

**CNMV Advisory Committee response to the ESAs joint Call
for Evidence on greenwashing- January 2023**

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PART 1 - ESAs common section of the CfE

A. Possible features of greenwashing

1. Core features of greenwashing

This part of the survey enquires about the views of respondents on what can be seen as core characteristics of greenwashing, including:

1) Similarly with the communication of other misleading claims there are several ways in which sustainability-related statements, declarations, actions, omissions or communications may be misleading. On the one hand, communications can be misleading due to the omission of information that consumers or investors would need to take an informed transactional or investment decision (including but not limited to partial, selective, unclear, unintelligible, inconsistent, vague, oversimplistic, ambiguous or untimely information, unsubstantiated statements). On the other hand, communications can be misleading due to the actual provision of information, relevant to an informed transactional or investment decision, that is false, deceives or is likely to deceive consumers or investors (including but not limited to mislabelling, misclassification, mis-targeted marketing);

2) Greenwashing can occur either at entity level (e.g. in relation to an entity's sustainability strategy or performance), at product level (e.g. in relation to products' sustainability characteristics or performance) or at service level including advice and payment services (e.g. in relation to the integration of sustainability-related preferences to the provision of financial advice).

3) Greenwashing can be either intentional or unintentional (e.g. resulting from negligence or from misinterpretation of the sustainable finance regulatory framework requirement).

4) Greenwashing can occur at any point where sustainability-related statements, declarations or communications are made, including at different stages of the cycle of financial products/services (e.g. manufacturing, delivery, marketing, sales, monitoring) or of the investment value chain (e.g. issuer, benchmark/rating provider, investment firms, etc.).

5) Greenwashing may occur in specific disclosures required by the EU sustainable finance regulatory framework (e.g. SFDR Article 9 product-level disclosure requirements). Greenwashing may also occur as a result of non-compliance with general principles - as featured either in general EU financial legislation or more specifically in EU sustainable finance legislation (e.g. the requirement to provide information that is fair, clear and not misleading). In that context, greenwashing may occur in relation to entities that are currently outside of the remit of the EU sustainable finance legislation as it currently stands (e.g. ESG ratings).

6) Greenwashing can be triggered by the entity to which the sustainability communications relate or by the entity responsible for the product, or it can be triggered by third parties (e.g., ESG rating providers or third-party verifiers).

7) If not addressed, greenwashing will undermine trust in sustainable finance markets and policies, regardless of whether immediate damage to individual consumers or investors (in particular through mis-selling) or the gain of an unfair competitive advantage has been ascertained.

Question A. 1: Please provide your views on whether the above-mentioned core characteristics of Greenwashing reflect your understanding of and/or experience with this phenomenon and whether you have anything to add/amend/remove

In recent years, as the visibility of sustainable finance has increased and its role as a driver of the transition has become more visible, the risk of greenwashing has become more important. We consider it a critical risk, as it can cause a loss of investor confidence. Any situation, no matter how minor, can have a very negative impact on confidence in the sector as a whole and all the work being done to develop the sustainable finance framework. Therefore, we consider greenwashing to be a direct threat to the fulfillment of the objectives for the transition to a green economy in the EU.

We consider that, given the complexity of the phenomenon, it is necessary to begin by understanding the concept as a whole, clarifying at a conceptual level the different characteristics of greenwashing, the different market participants, the specific issues that are susceptible to greenwashing, the usual channels of communication, the stages of the life cycle where it occurs, among others. In this sense, we welcome the work being developed by supervisory authorities to advance in the identification and mitigation of these risks.

We believe that the first step to mitigate the risk of greenwashing is to agree on a common definition of this risk, which would be effective from the point of view of achieving public policy objectives and articulable by market players. In this sense, we believe that a conceptual harmonization at the regulatory level is absolutely necessary.

The CNMV Advisory Committee considers that there is an urgent need for harmonization of the understanding of sustainability within the framework of European legislations and supervisory practices.

Existing EU requirements (contained in legislations such as the EU Taxonomy Regulation, SFDR and MiFID II) are currently based on a different understanding of sustainability. This scenario can lead to inconsistencies, legal uncertainty, lack of acceptance, and even "greenwashing" accusations, which can also give rise to civil liability issues.

Moreover, it is essential to ensure the level playing field across jurisdictions. All market participants, regardless of the jurisdiction they operate, should be subject to the same legal conditions avoiding situations of supervisory arbitrage. This will contribute to decrease the risk of greenwashing.

