

# Advice to the European Commission on Greenwashing

ANNEX TO THE PROGRESS REPORT

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**eiopa**

European Insurance and  
Occupational Pensions Authority

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# 1. ANNEX

## 1.1. METHODOLOGY

To inform its advice and to tackle the various topics outlined in the CfA, EIOPA has set out various dedicated tools and data collection exercises from different sources and stakeholders:

- ▶ EIOPA set up a workstream tasked with leading the work on the CfA, composed of EIOPA staff and National Competent Authorities staff. This to ensure adequate and timely information sharing between NCAs and EIOPA, including on NCAs early experiences with the supervision of sustainability-related requirements and greenwashing.
- ▶ EIOPA sought input from its Members (NCAs) via a survey that ran from November 2022 to February 2023. This survey covered the definition, risks, and impacts of greenwashing, occurrences of greenwashing, supervisory resources dedicated to greenwashing, supervisory practices and experiences in dealing with greenwashing, as well as insurance and pension specific questions.
- ▶ Jointly with the other two ESAs (EBA, ESMA) EIOPA carried out a Joint ESAs call for evidence to stakeholders on greenwashing. This allowed EIOPA to gather substantial input from stakeholders on how to understand the key features, drivers and risks associated with greenwashing, to collect examples of potential greenwashing practices and to seek feedback on insurance and pensions specific aspects. To inform the joint drafting of the ESAs cross sectoral parts included in this progress report, EIOPA, alongside EBA and ESMA, assessed the inputs provided by all stakeholders, which amounted to 138 unique responses. To inform the drafting of its progress report, EIOPA assessed all the inputs by stakeholders that are relevant to its remit, which amount to 79 unique responses. Filtering of the EIOPA relevant stakeholders was done by type of respondents and included all those that replied to EIOPA's section of the CfE.
- ▶ EIOPA carried out structured interactions with stakeholders (NGOs, consumer representatives, industry, extra-EU authorities, international organisations) to discuss how they see greenwashing, their approach in tackling and mitigating greenwashing when relevant, and their approach in implementing sustainable finance requirements when relevant. These interviews also served to gather feedback on whether the current policies are leading to the desired outcomes – i.e., ensure consumers are aware about whether the products marketed to them as “with sustainability features” do indeed have those sustainability features. EIOPA plans on continuing to carry out these structured interviews in the second half of 2023 and early 2024 to further inform the drafting of the final report.

- ▶ In line with its usual practices, EIOPA consulted its stakeholder groups, the Insurance and Reinsurance Stakeholder Group (IRSG) and the Occupational Pensions Stakeholder Group (OPSG) and sent each of them a request for input on greenwashing covering insurance and pension specific aspects. The OPSG provided its input on 14 March 2023<sup>1</sup>. The IRSG provided its input on 13 March 2023<sup>2</sup>
- ▶ EIOPA carried out an analysis of sustainability-related wording used by unit-linked or with profit products. To do so it listed around 200 sustainability-related words and translated them in all EU languages. EIOPA then searched for these words in the optional cell “C0120 Product Denomination” of Solvency II reporting template S.14.01 at Q4 2021. It then applied a data quality process to ensure that products included in this list had a sustainability-related word in the name.
- ▶ EIOPA carried out an analysis of sustainability-related names used by assets held in unit-linked products. To do so it listed around 200 sustainability-related words. EIOPA then searched for these words in the optional cell “C0190 Item Title” of Solvency II reporting template S.06.02 at Q4 2021. It then applied a data quality process to ensure that investment options included in this list had a sustainability-related word in their name.

Beyond dedicated data collection exercises, EIOPA gathered information from other ongoing and completed projects across EIOPA to further inform its view on greenwashing:

- ▶ EIOPA used the data gathered in the context of the Cost and Past Performance report to analyse data on article 8 and 9 SFDR insurance products, including at investment option level in case of MOPs, and assess their sustainability and non-sustainability features.
- ▶ EIOPA used the findings of the 2022 Consumer Trends Report and the results of the Flash Eurobarometer survey carried out in June 2022 to better understand consumers views on products with sustainable features.
- ▶ Further, EIOPA is in the process of carrying out a mystery shopping exercise on products with sustainability features in a Member State and will carry out a coordinated mystery shopping exercise on the advice process for IBIPs in multiple Member States. Where it finds the results of the two mystery shopping exercise relevant, EIOPA plans on using them to further inform its advice, particularly in relation to greenwashing in the sales and advice processes.

