

EU and UK approaches to Greenwashing Enforcement in the Financial Market: A Comparison

January 2025



Introduction

This briefing provides an overview and comparison of the principles underpinning regulatory approaches to addressing greenwashing in the financial services sector in the European Union (“EU”) and UK. It aims to help banks navigate the regulatory frameworks, particularly where they operate in the relevant jurisdictions. The focus for this briefing is specifically on the approach to greenwashing mitigation taken by UK and EU regulators of financial institutions and does not examine regulation of sustainability-related statements made by companies in the real economy. Regulators have published anti-greenwashing legislation and guidance which applies across the financial and non-financial sectors, including the Green Claims and Unfair Commercial Practices Directives in the EU, and guidance and standards published by both the Competition and Markets Authority and Advertising Standards Agency in the UK, both of which are considered here for comparison. This briefing will consider the differences in approach set out by the UK FCA in its anti-greenwashing rule¹ and accompanying [finalised non-handbook guidance on the anti-greenwashing rule](#), and the European Supervisory Authorities’ Final Reports on Greenwashing, as detailed below. It is also important to note that supervisors do not have to wait for greenwashing specific regulations to be able to take action if they detect greenwashing. The ESMA Final Report on Greenwashing² details in an Annex a plethora of existing regulations (and specific provisions) that investment management firms can be supervised on in relation to alleged greenwashing.

¹ Rule ESG 4.3.1R of the [FCA Handbook](#)

² [ESMA36-287652198-2699 Final Report on Greenwashing](#) – see Annex 2 on page 65.

Policy Background

The European Commission (the “**Commission**”)’s renewed [sustainable finance strategy](#), published on 6 July 2021 promised to assess whether existing supervisory powers to address greenwashing in the financial market were “*fit for purpose*.” In the view of the Commission, sustainable finance disclosure regimes put into place in 2019 and 2020 such as the Sustainable Finance Disclosure Regulation (SFDR), Taxonomy Regulation (EU Taxonomy) and Low Carbon Benchmarks Regulation provided a first line of protection in preventing greenwashing, but the Commission additionally wanted to ensure “*an adequate level of enforcement*” to prevent greenwashing.

In response to the Commission’s May 2022 request for input on “*greenwashing risks and the supervision of sustainable finance policies*”, EIOPA, ESMA and the EBA (the three ESAs) launched a [Call for Evidence](#) to better understand greenwashing practices in the financial market.³ Building upon the findings in the Call for Evidence, the ESAs published [their progress reports](#) on greenwashing in June 2023 and their [individual Final Reports](#) on greenwashing on 4 June 2024. Given AFME’s focus on capital markets, this briefing concentrates on the ESMA and EBA final reports.

In the UK, following on from the [2021 UK Green Finance Strategy](#)⁴, the FCA similarly took the view that sustainability disclosures must be monitored using appropriate supervisory powers to address greenwashing risks. In October 2022, the FCA [consulted](#) on a new set of UK Sustainability Disclosure Requirements and investment labels including rules for fund names, consumer-facing disclosure and detailed product and entity-level disclosures for funds (together, these rules are known as the UK “SDR”).⁵ The SDR regime included a general anti-greenwashing rule “*to give [the FCA] an explicit rule on which to challenge firms*” for making misleading sustainability claims about products and services. In November 2023, the FCA [consulted](#) on guidance for applying its anti-greenwashing rule, and in April 2024, published its finalised non-handbook guidance on the anti-greenwashing rule.

Whilst the ESAs and the FCA have taken different regulatory approaches to addressing greenwashing as outlined here, there are also material similarities to draw out. Understanding these similarities will allow firms operating across both jurisdictions to apply the work they do in one jurisdiction to their approach in another, though as expected, the comparisons are not entirely straightforward. This comparison focuses on the EU and UK; IOSCO has published a comparative guide to greenwashing supervisory practices which covers other jurisdictions.⁶ EU-regulated firms will also be subject to the regulatory and enforcement approaches taken by individual NCAs, which may differ from the high-level approach articulated by the ESAs.

³ See [AFME response to the ESAs’ Call for Evidence on better understanding greenwashing here](#).

⁴ See [AFME response to the HM Government Update to Green Finance Strategy Call for Evidence](#).

⁵ See AFME response to the FCA’s consultation on the SDR [here](#).

⁶ See [IOSCO report, Supervisory Practices to Address Greenwashing](#).

