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Green claims in focus webinar series

Financial sector – insurance, funds, banking

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Speakers

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Sustainability disclosure legal framework – General overview

EU

- Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector “**SFDR**” or “**Disclosure regulation**”
- Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 or “**Taxonomy Regulation**”
- Directive (EU) 2022/2464 amending Regulation (EU) No. 537/2014, Directive 2004/109/EC, Directive 2006/43/EC, and Directive 2013/34/EU as regards corporate sustainability reporting or “**Corporate Sustainability Reporting Directive – CSRD**”
- Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 or “**Corporate Sustainability Due Diligence Directive – CSDDD”**.

UK

- ESG 4.3.1 R contains the “**Anti-Greenwashing Rule – AGR**”.
- ESG Sourcebook has the UK regime for certain financial products the “**Sustainability Disclosure Requirements – SDR**”.
- Mandatory “**TCFD Disclosures**” are contained in ESG Sourcebook, Companies Act and Listing Rules

ESMAs final report on Greenwashing of 4 June 2024

In the absence of a clear definition of greenwashing at the legislative level, financial sector supervisory authorities have so far played an important interpretative role, with a view to achieving convergence in application.

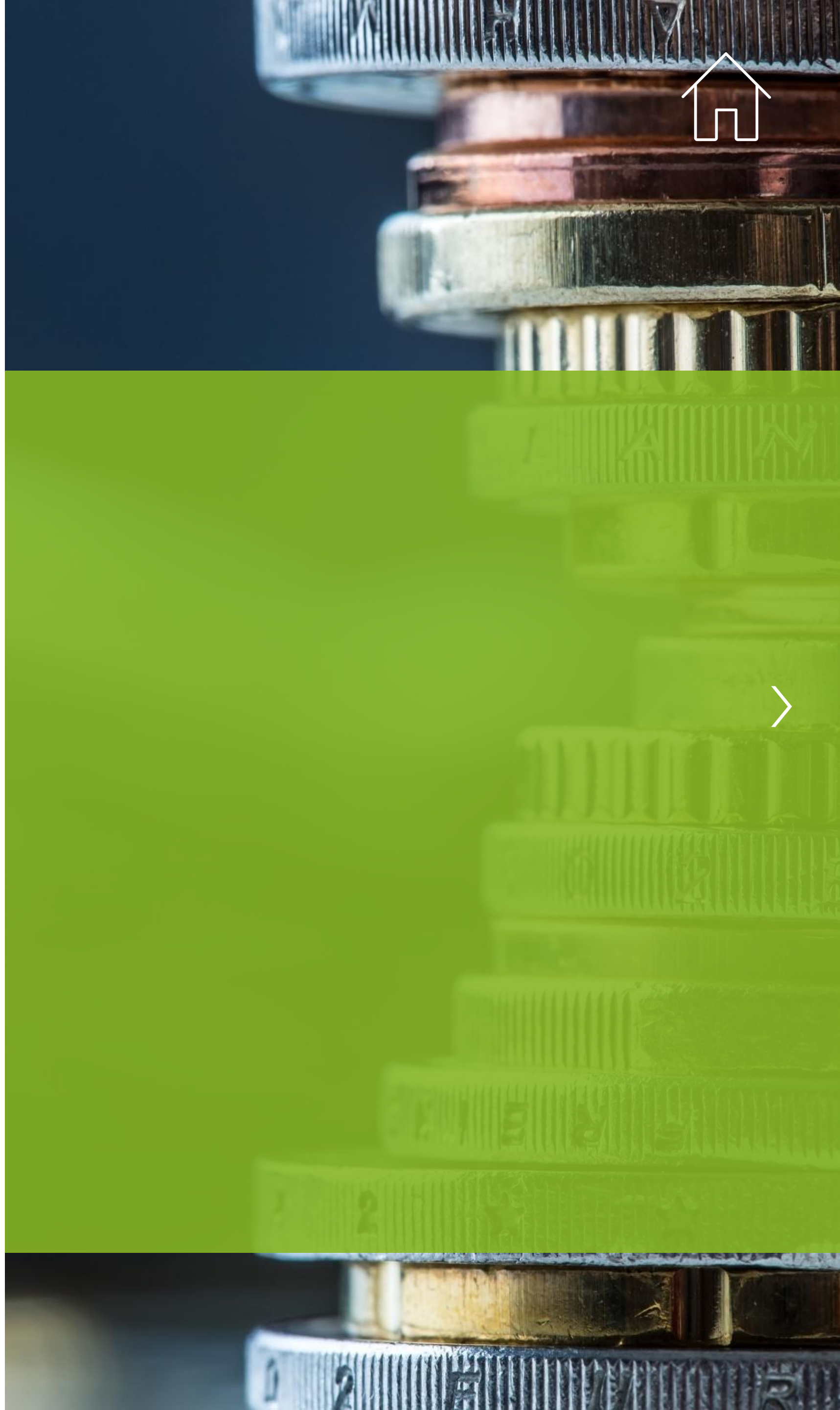
ESMA has been particularly active in clarifying misleading statements on sustainability, highlighting in the **Final Report on Greenwashing of 4 June 2024** how the **initiatives taken by national supervisory authorities to address this phenomenon are currently few and mainly inspired by constructive dialogue with market operators rather than sanctions.**

