

EBA PROGRESS REPORT ON GREENWASHING MONITORING AND SUPERVISION

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Executive Summary

In May 2022, the European Supervisory Authorities (ESAs) received a request for input from the European Commission requesting each ESA within its sectoral remit and competencies to provide input on the phenomenon of greenwashing, first in the form of Progress Reports by May 2023. The advice from each ESA was requested on:

- Common high-level understanding on greenwashing with key features;
- Most relevant types of greenwashing, its occurrences and complaints related to it;
- Risks that greenwashing poses to financial sector entities, investors and consumers;
- Supervisory practices, experiences and capacities, including tools to monitor greenwashing;
- Gaps, inconsistencies and problems in the current legislative framework.

This Progress Report is the EBA's response to the European Commission. As noted in the request, the Progress Report is a stock take of the current situation, providing initial findings, which will form the basis for the Final Report that is due in May 2024. It builds on the feedback received to the call for evidence issued to its stakeholders by the EBA – together with other ESAs – and a survey conducted among its competent authorities.

In addition, the ESAs were requested to coordinate their advice on horizontal aspects to ensure coherence across approaches taken. Hence, in this Progress Report, the ESAs propose a common high-level understanding of greenwashing as *'a practice whereby 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'*.

The rest of the Progress Report focuses mostly on the banking sector but also covers investment firms and payment service providers, with, however, limited input on payment service providers in the absence of the sufficient feedback received.

The analysis reveals that greenwashing may taint market participants' ESG strategy and objectives, their ESG performance, as well as the ESG labels and certificates, with pledges about future ESG performance considered to be the most prone to greenwashing.

The outcome of the quantitative analysis of the greenwashing phenomenon in the EU since 2012 shows a clear increase in the total number of potential cases of greenwashing across all sectors, including EU banks. It also indicates rising climate accountability: increased public attention to climate change has led companies being held more accountable for their environmental policies, climate impact and disclosures. However, it cannot be ascertained from the data analysis the extent to which these trends are primarily driven by companies effectively engaging more into greenwashing and/or by the fact that greenwashing gets more scrutiny nowadays and therefore tends to be more frequently identified, criticised and reported by stakeholders. The analysis of

examples of greenwashing in the EU banking sector indicates that a bank can potentially engage in greenwashing in multiple ways, mostly at entity level, while greenwashing seems rather limited at product level except in case of investment products, for which sustainability-related offerings and demands are far more developed than for example in retail and corporate banking.

The Progress Report describes the adverse impact that greenwashing can have on the financial risks of institutions and, ultimately, on consumers. Both CAs and stakeholders estimate greenwashing having highest impact on reputational risk, followed by operational and strategic/business risks of banks and investment firms. Less impact is perceived on liquidity and funding risks. The materiality of greenwashing risk to banks is currently perceived as rather low but it is expected to increase to medium or even high in the future.

The overview of existing or planned regulation and supervision reveals that several elements may already, or should going forward, contribute to addressing aspects of greenwashing by tackling misleading statements and enhancing transparency on sustainability practices. Some challenges have, however, been identified by stakeholders and several measures of the sustainable finance regulatory framework are still in the early stages of implementation, while others are being updated or developed, suggesting that benefits of these frameworks are not fully visible yet.

At this point, the EBA does not formulate policy recommendations. However, the EBA will continue its assessment on the effectiveness and potential shortcomings of the regulatory and supervisory frameworks and clarify the need for any further measures as it prepares its final report on greenwashing, its related risks and the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing.

1. Introduction

1.1 Background

1. Climate change and the need to move to a more sustainable economy has become one of the most pressing issues globally and it is one of the top priorities in the EU political agenda currently and going forward. The demand and supply for sustainable products has been increasing in recent years and banks together with other financial institutions are at the centre of this trend by providing financing for the green transition.

2. One of the side effects of this change is the phenomenon of greenwashing, which, even though existing for more than 20 years, has now become the focus of more attention with the potential to impact the transition by reducing investor confidence and necessary investments.

3. Greenwashing can generate reputational and financial, including litigation, risks for the institutions involved and can affect the overall credibility of sustainable finance policies and products and impact negatively the market. Therefore, supervisors have a key role to play in i) monitoring greenwashing risks and ensuring appropriate risk management policies by institutions, ii) assessing compliance with EU sustainability-related regulations, and iii) following up on greenwashing practices, including potential sanctions.

4. The EU has taken steps to address and tackle greenwashing with the Taxonomy Regulation¹ and the Sustainable Finance Disclosure Regulation (SFDR)². Also, the Action 5(a) of the European Commission's Strategy for Financing the Transition to a Sustainable Economy consists in increasing the resilience in the financial system by monitoring greenwashing risks and assessing whether supervisory mandates and powers are effective in addressing greenwashing risks. As part of the implementation of this action, the Commission issued a request for input to the three ESAs³ in 2022 to analyse greenwashing within their respective sectors of competence. The ESAs were requested to identify key issues in the market practices and supervision, but also shortcomings and inconsistencies in the current regulatory framework. The request to address greenwashing has also been included in the EBA's Roadmap on Sustainable Finance⁴ published in December 2022.

5. In order to meet the Commission's request, the EBA has been working closely with ESMA and EIOPA to deliver the advice in the form of a Progress report. With this Progress report, the ESAs propose a high-level understanding of greenwashing with core principles, followed by the EBA's

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 – [link](#)

² 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 - [link](#)

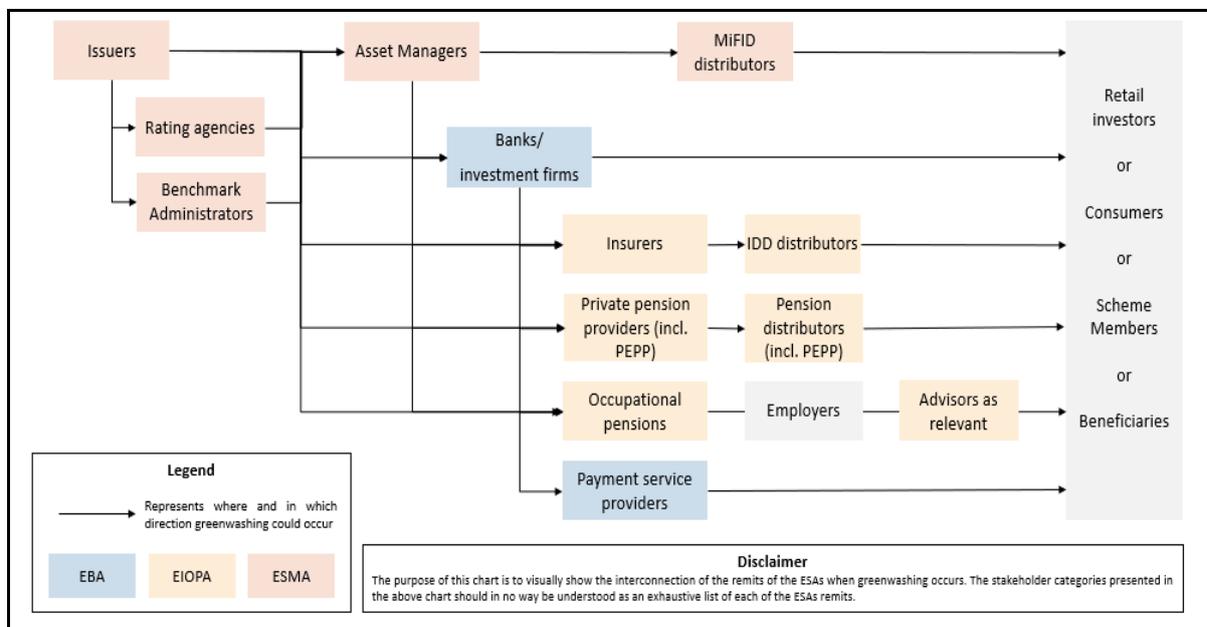
³ [Call for Advice on greenwashing 2022](#)

⁴ [The EBA Roadmap on Sustainable Finance](#)

analysis of greenwashing in the banking sector and the impact it can have on financial risks. Market and supervisory practices have also been assessed. As noted in the Commission's request for input, the EBA does not propose any policy recommendations in this Progress report yet.

6. For the purposes of this Report, and in addition to the joint understanding, the ESAs have also jointly developed a high-level overview of the sustainable finance investment value chain (see figure 1 below. This is to show in summary the interconnectedness across the sectors within each of the ESAs' remit.

Figure 1. Sustainable finance value chain



Source: ESAs elaboration

1.2 Mandate

7. The mandate from the EC requests each of the ESA's input, individually but in coordinated manner, on several aspects related to greenwashing and its related risk and the implementation, supervision and enforcement of sustainable finance policies intended to prevent greenwashing. The input from national authorities and, where relevant, through a public call for evidence was recommended.

8. All three reports should include a shared summary of key horizontal aspects. More specifically, 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 sectorial definitions where relevant and necessary. This should ensure that there is a common understanding and a common denominator across the sectors.

9. The EBA's focus in the response to Commission's request for input is to:

- i. provide insights into an understanding of the greenwashing phenomenon and identify the specific forms and dimensions it can take in the context of banking activities;
- ii. evaluate greenwashing risks within the EU banking sector and determine the extent to which this may be an issue (currently and going forward) from a prudential perspective;
- iii. identify the existing market practices, regulatory frameworks, and supervisory tools which can be used to address greenwashing and to point out potential challenges and shortcomings; and
- iv. assess whether amendments to the EU supervisory framework and the EU single rulebook would be needed and to provide recommendations to the European Commission to further address greenwashing, if deemed appropriate.

10. As this progress report is intended to be a stocktake, it does not include any policy recommendations but is rather focused on the current state of play and issues identified by stakeholders and competent authorities. Policy recommendations will be part of the Final report that is due in 2024.

1.3 EBA's approach and content of the report

11. In this progress report the EBA has focused on the entities and sectors in its remit – credit institutions, investment firms and payment service providers – to address the European Commission's request for input on greenwashing phenomenon, but also on its monitoring and supervision in the EU. The EBA has also analysed greenwashing trends based on the data of RepRisk (ESG data provider).

12. Chapter 2 of the report includes the overview of the limitations that current greenwashing definitions have and proposes ESAs' high-level understanding of greenwashing. It also elaborates on the key characteristics of greenwashing that is largely based on the feedback from stakeholders. The last part of this chapter provides a quantitative analysis of greenwashing phenomenon since 2012 including the overall greenwashing trends across all companies, sectors, and geographic area. It also focuses on greenwashing in the context of the EU financial sector and EU banks and a qualitative insight based on both theoretical and empirical examples of greenwashing to illustrate how greenwashing may materialise in various areas of banking activities.

13. Chapter 3 addresses the adverse impact of greenwashing on financial risks of institutions (banks, investment firms and payment service providers). The risks assessed are reputational, operational, strategic, liquidity and other risks of institutions but also risks to financial stability. The second part of this chapter describes the materiality of greenwashing risks for institutions and impact of greenwashing on consumers and society.

14. Chapter 4 provides an overview of existing or upcoming regulatory and supervisory frameworks, as well as market practices, which can help address greenwashing and the financial risks linked to greenwashing. The chapter firstly describes the EU and national legislative

frameworks which may help address greenwashing as well as gaps and challenges identified by stakeholders in relation to these frameworks. It also includes a case study on banks' net zero commitments. This chapter also presents some market practices described by stakeholders on how they address greenwashing.

15. The follow-up to the Progress report will be issued in 2024 in the form of Final Report.

1.4 Sources

16. In order to gather input for the purposes of this report, the EBA launched two surveys – one to competent authorities (CAs) that concluded on 18 December 2022 (30 responses received) and one to stakeholders with other ESAs that concluded on 16 January 2023 (136 responses). The progress report reflects data as reported in that period. The EBA has also engaged with two third parties – RepRisk⁵ data provider and Lex Mundi network⁶ of law firms in 27 EU jurisdictions. The input from the two surveys, RepRisk data and analysis of legal frameworks on greenwashing have been included in this Progress report.

⁵ RepRisk ([link](#)) is an ESG data provider that collects information on ESG and business conduct risk of companies and infrastructure projects to support decision-making by investors, banks insurers and other corporates. It takes an outside-in approach to ESG by processing and analysing ESG data from various public sources and stakeholders (such as NGOs, regulators, press, social media, think tanks and research firms) and by intentionally excluding company's self-disclosures). RepRisk's data is also mapped to 101 ESG risk factors and to standards such as UNGC, SASB, SDG. RepRisk covers public and private companies across all sector and markets. RepRisk's [methodology](#) is public.

⁶ Lex Mundi ([link](#)) is a global network of independent corporate law firms across 125 countries. Lex Mundi offers a service model that helps clients to benefit from the collective expertise of the member firms through original legal insight and coordinated, cross-border advice.

2. Defining and understanding greenwashing

17. In the sections below, the ESAs layout a common high-level understanding of greenwashing risks that need to be monitored, assessed and addressed in the financial system, in order to protect consumers, investors and other markets participants. This is meant to provide a shared reference point to market participants in dealing with the issue and should help inform supervision, enforcement activities as well as regulatory interventions. At this stage, it is not the intent of the ESAs to elevate this high-level understanding of greenwashing into a level 1 provision, but to use it as a basis for advocating certain future developments in the regulatory framework and to prioritize supervisory action.

18. The drivers of greenwashing are multifaceted and complex. These include a considerable increase in demand for products with sustainability features, the competitive drive for companies to improve their sustainability profile, including sustainable product offering, a fast-evolving regulatory landscape, inconsistencies or lack of clarity of certain regulatory provisions and concepts, data quality and availability issues, lack of expertise and skills within the financial system, and financial literacy gaps. Clearly defining and better understanding greenwashing is a key step towards better tackling its causes and drivers.

19. This section summarises the outcome of the ESAs' analysis of existing references to greenwashing and presents the ESAs' common high-level understanding of the key features of this phenomenon.

2.1 A common high-level understanding of greenwashing covering the three ESAs remits

2.1.1 Limitations of the existing definitions and ESAs approach

20. While the references presented in the EU regulatory framework (for the overview of current definitions, please see Annex) represent the starting point of the ESAs' work on common high-level understanding of greenwashing, they do not encompass all potential forms of greenwashing under the ESAs' respective remits. In particular, the definitions available in the Taxonomy Regulation, the SFDR Delegated Regulation, as well as in amending MiFID II and IDD Delegated Regulations are not deemed sufficient for the following reasons:

- i. 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 and feed into documents required by regulation.
- ii. The reference to "basic environmental standards" in the definition provided in recital 11 of the Taxonomy Regulation (as well as in the amendments to MiFID and IDD delegated regulation) is not sufficient, as a product or entity could meet "basic" standards but be misleadingly portrayed as fulfilling higher standards.

- iii. While gaining a competitive advantage could be the result of greenwashing practices, it is not an automatic nor a systematic consequence of such phenomenon, and thus, should not be construed as a precondition for greenwashing.
- iv. While some references do mention greenwashing, several existing references do not explicitly define greenwashing in a broad sense as encompassing all environmental, social and governance aspects.

21. The ESAs' common high-level understanding of greenwashing proposed below seeks to address these limitations.

2.1.2 ESAs common high-level understanding of greenwashing

22. The ESAs outline below a summary statement of what they understand greenwashing to be:

The ESAs understand greenwashing as a **practice whereby 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.**

23. In addition, the ESAs have identified several core characteristics that help understand the potential scope of greenwashing:

- i. Similarly to 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, 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, inconsistent information).
- ii. 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.
- iii. 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.

- iv. Greenwashing can occur either **at entity level** (e.g. in relation to an entity's sustainability strategy or performance), **at financial product level** (e.g. in relation to products' sustainability strategy or performance) or **at financial service level** including advice⁷ (e.g. in relation to the integration of sustainability-related preferences to the provision of financial advice).
- v. 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**.
- vi. 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**.
- vii. 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 providers, or third-party verifiers).
- viii. Greenwashing may or may not result in immediate **damage to individual consumers or investors** (in particular through mis-selling⁸) or the gain of an unfair competitive advantage. Regardless of such outcomes, if not kept in check, greenwashing may undermine trust in sustainable finance markets and policies.

24. In the context of the summary statement outlined above, “entities” are understood to be financial or non-financial undertakings or 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 “entities”.

⁷ NB: there may be interdependencies and/or blurred lines between the product's level and the institution'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 institution should be regarded as sustainable, greenwashing concerns could arise.

⁸ 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 greenwashing request for input, we are considering this latter case of market not responding properly to consumers or investors preferences.

25. For this Report, the ESAs launched a Call for Evidence that ran from 15 November 2022 to 16 January 2023 and 136 responses were received⁹. A significant number of respondents indicated that a clear and uniform definition of greenwashing practices, together with the harmonisation of the existing regulatory sustainability definitions (e.g. “sustainable investment”), would help financial market participants to identify, prevent and manage greenwashing risk, which are otherwise left to individual courts. A substantial number of respondents indicated that a too broad definition of greenwashing, despite being all-encompassing, would help neither authorities nor market participants to develop targeted measures to fight greenwashing. Some respondents suggested revising the existing regulatory framework towards a clarification, simplification, and harmonisation rather than adding additional legislative and supervisory powers on greenwashing.

26. Regarding the core principles, many of the respondents expressed concerns with greenwashing being **unintentional**. The most common observations expressed were: (i) greenwashing should relate to the damage caused to market integrity and/or customer protection due to misleading information or material omissions that could affect decision making processes around sustainability, and ii) an organization cannot be held responsible of greenwashing for misinterpreting the sustainable finance regulatory framework if acted in good faith when such misinterpretation is due to external circumstances over which the firm has no control. A few indicated that the distinction of whether greenwashing is intentional or not is not relevant because, in their view, greenwashing is always intentionally promoted with a clear profit motive.

27. Concerns were also expressed on cases where greenwashing is **triggered by third parties** (e.g. ESG rating providers or third-party verifiers). Financial market participants should not be treated as ‘greenwashers’ where they rely on ESG data obtained from third parties in good faith, provided that an appropriate due diligence was carried out on such data providers. Some respondents also referred to a mismatch between retail investors’ and authorities’ expectations and financial market participants’ ability to deliver real-world impact as a source of greenwashing, due to a ESG rapidly evolving landscape.

28. Some respondents suggested considering the **drivers and enabling conditions** that make greenwashing possible among the core features of greenwashing (e.g. the mismatch between demand for investments that can make a sustainability impact and the supply of genuinely sustainable investment opportunities, the fact that sustainability claims are not subject to verification, the lack of consistent definitions and standardised criteria, and the issue of lack of consistent and convergent definitions).