Summary

Supervisor/ ESA	Firm Type	Regulatory focus with respect to greenwashing
FCA	All regulated firms in the UK	The anti-greenwashing rules (ESG 4.3.1R) in the FCA ESG Sourcebook applies to: FCA-regulated firms' communications, whether written, oral or visual (e.g., using imagery) with clients in the UK about their products and services ⁷ , including FCA-regulated firms' communications or approvals of financial promotions to persons in the UK
EBA	Wholesale and retail banks Other credit institutions such as investment banks Class 1 investment firms Payment service providers	Marketing or commercial practices Green loans Green mortgages Deposits Green bonds Green securitisation Sustainability-linked loans ⁸ Sustainability-linked bonds ⁹ Financial advice and discretionary portfolio management Claims on current sustainability characteristics Claims on sustainability results or real-world impacts Claims on forward-looking commitments (e.g. net-zero claims) ¹⁰
ESMA	Securities issuers Investment managers Investment service providers Benchmark administrators	Issuer sustainability disclosures ¹¹ Prospectuses ¹² Advertisements associated to prospectuses ¹³ Investment management disclosures under SFDR, AIFMD, UCITS, MiFID II ¹⁴ Investment management and service provider advertisements ¹⁵ Engagement activities ¹⁶ BMR names and ESG disclosures ¹⁷

⁷ i.e. whether they are undertaking sustainability in-scope business (e.g. managing a UK UCITS or UK AIF) or not.

⁸ Encompassing both environmental and social loan products that have sustainability-related terms and requirements.

⁹ Encompassing both environmental and social bond products that have sustainability-related terms and requirements.

¹⁰ See pages 36 to 37 of the [EBA Final Report on Greenwashing Monitoring and Supervision](#).

¹¹ Including disclosures related to all elements of ESG (i.e. reporting on ESG metrics related to healthcare or energy efficiency), see section 3.1.1 of the [ESMA Final Report on Greenwashing](#).

¹² See section 3.1.2 of the [ESMA Final Report on Greenwashing](#).

¹³ See section 3.1.2 of the [ESMA Final Report on Greenwashing](#).

¹⁴ See section 4 of the [ESMA Final Report on Greenwashing](#).

¹⁵ See sections 4.2.3 and 5.2.3 of the [ESMA Final Report on Greenwashing](#).

¹⁶ In respect of all elements of ESG (environmental, social and governance); page 39 of the [ESMA Final Report on Greenwashing](#).

¹⁷ Page 54 of the [ESMA Final Report on Greenwashing](#).

Application of anti-greenwashing guidance at entity or product level

FCA

The FCA's anti-greenwashing rule applies to all FCA-authorized firms in relation to communications made about financial products or services which FCA-authorized firms (including credit institutions, asset managers and payments institutions) make available for clients in the UK.

In its finalised guidance, the FCA reminds firms that, while the scope of the anti-greenwashing rule relates to products and services, the Competition and Markets Authority (CMA) and Advertising Standards Agency (ASA)'s guidance, as well as FCA Principles 6 and 7 or, as relevant, the Consumer Duty (Principle 12 and PRIN 2A) apply to sustainability-related claims that a firm may make about itself as a firm. The CMA and ASA's guidance is summarised briefly below¹⁸.

CMA Guidance on Environmental Claims

The CMA's guidance applies to all businesses who make environmental claims, including where such claims relate to their product and services. It applies largely to business-to-consumer claims, and to a more limited extent, business-to-business claims. The six principles it sets out are designed to give businesses greater clarity about how the CMA thinks consumer protection law translates into practice and what this means for businesses making environmental claims:

- claims must be truthful and accurate;
- claims must be clear and unambiguous;
- claims must not omit or hide important information;
- comparisons must be fair and meaningful;
- in making the claim you must consider the full life cycle of the product or service; and
- claims must be substantiated.

ASA Advertising Guidance

This guidance is specifically on the interpretation of UK rules for broadcasting and non-broadcasting marketing activities concerning environmental-related advertising issues, intended to guide advertisers, agencies and media owners.

It sets out that environmental claims are likely to mislead if:

- the basis of the claim is not clear;
- the meaning of all terms used in the advertisement or marketing communication is not clear, or the terms used are unqualified;
- the claims cannot be substantiated, or divergence of scientific opinion is not made clear;
- they do not take into account the product's full lifecycle; and
- the environmental benefit of a product is overstated or otherwise set out in a misleading fashion.

"Social responsibility"

Marketing communications must be prepared with a sense of responsibility to consumers and society. This means that the ASA recognises the increased urgency for businesses and other stakeholders playing their part in tackling climate change and other environmental harms, and that for the UK to meet net zero targets, consumer behaviour must change.

