate each aspect out of 5.  
 Sources: Responses received to the ESMA public Call for Evidence on Greenwashing, ESMA.

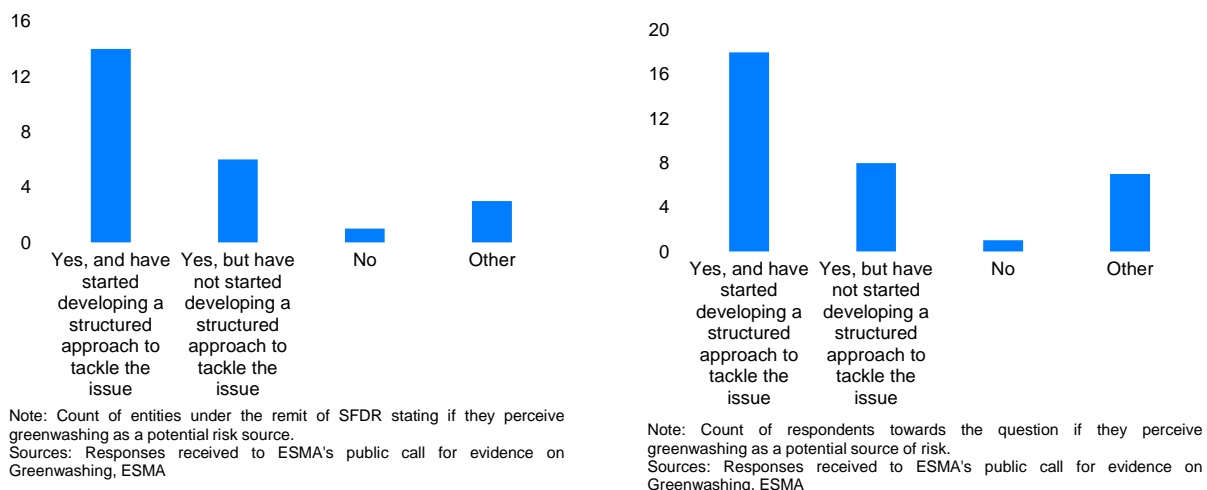
232. With regards to product-level sustainability-related claims, respondents were asked to assess the greenwashing risks of different asset classes / categories of financial products. In general, respondents consider most of the asset categories as carrying a high risk of greenwashing, with almost all of them reaching nearly 60%, except “other MiFID II instruments” and “other” product types.

**FIGURE 12. GREENWASHING RISKS ACROSS VARIOUS ASSET CLASSES**



233. Respondents were asked also to specify if their organisation perceived greenwashing as a potential source of risk, which the majority (79%) confirmed. Out of these, around half (53%) have started developing a structured approach to tackle the issue. For those entities subject to SFDR, 58% perceive greenwashing as a risk source and have started to develop a structured approach to the issue.

**FIGURE 13. PERCEPTION OF GREENWASHING AS A POTENTIAL RISK SOURCE AMONG ALL RESPONDENTS (LEFT) AND AMONG ENTITIES UNDER THE REMIT OF SFDR (RIGHT)**



## 6.6 Securities and Markets Stakeholder Group advice

234. The Securities and Markets Stakeholder Group (SMSG) rendered, on 18 January 2023, its advice to ESMA on the ESAs' Call for Evidence on Greenwashing.<sup>208</sup> Outlined therein are its perceptions of the most pressing issues to be addressed as part of the greenwashing project. On 16 March 2023, the SMSG provided advice to ESMA on additional questions related to greenwashing.<sup>209</sup>

## 6.7 Controversies analysis – methodology and main findings

235. As highlighted, in section 5.1 of the report, ESMA analysed greenwashing-related controversies involving STOXX Europe 600 companies (as of July 2022), by leveraging RepRisk data on misleading communication incidents. RepRisk defines misleading communication incidents as situations in which “a company manipulates the truth to present itself in a positive light, but contradicts this image through its actions, or misleads consumers about its products and services”. The data shows that, between January 2020 and December 2021, one-third of STOXX 600 companies have been involved in a total of 933 misleading communication incidents.