29. Regarding current practices, approximately half of respondents (across all sectors) stated not using a specific definition of greenwashing as part of their activities. Some respondents pointed to the definitions of greenwashing included in the existing regulation as the definition being used in their organisations. A few respondents indicated that, despite not having established a definition

⁹ Stakeholders included 13 bank associations, 17 credit institutions, 12 investment firms, 18 market associations, 22 investment managers, but also 15 NGOs, 11 think tanks, 13 issuers, 4 benchmarks administrators, 3 ESG ratings providers, 3 consumer associations, 9 consultancy companies, 2 data providers, 7 institutional investors, 12 insurance undertakings and 1 insurance intermediary, 2 payment service providers, 2 occupational schemes providers, 3 pension funds, 3 retail investors/consumers, 3 trade unions and 2 regulators/supervisors. 14 respondents defined themselves under ‘Other’.

of greenwashing, ESG and financial risks are currently managed through existing internal processes and governance mechanisms.

2.2 Characterising greenwashing

30. Given the increasing demand for sustainable products and the need to keep up with competitors, greenwashing is a side effect that can occur in any stage of the sustainable finance value chain. Sustainability related claims can be communicated via different channels, and they can be related to different areas (topics).

31. This sub-section will further describe the concept of greenwashing and will highlight its most common features in the EU financial sector (including banks). It focuses on the drivers of greenwashing, the potential roles the market participants play, the sustainability-related claims and communication channels are presented based on the input received from the stakeholders.

2.2.1 Drivers of greenwashing

32. Greenwashing can be driven by various factors. In particular, it can be induced by competition in the market, regulatory requirements, NGOs and media scrutiny, imperfect information or by the entity itself:

- a) Competition-induced factors – as a response to consumer and investor pressure to offer more environmentally friendly products and services and increased positive attention to entities that claim to be sustainable one way or another, entities may be induced to make environmentally-friendly statements or offer environmentally-friendly products or services. There is also a fear of falling behind competitors who communicate positively about their environmental practices.
- b) Regulation-induced factors – regulation sets minimum regulatory requirements, which are expected to be met by entities. Without the appropriate supervision, this situation can lead to greenwashing. There can also be a perceived low likelihood of being “punished” for engaging in greenwashing practices given the inconsistencies or even lack of relevant legal framework in place.
- c) NGOs and media scrutiny-induced factors – NGOs and media regularly uncover alleged greenwashing practices. As entities know that they are subject to such scrutiny, they may focus their communication on those of their actions that are in favour of sustainability while ignoring or downplaying the environmentally harmful part of their business. For example, entities may communicate on the fact that they ‘offset’ their carbon footprint by investing in green products or engaging in green practices, while continuing operating in environmentally harmful practices in the rest of their business.
- d) Imperfect information-induced factors – Limited or imperfect information about an entity’s or asset’s environmental performance may result in greenwashing being performed.

- e) Entity-induced factors – The internal structure and firms’ ethic and governance can be a driver for greenwashing in case there are job titles or internal structures created with ‘ESG’ or ‘sustainable’ – or products offered labelled e.g. as green or sustainable – but without proper sustainable policies behind them. Lack or weak ethics code, clearly allocated responsibilities and standards of conducts can also contribute to this.

2.2.2 The potential roles market participants can play in greenwashing

33. Market participants can play various roles in greenwashing. They can be either trigger, spreader, or receiver. A market participant is a ‘trigger’ when it initiates greenwashing, for example an entity, which offers ‘green’ or sustainable products that are actually not green or sustainable. A market participant is a ‘spreader’ when it enables or communicates greenwashing (e.g. ESG ratings provider, investment advisor), while a receiver is a market participant that buys the product or service that has been marketed as sustainable but is not.

34. About 60% of respondents (all sectors) agreed with these three roles that market participants could play in greenwashing. Regarding the respondents that did not agree with the roles described, approximately half of them did not provide any comment. In respect of the other half, a significant number of them did not agree with the need to differentiate the roles. Some mentioned that the various roles involved in greenwashing should not face the same liability regime, and a few indicated that one actor could play various roles.

35. Only a small number of respondents suggested additional roles: (i) a facilitator, meaning people or institutions that intentionally or unintentionally enable or facilitate greenwashing (e.g. educational institutions, NGOs, third-party verification bodies, etc.); (ii) a verifier or screener, meaning the actor who is meant to verify/opine on the matching of the characteristics with the claim/labelling/marketing and provide guarantee to other actors by rebalancing information (e.g. the supervisor, external auditors, ESG data and research providers and ESG rating providers that often assess or screen the sustainability-related claims made by an issuer and/or provide an independent assessment); (iii) a gaper, being the person/entity/actor who creates a mismatch, either intentionally or unintentionally, between the content, the container and the tag; (iv) a whistleblower, being the person or group of people revealing to the overall public and spreading the alleged greenwashing case through the media.

2.2.3 Sustainability-related claims and the impact

36. Areas that are potentially prone to greenwashing can be broadly divided into three categories:

- i. **ESG corporate resources and expertise**, including board and senior management’s role and expertise, which sets the tone and targets in an entity but also determines if the staff is equipped enough and understands the issues sufficiently;
- ii. **ESG strategy, objectives, and characteristics**, which includes sustainability management policies, ESG qualifications, labels and certificates, but also engagement with stakeholders; and

- iii. **ESG performance** i.e. performance to date, as well as pledges about future ESG performance.

37. Stakeholders were asked to assess these claims in terms of how prone they are to greenwashing (from 'very relevant to 'not relevant at all') and the potential impact or harm these misleading claims can have on that area (from 'very low' to 'very high'). The results are presented in Table 1 below.

Table 1. Stakeholders' views on the sustainability related claims

Sustainability-related claim	Prone to GW (% of respondents)	Not prone to GW (% of respondents)	High/very high impact (% of respondents)	Low/very low impact (% of respondents)
Pledges about future ESG performance (ESG targets, transition plan etc)	55.89 %	3.68 %	60.29 %	3.68 %
Engagement with stakeholders	55.15 %	11.03 %	41.48 %	8.83 %
ESG performance to date (incl. metrics for impact claims)	50.73 %	8.09 %	59.56 %	5.15 %
ESG qualifications/labels/certificates	49.26 %	8.09 %	55.89 %	4.41 %
ESG strategy, objectives, characteristics	45.58 %	8.09 %	59.56 %	3.68 %
Sustainability management policies	41.91 %	10.30 %	50.00 %	5.88 %
Board and senior management's role in sustainability	36.03 %	13.24 %	47.06 %	11.77 %
ESG corporate resources and expertise	34.56 %	14.70 %	43.38 %	5.89 %

Source: ESAs call for evidence to stakeholders.

38. Stakeholders estimated **pledges about future ESG performance** (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) as the most prone to greenwashing (55.89 % of the respondents assessed it relevant or very relevant and only 3.68% as irrelevant). At the same time, 60.29% of respondents assessed that the potential impact or harm that misleading claim can make on pledges about future ESG performance is high or very high (3.68 % assessed the impact low or very low).

39. **Engagement with stakeholders** was also assessed as very prone to greenwashing (55.15 % of respondents assessing it prone/very prone, and not prone at all by 11.03% of respondents). **ESG performance to date** (incl. metrics for impact claims) was assessed as prone to greenwashing by half of the respondents and the potential harm that misleading claims can have on ESG performance was assessed high or very high by 59.56 % respondents. The lowest score was given to ESG corporate resources and expertise – 34.56 % of the respondents assess it prone or very prone to greenwashing and the potential harm or impact the misleading claim can have on their role was assessed high or very high by 43.38 % of respondents. This shows that the areas that were perceived to be more prone to greenwashing were also the areas where respondents estimated the potential impact or harm that a misleading claim can have on to be high as well.

40. Sustainability-related claims can be misleading in different ways. Most relevant was considered **selective disclosure or hidden trade-off** (cherry-picking positive information and/or omitting relevant negative information) with 69.11% of the respondents considering it very relevant or relevant, followed by **misleading/suggestive use of ESG-related terminology** (naming-related greenwashing) with 60.29% of respondents considering it relevant, **outright lie (falsehood)** with 58.83% and **empty claims** with 58.1% considering it relevant. Least relevant claims were considered outdated information (33.82% considering it at relevant or very relevant and 16.91% as not relevant or not at all relevant) and providing irrelevant information (35.29% considered it at relevant and 17.65% not relevant).

41. Respondents were also asked about the **channels** through which misleading claims about the dimensions described above can be communicated to other segments of the sustainable finance value chain. The most likely channel was considered **marketing materials** with 62.5% considering it 'likely' or 'very likely' followed by **product information** (including internal classifications, and internal target market, product testing and distribution strategy related documentation) with 47.8% of the respondents considering it at least likely, **ESG ratings** (45.59% considering it likely) and **labels** (45.58% considering it likely). Least likely channels were considered regulatory documents and/or any mandatory disclosures (33.09% considering it likely and 27.2% not likely).

42. Finally, regarding **product's lifecycle**, the most likely stages where greenwashing could occur were all estimated to be in **product delivery stages**: 1) **marketing** (advertisements, non-regulatory information) with 58.82% of respondents assessing it likely or very likely, followed by 2) **sales**: information asymmetry (including under or over emphasis of certain product features) 53.67% considering it at least likely, and 3) **mis-selling due to misleading information/disclosure** (52.2%). The least likely channels were regulatory disclosure (29.41% likely and 20.59 not likely) and in

business model at entity level – value chain, group structure, innovation/digitalization, outsourcing (29.41% likely and 14.71% not likely).

43. Stakeholders were also asked to provide comments on their assessments about occurrences of greenwashing and misleading claims. Their views are summarised below.

Banks, investment firms and investors

44. Banks, banking associations, investment firms and investors all mentioned that greenwashing can happen at any of the above-mentioned topics and it is not easy to rank them given that there is no definition and the data is limited. Respondents said that market participants are aware of greenwashing risk but there is a **need for clear definitions and methodologies** to define and implement targeted measures (for example, the road to net zero is not clear). Uncertainties with **current regulatory framework** and lack of clear methodology/weak criteria, inconsistencies in (or lack of) metrics were mentioned by several respondents.

45. Lack of clear definition on top of regulatory inconsistencies is why many respondents noted **certificates and labels** as one of the elements that are most prone to greenwashing. Claims tend to be vaguely formulated and there is too much room for interpretation but no higher authority to control the execution of the claims. There is also a market push to achieve higher ESG score and better performance that leads to greenwashing. It was also mentioned that declarations of intent are often focused on the relative (i.e. not absolute) reduction of emissions and do not allow conclusions to be drawn about the added value.

46. Several mentioned the **absence of internal policies and accountability measures, and strategies and policies that are a result of regulatory compliance** but without clear set of values and measurable objectives. Indicators can also be overestimated in order to obtain best results, as requiring only due diligence by supervisors is not enough to tackle greenwashing as there is no clarity on what is and what is not allowed.

47. Some respondents noted that **low level of awareness and skills among board members** can contribute to greenwashing, also motivation to describe own products 'greener' than they are and consumers/investors ('receivers') not questioning what they receive. Weak engagement, lack of adequate HR and lack of resources on this issue in general were also mentioned as aspects that can increase greenwashing risk.

NGOs, think-tanks and consumer associations

48. Answers from **NGOs, think tanks and consumer associations** mentioned mostly **misleading communication and marketing** and also 'competence greenwashing'¹⁰ where a position is rebranded by simply adding 'ESG' or 'climate' or 'sustainability' to existing job title; however, the activities of these positions were mostly limited to communications and marketing without conducting ESG risks assessments or sustainability impact monitoring. They also mentioned the

¹⁰ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4303609

absence of real ESG subject matter expertise, especially on non-financial areas (climate, ecology, biodiversity), and setting targets without adequate means to achieve them. **Vagueness of information, insufficient standardisation, unreliability and absence of data** can also easily mislead consumers and retail investors and therefore increase the risk of greenwashing. As an example, there have been cases where an entity claimed to be ‘carbon neutral’ by making offset purchases yet conducting environmentally harmful activities in their daily operations.

2.3 Greenwashing trends and examples in the EU banking sector

2.3.1 Greenwashing quantitative trends

49. This section provides a quantitative overview of the greenwashing phenomenon since 2012. It first looks at the overall greenwashing trends across all companies, sectors, and geographic area and then focuses on greenwashing in the context of the EU financial sector and EU banks with a view to identifying potential specificities.

50. The analysis is based on the data collected by RepRisk¹¹, which gathers ‘risk incidents’ (criticism and events) of companies associated with misleading communication around ESG issues, including for example criticisms of an advertising campaign deceiving consumers on environmental objectives, research findings revealing that a company is overstating the social impact of an initiative, or companies’ website promoting ESG activities and business conduct in contrast to its actual sustainability practices. RepRisk captures alleged cases of greenwashing i.e., greenwashing incidents reported in public sources. While RepRisk does not verify or validate reported allegations, each alleged incident is identified and assessed in a systematic, transparent and rule-based way, including through quality checks and regular reviews of the classification of sources.

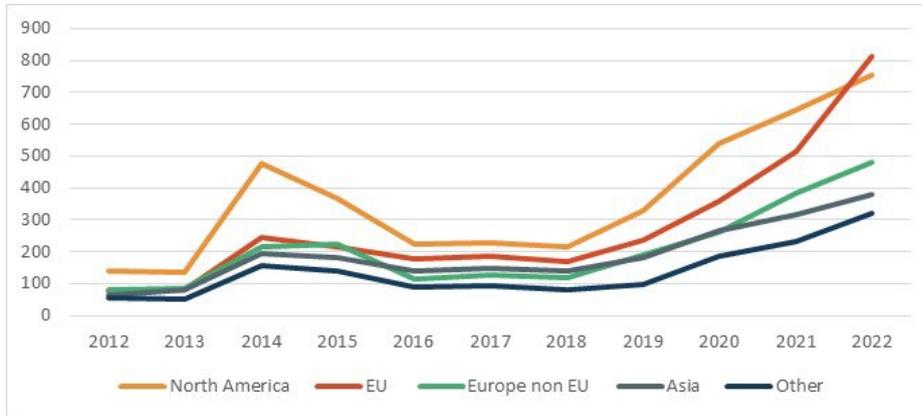
51. Finally, a caution should be exercised when reading the analysis due to the “alleged nature” of the claims and the heterogeneous and different sources of data that could impact the quality.

a. Greenwashing across all companies, sectors and regions

52. As a whole (i.e., considering all companies and sectors), the total number of alleged cases of misleading communication on ESG related topics reported by stakeholders has risen significantly in the recent years. It has been multiplied by 4 since 2018 and 6.5 since 2012. This rise has occurred in all regions, but it has been especially high for companies located in North America and in the EU, which accounted for 60% of all alleged cases of greenwashing in 2022 (**Error! Reference source not found.**).

¹¹RepRisk ([link](#)) is an ESG data provider, which collects information on companies’ and infrastructure projects’ ESG and business conduct risk to support decision-making by investors, banks insurers and other corporates. RepRisk’s [methodology](#) is public.

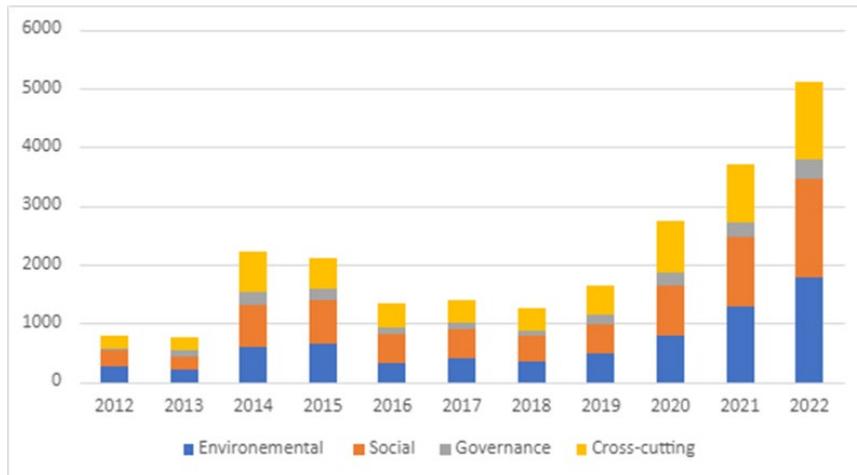
Figure 2. Total alleged incidents of misleading communication on ESG related topics by geographic location



Source: RepRisk ESG Data Science, www.reprisk.com

53. Alleged cases of greenwashing have increased in all three ESG dimensions, but environmental and social related issues are the most prominent topics subject to greenwashing. In comparison, alleged greenwashing cases related to governance issues (such as anti-competitive practices, corruption, bribery, money laundering, tax evasion and executive remuneration) appear relatively small (Figure 3).

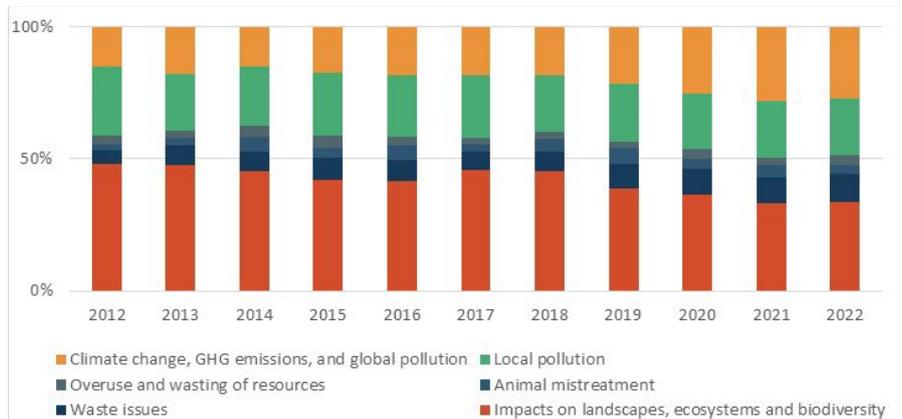
Figure 3. Total alleged incidents of misleading communication on ESG related topics



Source: RepRisk ESG Data Science, www.reprisk.com

54. Regarding environmental issues, climate related topics accounted for ca. 30% of the total of alleged greenwashing cases related to environmental issues against 15% in 2012, hence becoming the second most prominent green items subject to greenwashing by companies after the impact on landscape, ecosystem, and biodiversity (34% in 2022). (Figure 4).