## 1.2. JOINT ESAS HIGH LEVEL UNDERSTANDING OF THE KEY FEATURES GREENWASHING - DETAILED

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<sup>1</sup> Occupational Pensions Stakeholder Group's Advice on EIOPA's technical advice on greenwashing risks and supervision of sustainable finance products - [link](#)

<sup>2</sup> Insurance and Reinsurance Stakeholder Group's Advice on EIOPA's technical advice on greenwashing risks and supervision of sustainable finance products - [link](#)

According to the request for input from the European Commission (COM), *“the ESAs are 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, which builds on existing EU definitions used in the context of greenwashing in general (e.g., the Unfair Commercial Practices Directive), in the financial market in particular (e.g., the SFDR, Taxonomy Regulation, the latest sustainable finance strategy, etc...), and other potential definitions used by the market”.*

For the European Supervisory Authorities’ (ESAs’) work to deliver on the COM’s mandate, misleading sustainability-related claims are considered across the environmental, social and governance (ESG) aspects. The COM’s request for input broadly refers to “sustainability claims” consistent with an expectation that the ESAs should encompass the entire ESG spectrum in their work.

In the sections below, the ESAs lay out 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 common high-level understanding of greenwashing into a level 1 provision, but to use it as a basis for future developments in the regulatory framework and to prioritize supervisory action.

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.

This document 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.

### 1.2.1. EXISTING REFERENCES TO GREENWASHING

#### 1.2.1.1. References to greenwashing in the EU regulatory framework

##### 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)<sup>3</sup> states in its recital 11: *“In the context of this Regulation, **greenwashing** refers to the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met.”*
- ▶ The Commission Delegated Regulation (EU) 2022/1288 supplementing Regulation (EU) 2019/2088 (SFDR Level 2<sup>4</sup> contains the following:
  - In its explanatory memorandum: *“Disclosure obligations and the assessment of sustainability preferences support the policy objective of reducing the occurrence of **greenwashing**, a form of mis-selling.”*
  - In its recital 16: *“It is therefore necessary to address concerns about ‘**greenwashing**’, that is, in particular, the practice of gaining an unfair competitive advantage by recommending a financial product as environmentally friendly or sustainable, when in fact that financial product does not meet basic environmental or other sustainability-related standards.”*
- ▶ 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 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

<sup>3</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance) - [link](#)

<sup>4</sup> Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports – [link](#)

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)<sup>5</sup> states in part 4.1.1:
  - *“The expressions ‘environmental claims’ and ‘green claims’ refer to the practice of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services. This may be due to its composition, how it has been manufactured, how it can be disposed of and the reduction in energy or pollution expected from its use. When such claims are not true or cannot be verified, this practice is often called ‘greenwashing’.”*
  - *“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.”*

#### References available in the EU regulatory framework

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

- ▶ The “Strategy for financing the transition to a sustainable economy”<sup>6</sup> 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 Roadmap<sup>7</sup> defines greenwashing as *“market practices, both intentional and unintentional, whereby the publicly disclosed sustainability profile of an issuer, and the characteristics and / or objectives of a financial instrument or a financial product either by action or omission do not properly reflect the underlying sustainability risks and impacts associated to that issuer, financial instrument or financial product. The greenwashing*

<sup>5</sup> Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market – [link](#)

<sup>6</sup> European Commission’s Strategy for financing the transition to a sustainable economy – [link](#)

<sup>7</sup> [Sustainable Finance Roadmap 2022-2024 \(europa.eu\)](#)

*phenomenon could be generally identified as a misrepresentation, mislabelling, mis-selling and / or mis-pricing phenomenon”.*

#### 1.2.1.2. Other references to greenwashing outside the EU framework

##### Definition by non-EU authorities

- ▶ In its 2018 Discussion Paper on climate change and green finance<sup>8</sup>, the UK FCA referred to greenwashing as “marketing that portrays an organisation’s products, activities or policies as producing positive environmental outcomes when this is not the case”.
- ▶ In Guidance<sup>9</sup> published in 2021, the Swiss FINMA referred to greenwashing as “the risk that investors and clients will be consciously or unconsciously misled about the sustainable characteristics of financial products and services”.

