

Request for input to the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) related to greenwashing risks and supervision of sustainable finance policies.

1. Context and scope

The demand for and offer of sustainable investments is growing rapidly. This is a very positive trend in line with the European Green Deal objectives. However, it should not come at the expense of greenwashing practices, affecting investors, consumers and financial market participants and potentially undermining the overall trust in sustainable finance and the capacity of the financial system as a whole to channel private capital to sustainable investments.

Greenwashing is a complex and multifaceted issue. It can occur at different stages of the financial value chain, such as at the sale or marketing of financial products. It can also occur at company level where an undertaking or a financial institution makes false or unsubstantiated sustainability claims about its products, activities or policies.

Greenwashing can generate reputational and financial risks for the actors involved. It can also negatively impact the market and system level as well as the overall trust into sustainable financial investments. For instance, greenwashing related to the sale of a financial product, can trigger legal and operational risks for the seller. Greenwashing could also create reputational risk and lead to investors withdrawing investments or funding, ultimately affecting the business and financial situation of the financial market participant.

The EU has taken important steps to address greenwashing in the financial market by adopting sustainable finance related policies and legislation. These include sustainability disclosures and (proposed) sustainability reporting requirements for companies (Taxonomy Regulation¹ and proposal for a Corporate Sustainability Reporting Directive²), and manufacturers of financial products and financial advisers (Sustainable Finance Disclosure Regulation³, Taxonomy Regulation, sustainability preferences of retail investors in investment advice⁴).

The EU has also created tools to increase transparency and help end-investors identify credible investment opportunities and potential risks. These include the SFDR and the Taxonomy disclosures, the

¹ 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, [PE/20/2020/INIT](#).

² Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, [COM/2021/189 final](#).

³ 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, [PE/87/2019/REV/1](#).

⁴ The integration of sustainability aspects including sustainability preferences was implemented through amendments of the Level 2 regulations under MiFID, UCITS Directive, AIFMD, IDD and Solvency II. See [Commission communication on the Sustainable Finance Package](#).

benchmarks under the Benchmark Regulation⁵ and the proposal for a European green bond standard⁶. Moreover, financial risks stemming from greenwashing are covered by the prudential rules such as the CRR/CRD rules for banks⁷ and Solvency II rules for insurance companies⁸.

The EU sustainable finance framework will be implemented and complemented by legislation under negotiation in the next few years and substantially increase transparency and require the substantiation of sustainability claims in the financial market. Existing EU policies, for instance the SFDR, the Taxonomy Regulation and more generally the Unfair Commercial Practices Directive⁹, provide the basis for defining greenwashing and unfair green claims but further investigation and a common understanding of the specific features and ways greenwashing can materialize in the financial market is needed.

In parallel to the implementation of key policies, the monitoring of greenwashing is important. Greenwashing risks can arise in different parts of the financial market, including those not covered by sustainability rules and policies. The effectiveness of sustainable finance policies depends on an adequate level of supervision and enforcement across the EU. Therefore, it is crucial to closely monitor those risks and follow-up on the ways in which they are being tackled. Supervisors play a key role in monitoring greenwashing risks and compliance with European sustainable finance legislation. It is within the mandate of supervisory authorities to ensure that investors and consumers are protected against unsubstantiated or exaggerated sustainability claims, throughout the investment chain and product life cycle.

The Strategy on Financing the Transition to a Sustainable Economy¹⁰ therefore outlines steps under Action 5a to monitor greenwashing risks and assess whether supervisory mandates and powers are effective in addressing these greenwashing risks in cooperation with the European Supervisory Authorities (ESAs). Real or perceived greenwashing in the financial market can not only significantly discourage investors from investing in sustainable economic activities but also generate reputational risks for the

⁵ 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, [EUR-Lex - 32016R1011 - EN - EUR-Lex \(europa.eu\)](#).

⁶ Proposal for a Regulation of the European Parliament and of the Council on European green bonds, [COM/2021/391 final](#).

⁷ ESG Disclosure requirements under Article 449a of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions ("CRR"), EUR-Lex - 32013R0575 - EN - EUR-Lex (europa.eu). And amendment to CRR Article 449a by Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor COM/2021/664 final.

⁸ For more detail see: Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Strategy for Financing the Transition to a Sustainable Economy, [SWD/2021/180 final](#).