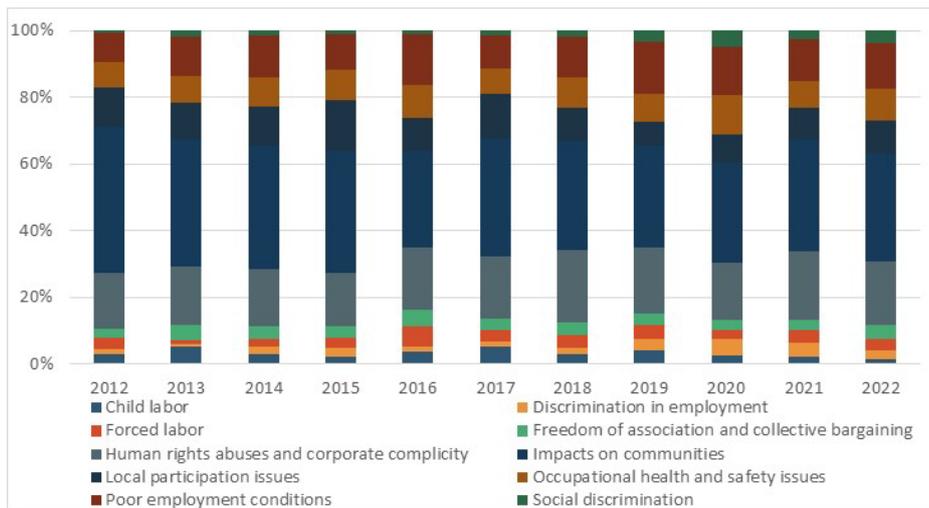
Figure 4. Type of environmental topics involved in alleged incidents of greenwashing



Source: RepRisk ESG Data Science, www.reprisk.com

55. Regarding social issues, ‘impact on communities’, which mostly entails impact to health and economic impact on local communities, is the most common topic subject to ‘greenwashing on social topics’ by companies worldwide. Its share has however decreased from 49% in 2012 to 37% in 2022 while alleged miscommunications on employment conditions and social discrimination tend to become more prominent (Figure).

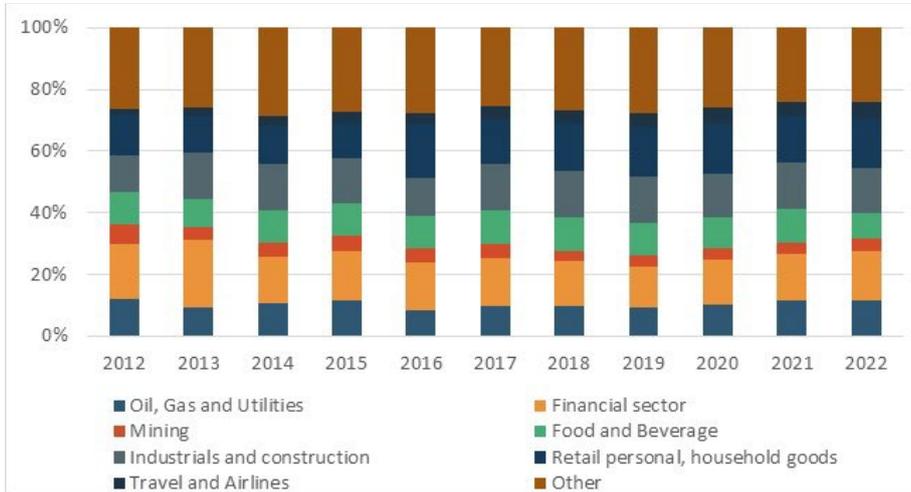
Figure 5. Type of social topics involved in alleged incidents of greenwashing on social topics



Source: RepRisk ESG Data Science, www.reprisk.com

56. Alleged cases of greenwashing have also been occurring in all economic sectors. However, it has been mostly concentrated around six activities including oil, gas and utilities, mining, industrial construction, food and beverage, household goods and the financial sector. The latter accounted for ca. 16% of alleged greenwashing cases observed worldwide in 2022 (including insurance (1%) banks (4%) and financial services (10%)) (Figure 6).

Figure 6. Sectors involved in alleged greenwashing incidents

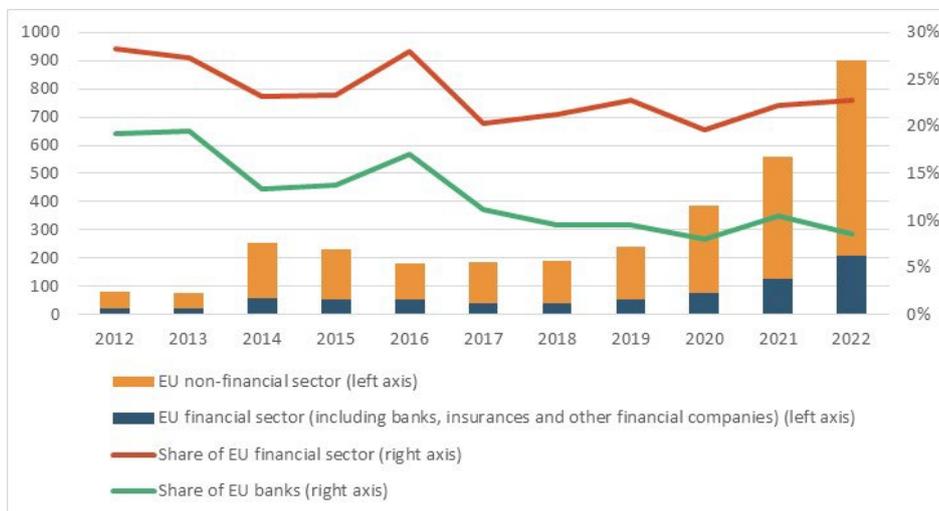


Source: RepRisk ESG Data Science, www.reprisk.com

b. Greenwashing in the EU financial sector and the EU banking sector

57. Similar to the trends observed across all companies, sectors and regions above, alleged greenwashing cases in the EU financial sector (including EU banks) have also increased significantly in the most recent years with around 206 cases reported in 2022 against 40 in 2018. Moreover, the EU financial sector accounts for a higher share of the total alleged greenwashing cases reported by stakeholders on EU companies. In 2022, the EU financial sector represented 23% (including 9% for EU banks) of the total alleged greenwashing cases involving an EU company (Figure 7).

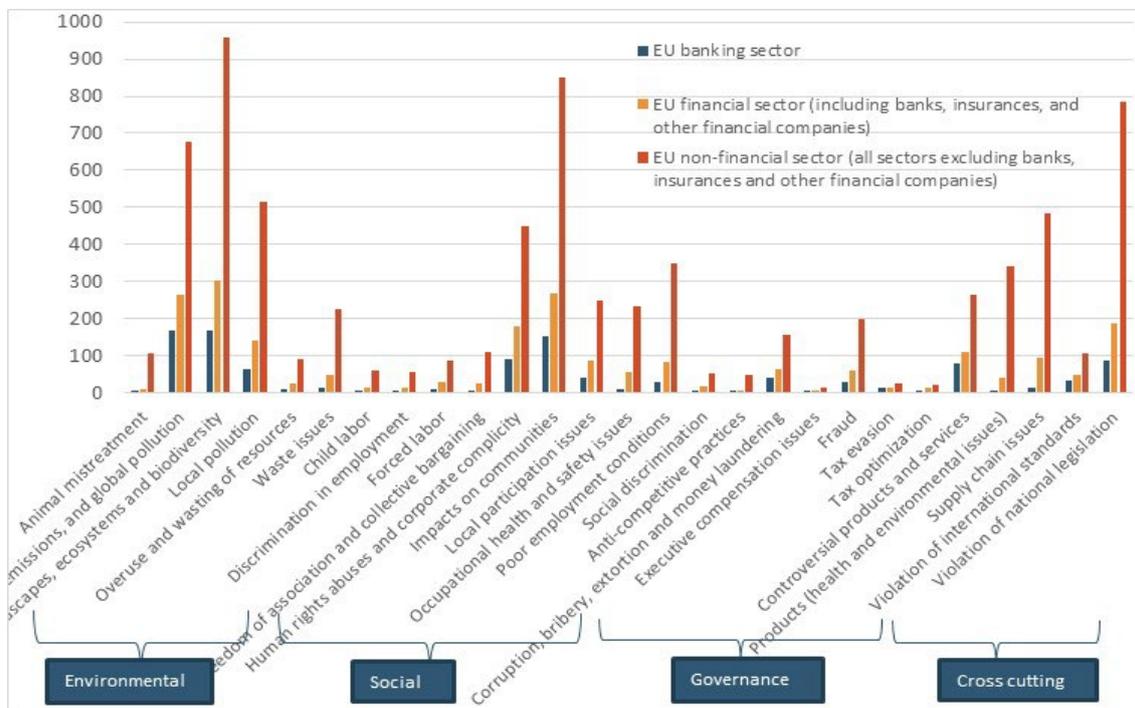
Figure 7. Number of alleged greenwashing incidents in the EU financial and banking sector



Source: RepRisk ESG Data Science, www.reprisk.com

58. Furthermore, and also in line with the trends observed in other sectors, climate change, impact on landscape and biodiversity and impact on local communities are the three most common topics subject to greenwashing claims in the EU financial sector, including EU banks (Figure 8).

Figure 8. Cumulative count of misleading communication incidents around EGS topics between 2012 and 2022 in the EU



Source: RepRisk ESG Data Science, www.reprisk.com

59. However, EU banks tend to have been more exposed than other sectors to alleged greenwashing on other social and governance topics, such as financing of corporates criticised for human right abuses, involvement in controversial products and services, money laundering and tax evasion. Furthermore, between 2012 and 2022, climate related issues have been the first topic subject to greenwashing claims by EU banks, while it has been only the fourth in the EU non-financial sector.

c. Key conclusions

60. The past years data related to misleading communication on ESG topics shows a clear increase in the total number of potential cases of greenwashing across all sectors including EU banks. It also indicates the rising accountability of climate action, especially in the years following the signature of the Paris Agreement in 2015, which has brought further public attention to the climate change issue and has led companies being held more accountable for their environmental policies, climate impact and disclosures.

61. Critics over greenwashing practices have increased in all geographical regions. However, according to RepRisk database, they have been amplified towards EU companies (including the EU financial and banking institutions which account for a higher share of alleged greenwashing cases compared to other regions). This may be explained *inter alia* by i) the increasing incentives for EU companies to meet customers' sustainability-related claims and ii) the fact that EU companies

including large banking groups may be more likely to get wider public scrutiny, hence, tend to also have their ESG policies and strategy more challenged by stakeholders, especially in a context where sustainable finance policies and regulations are also relatively more advanced in the EU than in other regions and countries. Indeed, sustainability-related legislation has grown rapidly since 2018 for the EU financial sector (namely with the EU Taxonomy, the Sustainable Finance Disclosure Regulation, amendments to the Benchmark Regulation, coverage of ESG risks in the ITS on institutions' disclosures and a number of EBA Guidelines etc.), increasing the risk of entities being challenged or criticised for potential non-compliance.

62. Therefore, it cannot be ascertained from the data analysis, the extent to which these trends are primarily explained by changes in companies' conduct (i.e. companies effectively engaging more into greenwashing (see section 2.2 on drivers of greenwashing)) or by the fact that greenwashing gets more scrutiny nowadays and therefore tends to be more identified, criticised and reported by stakeholders. Undertakings have more incentives to enhance transparency on sustainability matters and consumers and investors require more accountability on undertakings' role in the achievement of sustainability objectives. It is however probable that it is the result of a combination of both.

2.3.2 Examples of greenwashing in the banking sector

63. This section complements the quantitative analysis of greenwashing trends with further insights on how greenwashing may precisely occur in the banking sector. To that end, it analyses both theoretical and empirical examples of greenwashing to illustrate how greenwashing may materialise in various areas of banking activities.

64. In this regard, it must be noted that the present analysis only covers credit institutions thus excluding other type of entities within the EBA prudential scope such as investment firms and payment service providers (due to limited data on the form and extent to which they are presently engaging in sustainability businesses and practices).

a. Theoretical examples (greenwashing matrix)

65. Table 2 and 3 (below) include a list of indicative examples to show how greenwashing could happen in the banking sector. This list is not meant to be comprehensive but rather provides key illustrations of greenwashing, which are deemed the most relevant in the context of banking activities.

66. To get an orderly view of potential greenwashing practices in the banking sector, the examples have been classified according to the types of sustainability claims (rows) and to the type of banking activities where greenwashing could occur (columns):

- Three main types of misleading claims (including errors and omissions) have been identified
 - i) misleading claims on the current approach to integrating sustainability (i.e., how sustainability is considered in the current objective, design, practice or strategy),
 - ii) misleading claims on the sustainability results and real-world impact (i.e. the extent to

which a product and/ or an activity has an actual positive impact on sustainability factors), and iii) misleading claims on future commitments relying on medium or long-term plans. The first two topics refer to current ESG practices and characteristics of an entity or a product, while the third topic represents future commitments whose successful realisation cannot be reasonably ascertained in the near term and which rely on medium or long-term plans (for instance, net zero pledges or taxonomy alignment plans).

- The activities cover the overall spectrum of banking businesses (i.e. retail banking, corporate banking, investment services, payment services and own funds, funding and liquidity management). All of them are within the regulatory and supervisory remit of the EBA except for one (i.e., investment services), which is not directly within EBA's scope but appears highly relevant for banking groups and in the context of greenwashing risk.

67. In addition, in line with the ESAs' high-level understanding of greenwashing (section 2.1 of the report), the table makes a distinction between greenwashing that could happen at product, service and financial instrument level, and greenwashing that could occur at entity level, including in particular misleading claims on the ESG business strategy and/or the internal corporate governance.

68. Given the relevance of the regulatory disclosures for supervisors in monitoring greenwashing risk, the table also includes some examples of alleged greenwashing related to incorrect/inaccurate statements in the disclosure regulatory framework.

Table 2. Illustrative examples of greenwashing at product, service, and financial instrument level

	Retail banking	Corporate banking	Investments services	Payment services	Own funds, funding, and liquidity management
1. Misleading statements on the current sustainability characteristics	<i>misleading claims in regulatory disclosure</i>	<ul style="list-style-type: none"> - Misleading disclosures on EU taxonomy alignment (GAR) of mortgages and car portfolios 	<ul style="list-style-type: none"> - Misleading disclosure of EU taxonomy alignment (GAR) of loans to NFCs 	<ul style="list-style-type: none"> - Misleading product classification of financial products (funds, managed portfolio) under article 8 and article 9 of the SFDR. 	
	<i>other misleading statements</i>	<ul style="list-style-type: none"> - Green retail loans and mortgages that are not used to finance goods, products, activities or properties which qualify as (fully) green. - Misleading reference to green loans standards and /or label. - Linking credit card purchases to unproven sustainability-related benefits such as "for each substantial amount X spent on purchases with your credit card, a tree will be planted in developing country Y". - Saving products labelled as green but the institution does not clearly commit on the extent to which the savings collected will be used to finance sustainable projects. 	<ul style="list-style-type: none"> - Sustainable or sustainability linked financing to activities (commercial real estate, CAPEX) and/or entities which do not qualify as (fully) sustainable. 	<ul style="list-style-type: none"> - False or inaccurate statement on the extent to which the service (e.g., portfolio advice or investment) considers clients' sustainability preferences. - Investment fund marketed as green, but the green related considerations are not significant in the manager's investment decision. - Investment fund portrayed as sustainable without providing any actual information about its sustainability. - Investment fund portrayed as sustainable while financing directly or indirectly dubious activities or countries (under violation of international law). - Showcasing the syndication activities around sustainable bonds without mentioning the syndication of securities from fossil-heavy companies, while the latter is much more material in terms of volumes. 	<ul style="list-style-type: none"> - Misleading commitment by a payment service provider to compensate carbon emissions produced by crypto currency by purchasing carbon offsets.
2. Misleading statements on the sustainability results and/ or 'real world' impact	<i>misleading claims in regulatory disclosure</i>		<ul style="list-style-type: none"> - Incorrect statements on product results under article 11 of the SFDR 		
	<i>other misleading statements</i>	<ul style="list-style-type: none"> - Unsubstantiated (e.g., without being supported by sufficient evidence) claim that ascertains that a green loan/ investment (e.g. in energy improvement) will allow the customer to reduce for example home energy consumption by X. 	<ul style="list-style-type: none"> - Sustainability linked loans presented as having real world impact while their structure does not necessarily allow it and/or with low quality of contractual commitments (e.g., step-up where borrowing companies get a discount if they hit their targets but no penalty if they do not). - 'Unsubstantiated claims on the impact of investments to corporates, like Potentially Avoided Emissions. 	<ul style="list-style-type: none"> - A fund claiming to have a strategy to invest in companies contributing to 'positive environmental impact' but i) which includes no information on how this positive environmental impact is measured or ii) which invests in companies that are not green but just 'better than benchmarks'. - Misuse of the term, 'impact investing'. 	<ul style="list-style-type: none"> - Sustainability linked bonds of which KPIs account for only a tiny portion of CO2 emissions of the issuer or where the KPI relates to something the issuers would achieve anyway. - Ambiguity between the 'use of proceeds' earmarked for green purposes by the bond issuer and the actual financing of the activities suggesting that the instrument leads to additional investment in the earmarked green activities (while the proceeds are used to refinance existing assets).
3. Misleading statements on future sustainability commitments	<i>misleading claims in regulatory disclosure</i>			<ul style="list-style-type: none"> - Crypto-assets providers making a public statement to move to an eco-friendlier method of settling transitions (which will require less energy consumption) but technology is not yet advanced to support the transition. 	
	<i>other misleading statements</i>	<ul style="list-style-type: none"> - Institutions making public commitments to reduce scope 3 emissions and/or reach net zero emissions for a given retail portfolio (e.g., mortgages, car loans) but transition plan is not credible 	<ul style="list-style-type: none"> - Institutions making public commitments to reduce scope 3 emissions and/or reach net zero emissions on their exposures to the energy sector / manufacturer but transition plan is not credible. 	<ul style="list-style-type: none"> - Institutions making public commitments to reduce scope 3 emissions and/or reach net zero emissions for its funds/assets under management but transition plan is not credible. 	<ul style="list-style-type: none"> - Misleading claims on how climate considerations are integrated into funding plans (i.e., capital allocation and financing decision). - Misleading claims on how the proceeds from stocks and bonds marketed as sustainable or green feed into the transition plans of the entity as a whole.