Additionally, marketing communications must not condone behaviour that is grossly prejudicial to the protection of the environment, meaning that advertising or marketing that is likely to lead to environmental harm. This guidance also arises from the broadcasting and non-broadcasting marketing rules, and advertising content which breached these rules would also breach the social responsibility rules set out above.

Both the CMA's six principles and the ASA's guidance are closely related to the FCA's finalised guidance on the anti-greenwashing rule. They can be read to essentially extend the principle of "*clear, fair and not misleading*" environmental claims to the entity level, and beyond the financial services sector, in the UK.

While there is some overlap between the ASA and CMA guidance, (e.g. the importance of reviewing claims by reference to the "full life cycle" of a product), there are clear differences which must be considered by regulated entities against all contextual facets of claims made.

¹⁸ See paragraphs 2.10 – 2.15 of the FCA's Finalised non-handbook guidance.

ESAs

Whilst there is no equivalent specific “anti-greenwashing rule” *per se* under the EU sustainable finance regulation, the ESAs’ guidance on greenwashing applies at both the entity level and to the financial products or services authorised firms offer and applies to the types of firms under each supervisory authority’s remit, with ESMA focused on issuers, investment managers, investment service providers and benchmark administrators, and the EBA focused largely on banks, as well as class 1 investment firms and payment service providers.

Supervisory definition of greenwashing

Despite the difference in approach with respect to application, the FCA’s definition of greenwashing, as taken from the anti-greenwashing rule, and the ESAs’ common high-level understanding of greenwashing as set out in their Progress Reports and reiterated in their Final Reports, are largely aligned as shown in the table below, with the two material differences being that (1) the FCA is focused solely on references to *products or services*, whereas the ESAs are focused both on *products and services* and *at entity level* and (2) the FCA definition is purely objective, whereas the ESA definition references the role of the subjective perception of consumers, investors or other market participants:

FCA	ESAs
Greenwashing means references to the sustainability characteristics (comprising environmental or social characteristics) of a product or service that are not consistent with the sustainability characteristics of the product or service, and which are unfair, unclear or misleading.	Greenwashing is 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 service. This practice may be misleading to consumers, investors or other market participants.

In addition to these definitions, the ESAs have developed eight common **characteristics of greenwashing**, which we have included in the Appendix to this paper for reference.

Regulatory approach to preventing greenwashing and the introduction of an anti-greenwashing rule

The FCA and ESAs have also taken different approaches here. The FCA has introduced a specific new “anti-greenwashing” rule into its handbook. By contrast, the ESAs have determined that greenwashing can be enforced against using the existing EU regulatory framework and have therefore not introduced a new anti-greenwashing rule, though they have provided extensive guidance in both their Progress Reports and Final Reports as to how firms or institutions can mitigate their greenwashing risks.

FCA

The FCA has introduced a new rule into the Environmental, Social and Governance (ESG) Sourcebook of the FCA Handbook (ESG 4.3.1R), which requires authorised firms to ensure that any reference to the sustainability characteristics of a product or service is (i) consistent with the sustainability characteristics of the product or service, and (ii) is fair, clear and not misleading.

The anti-greenwashing rule applies when a firm:

- communicates with clients in the UK in relation to a product or service; or
- communicates a financial promotion (or approves a financial promotion for communication) to a person in the UK.

The rule applies with respect to references to sustainability characteristics (environmental and/or social characteristics) of a product or service, in relation to financial products or services which FCA-authorised firms make available for clients in the UK. This includes financial promotions that authorised firms

communicate or approve for unauthorised persons (including for overseas products or services where the promotion is approved in the UK).

The anti-greenwashing rule builds on the FCA's Guiding Principles, as set out in [a letter to the chairs of authorised fund managers in July 2021](#), which explain the FCA's expectations with respect to the design, delivery and disclosure of ESG and sustainable investment funds. In this letter, the FCA noted that:

*“Consumers are placing significant value on ESG-related investment opportunities. It is therefore essential that funds marketed with a sustainability and ESG **focus describe their investment strategies clearly and any assertions made about their goals are reasonable and substantiated.** We have seen numerous applications for authorisation of investment funds with an ESG or sustainability focus. A number of these have been poorly drafted and have fallen below our expectations. They often contain **claims that do not bear scrutiny.** We also expect clear and accurate ongoing disclosures to consumers where funds make ESG-related claims, and we want to see funds deliver on their stated objectives and/or strategy.”*

From this statement, it is easy to see the areas of focus the FCA subsequently identified in its finalised guidance on the anti-greenwashing rule.