How do ESAs define "greenwashing"?
"…a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services"

FCA Guidance on Anti-Greenwashing Rule of 23 April 2024

Sustainability related claims must be:

- **Correct** and capable of being **substantiated**
- Be **clear** and presented in a way which can be **understood**
- Be **complete** – i.e. not omit or hide important information
- Be **fair and meaningful** in relation to any **comparisons** to other products or services



Funds Sector

State of play: Green claims in the investment fund sector

- The European Supervisory Authorities (**ESAs**) understand **greenwashing** as a *practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.*
- **No standalone, horizontal regulation in the EU** specifically on “green claims” in the investment fund sector; instead, sectoral frameworks govern sustainability statements and disclosures, notably the SFDR and the EU Taxonomy, alongside UCITS/AIFMD requirements on organisation, risk management, and fair, clear and not misleading communications.
- **In the UK** green claims are generally governed by the AGR – with the SDR regime also effectively governing disclosures in relation to particular funds.

Supervision and sanctions: Recent developments

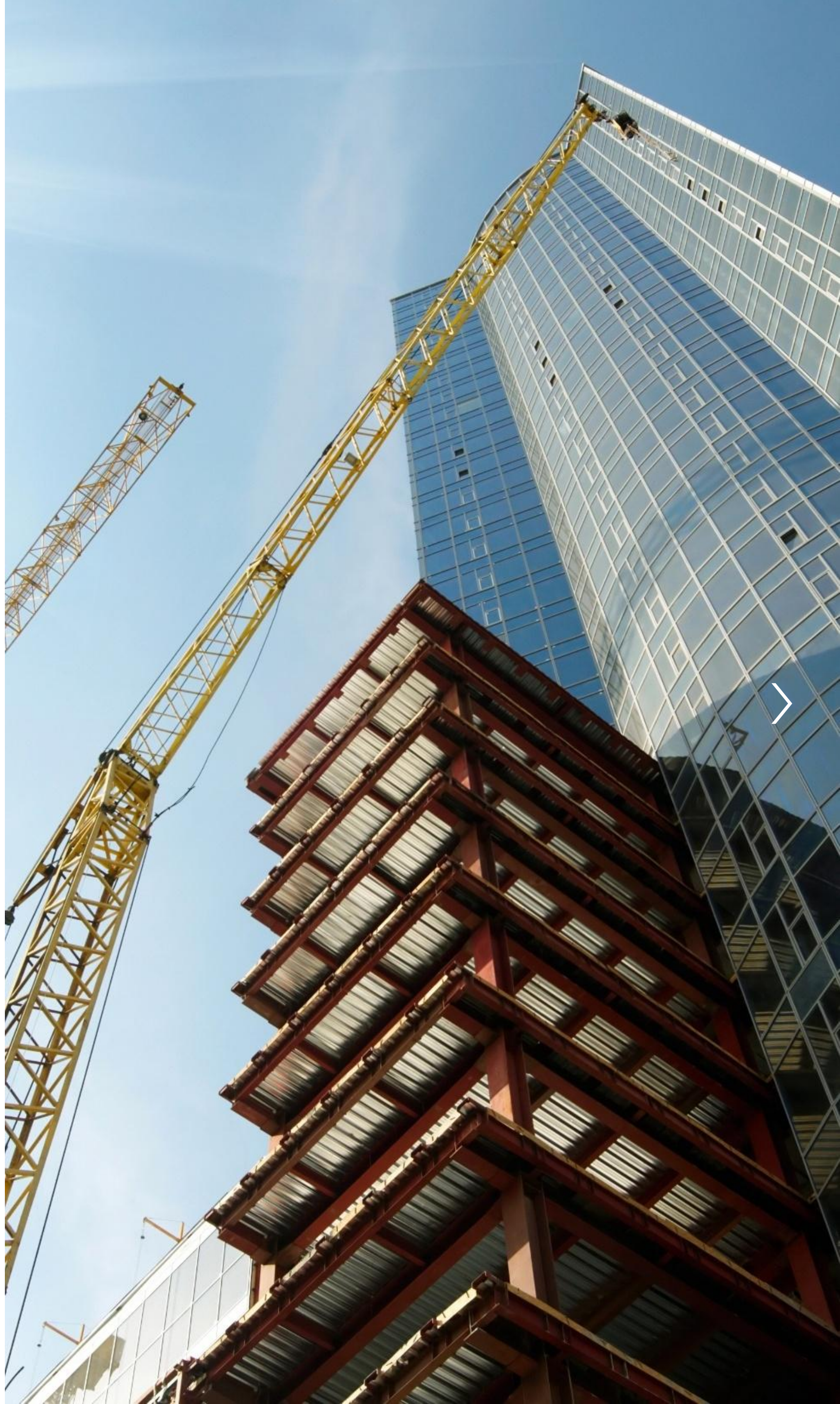
- 15 October 2024: **first administrative sanction in Luxembourg** linked to SFDR disclosures, grounded in breaches of the UCITS law requirements to maintain sound administrative procedures and adequate internal control mechanisms.