### 1.3. SUPERVISORY GREENWASHING: DETAILS

#### 1.3.1. SUPERVISORY CAPACITIES: DETAILS

**10 NCAs believe having sufficient resources and expertise to tackle greenwashing.** Two of them noted that while they have limited resources, they believe it to be adequate because of the low offering of products with sustainability features in their market. Another NCA mentioned the ongoing learning process of its staff due to the newness of the topic and of the regulatory requirements, and that it is seeing a gradual a shift of internal resources involved in greenwashing from its supervisory policy staff towards its supervision staff. Yet another NCA highlighted that they might be facing gaps in certain areas to fully tackle greenwashing. One NCA mentioned the creation of a cross-sectoral expert group supporting its supervisors with supervisory tools and expert advice on matters related to greenwashing.

**17 NCAs believe not having sufficient resources and expertise to tackle greenwashing.** Three NCAs mentioned that they are currently building the required expertise by providing training to staff on sustainability-related matters including greenwashing. Another NCA noted other supervisory priorities (e.g., inflation) and resource constraints which have led to little activity and therefore experience on greenwashing. Eight NCAs highlighted the need for new expertise to be developed internally as well as recruiting of expert staff in order to adequately supervise greenwashing in a context where the current sustainable finance regulatory framework is complex and extensive.

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<sup>8</sup> UK financial Conduct Authority - Climate Change and Green Finance – [link](#)

<sup>9</sup> Investor protection: preventing greenwashing | FINMA – [link](#)



Another NCA pointed to the limited availability of guidance on the supervision of greenwashing, which prevents its adequate supervision.

**2 NCAs did not provide a view as to whether they believe having sufficient resources and expertise to tackle greenwashing.** One NCA noted that, while it has sufficient resources to supervise sustainability-related requirements within its remit, it does not have an explicit mandate to tackle greenwashing. If its mandate was to be broadened to tackle greenwashing practices, the NCA notes that it would need additional resources. The other NCA highlighted the high level of internal expertise on sustainable finance and that its staff is provided with continuous training in the field of sustainable finance. However, it highlights that there are some challenges in the identification of greenwashing (e.g., regulatory framework not fully into place, resource constrains), which requires appropriate and reliable data as well as expertise. To mitigate this the NCA plans on recruiting new staff with the adequate expertise.

### 1.3.2. PREVENTING, IDENTIFYING, MONITORING, AND INVESTIGATING GREENWASHING: DETAILS

- ▶ Given the newness and complexity of the regulatory framework, one NCA prioritised dialogue with the industry and offered guidance, for example through roundtable discussions with industry associations and groups of companies under the NCAs' remit. The NCA further plans on offering guidance to the industry notably through reports and other external communication. The same NCA has set out a detailed list of priorities it intends to focus on to tackle greenwashing in the future such as maintaining a dialogue with the industry, improving access to sustainability-related information, improving transparency around sustainability data and ratings, improving sustainable financial products' disclosures, following up on information provided in the advice process, integrating sustainability factors into their authorisation process, building capacity in the area of sustainable finance including consumer financial literacy initiatives, as well as continue to cooperate with other authorities on greenwashing.
- ▶ Getting the insurance and pension sectors ready for the SFDR by setting out its supervisory expectation and offer guidance to the industry was also the focus of another NCA. It did so by publishing in late 2020 an extensive letter about expectations with regard to SFDR compliance as well as other communications to the market such as newsletters and presentations. It also held dialogues with pension stakeholders on SFDR as well as insurers and insurance distributors on compliance with SFDR and with the new IDD sustainability requirements (POG and suitability assessment). In the NCA's dialogues, the industry highlighted that the regulatory framework is complex, that the sequencing of level 2 SFDR led to some issue, and that the one-size-fits all character of the SFDR leads to various practical questions. Additionally, the NCA received questions from the industry about how current sustainability related requirements apply to non-life insurance policies. The NCAs also investigated the compliance with SFDR and TR by