Table 3. Illustrative examples of greenwashing at entity level

	Business strategy	Internal corporate governance
	<ul style="list-style-type: none"> - Misleading/inaccurate disclosures under CSRD - Misleading/inaccurate disclosures under Taxonomy Regulation Article 8 Disclosures Delegated Act - Misleading statements on the integration of sustainability aspects in the business strategy (qualitative part of the EBA ITS on ESG Disclosures) 	<ul style="list-style-type: none"> - Misleading/inaccurate disclosures under CSRD - Misleading statements on the integration of sustainability aspects in the corporate governance (qualitative part of the EBA ITS on ESG Disclosures)
<p>1. Misleading statements on the current sustainability characteristics</p>	<p><i>Other misleading statements</i></p> <ul style="list-style-type: none"> - Selectively promoting green initiatives and intentionally hiding information about financing of companies involved in non-sustainable activities and/or negative impact on sustainability. - Misleading references to earned ESG certifications by the entity. - Failures of due diligence for engaging in business with individuals and corporations involved in various crimes (human right abuses, corruption, tax evasion) despite repeated pledges to repress dubious clients and/or contrary to the entity's business code of conduct. - An institution directly influencing climate or emissions policy decisions to their advantage (i.e., lobbying), while publicly marketing themselves as green. - An institution claiming that ESG screening has always been part of their investment strategy, however on closer inspection their investment decision was based on ESG negative screening at best. 	<ul style="list-style-type: none"> - Misleading claim on ESG resources and ESG dedicated staff (competence-washing). - Misleading claim on the extent to which ESG is embedded in the governance structure, management culture and staff policy of the entity. - Misleading references to earned ESG certifications by the entity. - Misleading claims on how senior management remuneration is linked to ESG performance and more generally how ESG is incorporated in performance reviews and compensation mechanisms of the staff.
	<ul style="list-style-type: none"> - Misleading/inaccurate disclosures under CSRD - Misleading/inaccurate disclosures under Taxonomy Regulation Article 8 Disclosures Delegated Act 	<ul style="list-style-type: none"> - Misleading/inaccurate disclosures under CSRD
<p>2. Misleading statements on the sustainability results and/or 'real world' impact</p>	<p><i>Other misleading statements</i></p> <ul style="list-style-type: none"> - Unsupported marketing claim by the entity stating that its activities are having 'real world impact' without evidence of a causal link in the real economy, (i.e., without assessing the effectiveness of their overall business strategy in delivering 'real world environmental impact). - Unqualified claims regarding the environmental benefit of the entity's activities despite continuing to finance companies that allegedly generate significant greenhouse gas emission. - Misleading statement on the environmental strategy to all its activities and processes, however the actual goals and objectives specified of strategy cover only the activities of the bank office (excluding lending activities). 	<ul style="list-style-type: none"> - Optimistic statements on internal policies for energy consumption reduction and increase of environmental awareness without implementation of real changes. - Drawing attention to a minor positive action that has little impact on overall environmental footprint.
	<ul style="list-style-type: none"> - Misleading/inaccurate disclosures under CSRD. 	<ul style="list-style-type: none"> - Misleading/inaccurate disclosures under CSRD.
<p>3. Misleading statements on future sustainability commitments</p>	<p><i>Other misleading statements</i></p> <ul style="list-style-type: none"> - Institutions making public commitments to de-carbonise their overall investments and lending activities (Scope 3) and/or reach net zero emissions but transition plan at entity level is not credible nor evidenced. - Incorrect claim (such as in voluntary disclosures e.g. TCFD) on the extent to which lending and other investment activities of the entity are aligned with a climate target (e.g. well below 2°C scenario). - Vague and/or unsubstantiated statements that future products will be designed towards protecting the environment. - Signing up to collaborative engagement initiatives that lack ambition sufficient to reach its ESG objectives or are not reflected in the business strategy or action plan. 	<ul style="list-style-type: none"> - Institutions making public commitments to reduce Scope 1 and Scope 2 emissions, but transition plan is not translated into internal control framework.

b. Empirical examples of (alleged cases) of greenwashing

69. At this point in time, it must be noted that only a few empirical cases of greenwashing in the EU banking sector have been identified by competent authorities (Table) and even less have actually been brought to court and eventually sanctioned.

Table 4. Have you identified any occurrences of actual or potential greenwashing?

		Answers	Ratio
Yes, many (i.e. more than ten)		0	0%
Yes, a few (i.e. ten or less)		8	26.67%
No		22	73.33%
No Answer		0	0%

Source: EBA survey to competent authorities (30 responses received).

70. For competent authorities the main obstacles that prevent the identification of actual or potential greenwashing practices in the EU banking sector are the lack of methodology (or guidance) and the fact that the sustainable finance requirements are not yet fully in place (Table 5) to clearly define what constitutes greenwashing. Therefore, most of the alleged cases of greenwashing in the EU banking sector are presently reported by external stakeholders such as NGOs, consumer protection associations and press investigations.

Table 5. If you have not identified actual or potential occurrences of greenwashing, what is the reason for that? [multiple choice]

		Answers
No specific methodology/internal guidance on how to detect/collect information on (potential) greenwashing cases		15
As sustainable finance requirements (including definitions and disclosure standards) are new/not in force yet, greenwashing is harder to detect and monitor		16
Limited resources preventing identification and monitoring of greenwashing		8
Thematic research is still ongoing or planned for the coming months/years		8
Little to no products with sustainability features are offered in my jurisdiction, decreasing the risk of greenwashing		9
Absence of clear mandate to investigate this issue		6
Current complaints about greenwashing may not be categorized as greenwashing but more generally as providing incomplete or misleading information		4
Other (please specify)		2
No Answer		10

Source: EBA survey to competent authorities.

71. Based on a review of these alleged greenwashing cases gathered from various sources of information (including ESA's call for evidence on greenwashing, NGOs report, press article and RepRisk database) it appears that, at this juncture:

- i. Greenwashing in the EU banking sector is deemed more likely to occur on environmental topics rather than on social and governance. This is mostly suggested

by the fact that at this point in time, the focus is mostly on sustainable products with a climate or environmental impact where the demand from costumers and investors is particularly high. In consequence, this is an area where the incentive to gain a competitive advantage is most significant. Furthermore, while the environmental topic is now the most well covered aspect of ESG by EU regulations, it is also deemed more complex than social or governance topics. Also, environmental topics are usually more long term than social and governance topics. All these factors make environmental topics harder to understand and monitor for external stakeholders, if they are not communicated in a transparent and simple way.

- ii. The most common type of (alleged) greenwashing in the banking sector seems at entity level and relates to the business strategy. In particular, EU banks have been mostly criticised for:
 - selectively promoting sustainable initiatives while intentionally omitting information about financing non-sustainable activities and/or avoiding any mention of negative impacts on sustainability:
 - Misleading the public into believing that an institution is contributing to the fight against deforestation, while investing in a company allegedly linked to deforestation in the Amazon.
 - Communicating on institution's commitment to be part of the climate solution, while it provides financing to oil companies operating in the Arctic.
 - Presenting its business model as sustainable in Europe, while, at the same time, financing environmentally unfriendly agribusinesses outside Europe.
 - Violating its own environmental and social policy framework by financing companies accused of human rights violations and for knowingly financing projects with severe social and environmental impacts despite pledging not to knowingly finance those projects as part of its sustainability targets.
 - Making claims regarding its efforts to alleviate climate change and omitting information regarding its contribution to greenhouse gas emissions.
 - making public commitments to decarbonise their overall investments and lending activities (Scope 3) and/or reach net zero emissions but the transition plan at entity level is not evidenced nor credible (see also case study in Box 1 on page 49), and simultaneously:
 - Lobbying against climate policies in Europe, the UK, and the US and undermining their own net-zero carbon commitments.
 - Investing billions in oil companies (where such investments do not finance the sustainable transition of those companies) despite membership in the Net Zero Banking Alliance.

- Continuing to finance companies operating in the fossil fuel industry despite commitments to step away from coal-related activities that are environmentally harmful.
 - Claiming to be working to reduce global carbon emissions, but in the meantime, continuing lending money to companies building coal-fired power plants.
 - Cherry-picking and using different net zero scenarios for different purposes (e.g. internal and external).
- failures of due diligence for engaging in business with individuals and corporations involved in various crimes (human rights abuses, corruption, tax evasion) such as:
 - Engaging in business with individuals and corporations involved in various crimes despite repeated pledges to repress dubious clients.
 - Being convicted of tax evasion and of misleading communication by officially stating that they do not engage in tax evasion activities.
 - Being convicted of breaching the new anti-money-laundering (AML) rules despite claims of reform.
 - conveying misleading communication on the extent to which ESG is embedded in the governance structure, management culture and staff policies of the entity such as:
 - Claiming to care about employees' well-being while using contested or unlawful human resources management methods (e.g. discrimination against employees, lack of safeguards on workers' rights).
 - Being accused of discriminating against employees affected by disability and contradicting its self-promoting image as a bank with staff friendly policies.
 - Investing in companies known to be involved in human rights abuses, despite public commitments to principles of sustainability and social responsibility.
- iii. With regard to greenwashing that may emerge at product and service level:
- most alleged cases reported so far relate to investment products:
 - False claims to clients about the green characteristics, objectives, composition and or scale of investment products.
 - Promoting funds as 'sustainable' while they invest in companies having adverse socio-environmental impacts.
 - Launching a label for sustainable investment that allow investments in fossil fuel companies (without a transition purpose).
 - only a few cases have also been identified in corporate and retail banking:

- Portraying a financing in an airport project as environmentally sustainable despite significant negative impact on biodiversity and increase of greenhouse gaz emissions (GHG).
 - Extending sustainability-linked financing to a company in charge of constructing oil sands pipeline despite criticism from indigenous people due to alleged impacts on their lands and waters.
 - Misleading customers about the impact on the personal carbon footprint of a financial investment.
- based on data sources currently available at the EBA, no cases have been identified in payment services, crypto assets, and liquidity and own fund management by EU banks.
- iv. Finally, it should also be noted that no cases of alleged greenwashing were associated yet with regulatory disclosures applicable to credit institutions specifically as they were not yet fully implemented.

c. Key conclusions

72. The analysis of examples of greenwashing in the EU banking sector indicates that there are multiple ways a bank can potentially engage into greenwashing. However, the review of the most recent alleged cases shows that EU banks are increasingly being blamed for engaging into greenwashing at entity level by positioning themselves externally (through advertising, social media, sustainability reports) as sustainability-oriented but still engaging in businesses or practices that could contradict the sustainability objectives and the image they communicate. In comparison, alleged greenwashing cases at product level seem to be rather limited except in investment products, where sustainable offerings and demands are far more developed than in retail and corporate banking for example.

73. However, it must also be noted that most of the alleged greenwashing cases in the EU banking sector are currently reported by external stakeholders such as NGOs and the press and not by direct consumers, clients, investors of the banks or supervisors. This may also explain why most of these alleged cases of greenwashing currently emerge at entity/ business strategy level as this could be more easily evidenced by external stakeholders from publicly available sources compared to greenwashing practices that could occur at product level and for which access to private data would be necessary. Further data on banks' sustainability-related products would therefore be needed to get a more complete and precise view on potential greenwashing practices in the EU banking sector. It should also be noted that those are expected to evolve in the future given the ongoing regulatory developments in this area. Finally, conclusions are not presented in terms of the relative weight of greenwashing to the overall cases of misleading claims in the banking sector; therefore, more data is needed to complete this analysis.

3. Greenwashing risk and adverse impact

3.1 Greenwashing-related financial risks and transmission channels

74. This chapter provides an overview of the greenwashing related financial risks and their transmission channels in the context of credit institutions, investment firms and payment service providers. It focuses on the most important risks (reputational, operational (including litigation), strategic and business risks, liquidity and funding risks, credit and market risk) of financial institutions that are potentially impacted by greenwashing, as seen by supervisors and stakeholders. This chapter also presents how greenwashing can have an effect on financial stability and hence, ultimately, on consumers.

75. Even though the literature does not yet include instances of greenwashing endangering the solvency of institutions, from the supervisory and prudential perspective several categories of financial risks may be affected by greenwashing, or merely by perceived greenwashing. Such risks can be expected to increase as the market share of green financial instruments increases and their price is to a higher degree dependent on their green credentials. These categories of financial risks could be impacted either directly because of greenwashing practices of institutions, or indirectly because greenwashing by the counterparties of the institutions would ultimately result in financial risks to these institutions. Finally, there is a risk to consumers and to the broader economy as greenwashing can generate a loss of confidence in entities and in sustainable finance products and markets, with the risk to jeopardise the efforts being made to achieve a more sustainable economy, and hence having possible negative effects on financial stability.

3.1.1 Reputational risk

76. Reputational risk is likely to be one of the most prominent risks associated with greenwashing or perceived greenwashing, due to growing attention to environmental issues. Reputational risk could arise due to:

- media campaigns and consumer association initiatives that contribute to a deterioration in the public perception and reputation of the institution when found or perceived being involved in greenwashing;
- published customers complaints regarding greenwashing;
- ongoing litigation/legal actions due to alleged greenwashing;

- more generally, any information revealing that an entity is engaged in financing activities harmful to the environment or social factors, or is not adequately addressing environmental or social impacts.

77. Reputational risk caused by greenwashing, or perceived greenwashing, can also increase other risks (business risk, operational risk, market risk, liquidity risk) and, for example, result in difficulties in attracting and retaining customers, employees, business partners and investors. The lack of trust and credibility may not only impact the institution involved in the alleged greenwashing cases, but also other institutions through a contagion effect.

3.1.2 Operational risk including losses related to litigation and liability risks

78. Greenwashing in the form of exaggerated and/or unsubstantiated claims on environmental or social credentials could lead to conduct risk (e.g. liability and litigation risks) as part of operational risks. This could take, for example, the following forms:

- Losses related to liability claims arising from a mis-selling of products as green whereas they do not comply with the standards for such products, or they do not match the advertised level of claimed green credentials;
- Litigation cases against institutions arguing that their advertised support for initiatives related to the protection of the environment could be labelled as greenwashing;
- Litigation cases against institutions due to a misalignment between their internal environmental or social policies and some of their activities.

79. Operational risk losses resulting from greenwashing could be the consequence of fines and penalties imposed through judicial or regulatory proceedings; damages and other sums paid to third parties as required by courts or regulators; withdrawal or reclassification of products; temporary prohibition to operate and/or to issue the product on the market, as well as associated legal fees.

80. Operational (and possibly reputational) risk could arise if the institution's counterparties are affected by greenwashing controversies and the institution does not adjust its relationship to those counterparties subsequently. Therefore, greenwashing-related litigation risks, either addressed to the institution or to its counterparties, can also increase other risks (e.g. reputational risk, business risk, credit risk and market risk).

3.1.3 Strategic and business risk (risk to business model)

81. Risk to the institution's business model, in particular to its profitable operations, could materialise as a result of greenwashing due to:

- reductions in earnings or loss of confidence in or disaffection with the institution by investors, depositors or interbank market participants;

- loss of income resulting from conduct failure and fines.

3.1.4 Liquidity and funding risk

82. Liquidity and funding risks could also be affected by greenwashing, for instance in the following cases:

- reduced access to market funding or less favorable market access conditions (incl. to rollover existing so-called “green” issuances) motivated by reputational damage leading ultimately to the withdrawal of funding provided to the institution by investors (wholesale, corporate, government, retail investors);
- reduced ability to issue green bonds due to a lack of confidence as a result of reputational damage.

3.1.5 Credit risk

83. Credit risk can be affected by greenwashing through its impact on the counterparties of the institution, which could subsequently affect their ability to honour their commitments to the institution. This could for example arise in case of greenwashing-related litigation cases affecting a counterparty and leading to weakened creditworthiness. In the worst case, it could lead to defaults by counterparties.

3.1.6 Market risk

84. Market risk related to greenwashing could take the following forms:

- losses due to a drop in the market price of green-labelled financial instruments owned by an institution if these instruments are at some point not regarded as green;
- higher volatility in the market price of financial instruments issued by entities affected by greenwashing controversies.

3.1.7 Impact of greenwashing on financial risks for institutions

85. Given the lack of research on greenwashing and in order to assess how the market participants, including the supervisors, and to assess the level and impact of greenwashing on financial risks, the EBA asked the views from its competent authorities and stakeholders via two separate surveys. The questions that were asked related to the materiality of greenwashing risk to institutions currently and going forward, but also regarding the impact of greenwashing on financial risks (operational, reputational, liquidity, credit and market risks etc) that are addressed in the prudential context under the CRR framework. The answers from 30 CAs and 136 stakeholders were received and analysed and the results are presented below.

Credit institutions

86. The EBA also asked views on the impact on each of the financial risks (with a scale from ‘not relevant at all’ to ‘very relevant’). Despite mixed views, both CAs and stakeholders seem to perceive reputational risk as the most impacted risk (see Table 6).

Table 6. Perceived impact of greenwashing on financial risks of credit institutions by CAs and stakeholders

Financial risk	Competent authorities		Stakeholders*	
	Relevant	Not relevant	Relevant	Not relevant
Reputational risk	80 %	6.66 %	36.8 %	0 %
Operational risk	56.67 %	20 %	31.6 %	0 %
Strategic & business risk	36.67 %	30 %	26.5 %	1.5 %
Funding risk	26.66 %	63.33 %	22.8 %	6.6 %
Credit risk	23.33 %	46.66 %	20.6 %	8.1 %
Market risk	20 %	36.66 %	16.9 %	8.1 %
Liquidity risk	13.33 %	66.66 %	16.9 %	8.8 %

Sources: EBA survey to competent authorities and Call for Evidence to stakeholders

* Most of the organisations (64%) did not answer or answered ‘do not know’.

87. According to the survey conducted among the CAs, 80% perceived greenwashing’s impact on the **reputational risk** of credit institutions relevant or very relevant. **Operational risk** was perceived as the second most relevant risk that would be impacted by greenwashing – more than half of CAs considered the impact on operational risk as relevant or extremely relevant. When it comes to conduct risk, as part of operational risk, views on the impact were similar to that of broader category of operational risk with only minor differences. 20% of CAs perceived the impact of greenwashing irrelevant for the operational risk of credit institutions.

88. Most stakeholders (64%) did not give any assessments or answered ‘do not know’. Those who responded also considered that greenwashing impacts reputational risk the most for credit institutions with almost 37% of the respondents stating the impact as relevant. 32% of the

respondents perceived operational risk of credit institutions to be significantly impacted by greenwashing making it the second most relevant risk after reputational risk. No respondent considered the impact on either of these two risks to be irrelevant. Similar views were given about conduct risk (as part of operational risk) with 25% considering greenwashing has a significant impact on the conduct risk of credit institutions and no respondent perceived it as irrelevant.

89. The views on the impact of greenwashing on **strategic and business risk, and credit and market risk** of credit institutions were mixed with almost equal number of CAs assessing it neutral relevant or irrelevant. More than half of stakeholders did not respond to this question. Among those who answered, 14.71% perceived the impact on strategic and business risk extremely relevant or relevant (11.76%) and only 2% thought the impact is irrelevant.

