



# ESMA PUBLISHED ITS PROGRESS REPORT ON GREENWASHING

In May 2022, the European Commission (EC) issued a “[Request for input related to greenwashing risks and the supervision of sustainable finance policies](#)” to three European Supervisory Authorities (EBA, EIOPA and ESMA - the ESAs).

The EC request also sought input on the definition of greenwashing in the financial sector, on the risks greenwashing can pose to investors and financial markets, on the implementation of sustainable finance policies aimed at preventing greenwashing, as well as on potential improvements to the regulatory framework.

## **ESAs Progress Reports**

Following feedback received from the 2022 request for input, the [EBA](#), [EIOPA](#) and [ESMA](#) published their respective Progress Reports on Greenwashing on the Financial Sector (the Reports) on 1 June 2023.

The purpose of the Reports is to support a better understanding of greenwashing and to assess which areas of the sustainable investment value chain (SIVC) are more exposed to greenwashing risks.

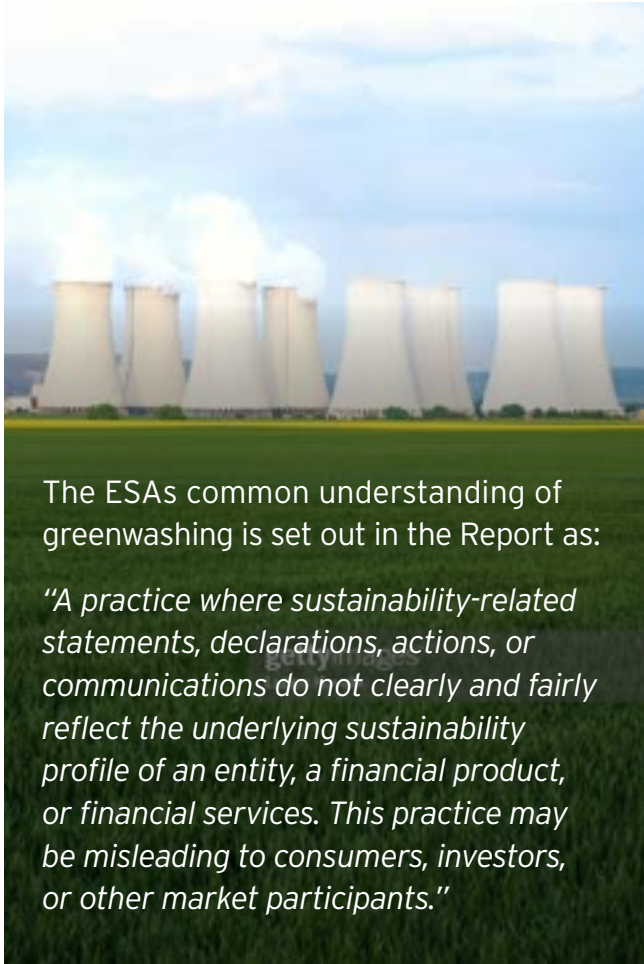
The Reports refer to a number of areas, including effective monitoring, prevention and remediation of greenwashing risks. They also identify preliminary remediation actions, which may need to be further adjusted and complemented as required.

Currently, the Reports contain no specific timeframes and do not lay out any preferred legal forms (directives/regulations, technical standards, guidelines or other ESMA guidance) for the implementation of potential changes to the EU regulatory framework.

## **ESAs common high-level understanding of greenwashing**

The ESAs have put forward a common high-level understanding of ‘greenwashing’ applicable to market participants across their respective remits - banking, insurance and pensions, and financial markets in the Report.

Given the integrated nature of the financial system, the ESAs have indicated their intention to work in a coordinated manner to address greenwashing.



The ESAs common understanding of greenwashing is set out in the Report 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.”*

#### **Focus on the ESMA Progress Report**

In the ESMA Report, it specifically assesses which areas of the SIVC are more exposed to the risk of greenwashing (as further detailed in the Report).

#### **Findings from the ESMA Report**

The ESMA Report findings indicate that misleading claims may relate to all key aspects of the sustainability profile of a product or an entity - from governance aspects to sustainability strategy, targets and metrics or claims about impact. The ESMA Report also provides sector-specific assessments for key sectors under ESMA's remit: issuers, investment managers, benchmark administrators and investment service providers.