  → Particular attention from the regulators to sustainability information and approach towards fund manager's accountability in respect to what is committed to investors.

- **ESMA Guidelines on funds' names** published to frame the use of "ESG" and "sustainability" terms in fund names, treating the name as a first marketing communication and imposing substantive conditions for using such terms.
- **CSSF scrutiny of sustainability risk claims and SFDR disclosures**: recent report highlights (i) the need to strengthen disclosure quality and accessibility, (ii) insistence on alignment between disclosures and marketing communications, and (iii) illustrative findings such as inconsistent sustainability metrics, vague or unsubstantiated ESG strategies, and insufficient website disclosures.

Enforcement focus: What supervisors test

- **Substantiation and evidence**: supervisors assess whether sustainability characteristics, binding elements, KPIs, and exclusions are defined precisely, applied in portfolio construction, and backed by data and records.
- **Consistency across documents**: pre-contractual, periodic, website, and marketing materials must be coherent and mutually reinforcing; fund names and objectives must match investment process and holdings.
- **Governance and controls**: management body oversight, roles and responsibilities, data due diligence, model/third-party provider oversight, and post-trade monitoring must support sustainability claims and limit greenwashing risk.



Looking ahead: EU SFDR 2.0 product categorisation

- Policy objective: reduce greenwashing risk by introducing **clearer product categories** (e.g., "sustainability" and "transition") with defined criteria; sustainability claims under SFDR would be anchored to category-specific thresholds and indicators.
- Greater coherence with naming and marketing rules: claims to be framed by objective criteria, supporting the **ESMA funds' names regime** and enhancing comparability for investors.
- Article 13 of the proposal: expected to reinforce the linkage between marketing communications, binding elements and strategy, and to tighten pre-contractual and periodic disclosures:
  - **Clear, fair and not misleading sustainability** claims which are consistent with the sustainability features of the financial product
  - Sustainability-related claims **in the names** and in marketing communication **limited to** financial products which comply with one of the category
  - Commission to adopt a delegated act to determine the **content and standard presentation** of sustainability-related information in marketing communications

Banking sector

EU sustainability disclosure legal framework – Banking

Directive (EU) 2024/1619 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (**Capital Requirements Directive VI or CRD VI**);