90. The least relevant impact was perceived on **liquidity risk** for credit institutions – 66.7 % of the CAs estimated it irrelevant or completely irrelevant and only 13.33 % of CAs perceived the impact relevant. Stakeholders provided very limited views with 58.82% not answering to this question and 6.62% saying they do not know the possible impact on liquidity risk.

Investment firms and payment service providers

91. The views on the impact on financial risks of investment firms and payment service providers were asked only from the competent authorities. The results can be seen in the following table 7.

Table 7. Perceived impact of greenwashing on financial risks of investment firms and payment service providers by CAs

Financial risk	Investment firms		Payment service providers	
	Relevant	Not relevant	Relevant	Not relevant
Reputational risk	46.7 %	13.3 %	26.7 %	30 %
Operational risk	40 %	20 %	16.7 %	36.7 %
Strategic & business risk	30 %	16.7 %	10 %	33.3 %
Funding risks	20 %	36.7 %	10 %	40 %
Credit risk	16.7 %	26.7 %	3.3 %	40 %
Market risk	13.3 %	36.7 %	3.3 %	46.7 %

Financial risk	Investment firms		Payment service providers	
Liquidity risk	13.3 %	40 %	3.3 %	50 %

Source: EBA survey to competent authorities.

92. In the context of investment firms, the most impacted risk by greenwashing was perceived **reputational risk** with 46.7% of the CAs estimating it relevant or extremely relevant. **Operational risk** was perceived as the second most important risk impacted by greenwashing in the case of investment firms with more than 40% of the CAs considering the impact relevant or extremely relevant followed by **strategic and business risks**; however the impact on them was perceived as slightly more relevant compared to credit institutions (30 % CAs estimating it at least relevant). The least impact is perceived on the **credit, market and liquidity risks** for investment firms where the general view was that the impact is rather irrelevant.

93. In the context of payment service providers, the most impacted was again reputational risk (26.7% of the CAs perceived it relevant), followed by operational risk (16.7 %). The lowest impact was perceived on credit, market and liquidity risks (40-50% perceived the impact irrelevant and only 3.3 % perceived it relevant).

94. About one third of CAs did not know how the impact of greenwashing on any of the risks for either investment firms or payment service providers.

3.1.8 Financial stability risk

95. Greenwashing may also cause a risk to financial stability. Should it appear in a large scale or should the lack of trust impacting one or more than one institution involved in alleged greenwashing spread over to other institutions, it would potentially affect the whole market. From a financial stability perspective:

- A “Minsky moment” could arise, where green financial instruments, in their entirety or a substantial part of them, are no longer perceived as green, impacting negatively the sustainable financial markets’ credibility and causing a widespread repricing and drop in liquidity, subsequently resulting in a risk to the entire financial system (e.g. fire-sales of green bonds).
- The argument could be made that greenwashing could have detrimental effects by distorting or preventing an accurate assessment of risks and thus giving too much credit to entities’ disclosed transition timelines, metrics and targets, hence underestimating transition risk, increasing the risk of a disorderly climate transition and ultimately impacting the resilience of financial institutions.

96. Most CAs (2/3) estimated greenwashing having a high impact on the credibility of sustainable financial markets but a low impact on financial stability both at national level (53% of respondents)

and at EU level (50% of respondents). Only two CAs estimated the impact to financial stability high (both at national and EU level). Those who considered the impact low said that financial stability depends on many other factors (one CA) and market participants are probably less aware and sensitive of sustainability related aspects (one CA). More than half of stakeholders (54.4%) did not answer to this question; 33.8% of stakeholders estimated potential overall impact for the credibility of sustainable financial markets high and only 1.5% estimated it low. The impact on national and EU financial stability was estimated high by 13 % of respondents.

3.2 Scale, prevalence and adverse impact

3.2.1 Materiality of greenwashing risk

97. While the phenomenon of greenwashing has been existing for years, there is not only a need to tackle it but also to assess how material this risk is to institutions and to the risks they need to manage in the course of their business. Even though currently it might not be recognised as a prevalent or imminent risk in the risk management policies and procedures yet, it has the potential to create significant reputational risk and therefore become material with detrimental impact on institutions themselves but also their customers.

98. In order to assess the current understanding of the materiality of greenwashing by institutions, the EBA asked CAs and stakeholders how they see the materiality of greenwashing for credit institutions, investment firms and payment service providers. While answers were provided by all CAs, only about one third of the stakeholders answered to this question. The results can be seen in table 8 on the following page.

99. In the context of **credit institutions**, more than half of CAs perceived materiality of greenwashing currently as low and 30% of the CAs assessed it as medium. Only 2 CAs perceived it high already now. However, most CAs estimated the materiality of greenwashing for credit institutions to increase in the future from low to medium.

100. Most stakeholders (62.5%) provided no answer and 10.3% said they do not know. Those who answered, the assessment was split with almost an equal number assessing it currently low (8.1%) and medium or high (9.6% for both). The views differed only a little when assessing the materiality of greenwashing going forward – 5.9% of respondents assessed it would remain low, 11.03% medium and 10.3% assessed it to become high.

Table 8. Materiality of greenwashing on financial risks of credit institutions by CAs and stakeholders

Materiality on credit institutions	Assessment by competent authorities		Assessment by stakeholders*	
	Currently	Going forward	Currently	Going forward
Low	53.3 %	16.7 %	8.1 %	5.9 %
Medium	30 %	53.3 %	9.6 %	11 %
High	6.7 %	10 %	9.6 %	10.3 %
Do not know	10 %	20 %	10.3 %	9.6 %

Sources: EBA survey to competent authorities and Call for Evidence to stakeholders

* Most of the stakeholders (62.5%) did not answer to this question.

101. In the context of **investment firms**, no CA perceived the materiality of greenwashing currently high. One third perceived it medium and 23.3% said it is low. Materiality expected to increase slightly going forward. However, almost half of CAs said they do not know how to estimate the materiality now or in the future. The views of stakeholders differed from CAs – 18.4% of the respondents assessing it currently high, and only 4.4% estimated it low. Going forward, only 2.94% assessed the materiality of greenwashing to be low, 8.82% said it is medium and 15.44% consider it high (vs 18.4% now). 65 % of the respondents provided no answer.

102. Materiality of greenwashing risk by **payment service providers** was considered currently low by more than half of CAs and no CA considered it high. Going forward, there is again slight increase expected but it is generally expected to remain low. About 15 % said they don't know and 68% of the stakeholders provided no answer at all.

3.2.2 Risk to consumers and society

103. Greenwashing can also have an impact on consumers and end-investors due to purchase and investment decisions being based on misleading information. In addition, a loss of trust could discourage consumers to engage in sustainable finance. Therefore, greenwashing has also a significant potential to undermine confidence in markets, therefore threatening the ability to transition to a low carbon economy.

104. The survey to stakeholders included a question on the types of impact or harm and their consequences that they anticipate as a result of greenwashing practices. The answers can be grouped as follows:

- i. Risks for the individual bank/entity, in particular reputation and litigation risks but also business and financial risks;
- ii. Negative impacts on the market, such as unfair competitive practices, suboptimal allocation of capital, mispricing, and misleading consumers;
- iii. Negative real-world impacts on the transition/sustainable economy, as financing is not provided/used for as needed.

105. **Credit institutions and banking associations** most often cited reputation and litigation risk as an impact of greenwashing that can concern all parties in the value chain. This would risk undermining both the trust in the concerned entity and in the ESG products market while also discrediting the financial services industry as a whole. Claims could also cover commercialization and assets' management (lack of transparency, misleading information, etc). Some answers also highlighted that this may drive investors away, in turn reducing incentives for financial institutions to increase transition and sustainability financing. One participant pointed out that this risk is increasing due to the development of new ESG-related products and services and the expanding ESG strategy of entities.

106. Some of the general aspects mentioned by them were:

- i. Reduction of the involvement of critical stakeholders;
- ii. Financial penalties/fines imposed and resulting losses. In an extreme situation, these may lead to the collapse of the institution;
- iii. Investment risk (negative effect on value of investment) and unjustified investments due to misleading information;
- iv. Risk of failure to achieve environmental protection objectives / undermining the green transition;
- v. "Trivialisation of ESG factors";
- vi. Loss of leadership credibility; loss of skilled labour and difficulty in finding employees with the right skills; loss of focus and clarity of goals; and loss of clarity on policies and responsibilities.

107. **Investors and investment firms** also frequently mentioned the impact of undermined trust in investment products, sustainable regulation, companies, and the markets, ultimately resulting in reduced demand from investors which would undermine efforts to channel finance in support of sustainability objectives. Other aspects mentioned were:

- i. Litigation and reputational risk. One investment firm mentioned that reputational risk could also concern investors: if investment firms are found to be triggers of greenwashing, this may damage their fund's reputation, leading to a loss of trust from investors and stakeholders which could impact future fundraising;
- ii. Misleading of investors (who would have taken a different investment decision would they have known about the false statements);
- iii. Resulting failure to stop global warming;
- iv. Competition concerns and negative effects on financial results of the companies;
- v. Negative effects on innovations.

108. Answers from **think tanks, NGOs and consumer associations** had a different focus. Their most common answer was the loss of trust of investors/consumers by misleading statements. This would discourage consumers to engage in sustainable finance, undermining the EU sustainable finance policy. Legal and reputational risks for the company were also frequently mentioned.

109. Many answers also referred to the direct negative impacts on environment/climate, e.g. end users unknowingly buying a product or service which is highly polluting which undermines the goal of protecting the planet (sometimes referred to as “carbon budget overshoot”). This might also lead to a delay in addressing urgent sustainability needs (e.g. delay in effectively reducing corporate GHG emissions), thus increasing systemic stability risk.

110. There are also differences between the short term and long term: In the short term, investors may allocate less money to real sustainable strategies, and make less efforts in voting and engagements on ESG strategies which could result in misallocation of capital between different asset classes, products, sectors and markets. In the long term, greenwashing could lead to lower trust in market data and sustainability disclosures.

4. Addressing greenwashing: state of play

111. This chapter provides an overview of existing or upcoming regulatory and supervisory frameworks, as well as market practices, which can help address greenwashing and the financial risks linked to greenwashing in the context of activities carried out by credit institutions, investment firms and payment services providers. The chapter presents some views from stakeholders and Competent Authorities in terms of the appropriateness of these frameworks to tackle greenwashing but does not include final views or policy recommendations from the EBA as these would be elaborated when preparing the EBA's final report to the Commission.

112. The overview covers tools which may contribute to prevent, identify, mitigate and sanction greenwashing, as well as tools which may contribute to manage or supervise the financial risks to institutions arising from greenwashing. Tools are hence relevant for addressing either greenwashing itself, as a communication, consumer protection and market integrity issue, or the financial consequences of greenwashing for supervised entities, as a prudential issue relevant to banking supervision and potentially to financial stability.

4.1 An evolving regulatory framework

113. This section describes the EU and national legislative frameworks which may help address greenwashing as well as gaps and challenges identified by stakeholders in relation to these frameworks.

4.1.1 The EU legislative framework

114. The EU legislative framework may contribute to address greenwashing through (i) rules and principles that aim at tackling the issue of misleading statements and commercial practices, and (ii) sustainable finance regulatory initiatives.

115. The first category (i) may contribute to address greenwashing by regulating the communication and marketing practices of organisations, including of financial services providers, to avoid misleading the end-customer. Relevant frameworks relate to investor and consumer protection, conduct of business and corporate communication and marketing. Non-exhaustive examples include the Unfair Commercial Practices Directive (UCPD) and the Directive on Markets in Financial Instruments (MiFID II)¹². The second category (ii) covers existing and planned regulations on sustainable finance, including the EU Taxonomy, EU Green Bond Standard and sustainability disclosure requirements.

¹² Non-exhaustive examples. Other legislations include Market Abuse Regulation, Consumer Protection Cooperation Regulation, legislation on risk and compliance assessments under UCITS and AIF.

Consumer and investor protection: regulating (environmental) claims in marketing and communication

- UCPD

116. The Unfair Commercial Practices Directive (UCPD¹³) constitutes the overarching piece of EU legislation regulating unfair commercial practices in business-to-consumer transactions. It applies to all commercial practices that occur before (i.e. during advertising or marketing), during and after a business-to-consumer transaction has taken place, including in relation to financial services, encompassing any service of a banking, investment or payment nature. The current UCPD does not provide specific rules on environmental claims, however a Commission's Guidance on the Directive¹⁴ explains that based on current UCPD provisions on misleading actions and omissions, green claims must be truthful, not contain false information and be presented in a clear, specific, accurate and unambiguous manner, so that consumers are not misled.

117. At the current juncture, the UCPD seems to provide a legal basis to tackle unfair environmental claims to consumers, including from financial institutions (traders in the UCPD terminology¹⁵). Breaking the requirements of UCPD may entail investigations and sanctions, although Competent Authorities under the remit of the EBA are not necessarily the ones in charge of enforcement¹⁶.

118. It should be noted that the UCPD is currently under revision as a result of a Commission's initiative to empower consumers for the green transition¹⁷, which aims among other things at strengthening consumer protection against untrustworthy or false environmental claims. The Commission's initiative consists in particular in amending two existing consumer law Directives, the UCPD¹⁸ and the Consumer Rights Directive, and in proposing a new complementary directive (proposal for a Directive on Green Claims adopted by the Commission in March 2023 which, however, would not apply to the financial sector).

¹³ Directive 2005/29/EC

¹⁴ See Commission Notice, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC1229\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XC1229(05))

¹⁵ trader' in the context of UCPD means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader

¹⁶ According to the UCPD, Member States must impose penalties for infringements of the UCPD which are effective, proportionate and dissuasive. Member States must ensure that the court or an administrative authority has the necessary powers to enable them to order the cessation and/or prohibition of a practice which has been determined to be an unfair commercial practice. Competition regulators often have jurisdiction over UCPD legislation; however, some CAs in the remit of the EBA are also responsible for the prohibition of unfair commercial practices and for supervising compliance with consumer protection rules on the financial market by selected entities.

¹⁷ [Empowering-the-consumer-for-the-green-transition](#)

¹⁸ Proposed amendments to the UCPD aim at better regulating environmental claims through: defining environmental claim; ensuring that consumers are not misled about environmental and social impacts of products; prohibiting the use of sustainability labels not based on a certification scheme or established by public authorities; prohibiting the use of generic environmental claims used in marketing towards consumers, where the excellent environmental performance of the product cannot be demonstrated in accordance with officially recognised labelling; prohibiting environmental claims about the entire product, when it actually concerns only a certain aspect of the product. Besides, some commercial practices to be considered misleading would be added, including making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system.

119. Outcomes of these legislative processes are not yet known and will determine to what extent these (revised) rules would apply to the financial sector, including whether other, more specific, rules such as the ones of the sustainable finance framework should take precedence (*lex specialis*). Going forward, further clarity as to the articulation of the UCPD with other frameworks and as to the exact range of claims made by financial institutions that would fall under the scope of UCPD would therefore be beneficial.

- MiFID II

120. The Markets in Financial Instruments Directive (MiFID II¹⁹) contains rules on all information, including marketing communications, addressed by an investment firm, and a credit institution providing one or more investment services and/or performing investment activities, to clients or potential clients. It states that the communication must be fair, clear and not misleading both in its content and its presentation. It notably means that any marketing communication should be sufficient for and presented in a way that is likely to be understood by the average member of the group to whom it is directed, or by whom it is likely to be received.

121. With regard to supervision, MiFID II provides a general provision that competent authorities shall be given all supervisory powers, including investigatory powers and powers to impose remedies, necessary to fulfil their duties, and provides a list of the minimum supervisory powers which competent authorities must have. In addition, ESMA is currently conducting a common supervisory action with national competent authorities (NCAs) on the application of MiFID II disclosure rules with regard to marketing communications. As part of this, NCAs will review whether marketing communications (including advertisements) of investment firms and credit institutions are fair, clear and non-misleading and how firms select the target audience for the marketing communications. This will also be an opportunity to collect information about possible greenwashing practices.

122. At a legislative level, the MiFID II may thus also provide a tool to regulate green marketing communications by investment firms and credit institutions which provide one or more investment services and/or perform investment activities.

A fast-evolving array of sustainable finance regulations which may mitigate greenwashing

123. In addition to consumer and investor protection, several elements of the EU sustainable finance regulatory framework should also help to prevent, identify or mitigate aspects of greenwashing. Existing or planned initiatives should in particular contribute to (i) better define green activities, (ii) improve the disclosure framework and data basis regarding sustainability and (iii) harmonise criteria and labelling for certain green financial products.

124. First, the *EU Taxonomy* offers an important classification framework, establishing criteria for environmental sustainability and introducing associated disclosure requirements. By providing detailed, publicly available information on eligible green or sustainable activities, the EU Taxonomy

¹⁹ Directive 2014/65/EU

should reduce the need for interpretation and lead to improved data reliability and comparability. This should increase transparency and limit the risk of market fragmentation in the classification of green activities, although the use of the EU Taxonomy is not always mandatory when marketing all types of financial products or instruments as sustainable²⁰.

125. For credit institutions and investment firms, the upcoming disclosures on how and to what extent their activities qualify as environmentally sustainable²¹ in accordance with the Taxonomy will contribute to improve market transparency and enhance entity-level sustainability disclosure requirements (respectively, Green Asset Ratio and Green Investment Ratio). Besides, while the EU Taxonomy did not modify the regulatory framework applicable to the distribution of (sustainable) retail banking products, it constitutes nonetheless one key tool to help identify green financial and green banking products, as specified by the Commission in its call for advice to the EBA on green loans and green mortgages²².

126. In addition to Taxonomy's transparency requirements, the current landscape of *ESG disclosure frameworks* is evolving towards more comprehensiveness, comparability and reliability and should improve transparency about institutions' sustainability characteristics, hence contributing to prevent or to identify greenwashing. Relevant requirements for institutions under the remit of the EBA include transparency requirements introduced by:

- the EU Taxonomy Regulation (see above);
- the Capital Requirements Regulation (CRR) and Commission Implementing Regulation (EU) 2022/2453 as regards the disclosure of ESG risks - i.e. prudential (Pillar 3) disclosure requirements with detailed templates for reporting on climate-related risks metrics;
- the Regulation on Sustainability-Related Disclosures in the Financial Sector (SFDR²³), aiming at enhancing disclosures and increasing the comparability of information made available to end-investors for products with environmental or social characteristics or sustainability objectives²⁴;

²⁰ Issuers may choose to apply different, also market-based classification systems. However, the provisional agreement reached on European green bonds foresees a degree of alignment with the EU Taxonomy, and SFDR introduces disclosure requirements when financial market participants offer financial products making sustainability-related claims on the extent of Taxonomy alignment of the underlying investments.