The anti-greenwashing rule also builds on the FCA's previous work on the loan markets side. In June 2023 the FCA published a [letter](#) outlining the results of its review of the Sustainability-Linked Loans (SLL) market, in which it noted that:

*“A number of the issues identified have informed our observations about the possibility of **potential risks to market integrity and suspicion of greenwashing in the context of SLLs.** In particular, **there may be a case for strengthened expectations on sustainable performance targets (SPTs) and KPIs, with clearer alignment to borrowers' published transition plans, and disclosure of these by borrowers.**”*

While the FCA does not regulate the loan market directly, the letter emphasises that it is keen to ensure that the sustainable finance market works well, and that market integrity is maintained. Underlying exposures of financial products may include ESG or sustainability-linked bonds or loans, and so this guidance is directly relevant.

Despite having introduced a specific anti-greenwashing rule, in the finalised guidance the FCA highlights that various sections of their Handbook as well as other legislation and guidance already require most firms to ensure that the information they communicate is fair, clear and not misleading. The anti-greenwashing rule and guidance is intended to complement and be consistent with these rules. It is not a substitute for them and is not intended to override them, or any other rules in the Handbook where firms may be subject to fair, clear and not misleading rules in specific circumstances.

Visual representation of existing and emerging UK regulatory framework with respect to fair, clear and not misleading information



ESAs

At the EU level, the ESAs’ Final Reports do not recommend that a UK-style “anti-greenwashing rule” be encoded into legislation. The rationale for this is that existing EU regulations (as illustrated below) already contain prohibitions against making statements, declarations or communications, or taking actions, which do not clearly and fairly reflect the underlying characteristics of an entity, financial product or financial service, including any sustainability-related statements. The ESMA Final Report includes an annex setting out all specific legal provisions from the current EU legislative framework relevant to the supervision of greenwashing.¹⁹ We have cited the relevant sections of each of these regulations and directives in the graphic below. Therefore, greenwashing can be captured by the existing rules in these regulations either (i) prohibiting misleading information; or (ii) setting out specific sustainability disclosure requirements such as those in SFDR or CSRD, the infringement of which may lead to supervisory actions.

ESMA

In its Final Report, ESMA notes that, as a type of miscommunication or misconduct, greenwashing can be captured by existing EU rules prohibiting misleading information, such as the “clear, fair and not misleading” rules set out in MiFID²⁰, the UCITS Directive²¹ and the IDD²². Greenwashing can also be enforced via infringements against a series of specific sustainability-related requirements introduced in the EU in recent years, such as SFDR, the EU Taxonomy and CSRD.

EBA

At a legislative and regulatory level, the EBA considers that the most effective way forward to address greenwashing by EU banks is to focus on the finalisation and implementation of existing and planned legislative initiatives. Existing frameworks and ongoing developments provide key foundations to address several aspects of greenwashing concerns in the banking sector. This includes rules on consumer/investor protection that provide the legal basis for tackling misleading statements such as the Green Claims Directive²³, and sustainable finance-related developments, including ESG disclosures and transition plans

¹⁹ [ESMA36-287652198-2699 Final Report on Greenwashing](#) – see Annex 2 on page 65

²⁰ See Articles 24(3) and 30(1)

²¹ See Article 77

²² See Article 17(2)

²³ Note that the Green Claims Directive is a proposal at this stage and would not fully apply to the financial sector (see the Commission’s [proposal](#) for a directive on substantiation and communication of explicit environmental claims. Recital 10: “*this Directive shall not apply to sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to the Union or national rules for financial services, such as rules relating to banking, credit, (...) investment firms, payment, portfolio management and investment advice*”.

that should enhance transparency on sustainability practices. For example, the EBA recently introduced binding requirements for banks to regularly perform materiality assessments of ESG risks, including greenwashing. Under these requirements, banks should have in place sound processes to identify, prevent and manage risks resulting from greenwashing.²⁴

Visual representation of existing and emerging applicable EU legislative frameworks



Analysis of ESAs & FCA's differing approaches

Broad regulatory themes

Despite the difference in approach and focus by the FCA and the ESAs, there is a substantial overlap between the recommendations in the FCA's finalised guidance and the general recommendations for the mitigation of greenwashing risk set out by ESMA and the EBA. The broad regulatory themes are similar, with misleading and incomplete claims, lack of meaningful comparison and misleading imagery identified as high-level examples of greenwashing in both the FCA's guidance and the ESAs' Final Reports. As illustrated in the mapping exercise below, the EBA's general principles and the FCA's expectations with respect to mitigating greenwashing risks are largely aligned. Additionally, both the FCA and the ESAs have reiterated, in their finalised guidance and Final Reports respectively, the importance of ensuring that any sustainability information provided is fair, clear and not misleading.