To summarize, it is necessary to have a scientific, standardized and comprehensible definition on what is sustainable, green, social or takes into account governance criteria. This is a mandatory prerequisite in order to be able to present sustainability attributes in investment products in a legal certainty, credibly and transparently. The absence of a clear and common definition of sustainable investment (and, as a consequence, of greenwashing itself) may be, in fact, a source of greenwashing risks.

Although the proposed concept of greenwashing covers both intentional and unintentional practices, we consider that a different term should be established for each case. For example, in the case of a spreader, it would be unfair to accuse it of greenwashing, on the same level as a trigger. This would put the value chain at an unfair risk, forcing each agent in the value chain to maintain a supervisory or auditing role over the rest of the participants.

Considering a future legal definition of greenwashing (that could be used for supervisory and sanction purposes), the non-intentional dimension should be eliminated, for reasons of legal certainty.

Question A. 2: Do you have or use a specific definition of greenwashing as part of your activities? If so, please share this definition.

No.

2. Dimensions of greenwashing

Question A. 3: Market participants could potentially play three main different roles (trigger, spreader, receiver) in any given occurrence of greenwashing. For instance, a corporate issuer can trigger greenwashing by understating its carbon emissions. This misleading claim could be communicated to both investment managers, ESG data providers and/or other market participants some of who might continue to spread the misleading claim to the end investors/consumers, who will be the receiver of greenwashing.

Question A.3.1: Do you agree that market participants could be involved in three different ways in greenwashing, as described above?

- a) Yes
- b) No

Question A.3.2: If no, could you please further elaborate on the roles market participants could play in greenwashing, including on potential alternative or additional roles to the ones identified above?

N/A

Another dimension of greenwashing is the topic of a given sustainability-related claim, which can be grouped into 3 broad topics. These can be applicable to various sectors across the sustainable value chain and can be cross-cutting at entity- and product-level. However, this does not mean that all of these 3 categories necessarily lead to greenwashing in all sectors. Moreover, it is important to note that one given claim can fall under several topics, for instance an entity making claims about targeting positive impact on climate change can be split into its actual strategy around creating positive impact (falling under Topic 2), its governance around monitoring and implementing this strategy including dedicated staff composed of impact analysts (Topic 1), while the actual metrics referenced to measure the impact would fall under Topic 3. Furthermore, greenwashing can occur in relation to an isolated claim about one of the topics listed below or it may relate to a combination of claims which in aggregate constitute greenwashing.

Question A.4 : Please indicate the degree to which you consider each topic described above, as prone to the occurrence of greenwashing. Please provide a score from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence ; 3 = neutral ; 4 = high occurrence ; 5 = very high occurrence)

- a) Board and senior management's role in sustainability (Topic 1, i) =2
- b) ESG corporate resources and expertise (Topic 1, ii) =1
- c) ESG strategy, objectives, characteristics (Topic 2, i) =1
- d) Sustainability management policies (Topic 2, ii) =2
- e) ESG qualifications / labels / certificates (Topic 2, iii) =3
- f) Engagement with stakeholders (Topic 2, iv) =2
- g) ESG performance to date (including metrics for impact claims) (Topic 3, i) =2
- h) Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii) =3

Question A.4.1: Please specify the underlying drivers of greenwashing in relation to the topics you scored higher.

Section e: when the market participant is a receiver, ESG ratings/labels/certificates could be a source of greenwashing.

Section h: we consider that the commitments about ESG performance could conflict with future technical standards or stricter criteria that may be imposed by new regulations. Moreover, inefficient control and auditing, poor data quality, rapidly evolving regulations (compliance risk), unreliability of unaudited sustainability statements of counterparties (counterparty risk), unvalidated models for climate risks (model risk), false or not fully reviewed ESG statements (conduct risk) can also lead to greenwashing episodes.

Question A.5 : For the same list of topics listed in the previous question, please provide a score from 1 to 5 on the potential harm/impact of a misleading claim made on that topic (where 1 = very low impact ; 2 = low impact ; 3 = neutral ; 4 = high impact ; 5 = very high impact).

- | | |
|---|-----|
| a) Board and senior management's role in sustainability (Topic 1, i) | = 4 |
| b) ESG corporate resources and expertise (Topic 1, ii) | = 3 |
| c) ESG strategy, objectives, characteristics (Topic 2, i) | = 3 |
| d) Sustainability management policies (Topic 2, ii) | = 3 |
| e) ESG qualifications / labels / certificates (Topic 2, iii) | = 2 |
| f) Engagement with stakeholders (Topic 2, iv) | = 1 |
| g) ESG performance to date (including metrics for impact claims) (Topic 3, i) | = 2 |
| h) Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii)d | = 2 |

Question A.5.1: Please explain what types of impacts or harm and their consequences you anticipate as a result of greenwashing practices.