²¹ Under article 8 of the EU Taxonomy Regulation and as specified in corresponding delegated acts

²² The EBA is working on an advice to the European Commission on the definition and possible supporting tools for green loans and green mortgages to retail and SME borrowers. The [Call for Advice](#) notes that the EU Taxonomy should serve as one of the tools and reference points for credit institutions to define green loans.

²³ Regulation (EU) 2019/2088

²⁴ The SFDR's sustainability-related disclosure requirements apply to financial market participants (including credit institutions which provide portfolio management), financial advisers (including credit institutions which provide investment advice) and financial products and have been further specified by technical standards.

- the Securitisation Regulation²⁵, regarding the disclosure of sustainability information for certain types of Simple, Transparent, and Standardised securitisation (to be further specified by ESAs technical standards), and
- the Corporate Sustainability Reporting Directive (CSRD²⁶), amending the Non-Financial Reporting Directive (NFRD) and expected to significantly expand and enhance the availability, comparability and reliability of sustainability information by financial and non-financial corporates, including through obligations to audit sustainability data, which can play an important risk-mitigation role for greenwashing.

127. The EBA welcomes the dynamic towards better sustainability reporting and notes that disclosure obligations support the policy objective of reducing the occurrence of greenwashing. ESG-related transparency requirements and an enhanced set of metrics to convey sustainable and climate-related information should allow stakeholders to better form an opinion on the sustainability characteristics of a particular financial product or entity, which enhances the ability to identify and monitor greenwashing.

128. Thirdly, some regulatory initiatives aim at creating new *standards or labels* including for some financial products relevant to credit institutions, such as green bonds. With regard to the latter, new legislation is currently under finalisation with a provisional agreement reached between the Council and the European Parliament in March 2023. An EU green bond standard with common definitions of environmental sustainability, standardised disclosures and reporting, and reliability ensured by registered and supervised external reviewers, should contribute to promote market integrity and prevent bond greenwashing. In addition, following its first Sustainable Finance Action Plan from 2018, the Commission initiated work to develop an EU Ecolabel criteria, under the EU Ecolabel Regulation²⁷, for some financial products, including the service of managing a fixed-term deposit or savings deposit product in order to pay interest and derive environmental benefits from the projects and economic activities to which the deposited money is loaned (i.e. green deposit). However, this project is on hold and no timeline has been communicated for its completion.

129. Overall, several sustainable finance regulatory developments in the EU may thus contribute to prevent, identify and monitor greenwashing, by providing specific definitions and criteria and leading to improved data availability, reliability and comparability. However, this framework is still under development and not yet fully applicable (see also below, summary and way forward).

130. It should also be noted, with regard to the financial risks arising from greenwashing, that the banking package (CRR/CRD), currently under revision, will likely introduce new obligations for

²⁵ Regulation (EU) 2017/2402

²⁶ Directive (EU) 2022/2464

²⁷ The EU Ecolabel criteria are designed to promote the use of the most environmentally friendly products as articulated by the Regulation on the EU Ecolabel (Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel). According to Article 2, this Regulation applies to 'products' (either goods or services) that are supplied for distribution, consumption or use on the Community market. Financial products fall within the scope of the EU Ecolabel Regulation where they can be considered as services for distribution or use.

institutions to ensure a robust management of ESG risks, under which financial risks resulting from greenwashing should be considered (see chapter 3, greenwashing risks).

Box 1. Case study on “net zero commitments”

a. The issue: (alleged) greenwashing on GHG net zero targets and commitments

As described in section 2.3, a vast majority of alleged greenwashing cases in the EU banking sector relates to the business strategy of institutions (entity level). One particular instance in which EU banks have been, or are being, criticised relates to public commitments issued around the objective to reach “net zero Green House Gas emissions” by a certain date (e.g., 2050), while not implementing the business processes or concrete actions required to achieve those targets.

Achieving net zero GHG by 2050 has become a commonly referred to goal to limit global warming²⁸ and there has been in recent months a proliferation of commitments by financial institutions including banks to align their business activity (i.e. reach net zero in their operations, lending and investing activities, or scope 3 emissions) with this objective, either individually or through international market-led alliances such as the Glasgow Financial Alliance for Net Zero, of which the Net Zero Banking Alliance is part with 43 EU members banks²⁹.

In this context and while common measurement methodologies to net zero, or global standards defining what achieving net-zero GHG emissions would entail, are not fully available yet³⁰ (also representing a challenge to precisely identify greenwashing), there is increased scrutiny on commitments being made by institutions. Several banks in the EU and worldwide have been accused of greenwashing in relation to their net-zero commitments³¹:

1. Two banks have been criticized for greenwashing by lobbying against necessary climate policies, undermining their net-zero carbon commitments.
2. One bank has been accused of greenwashing for investing more than EUR 1.8 billion in a carbon-intense company with fossil fuels activities, despite its membership in the Net Zero Banking Alliance.
3. The credibility of net zero pledges of banks that were involved in selling a green bond issued by an airport authority was questioned, due to environmental issues linked to the project funded, and an apparent contradiction between emissions reductions targets and support of air traffic growth.
4. NGOs have put in place the “Oil and Gas Policy Tracker: a tool to detect greenwashing practices in the finance sector”, assessing the oil and gas exclusion policies (or lack thereof) of the biggest financial institutions including all significant members of the GFANZ. NGOs estimated that many banks’ policies would not allow to align their business with their net zero 1.5°C targets.

²⁸ To keep global warming to no more than 1.5°C – as called for in the Paris Agreement – emissions need to be reduced by 45% by 2030 (in the EU, this interim target has been set at least 55%) and reach net zero by 2050.

²⁹ As of February 2023, <https://www.unepfi.org/net-zero-banking/members/>

³⁰ See for example OECD summary on [climate alignment methodologies for finance](#) and initiative on [Metrics for Climate Transition and Net-Zero GHGs in Finance - Supporting climate policy goals and avoiding greenwashing](#).

³¹ As in the rest of the report, the list reflects *alleged* greenwashing cases.

5. One bank in Canada is under investigation by the local competition regulator for allegedly misleading marketing practices in relation to climate change, including regarding communication that the bank is committed to achieve net-zero emissions in its lending by 2050 and net zero emissions in its global operations annually. The complaint estimates these claims are misleading because the bank is investing billions of dollars in fossil fuels. It also accuses the bank of lacking a credible plan for how it will reduce greenhouse gas emissions, despite the bank adopting a net-zero target and joining the global Net-Zero Banking Alliance.
6. The UK Advertising Standards Authority (ASA) has ruled that one bank misled consumers regarding its green credentials through advertisement, including one advert which included the following text: "... [the bank] is aiming to provide up to \$1 trillion in financing and investment globally to help our clients transition to net zero". While the bank argued that its financing of oil and natural gas production did not conflict with the aims of achieving net zero emissions because some investment in fossil fuels would be necessary to bring about an orderly transition, ASA held that consumers would not understand "the intricacies of transitioning to net zero", and that the ads did not disclose the bank's significant contributions to GHG and its commitment to that industry for many years into the future.

b. Financial risks resulting from (alleged) greenwashing on net zero commitments.

While evidence is not available yet, institutions may be exposed to heightened financial risks resulting from (alleged) greenwashing on net zero commitments (see also chapter 3, greenwashing risks):

1. In a context of growing litigation over sustainability claims, pledges that are not backed by credible actions and phrases such as "climate neutrality", "race to zero" and "net zero GHG" may face tougher scrutiny from advertisement, competition, market conduct authorities and NGOs. To the extent that banks' claims would be found to be misleading and made for the purpose of promoting their reputation, this would drive their operational risk, including liability risks and litigation costs;
2. In addition, the reputational damage linked to the commencement of proceedings or investigations, or to other public accusations of net zero greenwashing by NGOs or the media, would drive the reputational risk of institutions;
3. Further, institutions that make net-zero claims but do not use - in their business or risk management processes - scenarios that reflect their objectives may expose themselves to (i) strategic risks by not meeting their intended objectives, (ii) climate-related transition risks by not properly identifying the risks they are exposed to.

c. Addressing net zero greenwashing: an evolving framework

Various (on-going) initiatives may contribute to limit or address the risk of greenwashing in relation to banks' net zero commitments.

First, with regard to the general (cross-sectoral) commercial framework, the proposed amendments to UCPD include, as regards the commercial practices to be considered misleading

actions, two additional practices including *“Making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system”*. While it should be clarified if this provision would cover institutions’ net zero claims, this shows that the regulatory framework may evolve towards regulating forward-looking commitments.

Second, with regard to the disclosure framework, several upcoming disclosure requirements (CSRD, Pillar 3 ITS on ESG disclosures, Taxonomy) should help to identify banks’ objectives and practices and assess the alignment or misalignment between the net-zero targets and concrete actions implemented. This more demanding transparency framework may also push institutions to enhance the oversight of their public commitments, including regarding net zero targets.

Third, there is a trend towards regulating net zero pledges specifically in light of the proliferation of criteria with varying levels of robustness:

- The UN High-Level Expert Group³² on the Net-Zero Emissions Commitments of Non-State Entities, tasked with the development of clearer standards for net-zero emissions pledges by non-State entities including financial institutions, presented its recommendations³³ at COP27 in November 2022. These include: (i) A net zero pledge must contain stepping-stone targets and set out concrete ways to reach net zero in line with the Intergovernmental Panel on Climate Change (IPCC) or International Energy Agency (IEA) net zero GHG emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot. The plan must cover the entire value chain, including end-use emissions; (ii) Non-state actors must publicly share their comprehensive net zero transition plans; (iii) Finance net zero plans must not support new supply of fossil fuels; (iv) Non-state actors must lobby for positive climate action; (v) Financial institutions should have a policy of not investing or financing businesses linked to deforestation, and should eliminate agricultural commodity-driven deforestation from their investment and credit portfolios by 2025.
- The International Organization for Standardization (ISO) launched at COP27 the Net Zero Guidelines which aim at providing a global basis for harmonizing, understanding, and planning for net zero for actors at the state, regional, city and organizational level. Guidance provided relates among other to the definition of “net zero” and related terms (greenhouse gas removals, offsetting, value chain, etc) and transparent communication, credible claims, and consistent reporting on emissions, reductions and removals.

While not directly binding, these recommendations and/or guidelines may influence the scrutiny of banks’ net zero commitments and/or future regulatory actions going forward.

Fourth, several EU regulations foresee the development and disclosure of transition plans or ESG risks management plans (CSRD, CSDDD, CRD), including for banks. These plans may bring more clarity as to the short, medium and long-term actions implemented and planned by banks, and thus facilitate the assessment and verification of the credibility and adequacy of business processes in light of banks’ net zero commitments. Further developments in this area will also contribute to ensure that the assumptions or limitations around banks’ planned transition finance actions are highlighted as well alongside the intended outcome/commitments, therefore mitigating potential misleading claims. Under the Commission’s proposal on CRD6, shortcomings in banks’ ESG strategy and risk management including banks’ plans may also trigger a supervisory reaction.

³² <https://www.un.org/en/climatechange/high-level-expert-group>

³³ https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf

Finally, at the supervisory level, some authorities have started to establish a framework for monitoring and evaluating commitments by financial institutions, including in relation to achieving carbon neutrality³⁴.

4.1.2 National frameworks

131. The EBA has engaged with a network of independent law firms³⁵ to obtain an overview of the national legislative frameworks related to greenwashing and the banking sector across EU countries. This overview shows that in most countries there is no specific definition given to greenwashing, although guidance on how to define (non-banking specific) greenwashing is sometimes provided³⁶.

132. Most countries do not yet have specific legal frameworks to identify, address and sanction greenwashing, neither across the economy nor in the financial sector. However, in many countries general rules governing investor protection, consumer protection and prohibition of misleading advertising may apply, and greenwashing in the financial sector is indirectly addressed in connection with various financial legislations (e.g. national provisions transposing MiFID). Some countries have started to introduce dedicated legal amendment to their consumer codes to include sanctions against greenwashing in case of false promotional campaigns³⁷.

133. The relevant legal frameworks are generally based on the EU legislation which is directly applicable or implemented into national law. For example, the UCPD provides for minimum harmonisation for financial services. Member States can therefore adopt more restrictive or prescriptive national rules as long as these rules comply with EU law. The MIFID II principle stating that communication must be 'fair, clear and not misleading' must also be transposed at national level. Non-compliance with national provisions may entail legal consequences.

³⁴ See [ACPR and AMF joint annual reports](#) focusing on the commitments of French financial institutions to combating climate change and achieving carbon neutrality by 2050. The authorities encouraged French financial institutions to increase their efforts and transparency regarding the implementation of their voluntary commitments.

³⁵ Lex Mundi

³⁶ For example, the Belgian Federal Ministry of Economy included a description of greenwashing in its SPF Economy Guidelines, where it is described as "commercial practices, which consist of misusing a green positioning or environmental practices for marketing purposes. (...) Greenwashing can include all forms of business-to-consumer commercial practices related to the environmental characteristics of goods or services. In other words, a company engages in greenwashing if: the product which ecological merits the company promotes attaches little or no importance for the environment; sustainability arguments are cited whilst the company is little or not at all committed to a sustainability approach; the message it conveys to consumers is misleading as to its sustainable development efforts or the environmental quality of a product it promotes".

³⁷ Within a review on climate change and resilience, France has introduced direct sanctions against greenwashing. Guilty parties can now be fined up to 80% of the cost of the false promotional campaign and ordered to publish correction on billboards or in the media and a 30-day clarification on the company's website. France has also restricted the use of 'carbon-neutrality' in communication. Under the article 12 of France's Climate Law, alleging that a product is "carbon-neutral" is now forbidden unless the advertiser can demonstrate it is engaged in a virtuous approach aiming primarily to avoid and reduce its GHG emissions and compensating. Emission compensation should only be used in last resort and should meet high environmental-quality standards.

134. In general, greenwashing in the financial sector is currently addressed through general sectoral principles and general regulation of misleading commercial practices under consumer law, without specific guidance on greenwashing.

4.1.3 Gaps and challenges perceived by stakeholders

135. Stakeholders perceive some challenges and gaps as to how the legislative framework (mostly considered at the EU level), in its current shape i.e. reflecting views expressed as of end-2022/early 2023, may address greenwashing.

Challenges

136. The first challenge raised by stakeholders, particularly financial institutions, relates to the lack of available and reliable data to fulfil ESG disclosure requirements, potentially undermining the role of these disclosures to combat greenwashing. The following issues have been highlighted: (i) data and methodological gaps, e.g. absence of official public data, no common methodology to calculate the scope 3 GHG emission or the carbon footprint of a portfolio, no common definition of energy efficiency across Europe; (ii) the need to have recourse, in the absence of sufficient data, to equivalent information (EU Taxonomy) or estimates (SFDR, Pillar 3) from external providers, which may be heterogeneous and necessitate adjustments over time, potentially fueling greenwashing accusations; (iii) some discrepancies between regulations, e.g. as to the use of proxies. These data shortcomings are seen by institutions as drivers of complexity and sources of confusion and perceived as potentially creating instances of unintentional greenwashing.

137. The second challenge identified relates to uncertainty or ambiguity about sustainability standards, benchmarks, and eligibility criteria. Regulatory requirements and definitions of sustainability (e.g. for green or sustainable investments or products) are perceived as complex and sometimes diverging. Financial institutions noted implementation and interpretation challenges notably in relation to SFDR. Other stakeholders noted that the absence of generally accepted criteria for measuring the environmental costs or benefits of a product or service represents a challenge to employ the current general communication and marketing framework for addressing greenwashing.

138. Related to the latter point, some respondents believe that the legal basis and tools to investigate and take legal actions against greenwashing are not sufficient. They consider that the lack of a regulatory framework specifically on greenwashing, or clarifications on how the current framework may apply to greenwashing in the financial sector, may prevent effective actions from being taken. For example, while the existing communication or consumer/investor protection frameworks could potentially be used to take action against sustainability misleading claims, it is not clear how claims that do not cause detriment to the recipients of a product or service would be addressed. In addition, stakeholders mention that the lack of clear supervisory or enforcement outcomes in relation to greenwashing in the financial sector raises questions as to the adequacy of the current legal tools available.

139. Finally, the lack of sustainability resources and knowledge, although not considered as the primary challenge, has been mentioned as possibly impeding an effective implementation of the framework to prevent greenwashing, or to carry out reliable third-party verification and supervision.

Gaps

140. Stakeholders also perceive some gaps as to how the sustainable finance framework may currently allow to address greenwashing. The most mentioned gaps are:

- Absence of or under-developed regulatory framework on *transition finance and sustainability-linked products*. Some stakeholders note that there is no clear definition as to what can be labelled transition finance, no transition ratio (as opposed to green asset ratio), nor clear thresholds to calculate transition-aligned trajectories, which offers potential for transition-related greenwashing (or greenwashing allegations). The current regulatory framework is considered as not providing a basis to set credible targets aligned with sector-based pathways and ambitious social and environmental benefits. Related to this, at a product level, there are no binding standards on sustainability-linked loans and sustainability-linked bonds³⁸. This may lead to unharmonized practices, for instance in terms of how Key Performance Indicators (KPIs) and/or Sustainability Performance Targets (SPTs) and/or penalties are set, measured and implemented, which may create instances of misleading labelling.
- Absence of or under-developed framework for *natural or social* aspects, hence stakeholders may have diverging expectations, and institutions divergent practices, on what is nature- or socially-positive. For instance, biodiversity is seen as insufficiently covered in ESG disclosures or taxonomies at the moment, which does not allow for transparency on, or ways to ensure the credibility of, biodiversity-related claims.
- Absence of or under-developed regulatory framework for misleading *environmental (real-world) impact claims*. (Real-world) impact claims may be considered as a sub-category of broader environmental claims referring to the practice of suggesting that a financial product or service has a real-economy impact which is positive for the environment. Some stakeholders mention that general finance rules in relation to fair, clear and not misleading communications could apply to address these claims but are not specific enough, and the sustainable finance rules are not adapted to the specific context of environmental (real-world) impact claims as they do not distinguish between investor impact and investee company impact³⁹.

³⁸ Note that the ESAs survey was conducted before the provisional agreement on European green bonds regulation was reached. The provisional agreement foresees some voluntary disclosure requirements for sustainability-linked bonds issued in the EU.

³⁹ Only the EU Ecolabel for financial products may refer to the concept of investor impact, but this would not apply to all financial products and the ultimate outcome of the EU Ecolabel for financial products is currently on hold.