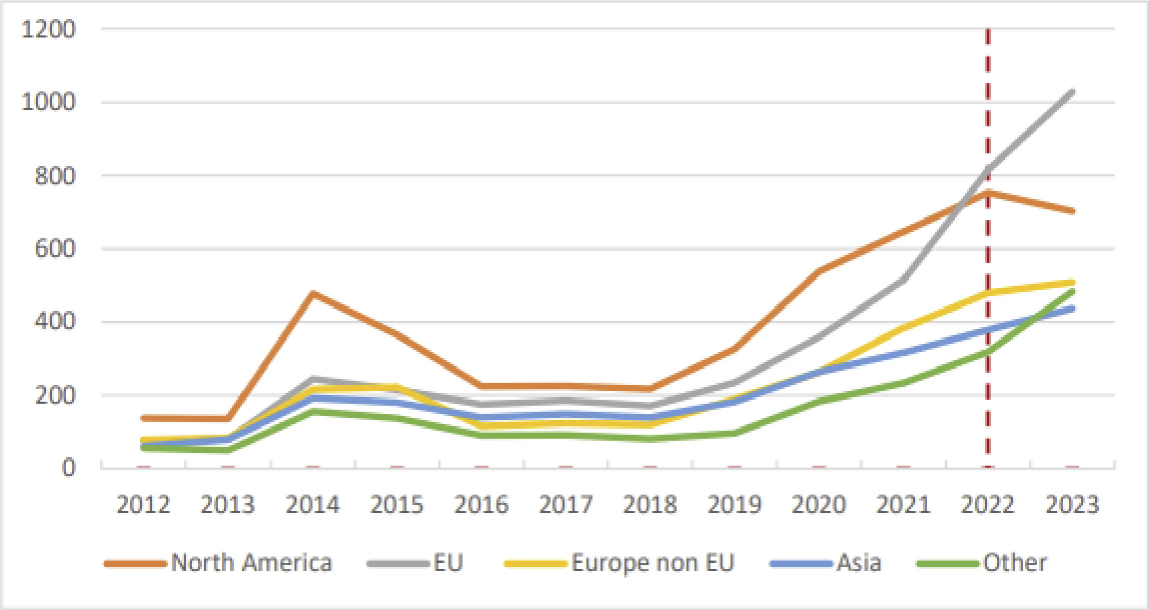
Art 76, par 2 on ESG risks: the management body must develop and monitor the implementation of **"specific plans that include quantifiable objectives and processes for monitoring and managing the financial risks arising in the short, medium, and long term from ESG factors"**

Art. 87-bis governance and ESG: Entities must **equip themselves**, within the framework of their *governance* mechanisms, **with appropriate strategies, policies, and systems for identifying, measuring, managing, and monitoring ESG risks in the short, medium, and long term**.

EBAs final report EBA/REP/2024/09 on greenwashing monitoring and supervision

As a whole (**all companies, sectors and regions**), the **total number of alleged cases of misleading communication on ESG related topics** reported by stakeholders continued to **rise in 2023 – by 21.2%** (2119 alleged cases in 2023 vs 1749 in 2022), which was 7.3 times higher than in 2012. Even though the number of alleged cases declined in North America (-6.8%), it continued to grow in all other regions in 2023 with **+26.1% in the EU, +6% in Europe non-EU and +51.7%** in the region 'Other'. The slight decline in the North America can possibly be explained with the backlash in ESG matters and thus less reporting on it.

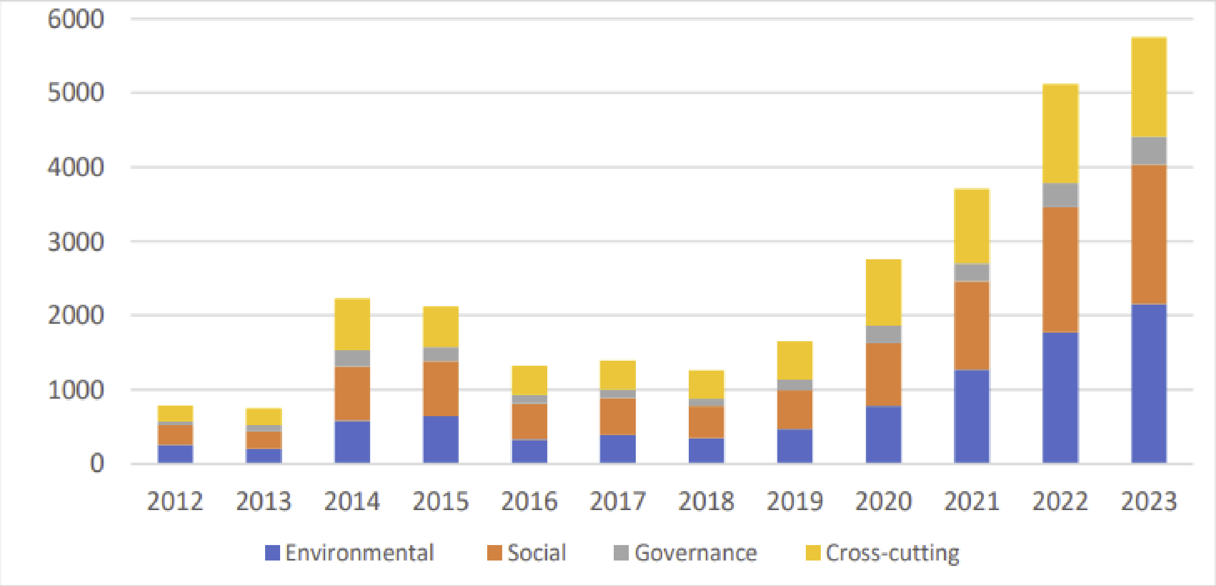
FIGURE 1. TOTAL ALLEGED INCIDENTS OF MISLEADING COMMUNICATION ON ESG RELATED TOPICS BY GEOGRAPHIC LOCATION (2012-2023)