The main concerning impact of greenwashing practices may be the loss of investor confidence, that at the end of the day could lead to the risk of not meeting the objectives for the transition to a green economy in the EU, as well as reputational and liability risks.

From the perspective of financial institutions there are several potential impacts. Some examples could include possible sanctions for non-compliance with disclosure requirements (SFDR or taxonomy), or sustainable finance standards such as green bonds; possible claims/complaints in relation to the marketing of products and services and asset management (misleading information, lack of information, among others); or the non-compliance of commitments or targets on ESG matters assumed at entity level.

In this regard, and as previously stated, the Advisory Committee considers it essential to ensure the level playing field across jurisdictions and the avoidance of supervisory arbitrage episodes.

Question A.6: In addition to the three topics and eight sub-topics above, do you identify any additional topics which would be relevant to potential greenwashing issues? If yes, please provide below more information on your answer including, if possible, a short example.

No.

Question A.7: Please indicate below if you have any additional comments regarding the relevance of the above topics on which sustainability-related claims are made in the context of a given sector or entity.

Given that methodologies and criteria are still in the process of development and are not fully implemented, the risk of perceived greenwashing increases. It is important to define the phenomenon properly, as well as to establish criteria that determine what is considered "green" or "sustainable" (e.g., EU Taxonomy).

This mainly affects future commitments (section h).

Question A.8: On a scale from 1 (i.e. "not relevant") to 5 ("very relevant"), please indicate the extent to which you find each of the misleading qualities of a sustainability-related claim listed below relevant to greenwashing practices

- | | |
|--|----|
| a. Selective disclosure or hidden trade-off (cherry-picking positive information and/or omitting relevant negative information); | =5 |
| b. Empty claims (exaggerated claims and/or failure to deliver on such claims); | =3 |
| c. Omission or lack of disclosure; | =2 |
| d. Vagueness or ambiguity or lack of clarity; | =2 |
| e. Inconsistency across various disclosures and communications (marketing, regulatory, website, etc.); | =2 |
| f. Lack of fair and meaningful comparisons, thresholds, scenarios and/or underlying assumptions; | =2 |
| g. No proof (unsubstantiated); | =1 |
| h. Misleading /Suggestive non-textual imagery and sounds (including the use of specific colours like green); | =2 |
| i. Irrelevance; | =1 |
| j. Outdated information | =1 |
| k. Misleading / suggestive use of ESG-related terminology (naming-related greenwashing) | =3 |
| l. Outright lie (falsehood) | =5 |

Question A.8.1: should any of the qualities be added, amended or deleted from the list and if so, why?

Another dimension of greenwashing is represented by the channels through which sustainability-related claims are communicated to other actors in the sustainable value chain. These channels include, but are not limited to, the following: (1) Regulatory documents (including Key Investor Documents or Key Information Documents (KIDs), prospectuses, financial statements, management reports, non-financial statements, benchmark statements and methodology documents, insurance–product information documents, pension benefit statements, etc.) or regulatory disclosures, (2) Ratings/benchmarks/labels, (3) Product information (including internal classifications and internal target market, product testing and distribution strategy related documentation), (4) Intermediary/advice information, (5) Marketing materials (including website, social media), (6) Voluntary reporting, falling outside previous categories as reported on a voluntary basis.

Question A.9: Regarding the above dimension and the list of channels through which misleading claims can be communicated to other segments of the sustainable value chain, please indicate the likelihood that a given channel serves to communicate misleading sustainability claims made at entity level and/or at product/service level. Please score each channel from 1 (rather unlikely) to 5 (very likely):

- a) Regulatory documents (including Key Investor Documents or Key Information Documents, Prospectuses, Financial statements, Management Reports, Non-Financial Statements, Benchmark

- statements and methodology documents, insurance-product information documents, pension benefit statements, etc.) and/or any mandatory disclosures, = 2
- b) Ratings (ESG ratings and/or other ESG data products), = 3
- c) Benchmarks, = 2
- d) Labels = 2
- e) Product information (including internal classifications, and internal target market, product testing and distribution strategy related documentation), = 2
- f) Intermediary/advice information, = 2
- g) Marketing materials (including website, social media, advertising) = 3
- h) Voluntary reporting, falling outside previous categories as reported on a voluntary basis, = 2
- i) Other (please specify).