141. It should be noted that the challenges and gaps described above reflect the comments made by stakeholders and not necessarily the views of the EBA. While the EBA takes note of the views expressed by stakeholders, it also notes that implementation of the sustainable finance framework is largely ongoing. The EBA will take into account all relevant on-going and forthcoming regulatory initiatives, such as on ESG disclosures and transition finance/transition plans, and how these could address (some of) the gaps and challenges identified by stakeholders, when assessing in its final report the appropriateness and potential shortcomings of the regulatory framework to address greenwashing.

4.2 Market practices

142. This section presents some market practices described by stakeholders on how they address greenwashing. These practices do not constitute officially recognized good practices nor EBA guidance but illustrate some tools and initiatives currently implemented or considered by market participants to prevent or mitigate greenwashing.

4.2.1 Institutions' tools and processes

143. Available evidence suggests that institutions seek to identify, manage and prevent greenwashing through regular internal processes and governance which have been implemented to manage conduct, compliance and ESG risks, as opposed to having specific tools and processes for greenwashing only. Institutions active to prevent greenwashing are primarily seeking to adapt existing processes, such as product governance process, review of marketing material, preparation of regulatory documents, training of employees, internal controls, etc. In this sense, stakeholders expressed the view that greenwashing should not be tackled in isolation.

144. The below presents some internal processes and governance practices mentioned by stakeholders to address greenwashing at entity or product/service level.

Entity level

145. To limit and address greenwashing at institution's level, the most important and frequent processes institutions have in place (or are planning to put in place) are, by order of ranking in ESAs' survey, the use of prudent communication for sustainability-related topics, internal control mechanisms, and monitoring of factors and events that may give rise to reputational concerns.

146. *Prudent communication* is seen as the best way to avoid greenwashing accusations in a context of evolving regulatory framework and stakeholders' expectations. Some examples mentioned are: ensuring that advertising and marketing are made with restraint and proportionality, whereby sustainability's place in any communication reflects the extent to which sustainability factors affect a given portfolio, activity or strategy, based on clear measurements; adopting a cautious approach to naming and labelling products or initiatives (e.g. as green or sustainable); selectively using terms, e.g. avoid claims about "positive impacts" or "carbon neutrality" given the challenges in demonstrating corresponding achievements; including a clear description of challenges, limitations

and gaps in environmental statements; involving a range of experts (marketing, scientific, legal etc.) to review environmental claims and ESG disclosures to avoid publishing misleading information.

147. *Internal control mechanisms* are also mentioned as a key element to help ensure the accuracy of claims, or to establish sound risk management processes to manage greenwashing-related financial risks. First, the compliance function has an important role in ensuring compliance with climate-related laws, rules, regulations and standards, and in advising business relationship officers on the compliance risks of greenwashing, including with regard to products and transactions labelled as green, ESG or sustainable. Supervisory experience also shows that compliance functions in some institutions find an increasing need to mitigate the risk of greenwashing, against the backdrop of regulatory developments and commitments voluntarily made. This may lead in some institutions to follow-up actions which relate, for example, to staff knowledge and expertise, data and methodologies, and governance and internal control frameworks. Second, the internal audit function also sometimes plays a role by checking external communications processes or by reviewing the application of relevant frameworks to ensure the integrity of green, transition, and sustainability products.

148. Some other tools used by institutions are:

- Building sound ESG data management systems and data understanding. In light of data challenges, needs for estimates and potential associated reputational risks, some institutions are seeking to build insights into the quality of the data underpinning ESG credentials (of assets, products, ratings etc.). This aims at ensuring a data-driven understanding of the credentials behind ESG claims and facilitating accurate presentation and communication.
- Managing greenwashing at a consolidated level, by ensuring consistency of environmental claims and integration of environmental aspects across the different products, business lines and activities. For a credit institution, this involves for example avoiding discrepancies between environmental claims related to its lending policies and practices on financing activities (e.g. bonds underwriting) and may be particularly relevant for credit institutions with investment firms or asset management subsidiaries.
- Putting in place overarching climate strategies and transition plans, and restructuring business practices, when commitments have been made to achieve net zero emissions and establish monitoring and reporting processes.
- Codes of conduct and remuneration policies for sales staff that aim at mitigating the risk of mis-selling of green financial products.
- Specific committees to review and assess any new sustainable product, activity and service from the perspectives of risks, permanent controls, legal and compliance to ensure that all requirements (including on advertising and marketing) as well as internal procedures are met. Other practices on committees include establishing a committee dedicated to the delivery of environmental commitments, and a scientific committee with members from

the scientific community, including from the International Panel on Climate Change, validating methodological choices on climate issues.

- With regard to greenwashing-related financial risks, some institutions have started to assess possible impacts on liquidity and funding. One institution designed a stress test scenario comprising the materialisation of the risk of greenwashing of green bonds issued⁴⁰, in combination with other idiosyncratic situations, and analysed the impact of such events on its Liquidity Coverage Ratio buffer. The institution assessed how this may cause several wholesale counterparties to withdraw their funding, followed by corporate and government counterparties as well as retail investors. In the most severe scenario, the institution also considered the effect of such reputational damage on future green bond issues.

Product or service level

149. To limit and address greenwashing at the product/service level, the most important and frequent tools institutions have in place (or are planning to put in place) are, by order of ranking in ESAs survey, applying market guidance and/or standards that contribute to anchor definitions and criteria (more details in next sub-section, market and stakeholders' initiatives), establishing a clear list of eligible projects and activities for sustainability lending/finance (more details in next section, supervisory framework), clear new product approval process and policy that applies to sustainability products, and using external reviews and third parties verification.

150. It should be noted that some tools mentioned as relevant to address greenwashing at entity level also help to address greenwashing at product level, such as *prudent communication* to avoid misleading the customer, investor or saver (transparent communication and proportionate marketing on the key features of a financial product, including sustainability objectives, methodology and data), or the *role of the compliance function* in advising business relationships officers on the risk of misrepresenting a product or service as green when the underlying features do not reflect such label.

151. With regard to *product approval processes*, some institutions mention the relevance of having in place strict internal standards and criteria for products and services labelled as sustainable, reducing space for interpretation. One practice mentioned relates to ensuring the credibility of sustainability-linked products, such as sustainability-linked loans which – although they tend to be private contracts – could raise greenwashing concerns and reputational risks similar to the bond market. To mitigate greenwashing, some institutions engage in increased scrutiny and discussions with borrowers, making sure that KPIs and SPTs are material and ambitious and advising borrowers to be cautious in their claims (eg avoid marketing loans obtained as sustainability-linked until full clarity that these meet market standards).

⁴⁰ Proceeds of the green bonds issued not invested according to the eligibility criteria as set forth in previously disclosed guidelines.

152. The use of *external reviews and third parties' verification* is seen as a practice that provides credibility and value to green/sustainable labels, playing an important role in the good application of green principles, standards and taxonomies to financial products. Some institutions view external reviews as important elements in their approach to mitigating greenwashing and ensuring market integrity. On the other hand, some concerns have been raised over the lack of a high-quality, consistent, science-based and independent verification process, potentially hampering broader use or credibility of external reviews at the moment.

4.2.2 Market and other stakeholders' initiatives

153. Beyond the tools deployed by individual institutions, some market or other stakeholders' initiatives may contribute to mitigate greenwashing.

154. First, *market guidance* aimed at ensuring comparable product design can contribute to anchor definitions and criteria and support market integrity. At the product level, applying market guidance and/or standards is mentioned as the most relevant tool to mitigate greenwashing risk⁴¹. For instance, a set of guidelines or principles have been created related to Green, Social, Sustainable, Sustainability-linked Loans or Bonds⁴².

155. Guidance and frameworks provided by industry bodies often aim at addressing investors or stakeholders' concerns about greenwashing, also with a view to supporting growth of sustainable finance markets. For example, updates to green, social and sustainability-linked loan principles sought to reduce greenwashing risk through clarifications on the selection of KPIs and SPTs, external review process and reporting. More recently, industry bodies have also started to provide guidance on transition finance, looking among other at criteria for transitioning entities, also with a view to mitigate greenwashing concerns⁴³.

156. Such industry-led initiatives may contribute to mitigate greenwashing (e.g. from self-labelled products) by facilitating transparency and comparability, although some concerns have been raised on the credibility of self-regulation initiatives, e.g. in terms of level of ambition and stringency regarding assets and activities eligibility.

157. Other initiatives which may contribute to mitigate the risk of greenwashing include:

- harmonising lobbying practices and supporting their alignment with environmental goals committed to. For example, the Global Financial Alliance for Net Zero recommends its members to ensure that direct and indirect lobbying and public-sector engagement

⁴¹ This finding suggests that the EU Taxonomy has not yet been established as the key classification system for green financial products, however future developments will have to be taken into account e.g. with regard to its role for European green bonds and green loans and mortgages.

⁴² Under organizations such as the International Capital Market Association, the London-based Loan Market Association, the Loan Syndications and Trading Association in New York, the Asia Pacific Loan Market Association, the Climate Bonds Initiative etc.

⁴³ Examples include ICMA's "Climate Transition Finance Handbook" or CBI's paper "Transition finance for transforming companies: Avoiding greenwashing when financing company decarbonisation" and other initiatives to define sector-based transition finance standards at activity and entity level suitable for transition bonds.

advocate for policies that support or enable an accelerated and orderly transition to net zero, and do not contravene any net-zero commitments;

- multi-stakeholders' initiatives creating voluntary frameworks aimed at supporting credibility of environmental claims and targets, such as the Science-Based Target Initiative.

158. Lastly, it should be observed that non-financial market participants are likely to play a significant role in preventing or monitoring greenwashing by institutions. This includes scrutiny by civil society, media and non-governmental organisations of the environmental claims and commitments made by institutions, which tend to be increasingly analysed against the backdrop of their actual practices (see chapter 2).

4.3 Supervisory tools and practices

159. This section focusses on the role, tools and practices of Competent Authorities (CAs) in the remit of the EBA in relation to greenwashing, covering banking supervision and consumer protection, based on the results from the survey to CAs. It firstly describes mandates and resources related to greenwashing, provides an overview of existing or planned supervisory practices, and lastly explains how EBA Guidelines may address aspects of greenwashing and CAs' actions related to these Guidelines.

4.3.1 Mandate and resources

Mandates

160. The vast majority of CAs consider that their mandate allows them to address aspects of greenwashing, albeit often indirectly and to the extent that it relates to their primary mandate to ensure the protection of consumers or the resilience of institutions from a prudential perspective:

- for consumer protection authorities, greenwashing would be considered to the extent that it is associated with irregular or unfair commercial practices detrimental to the fairness and transparency of the market for financial products and services, such as misleading claims on the sustainability features of retail banking products or services;
- for banking supervisory authorities, greenwashing would be considered to the extent that it indirectly drives prudential and conduct risks and would affect the safety and soundness of credit institutions and/or financial stability.

161. Some CAs note however that their mandates and powers/competences are only partly sufficient to capture all aspects of greenwashing, or to effectively address greenwashing risks for institutions. Some of the reasons outlined relate to the need to stick to their mandate, e.g. prudential supervisors have a role in ensuring the safety and soundness of institutions but cannot comprehensively ensure the correctness of information provided to the market.

Capacities and resources

162. Resources available to address greenwashing or greenwashing-related financial risks are relatively scarce at the moment. Most CAs indicate they are, to some extent, facing gaps in terms of appropriate or needed resources and expertise to tackle greenwashing. Some CAs are nonetheless planning to increase their supervisory workforce in this area in the coming years.

163. While it should be kept in mind that CAs operate in markets of different sizes, affecting the size of their workforce, a snapshot of available resources shows that:

- Out of 30 CAs, 13 CAs have 2 or less Full Time Employees (FTEs) dedicated to various sustainability-related supervisory tasks, 9 CAs have 3 or more FTEs, while 8 CAs do not have any or were not able to provide an estimation.
- 11 CAs have 2 or less FTEs dedicated to tasks related to greenwashing, 3 CAs have 3 or more FTEs, while 10 CAs do not have any and 6 CAs were not able to provide an estimation.
- For the year 2023, 8 CAs are planning on increasing the number of FTEs dedicated to sustainability-related supervisory tasks, of which 6 CAs will have these FTEs dedicated to tasks related to greenwashing.
- For the year 2024, 5 CAs are planning on increasing the number of FTEs dedicated to sustainability-related supervisory tasks, of which the 5 of them will be to a certain degree dedicated to tasks related to greenwashing. Other CAs are either not planning to increase FTEs for these tasks or have not assessed it yet.

4.3.2 Supervisory practices

Supervisory practices

164. Most CAs have already carried out or are planning to carry out supervisory activities in relation to greenwashing (18 out of 30 CAs). This includes a range of practices such as: (i) assessing institutions' compliance with some level 3 requirements relevant to greenwashing (more details in the next sub-section, supervisory framework); (ii) participation in ESMA's common supervisory action on greenwashing; (iii) product oversight of green mortgages/loans, from a conduct supervision point of view; (iv) developing internal guidance or supervisory expectation on greenwashing; (v) surveying institutions with specific questions relating to greenwashing, such as asking if institutions possess internal procedures and policies in the area of greenwashing or have established a framework for key functions holders for avoiding conflict of interests which could result in greenwashing, and (vi) reviewing institutions' practices on the management of climate and environmental risks.

Data

165. CAs are planning to identify and monitor greenwashing risk, as a starting point, with the data and information stemming from the Taxonomy Regulation, Pillar 3 disclosures on ESG risks, the SFDR and the CSRD, but also from the institutions' marketing information and customers' complaints and, in some cases, further disclosure obligations introduced by national law.

166. Most CAs however consider that the data and information available is, or will be, only partly sufficient to identify, address and monitor greenwashing risks. This is due to the fact that: (i) (self-selected) information provided by or disclosed by institutions may not allow to identify greenwashing; (ii) the scope of application of some regulations does not capture all institutions, such as CSRD or CRR – in this regard, a potential extension of Pillar 3 requirements on ESG risks to all credit institutions is seen as a positive factor; (iii) CAs may at the moment lack experience and tools for analyzing this data.

Cooperation with other authorities and sanctions

167. Most CAs have not received information from or cooperated with other authorities with regard to greenwashing. In a few cases, CAs have exchanged with financial (e.g. banking supervisors' cooperation) or non-financial authorities (e.g. public prosecutors, ombudsman, consumer authorities).

168. CAs have not taken formal enforcement actions, such as sanctions or other administrative measures, with respect to greenwashing at this point, although available powers may allow to do so in the future.

Financial literacy and education

169. Half of CAs have conducted financial literacy and education initiatives involving the issue of sustainability generally or greenwashing specifically. Some examples mentioned are: a Financial Education Day dedicated to financial sustainability; university or school courses educating on sustainable finance topics and greenwashing; internal and external (e.g. for representatives of the financial industry) trainings on sustainable finance and covering the basic issues of greenwashing; a sustainable finance conference with a focus on the fight against greenwashing; webpages dedicated to sustainable finance and including references to greenwashing; communication campaigns on sustainability and greenwashing e.g. on social networks.

170. CAs consider that financial literacy and education have an important role to play to address greenwashing by raising awareness on sustainability and greenwashing risks. Educational programmes can provide information that help consumers identify greenwashing practices, review retail products' characteristics, and potentially challenge the retail products' alignment with climate-related and environmental considerations. In this regard, the EBA together with ESMA and EIOPA will also seek to incorporate ESG dimensions in the promotion of financial education, as part of the ESAs' mandates to review and coordinate financial education and literacy initiatives of national authorities. However, CAs noted that the role of consumers in being aware of (and combating) greenwashing should be carefully defined, as the main responsibilities should fall on the financial sector, and supervisors in the remit of their functions.

Challenges

171. CAs identified obstacles or challenges towards taking further supervisory activities in relation to greenwashing, which relate to:

- Mandate limitations (see above);
- Human resources constraints (see above) and the need to develop expertise and capacity in supervising greenwashing, e.g. needed upskilling and training of staff on ESG generally or greenwashing specifically;
- Limited evidence and data, hampering a comprehensive view on greenwashing practices (see above);
- The need to articulate any new actions with existing supervisory work programs;
- The need to firstly firmly establish the materiality of greenwashing or the impact of greenwashing-related financial risks on the risk profile of institutions;
- The need to take into account the size of the market for financial products with sustainability features, which may be lower in some jurisdictions;
- The absence of a specific framework on greenwashing, e.g. lack of specific rules on the distribution of retail banking products with sustainability-related characteristics, or of harmonized definition, criteria and materiality benchmarks to identify greenwashing;
- The need to design the best supervisory response, e.g. given the on-going development of the approach to integrating broader ESG risks into supervisory tools.

4.3.3 Supervisory framework

172. This sub-section provides a mapping of level 3 requirements (EBA Guidelines) which may contribute to address aspects of greenwashing through regulating institutions' processes, supervisory processes and consumer protection. It describes how these requirements have been or could in the future be used by CAs to advance mitigation and supervision of greenwashing or greenwashing-related financial risks.

Institutions' loan origination, governance and stress-testing processes

173. The *EBA Guidelines on loan origination and monitoring*⁴⁴ ("LOG") include, among others, minimum requirements for institutions that plan to engage in environmentally sustainable activities, including having in place:

- a list of the projects and activities, as well as the criteria, that the institution considers eligible for environmentally sustainable lending or a reference to relevant existing standards on environmentally sustainable lending;
- the process by which the institutions evaluate that the proceeds of the environmentally sustainable credit facilities they have originated are used for environmentally sustainable activities.

174. Some CAs are already verifying the compliance of institutions with the above-mentioned provisions of the LOG, which apply since 30 June 2021, while others have plans to do so in the near future. Some examples of current supervisory practices are:

⁴⁴ EBA/GL/2020/06

- assessing the above-mentioned requirements of the LOG as part of a broader thematic review on climate and environmental risks, which found that institutions have generally basic practices on the design of credit products with sustainability features, while they are not properly equipped to respond to the litigation and reputational risks arising from such product offering (see also below findings on litigation and reputational risks);
- surveying how the LOG are implemented, including looking at procedures preventing greenwashing. Supervisory findings show that some institutions have not yet fully implemented the required procedures, including a list of eligible environmentally sustainable lending. Follow-up reviews will ensure that remedial actions are implemented and institutions are fully compliant;
- reviewing the credit risk admission policy of an institution. Some shortcomings were identified with regard to compliance with the LOG provisions related to environmentally sustainable lending. The CA will verify the institution's progress, also with a view to identifying or preventing greenwashing;
- collecting some information on if and how institutions define 'green' in their green loan products.

175. It should also be noted that the CAs that did not yet conduct a review of the implementation of the LOG from the perspective of sustainability/greenwashing consider that it would be relevant to do so in the future, especially as demand for greener banking products is expected to rise. Some CAs have plans to integrate the environmental-related aspects of the LOG in the credit risk on-site inspection working plan and/or to review institutions' compliance with these requirements in the coming years.