⁹ Unfair Commercial Practices Directive (2005/29/EC) applies to unfair business to consumer practices, including greenwashing claims, in the field of financial services. The revised Guidance on the Directive (see Commission Notice, available at: [EUR-Lex - 52021XC1229\(05\) - EN - EUR-Lex \(europa.eu\)](#)) elaborates on the interpretation and application of the directive to environmental claims. Furthermore, the Commission recently adopted a proposal concerning Empowering Consumers for the Green Transition (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Empowering-the-consumer-for-the-green-transition>). The proposal aims at introducing targeted amendments in EU consumer law, including the Unfair Commercial Practices Directive, which will enable consumers to take better informed purchasing decisions and targets unfair commercial practices that mislead consumers with regard to sustainable consumption choices, including greenwashing practices.

¹⁰ Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, Strategy for Financing the Transition to a Sustainable Economy, [COM/2021/390 final](#).

actors involved and trigger a loss of trust in sustainable finance products, financial institutions and ultimately the entire financial system.

2. Procedure

The Commission requests each of the ESAs, individually but in a coordinated manner, to provide their respective input by means of a progress and final report on several aspects related to greenwashing and its related risks as well as the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing.

While the ESAs should accurately present the specificities of the respective sectors in their remit, the approach and basic structure of the reports should be coordinated among the ESAs to allow a certain degree of comparability across the reports and their findings. The reports should be accompanied by a shared summary of key horizontal aspects across all three reports.

To ensure that the ongoing implementation of policies is taken into consideration, the ESAs' input should be composed of progress and final reports. The progress reports should take stock of the work undertaken to date, focusing on how greenwashing is understood and where it may materialize, actions taken and tools developed to ensure adequate monitoring of greenwashing risks and early supervisory challenges in monitoring the application and enforcing new policies.

The final reports should build on the findings of the progress reports and complement them, for instance, by providing examples of greenwashing cases and assessing their impact on the financial market, by assessing supervisory measures, supervisory obligations and powers related to fighting greenwashing cases and addressing greenwashing risks, and by assessing implementation of policies aiming at preventing greenwashing and addressing greenwashing risks.

The ESAs are encouraged to reach out to Competent Authorities and, as appropriate, to market participants to gather evidence for the reports. The ESAs are also encouraged to share between themselves information and data on greenwashing cases and complaints given the cross-sectoral nature of greenwashing risks. They are also encouraged to use a wide variety of tools in their remit to collect evidence of greenwashing risks materializing in the market and to determine whether their tools are appropriate or not.

The progress reports are requested in 12 months after the date this request has been sent. The final reports are requested in 24 months after the date this request has been sent.

The sequencing and timing of this request would allow enough time for key sustainable finance policies to be in place and, at the same time, provide useful input to the Commission regarding greenwashing cases and risks in the meantime. The reports will be important input from the supervisory community to the Commission. Based on this input, the Commission will assess and monitor greenwashing risks in the financial market while the implementation of key policies is ongoing and will consider whether further steps are necessary for effective supervision and enforcement in the context of greenwashing and risks thereof as well as to ensure consistent outcomes for European consumers and investors. The Commission will also consider potential amendments to the existing rulebook if needed.

The Commission reserves the right to revise and/or supplement this request for input.

The input received on the basis of this mandate will not prejudice the Commission's final decisions in any way. In accordance with the established practice, the Commission may consult other experts or seek other inputs.

This request will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to the EBA, EIOPA and ESMA.

3. Scope and defining greenwashing

The request for input is addressed to each of the ESAs and should be considered within their respective sectors of the financial market and supervisory competences. It should cover the most relevant segments of the markets under the purview of each ESA, even where no specific sustainability-related policies are already in place or forthcoming. This means that if the ESAs see a high degree of greenwashing risks in sectors in their purview which are not covered by sustainability-related policies, they should analyze and provide advice on them as well.

The ESAs should coordinate their input and ensure coherence across the approaches taken for the reports.

To the extent possible, the ESAs should use common terminology on greenwashing across the sectors, whilst highlighting possible deviations to take into account sectoral specificities. As part of this, the ESAs are requested to come forward with a common high-level understanding of the key features of the greenwashing and complement that with more specific sectorial definitions where relevant and necessary. This should ensure that there is a common understanding and a common denominator across the sectors, which builds on existing EU definitions used in the context of greenwashing in general (e.g. the Unfair Commercial Practices Directive), in the financial market in particular (e.g. the SFDR, Taxonomy Regulation, the latest sustainable finance strategy, etc...), and other potential definitions used by the market. This includes assessing current market practices and perceptions of what can be considered as greenwashing.