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

EBAs final report (2)

FIGURE 2. TOTAL ALLEGED INCIDENTS OF MISLEADING COMMUNICATION ON ESG RELATED TOPICS



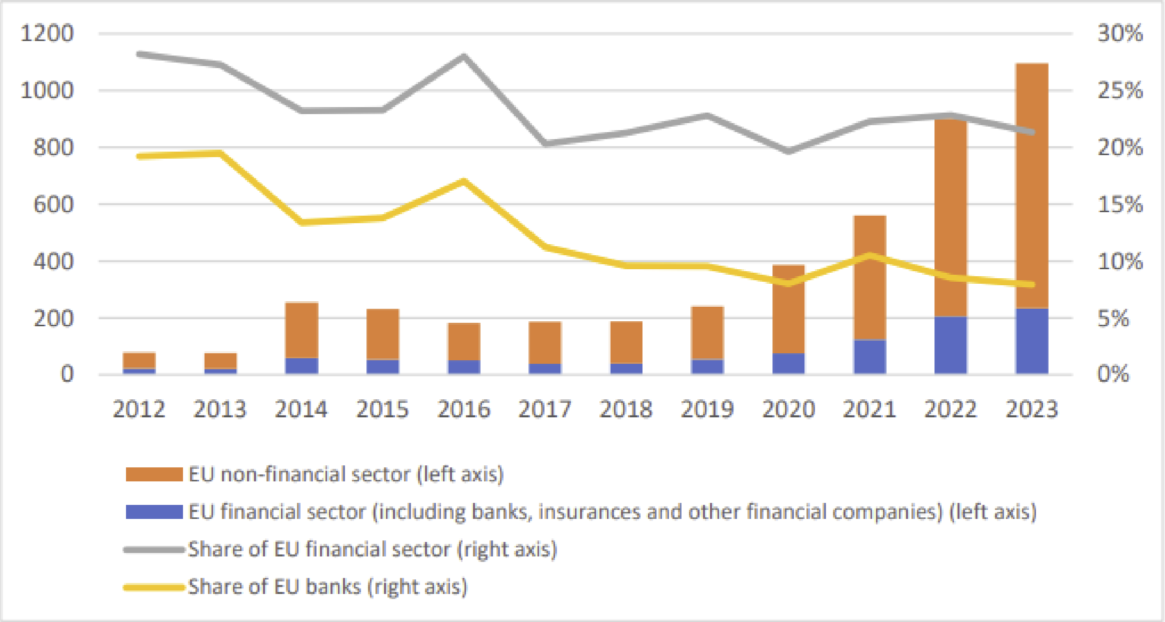
Source: RepRisk ESG Data Science, www.reprisk.com

Alleged cases of greenwashing also **continued to increase in all three ESG** dimensions in 2023, with **environmental and social related** issues as the **most prominent topics subject to greenwashing (37% and 33% respectively of all alleged cases**). Alleged greenwashing cases related to governance issues (such as anti-competitive practices, corruption, bribery, money laundering, tax evasion and executive remuneration) also increased but remain relatively small. Finally, **cross-cutting incidents** that include any combination of environmental, social and/or governance related issues **accounted for 23% of all alleged cases**.

EBAs final report (3)

Alleged greenwashing cases in the EU financial sector (including the EU banks) **increased** significantly until **2022** (around 206 cases reported in 2022 against 40 in 2018), and the growth continued in 2023 (13.6% increase compared to 2022). Moreover, the EU financial sector accounts for a higher share of the total alleged greenwashing cases reported by stakeholders on EU companies in 2023. **In 2023, the EU financial sector accounted for 21% (including 8% for the EU banks)** of the total alleged greenwashing cases involving an EU company. However, a slight decrease (from 23% and 9% respectively) has been observed here compared to 2022.