176. The *EBA Guidelines on Internal Governance*⁴⁵ include, among others, requirements on the new product approval process that credit institutions should adopt, including a well-documented new product approval policy (NPAP), approved by the management body, that addresses the development of new markets, products and services, and significant changes to existing ones. The NPAP should cover every consideration to be taken into account before deciding to enter new markets, deal in new products, launch a new service, or make significant changes to existing products or services. The risk management function and the compliance function should be involved in approving new products or significant changes to existing products, processes and systems.

177. A few CAs have assessed at this point the institutions' NPAP with respect to products with sustainability features, for the purpose of mitigating greenwashing. In the future, several CAs consider that it would be relevant to include this assessment as part of supervisory activities, such as in the context of business models assessments or inspections. This would ensure that institutions

⁴⁵ EBA/GL/2021/05

take into consideration any potential greenwashing aspect when deciding to enter new markets or deal in new products with sustainability features.

178. The *EBA Guidelines on institutions' stress testing*⁴⁶ include requirements for institutions to perform stress testing of conduct-related risk arising because of the current or prospective risk of losses from the inappropriate supply of financial services and the associated litigation costs, including cases of willful or negligent misconduct. Information on the implementation of the Guidelines in relation to greenwashing is not yet available, but these Guidelines may provide a basis to verify if and how institutions consider greenwashing in their conduct-related risk stress testing going forward⁴⁷.

Supervisory review and evaluation process

179. The *EBA Guidelines on the Supervisory Review and Evaluation Process*⁴⁸ (SREP) contain several provisions which may be relevant to assess greenwashing-related financial risks to which institutions are exposed and factor this into supervision.

180. Firstly, CAs should reflect in the SREP assessment available information and outcomes from other supervisory activities, including market conduct and consumer protection activities, in particular in the context of the conduct risk assessment⁴⁹. CAs have in general not yet reflected in their SREP assessments information and outcomes related to greenwashing coming from other supervisory activities. This is also in line with the few cases of greenwashing detected so far and/or brought to the attention of the CAs. Nonetheless, most CAs think that reflecting such information in the SREP may occur going forward, in the event of receiving (material) greenwashing-related information from other supervisory activities and in the broader context of the integration of ESG aspects in the SREP.

181. Secondly, CAs should assess whether institutions, as part of their code of conduct, set out principles on and provide examples of acceptable and unacceptable behaviours linked in particular to financial misreporting and misconduct, including but not limited to mis-selling and other violations of consumer protection laws. Generally, CAs have not yet assessed as part of the SREP whether institutions' code of conduct, or broader ethical corporate and risk culture, help mitigate the risk of greenwashing. It is nonetheless considered as potentially relevant for the future, e.g. it may be taken into account for the assessment of operational and reputational risks.

⁴⁶ EBA/GL/2018/04

⁴⁷ The Guidelines provide that institutions should take into account that conduct-related risk, as part of legal risk under the scope of operational risk, arises because of the current or prospective risk of losses from the inappropriate supply of financial services and the associated litigation costs, including cases of willful or negligent misconduct. In their stress testing, institutions should assess the relevance and significance of the following exposures to conduct-related risk and associated litigation costs: a) the mis-selling of products, in both the retail and the wholesale markets; b) the pushed cross-selling of products to retail customers, such as packaged bank accounts or add-on products that customers do not need; c) conflicts of interest in conducting business; f) poorly designed distribution channels that may result in conflicts of interest with false incentives; and h) the unfair processing of customer complaints.

⁴⁸ EBA/GL/2022/03

⁴⁹ Likewise, the findings from the SREP assessment should inform other supervisory processes.

182. Thirdly, the SREP includes an assessment of the reputational risk to which institutions are exposed. Such an assessment focusses on the overall reputational risk framework, ensuring the ability of the institution to manage and mitigate any reputation events through appropriate communication strategies. Competent authorities should consider both internal and external factors or events that might give rise to reputational concerns considering: sanctions and ongoing known investigations from official bodies; media campaigns and consumer-association initiatives that contribute to a deterioration in the public perception and reputation of the institution; the number of and changes in customer complaints or sudden loss of customers or investors; negative events affecting the institution's peers when they are associated by the public with the whole financial sector or a group of institutions.

183. Generally, CAs have not yet assessed as part of the SREP the potential implications of greenwashing for the reputational risks to which institutions are exposed. However, although not yet for SREP purposes, some CAs are starting to assess how institutions are managing reputational risks associated with environmental risks. One CA in particular observed that institutions are not properly equipped to respond to the litigation and reputational risks arising from green product offering. Few institutions assessed by the CA have processes in place to adopt mitigation actions for identified reputational or liability/litigation risks, while these mitigation actions are particularly important at a time of growing concern over greenwashing. The CA found that some institutions are likely to be insufficiently prepared to handle the repercussions from clients that are exposed to reputational issues, especially when they have themselves made claims related to being green or have issued such products.

184. CAs generally consider that greenwashing aspects could be increasingly reflected in the SREP going forward, especially for the assessment of operational and reputational risks, as the impact of greenwashing on the institutions' risk profile may increase.

Consumer protection

185. The *EBA Guidelines on product oversight and governance arrangements for retail banking products*⁵⁰ (POG Guidelines) aim to address some conduct risks. The Guidelines provide a framework for robust and responsible product design and distribution by manufacturers and distributors for the retail banking products that fall into EBA's consumer protection remit, which are: mortgages, personal loans, deposits, payment accounts, payment services, and electronic money. The requirements for manufacturers cover the manufacturer's internal control functions, identification of the target market, product testing, disclosure, product monitoring, remedial actions and distribution channels. The requirements for distributors, in turn, cover the distributor's internal arrangements, identification and knowledge of the target market, and information requirements. These Guidelines supplement other EBA guidelines that may be relevant to product oversight and governance, such as EBA Guidelines on Internal Governance (see above).

⁵⁰ EBA/GL/2015/18

186. Generally, CAs have not yet assessed whether the EBA POG Guidelines help to prevent and mitigate greenwashing-related conduct risk for retail banking products. However, several CAs expressed the view that these Guidelines would be helpful going forward, from a consumer protection and market conduct perspective, given that they provide a tool to mitigate the risk of greenwashing at all stages from product manufacturing to distribution of retail banking products. A proper application of the Guidelines should lead financial institutions to design green retail banking products in a way that actually addresses the environmental concerns of the target market identified and could help ensure that pre-contractual information and commercial claims related to green products are not misleading.

187. CAs are at different stages in developing their approach to sustainability-related consumer protection and conduct risk, also with respect to the POG Guidelines. One CA is planning to assess sustainability-related conduct risks, which could include greenwashing, using POG as one of the possible tools in 2023 and further. Other CAs mentioned that they are still developing their approach and have not yet come to a view as to what would be the relevant tools.

188. The *EBA Guidelines on remuneration policies for sales staff*⁵¹ aim at providing a framework for financial institutions to implement remuneration policies and practices that reduce the risk of mis-selling by improving the incentives to treat consumers fairly, and thereby reduce the possible conduct costs for financial institutions. The Guidelines apply to remuneration paid to staff employed by credit institutions, creditors, credit intermediaries, payment institutions and electronic money institutions, when selling mortgages, personal loans, deposits, payment accounts, payment services and/or electronic money.

189. A couple of CAs have started to (partly) assess whether institutions' implementation of the EBA Guidelines on remuneration policies for sales staff would help prevent and mitigate greenwashing-related conduct risk. Some CAs think that these GLs would be relevant to consider in the future, as they provide principles which should lead institutions to avoid providing incentives for greenwashing in commercial practices, such as pushing the sale of sustainable products which are not in the best client's interest.

190. The *EBA Guidelines for complaints-handling for the securities and banking sectors*⁵² aim at ensuring the adequate protection of consumers in relation to handling of complaints. CAs have in general not started to assess whether institutions' implementation of the Guidelines would ensure adequate consumer protection when handling complaints related to greenwashing. CAs are nonetheless of the view that these Guidelines would be relevant going forward, considering the rising trend of products manufactured and distributed with an ESG label and potential for misleading statements and declarations by the offering institutions. The Guidelines contain general and procedural requirements for complaint handling, not specifying the possible complaints' causes and covering any complaint related to the products/services under the EBA's remit, which may be suitable to cover greenwashing complaint handling.

⁵¹ EBA/GL/2016/06

⁵² JC 2018 35

191. Besides, complaints are an important source of information for market conduct supervisory activities and any greenwashing-related complaint would help monitor greenwashing over time. (In this regard, the EBA will also publish on a regular basis several retail risk indicators to measure the different types of harm to which consumers may be exposed when buying retail banking products and services. Since misleading information is part of said potential detriment, these indicators may help in the future to assess greenwashing risks, e.g. by analysing data related to the complaints addressed by consumers).

Challenges or preconditions

192. CAs have identified some challenges in or preconditions for using the above-mentioned frameworks for the purpose of addressing greenwashing. These relate to:

- challenges already identified to perform supervisory activities on greenwashing (see above);
- determining the right timing of any review, considering both institutions' learning curve on ESG and other evolving requirements (for example, for a review of implementation of the loan origination Guidelines, the need to consider the potential further role of the EU Taxonomy in supporting the definition of green loans and green mortgages);
- the need for more precise definitions and guidance related to greenwashing, such as in the form of updates to EBA Guidelines, or development of new Guidelines (such as Guidelines on ESG risks management).

4.4 Summary and way forward

4.4.1 Summary of how current frameworks may address greenwashing

193. The overview of existing or planned regulation and supervision reveals that several elements may already, or should going forward, contribute to address aspects of greenwashing. Several measures are however still in the early stages of implementation, while others are being updated or developed, suggesting that benefits of these frameworks are not fully visible yet.

194. On the one hand, the EBA notes that certain communication and marketing rules (e.g. UCPD, MiFID) already aim at tackling misleading statements, regardless of their nature or specifically for environmental ones, and may thus potentially allow to prevent or sanction greenwashing practices from credit institutions, payment service providers and investment firms. The EBA is however not in a position to assess the comprehensiveness or effectiveness of these rules to combat greenwashing at this point, also considering its – or its Competent Authorities' – limited mandate on these regulations.

195. On the other hand, the EU sustainable finance regulatory and supervisory framework is still under development and has not yet fully entered into application. ESG disclosure requirements, for example, will gradually enter into application, with first Pillar 3 disclosures expected in 2023, first

taxonomy-alignment reporting expected in 2024, and other pieces of the framework still to be developed⁵³.

196. Beyond disclosures, regulatory work is also underway at the EU level in several areas which may be relevant, inter alia, to address greenwashing at the (banking) product level (EU Green Bond Standard, EBA's work on green loans and mortgages), enhance reliability of sustainability data and ratings (expected EU legislative proposal on ESG ratings) and more generally tackle misleading environmental claims (EU legislative initiatives including UCPD review to empower consumers for the green transition).

Table 9. Sources of greenwashing and regulatory mitigants

Potential source of greenwashing	Potential EU regulatory mitigant
Marketing and commercial practice	MiFID 2, UCPD
<i>Banking product or service</i>	
Green loans	EU Taxonomy On-going Call for Advice to EBA on green loans and mortgages
Green mortgages	EU Taxonomy On-going Call for Advice to EBA on green loans and mortgages
Deposit	Uncertain (eco-label project on hold)
Green bond	EU Green Bond Standard
Sustainability-linked loan	No specific regulatory initiative
Sustainability-linked bond	Partial application of regulation on EU Green Bond Standard ⁵⁴ Action 1(e) of Commission's sustainable finance strategy ⁵⁵ foresees further reflection on bond labels such as transition or sustainability-linked bond
Financial advice and discretionary portfolio management	SFDR
<i>Entity level</i>	
Claim on current sustainability characteristics	Disclosure frameworks (Taxonomy, Pillar 3, CSRD)
Claim on sustainability results or real-world impacts	Uncertain
Claim on forward-looking commitment e.g. net-zero claim	Disclosure frameworks (Taxonomy, Pillar 3, CSRD) and requirements on transition plans (CSRD, CRD, CSDDD)

⁵³ Such as the delegated acts on activities related to the non-climate objectives of the EU taxonomy and sector-specific standards under CSRD.

⁵⁴ The provisional agreement reached in March 2023 by co-legislators foresees some voluntary disclosure requirements for other environmentally sustainable bonds and sustainability-linked bonds issued in the EU.

⁵⁵ [Communication from the Commission, Strategy for Financing the Transition to a Sustainable Economy](#)

197. Overall, significant parts of institutions' activities appear to be captured by regulatory requirements or initiatives, as shown in table 9 ⁵⁶.

198. Level 3 requirements also contain provisions which may contribute to address aspects of greenwashing by regulating institutions' processes or allowing for the consideration of greenwashing-related financial risks in institutions' risk management and CAs' supervision. Their use for greenwashing purposes remains at relatively early stage but may expand going forward.

4.4.2 Way forward

199. Given both the early stages of the sustainable finance regulatory framework and the existence of other legal frameworks targeting misleading statements and unfair commercial practices, more experience is needed to comprehensively assess the effectiveness and shortcomings of the regulatory and supervisory frameworks to address greenwashing by credit institutions, investment firms and payment service providers, and clarify the need for any further measures.

200. The EBA will pursue its assessment as it prepares its final report on greenwashing and its related risks as well as on the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing and takes note of the views expressed by stakeholders on the appropriate way forward.

Box 2. Stakeholders' views on the way forward

Stakeholders have expressed the following views regarding the way forward:

- Financial institutions consider that the existing and planned regulatory and supervisory framework is already rich and highlight the value of regulatory stability. They tend to caution against additional regulatory initiatives which could increase complexity, in particular if focussed on the financial sector while greenwashing is not inherent solely to financial services.
- Related to the previous point, institutions as well as some other stakeholders consider that the focus should be on effective implementation of the framework, considering both existing legislation on misleading claims (e.g. UCPCD) and the sustainable finance regulatory framework.
- At the same time, stakeholders have put forward several suggestions to further mitigate greenwashing beyond the existing and forthcoming EU sustainable finance regulations. These relate to the gaps identified (see section on gaps and challenges, in particular on transition finance, social and governance aspects, and environmental impact claims) as well as other areas:

⁵⁶ The table includes regulatory initiatives at different phases of development.

- The development of further regulatory guidance is supported by stakeholders, in particular to promote a consistent implementation of the sustainable finance framework, or to clarify how the existing legislation on misleading practices should apply to greenwashing in the financial sector. Some stakeholders suggested to develop guidance on best practices for avoiding greenwashing.
- With regard to transition finance, views range from developing principle-based guidelines to clarify what types of financing can be called “transition finance” to creating new labels, through the development of a framework for credible transition plans with science-based transition milestones.
- Stakeholders also see a need to obtain more transparency on the methodologies behind ESG data and ratings, external reviews and sustainability benchmarks, possibly through regulation of ESG ratings and data providers, to aid understanding and reliability of ESG scores, ratings and benchmarks. On the other hand, some respondents believe that further transparency will be achieved through upcoming rules and do not see a need to develop new regulations.
- The need for more effective supervision is highlighted by some stakeholders, while others express concerns that further supervision may come with additional constraints and burden.
- Some stakeholders believe that additional labels would be useful to distinguish sustainable products, especially if they are ambitious and verified by third parties to ensure their credibility. This is seen as relevant in the future for aspects which are currently under-regulated, such as social and governance aspects. On the other hand, other stakeholders believe that the total number of labels should be reduced to an essential minimum level and that the market is already confronted with a too wide array of labels, potentially already confusing.
- A range of other actions have been suggested by respondents to ESAs’ survey such as: address some complexity and inconsistency issues in the framework such as by simplifying concepts around green activities (do no significant harm, principal adverse impacts) and clearly defining green products with clear criteria for products falling under the disclosure obligations of article 8 and article 9 of SFDR; improve the usability and/or credibility of the EU taxonomy; establish a framework for environmental impact products and (real-world) impact claims; increase the availability of ESG-related data, such as with a European database on the energy efficiency of buildings; provide retail investor with redress mechanisms with regard to greenwashing; improve education and literacy on sustainable finance and provide market participants and especially retail investors with the tools to identify opportunities aligned with their interests and

their sustainability preferences; coordinate efforts at the global level to agree on internationally aligned definitions as well as an internationally aligned liability regime; ensure stability of green criteria to avoid greenwashing accusations due to the evolution of the framework; develop a single approach on the use of proxies/estimates across EU regulations, and define a list of acceptable proxies, to improve comparability of disclosures; establish a register of external verifiers authorized by the European authorities for verifying greenwashing matters; address greenwashing in the real economy as this would significantly reduce the prospects of greenwashing in the financial sector.

Annex – Existing references to greenwashing

References to greenwashing in the EU regulatory framework

a. References available in the EU regulatory framework

There is currently no generally applicable and binding definition of greenwashing available in the EU regulatory framework. However, several regulatory instruments, including four EU regulatory instruments and one EU regulatory guidance, refer to greenwashing in specific contexts:

- The Regulation (EU) 2020/852 (Taxonomy Regulation)⁵⁷ 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.”*
- The Commission Delegated Regulation (EU) 2022/1288 supplementing Regulation (EU) 2019/2088 (SFDR)⁵⁸ (SFDR Level 2) 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.”*
- The Commission Delegated Regulation (EU) 2021/1253, amending MiFID II Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms, 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*

⁵⁷ [Taxonomy Regulation](#)

⁵⁸ [Regulation on sustainability-related disclosure in the financial services sector.](#)

preferences. Investment firms should explain to their clients or potential clients the reasons for not doing so, and keep records of those reasons”.

- The Commission Delegated Regulation (EU) 2021/1257, amending IDD 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, states 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.”*
- The Commission notice providing guidance on the interpretation and application of Directive 2005/29/EC (Guidance on the Unfair Commercial Practices Directive)⁵⁹ 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’.”

“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.”

b. Additional references in the EU framework

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

⁵⁹ [Guidance on the interpretation of the Unfair Commercial Practices Directive](#)

- The “Strategy for financing the transition to a sustainable economy”⁶⁰ of the European Commission 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 Roadmap⁶¹ 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 to 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”*.

Other references to greenwashing outside the EU framework

Definitions by non-EU authorities are the following:

- In its 2018 Discussion Paper on climate change and green finance⁶², 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”*.
- In Guidance⁶³ 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”*.

⁶⁰ [Strategy for financing the transition to a sustainable economy](#)

⁶¹ [Sustainable Finance Roadmap 2022-2024 \(europa.eu\)](#)

⁶² <https://www.fca.org.uk/publication/discussion/dp18-08.pdf>

⁶³ [Investor protection: preventing greenwashing | FINMA](#)



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