Sources (and examples) of greenwashing risk

The FCA guidance provides examples of good and bad product disclosures to illustrate best practices for firms. Similarly, the EBA has included examples provided by the National Competent Authorities (regulators, or "NCAs") in its remit of complaints related to possible greenwashing in banking, investment firms or the payment service market. Examples included misleading information included in marketing materials and voluntary reporting and misleading characteristics including "vagueness or ambiguity or lack of clarity". ESMA also sought input from NCAs on greenwashing occurrences, though its Final Report confirmed that NCAs had reported detecting only a limited number of actual or potential occurrences of greenwashing. Specifically, thirteen NCAs identified occurrences of potential greenwashing and one identified actual greenwashing cases. The occurrences identified prompted 9 NCAs to ask investment managers to change: (i) their sustainability-related information, including funds names, (ii) their methodologies; (iii) their investment processes; and (iv) take immediate measures regarding lack of appropriate website disclosures and entity-level PAI disclosures.²⁵

ESMA's report specifically highlights the interplay between financial and sustainability reporting for issuers, particularly the reflection of climate-related matters in financial reporting and the consistency between sustainability reporting and financial reporting. ESMA notes that this consistency is important

²⁴ See the [EBA Final Report on Guidelines on the Management of ESG Risks](#) generally, and in particular, page 34.

²⁵ See chapter 4.2.4 of the ESMA Final Report for further details of greenwashing occurrences.

because one potential source of greenwashing is the existence of diverging information across an issuers' annual financial report with respect to sustainability matters.

Specifically with respect to issuers, ESMA also identifies aspirational language in advertising associated with prospectuses as an area at risk of being a potential source of greenwashing. For example, ESMA notes that it has observed that some issuers are including sustainability claims in their advertisements that are not in their prospectus disclosure. Material divergences between the advertising and prospectuses could therefore represent an additional source of greenwashing risk.

The FCA's examples of good and bad practice also include several references to promotional statements and advertising related to products' sustainability characteristics.

Firms subject to supervision by the EBA and FCA could also consider ESMA's focus on divergence between financial and sustainability reporting, and the language used in advertising, when uplifting their own practices in respect of greenwashing mitigation.

Recommended actions for mitigation

While both the FCA guidance and the ESMA Final Report share similar general principles to mitigate against greenwashing, the ESMA report includes recommendations of practices to mitigate greenwashing at the entity-level and product level which do not appear in the FCA guidance. For example, the ESMA report recommends that firms make improvements to their internal governance and processes, treatment of ESG data and their external validation processes, alongside the integration of ESG risk management systems and controls. In contrast, the FCA's guidance is more high-level, focusing on behaviours related specifically to communications made by authorised firms about the sustainability characteristics of their products and services. This reflects the difference in approach taken across the jurisdictions, with the FCA focusing on principles and outcomes-based approach to regulation, and the ESAs taking a risk-based approach. This is not to say that UK firms won't need to make such changes in order to comply with the FCA's anti-greenwashing rule, however ESMA in particular has explicitly drawn this out.

Firms conducting their own mapping exercises across both the UK and EU requirements could take the view that identifying and remediating any gaps with the ESAs' proposals and applying this to their UK business should also enhance their compliance with the FCA's anti-greenwashing rule and ensure uniform compliance with the ESAs' more detailed standards.

Finally, the FCA's final guidance provides more detailed insights on certain aspects of greenwashing, such as the importance of mitigating risks throughout the product life cycle. While the EBA and ESMA guidance acknowledges greenwashing risks across the sustainable finance value chain, it does not delve into life cycle mitigation measures to the same extent as the FCA.

ESAs' recommended practices for tackling/avoiding greenwashing mapped to FCA's finalised guidance

There is significant overlap between the ESAs and the FCA's approach to greenwashing. The four pillars of the FCA's guidance mirror the general recommendations set out by the ESAs, with the ESAs further recommending practical steps firms can take to put the general guidance into practice. We have illustrated the similarities and divergences in approach in the table below:

Supervisory authority		
FCA	EBA	ESMA
<p>General guidance</p> <p>Sustainability references should be:</p> <p><u>Correct and capable of being substantiated</u></p> <ul style="list-style-type: none"> The claims firms make should be factually correct. Claims should be capable of being substantiated at the point in time at which they are made. Firms should regularly review their claims and any evidence that supports them, to ensure the evidence is still relevant for so long as those claims are being communicated. Firms should also ensure that their claims remain compliant with the anti-greenwashing rule on an ongoing basis. <p><u>Clear and presented in a way that can be understood</u></p> <ul style="list-style-type: none"> The claims firms make should be transparent and straightforward, and firms should consider whether the meaning of all the terms would be understood by the intended audience. Firms should consider whether the information they are providing is useful for the intended audience. 	<p>General guidance</p> <ul style="list-style-type: none"> Institutions should take all necessary steps to ensure that sustainability information provided is clear, fair and not misleading. This includes observing key principles for sustainability claims to be: <ul style="list-style-type: none"> accurate and fairly represent the institution's overall profile and business model, or the profile of their product(s). able to be substantiated with robust evidence and clear facts; kept up to date, with any changes communicated in a timely manner and with a clear rationale; and are clear and presented in a way that can be understood by the target audience while maintaining accuracy. 	<p>General guidance</p> <ul style="list-style-type: none"> Substantiate sustainability-related claims and communicate sustainability information in a manner that is fair, clear and not misleading. Consider high-risk areas identified by the Progress Report: <ul style="list-style-type: none"> Board and senior management's role in sustainability; ESG resources and expertise; ESG strategy, objectives and characteristics; Sustainability management practices; ESG qualifications, labels or certificates (together, "ESG credentials"); Engagement with stakeholders; Present ESG performance against metrics and targets; Pledges about future ESG performance; and Impact.

<ul style="list-style-type: none"> • Firms should also be aware of the overall impression a visual presentation of a claim can create. Claims may be undermined if what they say is factually correct, but their visual presentation conveys a different impression. <p><u>Complete – they should not omit or hide important information and should consider the full life cycle of the product or service</u></p> <ul style="list-style-type: none"> • Firms should not omit or hide important information that might influence decision-making. • Firms should present claims in a balanced way and not focus solely on a product or service’s positive sustainability characteristics, where other aspects may have a negative impact on sustainability. • Firms should consider the life cycle of a product or service, as appropriate, when making sustainability-related claims and base their claims on the full life cycle of the product or service. • Where claims are only valid under specific conditions, firms should clearly and prominently disclose those conditions, along with any limitations of the information, data, or metrics used to support the claims (FCA Finalised Guidance, paragraph 2.29). <p><u>Comparisons to other products or services are fair and meaningful</u></p> <ul style="list-style-type: none"> • The claims firms make when comparing a product or service, either to one of their previous versions or to a 		
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<p>competitors', should be fair and meaningful. Comparisons should enable the audience to make informed choices about the products or services.</p>		
	<p>Recommended processes</p> <p><u>Governance and internal processes</u></p> <ul style="list-style-type: none"> Institutions should review and adapt their governance arrangements and internal processes to safeguard against greenwashing, and consider the extent to which external verification and alignment with market guidance would support the credibility of green or sustainable products and/or targets. <p><u>ESG data</u></p> <ul style="list-style-type: none"> Proactively address data challenges and potential associated reputational risks by building insights into ESG data sources they use, building internal resources and expertise to assess and verify the ESG data being used, and be transparent about the ESG data sources and methodologies they use, as well as about any limitations of that data. <p><u>External verification</u></p> <ul style="list-style-type: none"> Using external reviews and third parties' verification can add credibility and mitigate greenwashing risk by offering verification, facilitating the good application of green principles and standards to financial products, and demonstrating a 	<p>Recommended processes</p> <p><u>Upgrading firms' governance, processes, skills, IT systems</u></p> <ul style="list-style-type: none"> Invest in building capacities and expertise, IT systems fit for managing the new flow of sustainability information. Implement monitoring processes and report regularly on progress, where relevant. Further integrate ESG risks into risk management systems and controls. Adapt governance structures and processes to mitigate greenwashing risk (e.g., committees and guidance). Fulfil due diligence responsibilities on ESG data with the same level of ambition and care as for financial information. <p><u>Establishing reliable, comprehensive sustainability data</u></p> <ul style="list-style-type: none"> Where relevant, increase the recourse to external verification. Enhance transparency regarding ESG data methodologies, the use of estimates. <p><u>Supporting comprehensibility for retail investors</u></p> <ul style="list-style-type: none"> Contribute to addressing financial and sustainability

	<p>commitment to transparency.</p> <ul style="list-style-type: none"> Institutions subject to CSRD will be required to have their sustainability statements externally assured. <p><u>Entity-level</u></p> <ul style="list-style-type: none"> At the entity level, institutions should substantiate forward-looking sustainability commitments such as net-zero pledges with credible plans and strategies, provide clear and granular information on their green and sustainable finance targets, and integrate greenwashing-related financial risks as part of their management of conduct, operational and reputational risks. <p><u>Product level</u></p> <ul style="list-style-type: none"> At the product level, institutions should establish and report clear criteria, definitions and indicators for products and/or services labelled as green or sustainable. They should also apply rigor and closely engage with counterparties in designing sustainability-linked products, in particular sustainability-linked loans. 	<p>literacy gaps among retail investors (e.g., through providing contextual disclosures).</p> <ul style="list-style-type: none"> Exercise caution with the use of aspirational language in advertising.
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Conclusion