FIGURE 6. NUMBER OF ALLEGED GREENWASHING INCIDENTS IN THE EU FINANCIAL AND BANKING SECTOR



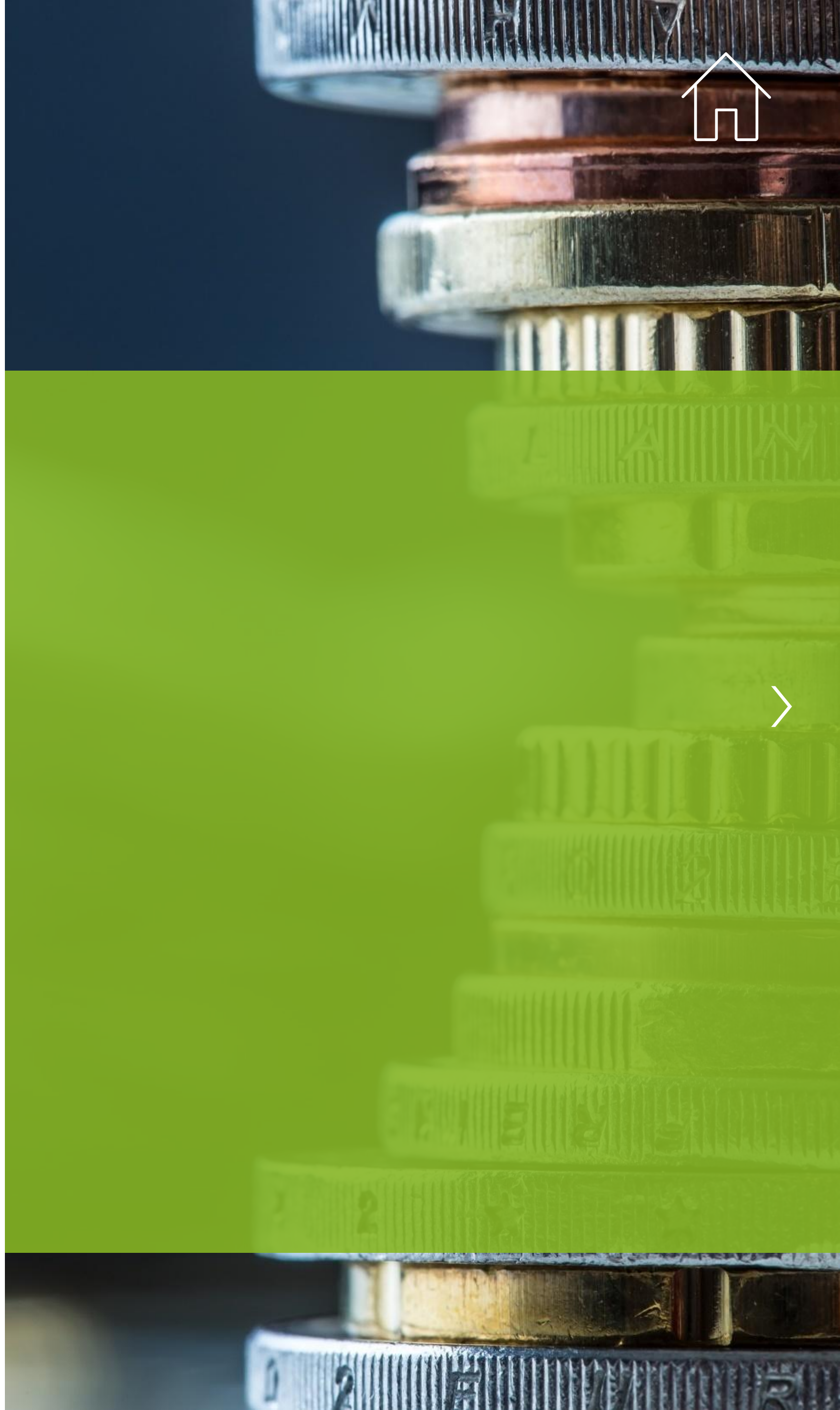
Source: RepRisk ESG Data Science, www.reprisk.com

EBA's Consultation paper EBA/CP/2025/13, 9 July 2025 on revision of EBAs guidelines on product oversight and governance

The proposed update of the EBAs guidelines follows the EBAs final report on greenwashing monitoring and supervision issued on 4 June 2024. The report lays down recommendations to address greenwashing-related aspects within prudential and conduct supervision.