Question A.9.1: Please indicate below if you have any comments regarding the communication channels of potentially misleading sustainability-related claims?

The CNMV Advisory Committee considers that since the content of prospectuses and product information is already heavily regulated, it is unlikely that a greenwashing or deliberate misinformation event would take place.

Legal requirements related to sustainability must be clear and feasible to apply by issuers and financial services providers in order to correctly inform investors.

We think that the risk of misinformation may be higher in the area of non-legally regulated information channels (e.g., information on social media) or in the gray capital market.

Additionally, we consider that in the case of ratings (ESG ratings and/or other ESG data products), the risk may be higher, as ESG rating providers use different methodologies that are not always publicly available.

In addition to the different channels of transmission of claims, greenwashing can also occur at various stages of the product lifecycle, including: the product manufacturing stage (product development, product design, market targeting), the product delivery stage (marketing, product-related disclosure, distribution, sales), the product management stage (product monitoring/review, ongoing product-related disclosure). Beyond the product lifecycle, greenwashing can occur at the entity-level: in the business model (value chains, group structures, innovation and technology, outsourcing) or in the business management (culture, governance arrangements, systems and processes)

Question A.10: For each of the stages of product lifecycle and with regard to the business model and management, please indicate the likelihood of the occurrence of greenwashing. Please provide scores ranging from 1 (rather unlikely) to 5 (very likely):

- a. Product manufacturing =3
- b. Product delivery - marketing: advertisements, non-regulatory information =3
- c. Product delivery - regulatory disclosure =2
- d. Product delivery - distribution channels =2
- e. Product delivery - sales: information asymmetry (this includes under or over emphasis of certain product features) =3
- f. Product delivery - sales: misselling due to misleading information/disclosure =3
- g. Product delivery - sales: misselling due to unsuitable product =2
- h. Product delivery - sales: incentives at point of sale =2
- i. Product management - product monitoring, product review, ongoing product disclosure =2
- j. Business model at entity level - value chain, group structure, innovation/digitalization, outsourcing =2
- k. Business management at entity level - culture, governance arrangements, systems and processes =2

Question A.10.1: Please indicate below if you have any comments on the above question.

- At entity level: ESG practices are identified with internal policies, management models or public commitments. The experience of financial institutions in terms of compliance with legal requirements, codes and self-regulation is very broad and their performance is usually satisfactory. For this reason, we do not consider this to be a significant risk of greenwashing.
- Product development is one of the main challenges, due to:
 - Lack of standardized ESG information from companies, which results in the use of indexes, among which there are sometimes significant differences in criteria.
 - The classification of ESG products has been evolving and requirements have been increasing. In this regard, it is important to provide a clear explanation of this gradual change in criteria so that clients do not have a feeling of arbitrariness.
- Marketing: in the banking sector, marketing is particularly regulated and subject to procedures. It is also crucial to have a clear framework for both clients and providers. In this regard, it is important to promote financial education on sustainable finance, which will allow matching clients' expectations with the capacity of the entities to respond to their concerns.

Sustainability training (in the entire value chain) is an essential aspect to prevent greenwashing practices. Among others, this is a mechanism that the market carries out to mitigate the risks of Greenwashing (Please see question 9 of part 4 - ESMA section).

Question A.11: Are there any relevant elements or features of greenwashing which have not been referenced in the questions above? And if yes, could you please provide below more information?

B. Example of potential greenwashing practices

Question A.12: Are you able to identify and characterize at least one example of potential greenwashing practice?

- a) Yes, I can provide at least one example of potential greenwashing practice.
- b) No, I cannot identify a specific example of potential greenwashing practice**

Question A.12.1: (If no) If you have not identified occurrences of greenwashing, what is the reason for that? [multiple choice]

- a) There is no specific methodology on how to detect (potential) greenwashing cases
- b) As sustainable finance requirements (including definitions and disclosure standards) are new/not in force yet, greenwashing is hard to detect
- c) Few or no products with sustainability features are offered in my jurisdiction / entity / area of interest, decreasing the risk of greenwashing
- d) I have not encountered any instances of greenwashing.
- e) Other**

As a legal body the CNMV Advisory Committee has not the mandate to identify occurrences of greenwashing. Nevertheless, we will analyze a hypothetical example of a greenwashing practice.

Question A.12.2: (If yes) if you have, briefly describe this example of potential greenwashing practice, including the potentially misleading sustainability-related claims identified, a short description of the product, service or entity (as applicable) and of the claim. Please also provide information on how you identified / found out about this case.