insurers and pension providers in late 2022 with various findings: sustainability information should be made more understandable and concrete, 93% of participants have a pension scheme that promotes sustainable characteristics, pre-contractual information about pension schemes should be more specific and be provided at the product level (pension scheme), managers of investment funds have become more cautious when classifying a fund as sustainable, and manufacturers of IBIPs generally only give information on the sustainability of underlying funds but not at the portfolio level.

- ▶ Another NCA noted publishing a “Dear CEO” supervisory expectations letter in late 2021 which specifically asked firms to ensure that they do not engage in greenwashing and pointed to various speeches available on its websites that set out importance of preventing greenwashing. The same NCA reported carrying out a desk-based assessment of SFDR in early 2022, which consisted of a questionnaire being issued to all life insurer in its market. The aim of the assessment was to ensure the adequate inclusion of relevant SFDR disclosures and to determine the size of the sustainable finance market in the life insurance sector. This NCA noted planning a cross-sectoral (including also sectors beyond insurance and pensions) thematic review in relation to greenwashing with a focus on products, investment strategies, product governance and advice to end-clients.
- ▶ Based on a survey to the industry, an NCA issued a report on the SFDR compliance readiness of financial market participants and advisors. A further preliminary analysis by the NCA of website disclosures showed that there is significant room for improvement on the quality and depth of the disclosures and the completeness of information provided, with some disclosures being overall limited. The NCA set up discussions with providers, and asked providers with identified shortcomings to address the shortcomings.
- ▶ Another NCA noted issuing guidance on sustainability-related aspects including greenwashing, pointed to its website where it has sustainability-related educational material outlining for example what sustainable investments are, and noted that it recently held a Sustainable Finance conference that covered greenwashing as well as SFDR. Further, after conducting a survey on SFDR disclosures, the NCA noticed that SFDR information is not always easily accessible on the undertakings' websites. This NCA also organized meetings with insurance representatives to discuss industry-developed templates aimed at collecting clients' sustainability preferences, as well as one-to-one meetings with insurers to answer their sustainability-related questions. The NCA also ran an IORPs survey to detect potential risks of greenwashing. This NCA plans to run another survey in 2023 to assess how insurance undertakings and intermediaries collect consumer's sustainability preferences and how they take these preferences into account in the advice process.
- ▶ An NCA recurrently reviews life insurance advertising. It noted an increase in the number of communications with extra-financial arguments (e.g., environmental) since 2019. In part to respond to that increase and to ensure the delivery of clear and non-misleading information,

the NCA published a recommendation of good practices aimed at improving the transparency and balance of information concerning the use of extra-financial arguments in life insurance advertising. Before issuing this recommendation the NCA held several workshops with industry representatives as well as consumers associations. The same NCA has also been conducting information and discussion sessions with insurers and intermediaries, to facilitate the implementation of the new IDD requirements relating to sustainability preferences in the advice process, including EIOPA's guidance. The NCA expects these sessions to continue also in 2023. This NCA also highlighted a different activity based around a consultative committee which advises the NCA on the monitoring and assessment of climate and sustainable finance commitments made by the industry. Its main goal is to encourage the adoption of consistent methods for the measurement and disclosure of financial institutions' climate commitments, with a view to ensuring their comparability and their monitoring over time. Against this background, the Authority, the consultative committee as well as another national authority takes part in the elaboration of an annual report, based on a survey to the industry, which provides an annual overview of climate commitments and exposures to fossil fuels of the national financial sector. The 2022 results remain mixed and further progress is still needed, as institutions haven't sufficiently addressed the recommendations made in previous reports, and the operational implementation of institutions' commitments remains insufficient.