Based on the observations made therein whereas risk of consumer detriment increases where financial institutions fail to comply with the highest standards of business conduct when offering product with ESG features, the EBA concluded that a revision of its existing POG Guidelines of retail banking products is needed.

The approach is to adjust in a proportionate and targeted manner limited number of the existing requirements in the Guidelines related to the subject matter, manufacturer's internal control functions, the target market, distribution channels, information for distributors and information and support for the manufacturer's arrangements.



UK cases on greenwashing

HSBC – 2022 ASA enforcement against HSBC poster ads highlighting HSBC's green initiatives, but omitting HSBC's funding of fossil fuels. ASA ordered HSBC to not run those ads again and to ensure future marketing clearly discloses its carbon footprint and financing of emissions when making eco-claims.

Lloyds – 2024 ASA enforcement against Lloyds campaign promoting Lloyds' support for a low carbon economy and nature projects. One ad was found to be misleading by omission due to omitting that Lloyds' still finances heavy carbon emitters.

Insurance sector

EIOPA Opinion on sustainability claims and greenwashing in the insurance and pensions sectors

- The European Insurance and Occupational Pensions Authority (EIOPA) issued an **Opinion** dated **23 May 2024** applicable to all product and entities under EIOPA's remit.
- The Opinion sets out **four principles** for sustainability claims:

  Principle 1: Sustainability claims made by a provider should be accurate, precise, and should fairly represent the provider's profile, and/or the profile of its product(s);

  Principle 2: Sustainability claims should be substantiated with clear reasoning, facts and processes;

  Principle 3: Sustainability claims and their substantiation should be accessible by the targeted stakeholders;

  Principle 4: Sustainability claims should be kept up to date, and any material change should be disclosed in a timely manner and with a clear rationale.
- EIOPA referred to its Opinion also to provide advice to the European Commission on greenwashing risks and the supervision of sustainable finance policies (advice dated **4 June 2024**)

Examples of sustainability claims

- An insurance provider does not apply the same level of rigor in its sustainability reporting as it does in its financial reporting. This leads the insurance provider to make a material misstatement in the sustainability information it reports. This claim is not accurate due to the sustainability information reported being wrong (**EIOPA principle 1**)
- An insurance provider has a Multi-Option Product (MOP) that is named "*Climate protection*". Most of the **investment** options proposed by the insurance provider's MOP are not aimed at protecting the climate. This claim is not substantiated (principle 2) because the sustainability related name of the MOP is not consistent with its investment options (**EIOPA principle 2**)
- An insurance provider claims to be a "*sustainability leader*" thanks to a rating given by a third party rating provider. It does not explain what the rating measures. In this case, the rating solely measures the sustainability risk profile of the entity; it does not assess the impact of the provider's activities on sustainability factors. This claim is unsubstantiated because the rating does not explain what it measures which may lead consumers to believe that they are investing in a provider that is positively impacting the environment or society, whereas this is not necessarily the case (**EIOPA principle 3**)

EIOPA Advice to the European Commission on greenwashing risks and the supervision of sustainable finance policies

Following its Opinion, EIOPA provide advice to the European Commission on greenwashing risks and the supervision of sustainable finance policies (advice dated **4 June 2024**).

The Advice sets out **nine proposals** aimed at enhancing the supervision of greenwashing and at improving the sustainable finance

- Proposal 1 – Using the ESAs common understanding of greenwashing as a reference point
- Proposal 2 – Building a common EU supervisory approach in relation to sustainability claims and greenwashing
- Proposal 3 – Tackling greenwashing through enhanced supervision and targeted supervisory activities
- Proposal 4 – Preventing greenwashing
- Proposal 5 – Enhancing supervisory resources and expertise to tackle greenwashing
- Proposal 6 – Closing the gap related to non-life insurance products with sustainability features
- Proposal 7 – Consumer-centric sustainability preferences
- Proposal 8 – A sustainability-related investment framework that works for insurance and pension consumers and providers
- Proposal 9 – Enhancing sustainable finance and mitigating greenwashing in the occupational pensions sector