The following is a hypothetical and generic case of greenwashing practice regarding a financial instrument, commercialized to retail clients, which has been given an incorrect classification in terms of sustainability (concerning articles 6, 8, and 9 of the Sustainable Finance Disclosure Regulation - SFDR-).

Question A.12.3: Please indicate if you consider this as an example of potential entity-level or product/service-level greenwashing practice:

- a) Entity level.
- b) Product / service level.**
- c) Both entity and product / service level.
- d) Not enough information to determine this.

Question A.12.4: In case of product / service level example, what was the asset class/ type of financial product in question? [multiple choice]:

- a) Equity (Common shares, other equity instruments)
- b) Fixed income (Green Bonds, Social Bonds and other Use of Proceeds (UoP) bonds, Sustainability-linked bonds, Common corporate bonds, Common government bonds or other fixed income securities)
- c) Derivatives (ESG derivatives including those with an ESG underlying and with an ESG performance target, other derivatives)
- d) Alternative investments (infrastructure, private equity)
- e) Funds, such as UCITS funds and AIFs (excluding ETFs), ETFs, Private Equity funds or other funds (e.g. Hedge Funds, ELTIFs); Benchmarks, such as PAB and CTB Climate Benchmarks, other climate benchmarks or ESG benchmarks
- f) Other MiFID II instruments (Securitisations)
- g) Insurance-based investment products (IBIPs) (including those with sustainability features),
- h) Other life insurance products
- i) Non-life insurance products
- j) Pan-European personal pension product (including those with sustainability features)
- k) Occupational pension scheme
- l) Corporate finance including project finance or specialised lending,
- m) Loan to retail and SMEs including consumer loans, mortgages,) credit cards
- n) Payment services (including online)
- o) Other products or services (please specify)
- p) Not enough information to determine this

Question A.12.5: Please indicate the sectors by which this example of potential greenwashing practice was triggered: [multiple choice]

- a) Issuers (other than credit institutions)**
- b) ESG data and rating providers**
- c) Credit rating agencies
- d) Benchmark administrators
- e) Investment services providers**
- f) Investment managers
- g) Insurance undertakings
- h) Insurance intermediaries
- i) Occupational pension schemes providers
- j) Pension funds

- k) PEPP manufacturers
- l) PEPP distributors
- m) Credit institutions**
- n) Payment service providers
- o) Not enough information to determine this
- p) Other (please specify)

Q A.12.6: According to you, was the entity triggering this potential greenwashing practice acting:

- a) Intentionally,
- b) Non-intentionally,
- c) I do not know.

Q A.12.7: If applicable, please indicate the stakeholders which acted, intentionally or nonintentionally, as spreader [multiple choice] :

- a. Issuers (other than credit institutions)
- b. ESG data and rating providers
- c. Credit rating agencies
- d. Benchmark administrators
- e. Investment services providers
- f. Investment managers**
- g. Insurance undertakings
- h. Insurance intermediaries
- i. Occupational pension schemes providers
- j. Pension funds
- k. PEPP manufacturers
- l. PEPP distributors
- m. Credit institutions
- n. Payment service providers
- o. Not enough information to determine this
- p. Other (please specify)

Q A.12.8: Please indicate the stakeholders which were the receivers of this example of potential greenwashing practice [multiple choice] :

- a) Issuers (other than credit institutions)
- b) ESG data and rating providers
- c) Credit rating agencies
- d) Benchmark administrators
- e) Investment services providers
- f) Investment managers
- g) Insurance undertakings
- h) Insurance intermediaries
- i) Occupational pension schemes providers
- j) Pension funds
- k) PEPP manufacturers
- l) PEPP distributors
- m) Credit institutions
- n) Payment service providers.
- o) Corporates
- p) Retail investors / Consumers**
- q) General public
- r) Not enough information to determine this
- s) Other (please specify)

Question A.12.9: Please identify the most relevant topic(s) in this example of potential greenwashing practice [multiple choice]:

- a) Board and senior management's role in sustainability (Topic 1, i)
- b) ESG corporate resources and expertise (Topic 1, ii)**
- c) ESG strategy, objectives, characteristics (Topic 2, iii)

- d) Sustainability management policies (Topic 2, iv)
- e) ESG qualifications / labels / certificates (Topic 2, i)
- f) Engagement with stakeholders (Topic 2, ii)
- g) ESG performance to date (including metrics for impact claims) (Topic 3, i)
- h) Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii)

Question A.12.10: Please identify the most relevant misleading characteristics of communication in this example of potential greenwashing practice [multiple choice]:

- a) Selective disclosure or hidden trade-off
- b) Empty claims (exaggerated claims and/or failure to deliver on claims)
- c) Omission or lack of disclosure
- d) Vagueness or ambiguity or lack of clarity
- e) Inconsistency across various disclosures and communications (marketing, regulatory, website, etc)
- f) Lack of fair and meaningful comparisons, thresholds and/or underlying assumptions
- g) No proof (unsubstantiated)
- h) Misleading / suggestive non-textual imagery and/or sounds
- i) Irrelevance
- j) Outdated information
- k) Misleading / suggestive use of ESG-related terminology (naming-related greenwashing)
- l) Outright lie (false)
- m) Other (please specify)

Question A.12.11: Please identify the communication channels through which this example of potential greenwashing practice have been communicated [multiple choice]:

- a) Regulatory documents (including Key Investor Documents or Key Information Documents, Prospectuses, Financial statements, Management Reports, Non-Financial Statements, Benchmark statements and methodology documents, insurance-product information documents, pension benefit statements, etc.) and/or any mandatory disclosures
- b) Ratings (ESG ratings and/or other ESG data products),
- c) Benchmarks,
- d) Labels,
- e) Product information (including internal classifications, and internal target market, product testing and distribution strategy related documentation),
- f) Intermediary/advice information,
- g) Marketing materials (including website, social media, advertising),
- h) Voluntary reporting, falling outside previous categories as reported on a voluntary basis,
- i) Other (please specify)

Question A.12.12: Please indicate below if the potential greenwashing practice relates to a stage of the product lifecycle or to business model/management [multiple choice]:

- a) Product manufacturing
- b) Product delivery - marketing: advertisements, non-regulatory information
- c) Product delivery - regulatory disclosure
- d) Product delivery - distribution channels
- e) Product delivery - sales: information asymmetry (this includes under or over emphasis of certain product features)
- f) Product delivery - sales: misselling due to misleading information/disclosure
- g) Product delivery - sales: misselling due to unsuitable product
- h) Product delivery - sales: incentives at point of sale
- i) Product management - product monitoring, product review, ongoing product disclosure
- j) Business model at entity level - value chain, group structure, innovation/digitalization, outsourcing

- k) Business management at entity level - culture, governance arrangements, systems and processes)
- l) Not enough information to determine this
- m) Other (please specify)

Question A.12.13: Is the example of the potential greenwashing practice related to any of the following situations? [multiple choice]

- a) Mis-selling (i.e. transaction or investment decisions not actually reflecting the actual preferences of the consumer or investor)
- b) Misclassification
- c) Mis-labelling
- d) Naming
- e) Market-abuse (typically consists of insider dealing, unlawful disclosure of inside information and market manipulation)²⁰
- f) Other (in that case, please specify below)

Question A.12.14: Is this example of potential greenwashing practice the result of a lack of compliance with current EU or national sustainable finance legislation requirements?

- a) Yes (please explain below)
- b) No
- c) Partially (please explain below)
- d) Do not know

This could be motivated by the lack of clear legal criteria.

Question A.12.15: Does this example of potential greenwashing practice relate to a third country entity providing financial services in the EU?

- a) Yes (if so, please explain below)
- b) No

Question A.12.17: Would you like to add another example of potential greenwashing practice?

- a) Yes
- b) No

Question A.13: Do you want to raise any additional points that was not included in this survey?

PART 2 - EBA section of the CfE

Question 1: In the context of ESAs' work on greenwashing, claims on environmental (e.g., climate-related) and/or social (e.g., human rights) and/or governance (e.g. director's duties) topics are considered. Based on your experience/knowledge, please indicate which of the following topics may be prone to the occurrence of greenwashing practices by EU banks, investment firms and payment service providers. [For each of the following items, please provide a score from 1 (i.e. 'unlikely') to 5 (i.e. 'extremely likely')]:

- a. misleading claim on E topics
- b. misleading claim on S topics
- c. misleading claim on G topics
- d. misleading claim on combined E and S topics
- e. misleading claim on combined S and G topics
- f. misleading claim on combined E and G topics
- g. misleading claim on combined ESG topics
- h. do not know

Please, briefly elaborate your assesment:

Question 2: In the context of credit institutions, please indicate which of the following areas may be prone to the occurrence of greenwashing practices? [For each of the following items, please provide a score from 1 (i.e. 'unlikely') to 5 (i.e. 'extremely likely')].