The ESAs are also invited to provide early insight on whether current legal definitions aimed at addressing greenwashing are understood consistently by supervisors and market participants (e.g. 'sustainable investment' under the SFDR, as well as MiFID and IDD delegated acts on sustainability preferences). Aside from relying on existing definitions in sustainable finance policies, it will be important to capture the most relevant types and forms of greenwashing in the financial market for enabling a comprehensive monitoring of greenwashing in the financial market.

4. Items on which input is requested

The ESAs are requested to provide input on the occurrence of greenwashing and potential for greenwashing risks as well as an overview and assessment of supervisory practices, experience, convergence and supervisory capacities related to the prevention of greenwashing through available tools

and powers at the time of this request. This should include whether existing tools and data are sufficient to adequately monitor and address greenwashing.

The Commission seeks the input of the ESAs with regard to supervision and enforcement both from a legal and a practical point of view.

4.1. Greenwashing and greenwashing risks

For the purpose of this request, the ESAs are requested to assess the scale of potential greenwashing and how frequently it occurs in the market. For this purpose, the ESAs are requested to, where possible, collect information on the most frequent greenwashing occurrences and complaints. It should also identify and assess risks that greenwashing poses to financial sector entities, investors and consumers. Such information should be collected based on input from national authorities, desk research as well as, where appropriate, through a public call for evidence. In this context, the ESAs are invited to give a sense of how many occurrences of greenwashing could be undetected and potentially not captured by their information collection.

Greenwashing could occur at the sale or marketing of financial products either covered or not covered by the SFDR. Greenwashing could also occur at company level where an undertaking or a financial institution makes sustainability claims about its business now and in the future that are not substantiated and correct¹¹. Greenwashing could also occur in relation to third country firms providing financial services in the EU. With due respect to obligations of professional secrecy, the reports should provide an overview and assessment of the occurrence of, and complaints (including to National Competent Authorities and Ombudsmen) regarding greenwashing in the financial sectors covered by the ESAs. This should include, where possible, information about the most frequent types of greenwashing¹². The reports should draw on both supervisory and market information, market monitoring as well as consumer and investor complaints. Occurrences and complaints should be reported in an anonymized manner.

If a limited amount of evidence emerges, the ESAs should provide an assessment as to why, including challenges, no occurrences of and complaints have been identified and areas where they see the highest risk of greenwashing. In this case, the ESAs could also present “case studies” where they highlight where greenwashing risk could emerge.

The reports should also provide an overview and assessment of the most relevant types of risks that affect financial markets and financial institutions with regard to greenwashing occurrences and complaints both within the EU and internationally including third country firms providing financial services in the EU. This includes assessing the potential emergence and/or observation of greenwashing risks in the financial markets, the chance that these risks materialize, the transmission channels of these risks and their potential impacts both on the financial markets and the solvency of financial institutions.

¹¹ The reports should not make any proposals that would imply modification of any provisions of the CSRD as we are unlikely to be any substantial experience of the application of the Directive before the final reports under this request are submitted.

The reports should highlight how the ESAs plan to monitor and identify these greenwashing risks and challenges in the future.

4.2. Supervisory practices, experience and capacities

While supervisors are gaining experience and building expertise in fighting and preventing unsubstantiated claims in the financial market, practices and capacities in dealing with greenwashing vary across the EU. Supervisory practices are also subject to the legal mandates provided to competent authorities by their respective legislators, which may differ.

While the implementation of the SFDR is ongoing and keeping in mind that national practices differ, the reports should identify the best practices and potential gaps, including the supervisory capacity and experience in dealing with greenwashing cases so far and their challenges. The ESAs could take into account their work conducted under Article 18 SFDR to take stock of the extent of voluntary disclosures¹³ in this context.

The reports should provide an overview and assessment of the most relevant supervisory practices and tools competent authorities are developing or have developed to define, capture and address greenwashing cases and greenwashing risks within their remit. To complement this, the experience and early lessons learned of supervisors to deal with greenwashing should be assessed, as well as the challenges supervisors face in this respect. This could include ideas and suggestions for the Commission to support the supervisors in their roles.

The overview should include existing or planned practices related to

- Techniques and tools used or which may be used for the identification of greenwashing
- Practices developed or being developed to deal with greenwashing occurrences within the EU and with regard to third country firms providing financial services in the EU
- Measures used to prevent and remedy greenwashing
- Data-requirements to enable the identification of greenwashing

This should be complemented by best practices of supervisory processes at international level (e.g. at IOSCO, BCBS, IAIS, FSB, etc.) if available.