Product – Level disclosure

What are the sustainability features of the product?
- *Xxxxx*
- *Xxxxx*

New section

Xxxxx Insurance
Insurance Product Information Document
Company: <Name> Insurance Company
Product: <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]
What is this type of insurance?
[Description of insurance]

What is insured?
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx
✓ Xxxxx

What is not insured?
✗ Xxxxx
✗ Xxxxx
✗ Xxxxx
✗ Xxxxx
✗ Xxxxx

Are there any restrictions on cover?
! Xxxxx
! Xxxxx
! Xxxxx
! Xxxxx
! Xxxxx

What are the sustainability features of the product?
- Xxxxx
- Xxxxx

Where am I covered?
✓ Xxxxxx

What are my obligations?
— Xxxxxx
— Xxxxxx
— Xxxxxx
— Xxxxxx

EIOPA is of the view that there may be merit in developing jointly product categorisation and product disclosure. Therefore, EIOPA believes that products fitting into the categories should be able to claim in disclosure or marketing material (e.g., advertisements, product name) that they have sustainability features.

EIOPA does not currently see the need for a dedicated pre-contractual document giving consumers information on the sustainability features. However, EIOPA sees **merit in requiring that products show their sustainability features in the existing Insurance Product Information Document** (IPID), which has been the primary standardised consumer-facing pre-contractual disclosure document

IVASS - Analysis of IBIP's policies with ESG characteristics

On **March 2024** IVASS asked 18 insurance companies for info on sustainability policies, including names and SFDR classification, how sustainability is implemented in the POG policy, investment selection methods, contracts, premiums and sales network promotion and customer preferences.

IVASS analysis carried out took into account the regulatory framework on sustainability and the work of EIOPA in this area and it is also **aimed to identify possible cases of greenwashing** in the insurance sector.

Most policies are **multi-branch** (**45%**), with **unit-linked** (**29%**) and **revaluable** (**25%**) policies following. Insurers often included ESG assets in existing policies rather than creating new ones ad hoc.

92% of policies were founded **'light green'** (promoting environmental/social characteristics in investment). No 'dark green' policies (sustainable investments as an objective) were reported.

ESG criteria in investment and divestment decisions

ESG criteria can be included in investment and divestment decisions by applying different approaches, each characterised by specific objectives and methodologies

It is possible to apply multiple approaches simultaneously, as they are not mutually exclusive

The most common approaches are :

- **Explicit exclusions** (production/sale of weapons, pornography, tobacco production/use of fossil fuels)
- **Internationals conventions** (compliance with norms and standards defined by OCSE, ONU, International Agencies)
- **Best in class** (favour business partners who can guarantee better ESG criteria)
- **Thematic investments** (renewable energy, energy efficiency, digital technology, ageing population, water resource management)
- **Engagement** (promoting dialogue between investors and issuers on sustainability issues)
- **Voting** (providing for the exercise of voting rights on ESG issues)
- **Impact investing** (investing in companies, institutions or funds with the explicit intention of having a positive environmental and social impact)

Source: Forum for Sustainable Finance and ANIA

New regulation on Greenwashing

On **5 November 2025**, the Italian Council of Ministers approved the draft Legislative Decree transposing **EU Directive 2024/825** on consumer empowerment for the green transition through improved protection against unfair practices and enhanced information

The new regulation will introduce **more effective tools** to tackle unfair commercial practices related to the environmental and social sustainability of products (so-called '*greenwashing*') and provides that environmental communication must be based on principles of clarity and verifiability, for the benefit of consumers

New commercial practices definitions ('*environmental claim*', '*generic environmental claim*', '*sustainability label*')

Other ESG litigation

ENI S.p.A. vs AGCM

- The AGCM fined the fuel distributor ENI S.p.A. 5 million EUR for misleading advertising (the improper use of the term “**green**”) in its 'ENI Diesel+' campaign
- After four years the Council of State overturns the AGCM ruling (cancelling the fine) on the Diesel+ case and defines the concept of ‘*green claim*’

San Benedetto S.p.A. vs AGCM

- The AGCM has identified unfair practices in the environmental claims and assertions used by Acqua Minerale San Benedetto S.p.A. to promote and market products in its ‘Ecogreen’ line
- San Benedetto S.p.A. has removed the misleading statements from its messages. In particular, the words ‘CO2 Zero Impact’ have been removed from the label, packaging and all commercial communications, including TV adverts and the website. The environmental claims and graphics referring to natural elements have also been modified

Questions

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Further information can be found at **cms.law**

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