The EU and UK financial regulators share a common understanding of greenwashing in financial markets but adopt distinct approaches to addressing it. The UK FCA has introduced an additional rule to mitigate against instances of greenwashing in communications, whereas the EU has taken the approach of explaining how existing sustainable finance regulations work to prevent greenwashing. There are also differences of approach and focus between ESMA and the EBA as can be seen from their different recommendations on the development of processes.

The EU understanding of greenwashing applies dually to both entity-level statements and financial products and services, whereas the FCA's anti-greenwashing rule applies solely to firms' communications made about the sustainability characteristics of authorised firms' products and services. This means that, while the ESAs have not recommended the introduction of a specific anti-greenwashing rule as the FCA has done, the scope for enforcement action by the ESAs is potentially much broader, given the scope of the existing sustainable finance disclosure obligations and their reliance on a wide range of regimes which pre-dated sustainable finance regulation.

Both the EU and UK make clear, however, that firms are subject to other prohibitions on greenwashing within legislation and from guidance on advertising and unfair commercial practices which are not unique to financial services. Both the FCA and the ESAs' approach to supervision under their respective sustainable finance frameworks – SDR in the UK and SFDR in the EU – will necessarily be informed by their stances on greenwashing, and firms can expect their supervisors in both jurisdictions to be scrutinising the sustainability disclosures and claims made under these regimes carefully.

Firms that operate across both jurisdictions, or which are subject only to the supervision of one of the two ESAs, could also draw on the guidance issued by the EBA, the FCA and ESMA to uplift their anti-greenwashing governance and risk management systems.

Appendix

The ESAs' eight common characteristics of greenwashing²⁶

- Sustainability-related communications may be **misleading** either by:
 - **omission of relevant information** (including by being partial, selective, unclear, unintelligible, vague, oversimplistic, ambiguous, untimely or unsubstantiated); or
 - **the provision of information that is false or deceptive** (including by mislabelling, misclassification, mis-targeted marketing and inconsistent information)
 - **Greenwashing is a type of misconduct** which may not only **result in a direct claim but in misleading actions**. For example:
 - in the product design phase, identifying clients with sustainability preferences within the positive target market of a product that does not have any sustainability features; or
 - not duly taking clients' sustainability preferences into account in the advice phase
 - **Sustainability-related misleading claims can occur and spread intentionally or unintentionally**, whereby intentionality, negligence or the lack of robustness and appropriateness of due diligence efforts could constitute aggravating factors in the context of supervisory or enforcement actions.
 - Greenwashing can occur at:
 - **Entity level** (relating to an entity's sustainability commitments, strategy or performance);
 - **Financial product level** (relating to a product's sustainability strategy or performance); or
 - **Financial service level, including advice** (relating to the integration of sustainability-related preferences to the provision of financial advice)
- Note that there may be interdependencies and/or blurred lines between the product level and the entity level. For example, one product could be correctly presented as sustainable, but if the communication around the product suggest that the whole entity should be regarded as sustainable, greenwashing concerns could also arise.²⁷
- **Greenwashing can occur at any point where sustainability-related statements, declarations, actions or communications are made**, including at different stages of the business cycle of financial products or services (e.g. manufacturing, delivery, marketing, sales, monitoring) or of the sustainable finance value chain.
 - **Greenwashing may occur in relation to the specific disclosures required by the EU sustainable finance regulatory framework, or in relation to general principles.**
 - In addition, greenwashing **can occur in relation to entities that are outside the remit of the EU sustainable finance legislation** as it currently stands.
 - Greenwashing can be triggered by:
 - **The entity to which the sustainability communications relate;**
 - **The entity responsible for the product;**
 - **The entity providing advice** or information about the product; or
 - **Third parties** such as ESG ratings and data providers or third-party verifiers.

²⁶ *Final Report on Greenwashing - Response to the European Commission's request for input on "greenwashing risks and the supervision of sustainable finance policies"* at Annex 3 - 4 June 2024.

²⁷ For example, a bank or building society offering a green savings bond product, which it advertises using "eco-friendly" imagery such as trees or images of nature would likely not be considered greenwashing. However, if that same bank or building society used the same images across its entire client-facing website, it could mislead clients into believing that all products offered by that bank are green or sustainable. If this is not the case, the imagery in this context could be considered greenwashing.