236. To more specifically identify greenwashing incidents among this set of controversies, both manual and automatic identification methods were employed: the automatic approach relied on a string filtering technique to search for the term "greenwashing" within the incident description and flag relevant instances; while under the second approach, all incidents were manually reviewed by two ESMA staff to determine whether they fell within the definition of greenwashing used in this report.

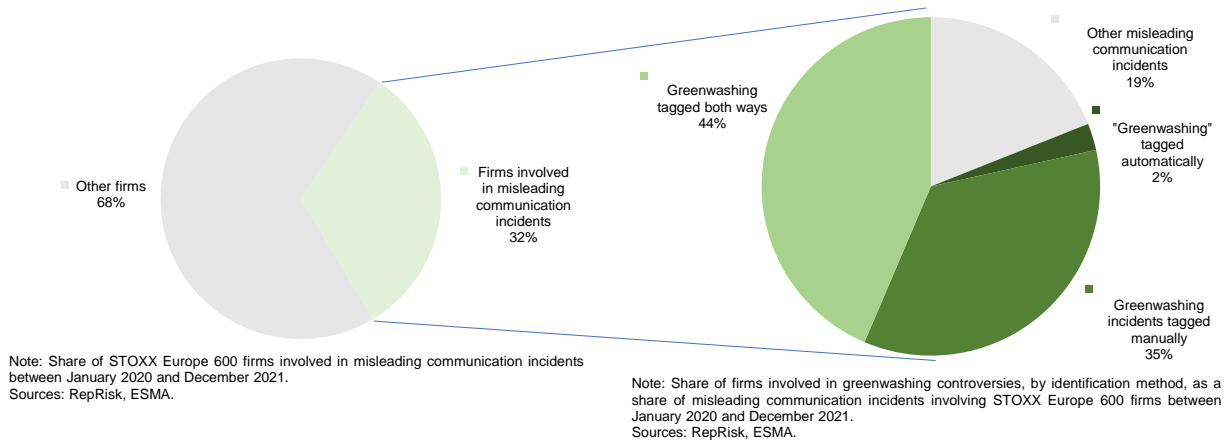
237. The results of the two approaches highlight the importance of establishing clear, common definitions for risk monitoring purposes. The broader definition used in the manual identification method yielded a much larger number of greenwashing controversies (630) than the text-based search (257). Conversely, 153 firms were identified as being involved in a greenwashing controversy when using the broader definition, compared with 90 using the automatic approach (Figure 2). When combining the results, a total of 158 firms (more than one-quarter of the sample) were involved in a greenwashing controversy between 2020 and 2021.

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<sup>208</sup> [ESMA22-106-4384-SMSG Advice on Greenwashing.docx \(europa.eu\)](#).

<sup>209</sup> [ESMA22-106-4551 SMSG Additional Advice on Greenwashing](#).

**FIGURE 14. SHARE OF STOXX EUROPE 600 FIRMS INVOLVED IN GREENWASHING INCIDENTS AND IDENTIFICATION OF GREENWASHING CONTROVERSIES BY IDENTIFICATION METHOD**



238. The occurrence of greenwashing controversies tends to be concentrated within a few sectors and firms. Using the broader definition of greenwashing, 19% of the controversies involved firms from the extractives and minerals processing sector, followed by 16% for financial sector firms. Meanwhile, 10 companies were involved in more than 10 controversies each. However, these findings may be driven by various external factors, including company size, media coverage, country specificities, etc. One consistent finding is that the total number of greenwashing controversies has steadily increased between 2020 to 2021, regardless of the identification method (Figure 3). This trend may reflect greater public and media scrutiny and could increase the pressure on firms to operate more transparently and responsibly as potential reputational risks become more prominent.

**FIGURE 15. MONTHLY NUMBER OF GREENWASHING CONTROVERSIES FOR STOXX EUROPE 600 FIRMS**