- a. Institution level
 - i. Green/ sustainability-related claim on the business strategy
 - ii. Green/ sustainability-related claim on the corporate governance
 - iii. Green/ sustainability-related claim on other entity-specific aspects [specify]
- b. Product and service level
 - i. Green/ sustainability-related claim on the objectives and/or characteristics of retail and SME banking products and services including,
 - consumer loans
 - mortgages
 - deposits
 - other [specify]
 - ii. Green/ sustainability-related claim on the objectives and/or characteristics of corporate and investment banking products and services including,
 - specialised lending and project finance
 - venture capital and private equity
 - corporate bonds
 - sustainability linked bonds
 - portfolio management and investment advice
 - other [specify]
 - iii. Green/ sustainability-related claim on the objectives and/or characteristics of own funds, funding and liquidity instruments including,
 - capital instruments (common equity, other equity)
 - fixed income instruments
 - green or social use of proceeds bonds,
 - sustainability-linked bonds,
 - regular bonds
 - securitisations
 - covered bonds
 - other [specify]
 - iv. Financing of governments, regional authorities and public sector entities
 - v. Payment account and (online) payment services
 - vi. Other [specify]

Please, briefly elaborate your assesment:

Question 3: In the context of investment firms please indicate which of the following areas may be prone to the occurrence of greenwashing practices? [For each of the following items, please provide a score from 1 (i.e. 'unlikely') to 5 (i.e. 'extremely likely')].

- a. Institution level
 - i. Green/ sustainability related claim on the business strategy
 - ii. Green/ sustainability related claim on the corporate governance
 - iii. Green/ sustainability related claim on other entity-specific aspects [specify]
 - b. Product and service level
 - i. Green/ sustainability related claim on portfolio management and investment advice
 - ii. Green/ sustainability related claim on underwriting of financial products
 - iii. Green/ sustainability related claim on trading on own account
 - iv. Green/ sustainability related claim on payment services (e.g. offsetting, clearing, reception transmission of orders)
 - v. Green/ sustainability related claim on other [specify]
- Please, briefly elaborate your assesment:

Question 5: Please fill-in the table below on a best effort basis with some illustrative examples of potential greenwashing (one cell can include several examples)

| | Retail banking | At product level | | | | At entity level | |
|---|--|-------------------|---------------------|--|--|-------------------|-------------------------------|
| | | Corporate Banking | Investment services | Payment services and electronic currencies | Own funds, funding and liquidity instruments | Business strategy | Internal corporate governance |
| Misleading statements on the current sustainability characteristics (i.e. how sustainability is taken into account in the current objective, design, practice or strategy) e.g., Incorrect disclosures on EU taxonomy alignment (green asset ratio) of mortgages and car portfolios | e.g., Incorrect disclosures on EU taxonomy alignment (green asset ratio) of mortgages and car portfolios | | | | | | |
| Misleading statements on the sustainability results and/ or 'real world' impact of a product, service, financial instrument, or entity. | e.g., Unsubstantiated claim that ascertains that a green loan/ investment (e.g., in energy improvement) will allow the customer to reduce home | | | | | | |

| | | | | | | | |
|---|-----------|---|--|--|--|--|--|
| | | energy consumption by X% | | | | | |
| Misleading statements on the sustainability commitments relying on medium and/or long-term (e.g., GHG emissions reduction, transition to carbon neutrality) | on future | e.g., Companies making public commitments to reduce scope 3 emissions and/or reach net zero emissions for a given retail portfolio (e.g., mortgages, car loans) but transition plan is not credible | | | | | |

Question 6: In your view, the materiality of greenwashing by credit institutions, is: (please elaborate below)

- a. currently: **low**, medium, high, I do not know?
- b. going forward: low, **medium**, high I do not know?

Question 7: In your view, the materiality of greenwashing by investment firms is: (please elaborate below)

- a. currently: low, medium, high, I do not know?
- b. going forward: low, medium, high, I do not know?

Question 8: In your view, the materiality of greenwashing by payment service providers is: (please elaborate below)

- a. currently: low, medium, high, I do not know?
- b. going forward: low, medium, or high, I do not know?

Question 9: Greenwashing can also generate financial risks to institutions. For credit institutions, what would be the risks most impacted by greenwashing? [For each of the following items, please provide a score from 1 (i.e. 'irrelevant') to 5 (i.e. 'extremely relevant') and elaborate if deemed appropriate].