#### **Causes of greenwashing set out in the ESMA Report**

The ESMA Report identifies that 'Greenwashing' is the result of multiple inter-related drivers, explaining that market participants across the SIVC face challenges in implementing the necessary governance processes and tools that support high-quality sustainability disclosures and transition efforts. In this context, market participants also have difficulties in producing and accessing relevant, high-quality sustainability data.

ESMA has taken what it describes in the Report as a double materiality approach, with a view to addressing misleading sustainability-related claims both when they are about:

- The exposure of a product or entity to sustainability risks; and
- The impacts a product or entity has on people or the environment.

#### **Preliminary remediation actions**

To mitigate greenwashing risks, the ESMA Report states that market participants across the SIVC should seek to ensure they meet their responsibility to make substantiated claims and communicate on sustainability in a balanced manner.

The ESMA Report also acknowledges that the comprehensibility of sustainability disclosures to retail investors needs to be improved, including by establishing a reliable and well-designed labelling scheme for financial products.

Finally, the ESMA Report says that the regulatory framework needs to gain in maturity and key concepts need to be clarified. The ESMA Report also considers a number of other related areas such as entity and product-level financial risks and the roles played by an actor in greenwashing (as further detailed in the Report).

#### **Sector-specific risks with the potential for greenwashing**

In addition to the ESMA Report's cross-cutting assessment, the ESMA Report focuses on four sectors under ESMA's remit and identifies areas it has determined are more exposed to greenwashing risks and proposes potential remediation actions.

#### **Investment managers**

Section 4.4 of the ESMA Report focuses on investment managers, detailing the high-risk areas for investment managers.

The ESMA Report sets out that sustainability claims that appear particularly exposed to greenwashing risks are those about a fund's or the manager's engagement with investee companies; ESG strategy, policies and credentials; ESG governance as well as claims on sustainability impact.

ESMA state that fund names, particularly important for retail investors' decisions, are also exposed to greenwashing risks.

The ESMA Report suggests that mitigating these risks would require clarifications regarding the concept of contribution to a sustainable objective, standardised disclosures for engagement, and addressing the misuse of the EU's Sustainable Finance Disclosures Regulation (SFDR) as a labelling regime.

### Possible remediation actions relevant for investment managers

The ESMA Report also considers preliminary remediation actions which could be relevant in the investment manager space. ESMA will further consider them for the final report and adjust and refine them as required.

Work on preliminary remediation actions has already started with the EC's comprehensive assessment of the SFDR - including a public consultation and industry outreach. This assessment is intended to focus on the need for the SFDR to ensure legal certainty, its usability, and its role in mitigating greenwashing.

The ESMA Report suggests that there may also be merit in providing additional clarification on best practices for defining the minimum contribution to a sustainable objective under the SFDR, as well as selecting adequate sustainability indicators to measure it.

To address the use of SFDR classifications being used as labels, the ESMA Report says that the EU may consider a new labelling legislation or changes to the current EU regulatory framework to create distinct investment product labels or categories based on minimum standards. Further detail regarding potential remediation actions are set out in the Report (at pages 39 - 47).

### Issuers

Section 4.3 of the ESMA Report contains specific comments related to issuers (e.g., potential greenwashing risks in relation to information disclosed by issuers (see pp. 32 - 39).

### Benchmark Administrators

Section 4.5 of the ESMA Report contains specific comments about potential greenwashing risks in relation to benchmarks (e.g., ESG benchmarks) (see pp. 47 - 54).

### Investment service providers

Section 4.6 of the ESMA Report contains specific comments about the extent to which advice offered to retail investors takes sustainability into account and situations where an advisor may not provide suitable personalised advice when presenting the sustainability features of products (see pp. 54 - 58).

### Next steps

The Final ESA Reports will be published in May 2024, providing a stock take of supervisory powers, resources and actions to address greenwashing risks.

The ESAs will also consider final recommendations, including on possible changes to the EU regulatory framework.

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