- Greenwashing may or may not:
 - **result in immediate damage to individual consumers or investors** (in particular through mis-selling, which the ESAs define for the purposes of greenwashing as authorised financial intermediaries unsuitably selling financial products or services to clients, or the market otherwise not responding properly to consumers' or investors' preferences); or
 - **result in the gain of an unfair competitive advantage;** or
 - **undermine trust in sustainable finance markets and policies.**

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

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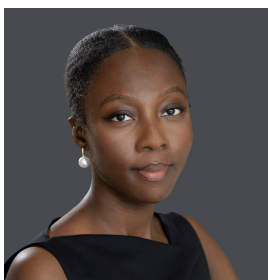


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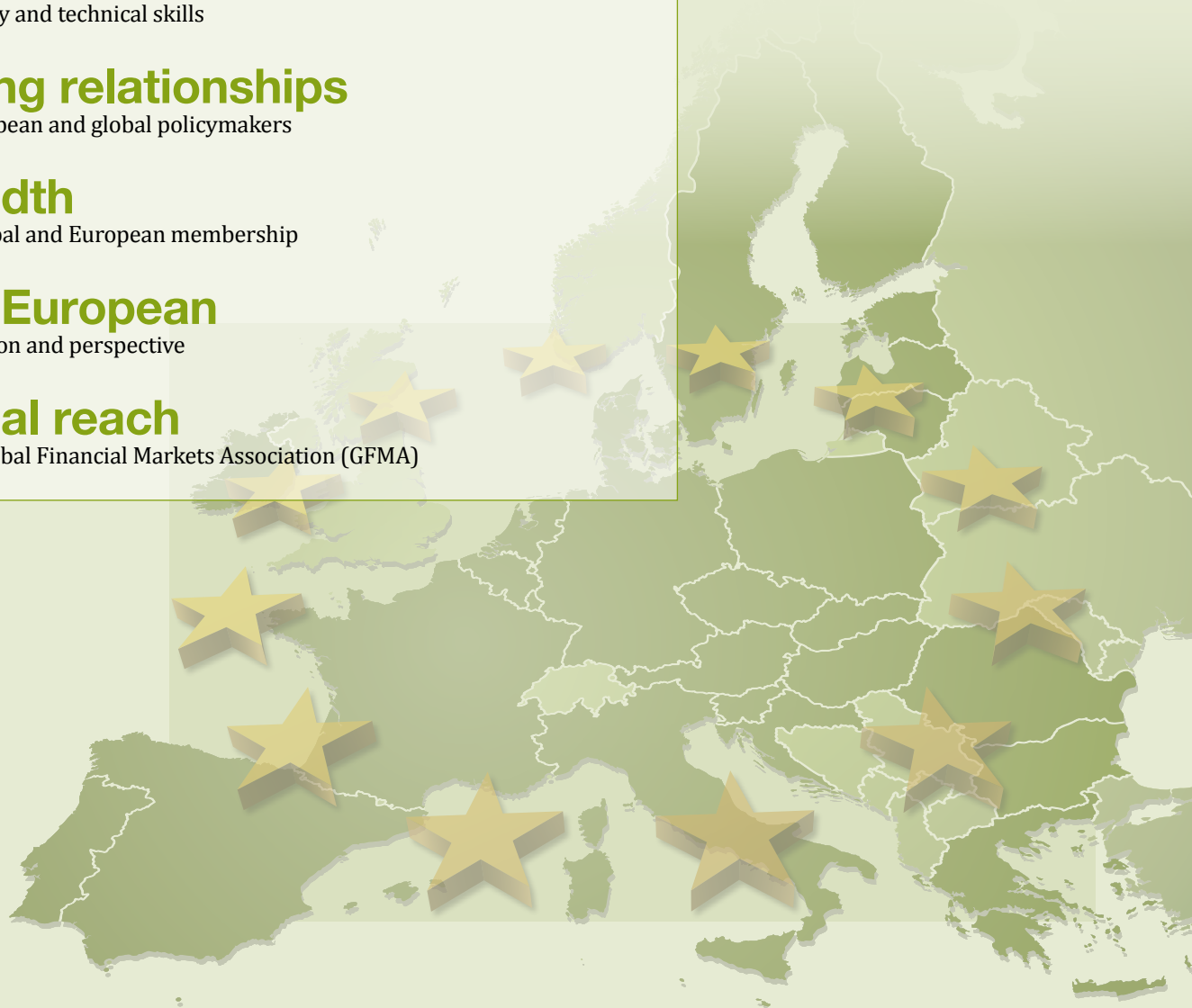
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