- ▶ Another NCA carried out SFDR disclosure analysis, which showed that several insurance undertakings and IORPs revised their consideration of adverse impacts of their investment decisions on sustainability factors, notably due to the entry into force of DR 2022/1288 requirements. Further investigations by the NCA showed that requirements regarding product-related disclosure have been implemented very differently, especially in unit-linked life insurance. This NCA also engaged with supervised entities through structured dialogues and formal meetings with management boards and high-level representatives of individual undertakings. It also provides supervised entities with information on the SUFI regulatory framework and implemented a Q&A process to ensure a consistent application of the disclosure requirements. Beyond this the NCA regularly evaluates undertakings sustainability-related strategies as well as the scope and quality of their non-financial reporting. The NCA noted that entities in its market are making efforts to implement the requirements properly but have encountered some challenges (e.g., due to legal uncertainties, lack of definitions and quantitative criteria). It also found that some entities, avoid claiming that their products sustainability characteristics (article 8) or have a sustainable investment objective (article 9) to avoid repercussions (e.g., legal risks).
- ▶ In their activities, three NCAs noted that the industry had many questions in relation to the regulatory framework (e.g., clear and concise definition of greenwashing missing, data related issues, disclosure-related questions, conflicting concepts under SFDR and TR) and was therefore

eager to receive guidance. Two of these three NCAs found divergences among undertaking in how they disclosed products' investment options, as well as data availability issues.

### 1.3.3. EXAMPLE OF NCAS SUPERVISORY PRACTICES AND TOOLS : DETAILS

#### Monitoring of greenwashing in advertisement

ACPR's first set of guidelines recommending good practices on the matter cover the below listed points:

- i. Ensure that any extra-financial arguments used in advertisements are clear and balanced:
  - ▶ ESG-related arguments should reflect fairly and without excess the extra-financial criteria effectively taken into account in the insurance product's composition;
  - ▶ For multi-option products, it should not be implied that the entire insurance product considers extra-financial characteristics when only some of its underlying options do;
  - ▶ Wording referring to extra-financial characteristics should be clear and accurate, especially where a risk of confusion could arise, e.g., with label names;
  - ▶ A clear and easy access for the general public to all information justifying the promoted extra-financial arguments, including the disclosures required under the SFDR.
- ii. Implement minimum standards for all communications using ESG-related arguments:
  - ▶ Compliance with the criteria set out in the French markets authority (AMF) guidelines for collective investments offered as unit-linked in multi-option insurance products, for the sake of consistency across the market. The market authority requires extra-financial commitments that are commensurate with the use of related arguments for fund promotion;
  - ▶ A requirement to add an indication of the number and proportion of sustainable unit-linked options offered in the product, in order to provide insight to consumers about its sustainable offering;
  - ▶ For the promotion of investment mandates, ESG-related arguments are allowed where the allocation meets a minimum proportion of investment options including extra-financial

### 1.3.4. SUPERVISORY POWERS: DETAILS

When describing the current situation of their NCAs in relation to the supervision of greenwashing, 23 NCAs noted either that (i) some data may be missing for my NCA to identify and monitor

greenwashing risks sufficiently and pre-emptively, or (ii) that some tools which can be useful to investigate greenwashing risks may be missing.

- ▶ Four NCAs noted that companies are still implementing the disclosure requirements therefore the data is currently either missing or not reliable, which hinders their ability to fully analyse disclosures and identify greenwashing.
- ▶ One NCA noted that sustainability-related information and data should be incorporated in the reporting templates. Another NCA pointed to the fact in the Solvency Reporting templates there is no link between the asset underlyings and the respective product.
- ▶ One NCA is currently in the process of implementing the data reporting system to process sustainability information, while another NCA is currently working on an IT-project to collect and analyse SFDR disclosures to identify and monitor greenwashing risks.
- ▶ Two NCA are of the view that tools such as web scraping and natural language processing may improve the efficiency of data gathering and analysis related to greenwashing.
- ▶ Two NCA are unable to use mystery shopping as a tool to investigate greenwashing.

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