The reports should also provide an overview and assessment of the current supervisory resources and expertise of financial supervisors in capturing, fighting and preventing greenwashing in the financial market based on their existing or forthcoming legal mandates. This could include ideas, best practices and suggestions for the Commission to support the supervisors in their roles. This could include basic quantitative estimation of resources/FTEs that are dedicated to sustainability-related supervisory tasks to then allow for a conclusion on resources and capacity related to the various tasks across Member States.

¹³ Article 18 of the SFDR: The ESAs shall take stock of the extent of voluntary disclosures in accordance with point (a) of Article 4(1) and point (a) of Article 7(1). By 10 September 2022 and every year thereafter, the ESAs shall submit a report to the Commission on best practices and make recommendations towards voluntary reporting standards. That annual report shall consider the implications of due diligence practices on disclosures under this Regulation and shall provide guidance on this matter. That report shall be made public and be transmitted to the European Parliament and to the Council.

Considerations on institutional arrangements and sharing of information amongst authorities at the national level and at the EU level could also be explored. For example, whether complaints received by alternative dispute resolution/Ombudsmen are reported to supervisory authorities, or whether information on cases received by one authority, is shared with another authority dealing with a different sector, for the latter to identify whether there are ‘spill-over’ or cross-sectoral effects.

4.3. Implementation of sustainable finance policies and supervisory convergence

The reports should also include the current state of implementation and application of relevant sustainable finance related EU policies and legislation in the remit of competent authorities and the ESAs which aim at preventing greenwashing or address greenwashing risks. This includes the legal mandates of competent authorities with regard to sustainability in financial supervision, including whether the current mandates are sufficiently broad to cover greenwashing and for them to use tools which allow them to monitor and address greenwashing risks.

In addition, an assessment of how competent authorities intend to or are already implementing the supervisory obligations related to sustainable finance disclosures under the SFDR and Taxonomy Regulation would be beneficial in assessing the coherence of approaches across the EU and common challenges we are facing. As part of this it could be assessed, how competent authorities prepare for the application and enforcement of upcoming sustainable finance obligations.

4.4. Supervisory measures and enforcement

The reliability of sustainable finance disclosures, data and other measures to prevent greenwashing depend on an adequate level of supervision and enforcement of sustainability-related obligations as provided for by European financial market legislation.

While some elements of sustainable finance related EU policies and legislation may still be under implementation, the application of key policies would be well underway by the deadline of the final reports and would allow an early assessment of supervisory and enforcement measures. The assessment should be based on measures taken by competent authorities over a defined period of observation.

The scope should cover measures to identify, prevent, investigate, sanction and remediate greenwashing in the financial market by competent authorities including but not limited to:

- Supervisory measures being adopted by Competent Authorities and/or challenges in adopting them;
- Tools used and granularity applied in the assessment of mandatory disclosures
- Investigatory activities by CAs, even where they did not result in a formal enforcement action (such as sanctions or other administrative measures imposed as a consequence of a breach of EU law) or information as to why no investigatory activities have taken place.
- Formal enforcement measures such as sanctions and other administrative measures imposed by Competent Authorities;
- Reports to law enforcement authorities by Competent Authorities and any judicial proceedings following these reports that the Competent Authorities are aware of.

4.5. Assessment of supervisory obligations and powers

Taking into account the experience with greenwashing cases and the actual enforcement so far, the ESAs are requested to assess whether the current and forthcoming supervisory mandates and toolkits of CAs¹⁴ are fit to identify, prevent, investigate, sanction and remediate possible greenwashing and address greenwashing risks throughout the investment chain and financial product lifecycle and enforcing European legislation aimed at preventing greenwashing.

This includes an assessment of the coherence of the supervisory mandates, obligations and powers available to competent authorities for sustainability-related enforcement, in particular but not limited to the assessment whether supervisory mandates, as well as the mandated powers and obligations

- sufficiently address and deter greenwashing and its risks ;
- are sufficient to adequately monitor, investigate and sanction greenwashing throughout the investment chain and product lifecycle;
- include the possibility to use appropriate and adequate tools and request data as needed.

4.6. Proposals for improvement of the regulatory framework

Appropriate supervisory action as regards greenwashing is only possible where the regulatory framework provides CAs with appropriate legal grounds for action. The ESAs are invited to provide, as part of the technical advice, insight on areas of improvement for the current regulatory framework, based on observed and experienced potential shortcomings (mishaps, inconsistencies, conflicting concepts or definitions, gaps, etc.), including in Level 1 legislation. The advice provided should not prejudice any legislative action from the Commission.

¹⁴ For instance, Commission proposals currently under negotiation such as CRR/CRD, Solvency II, etc.