- a. Operational risk including losses related to litigation and liability risks
- b. Conduct risk
- c. Reputational risk

- d. Strategic and business risk
- e. Funding risk
- f. Liquidity risk
- g. Credit risk
- h. Market risk
- i. Other [specify

Question 10: In your view, the potential overall impact of greenwashing (understood here as any detriment that greenwashing may cause, including in terms of financial implications but not limited to) is:

- a. for the credibility of sustainable financial markets: low, medium, high, I do not know?
- b. for end-investors: low, medium, high, I do not know
- c. for individual customers: low, medium, high, I do not know?
- d. for individual institutions (for example, in terms of impact on revenues or financial losses): low, medium, high, do not know
- e. For national (if applicable) financial stability (for example, in terms of impact on the functioning and stability of financial markets), low, medium, high, do not know?
- f. For the EU financial stability (for example, in terms of impact on the functioning and stability of financial markets): low, medium, high, do not know?

Please elaborate your assesment:

Question 11: What are the main challenges to address greenwashing risk? [For each of the following items, please provide a score from 1 (i.e., 'irrelevant') to 5 (i.e., 'extremely relevant')?]

- a. Lack of relevant and reliable data on the sustainability credentials, performance and/or impacts
- b. Uncertainty/ambiguity about sustainability standards, sustainability benchmarks, and sustainability eligibility criteria
- c. Lack of internal resources and knowledge to implement and monitor sustainability standards
- d. Lack of third-party verification or supervision
- e. Inappropriate legal basis and tool to investigate and take legal actions against greenwashing
- f. Other [specify]

Please briefly elaborate on your assessment

Question 12: For institutions, which of the following types of tools and processes are used internally to address greenwashing?

- a. tools and processes for greenwashing specifically
- b. tools and processes related to regular business conduct, risk management and regulatory compliance
- c. None

Please briefly elaborate on your assessment

Question 13: For institutions, what are the most important tools and processes you have in place (or are planning to put in place) to limit and address greenwashing risk. [For each of the following items, please provide a score from 1 (i.e., 'irrelevant') to 5 (i.e., 'extremely relevant').

1. At institution level:
 - a. Monitoring of factors and events that may give rise to reputational concerns
 - b. Code of conduct
 - c. Remuneration policies for sales staff that aim at mitigating the risk of mis-selling
 - d. Prudent communication for all sustainability -related communication
 - e. Internal control mechanism
 - e. Other [specify]
2. At the product/service level:
 - a. Applying market guidance and/or standards that contribute to anchor definitions and criteria
 - b. Using external reviews and third verification parties
 - c. Establishing a clear list of eligible projects and activities for sustainability lending/finance
 - d. Clear new product approval process and policy that applies to sustainability products
 - e. Other [specify]

Please briefly elaborate on your assessment:

Question 14: In your opinion, to what extent is (/will) the EU regulations (or projects) on sustainable finance¹ help addressing greenwashing risk within EU banks, investment firms and payment service providers? Please briefly elaborate on the expected benefits as well as on the potential shortcomings you may see in these regulations (/projects) presently?

Question 15: Beyond the existing and forthcoming implementation of the EU sustainable finance regulations, what actions could be taken to further mitigate greenwashing risk? For each of the following items, please provide a score from 1 (i.e., 'irrelevant') to 5 (i.e., extremely relevant').

- a. Develop further labels
- b. Improve supervisory oversight
- c. Develop regulatory guidance
- d. Further increase transparency
- e. Other [specify]

Please, elaborate below:

PART 3 - EIOPA section of the CfE

Question 1: Please outline below whether the occurrence of greenwashing can also lead to other risks for insurance or pension providers (e.g., reputational risks, litigation risks, solvency risks)

¹ Taxonomy regulation, EU Green bond standards, SFDR, Pillar 3 ESG risks requirements under CRR, CSRD.

Question 2: Do you have governance processes to prevent and monitor greenwashing in your institution (e.g., sustainable finance committee)?

- a. Yes
- b. No, but you are planning to
- c. No

If you are planning to have internal governance processes to monitor greenwashing, please provide more information below.

Question 3: Do you have internal tools to monitor greenwashing in your institution (e.g., systems and controls and/or key risk indicators flagging potential greenwashing)?

- a. Yes
- b. No, but you are planning to
- c. No

Question 3.1: If you have or are planning to have internal tools allowing the monitoring of greenwashing, please indicate below to what product this monitoring/reporting relates to [multiple choice]:

- a. Insurance: Life product
- b. Insurance: Non-life product
- c. Insurance: Entity-level greenwashing (this includes a mis-alignment between public commitments and actual investments or underwriting practices)
- d. Insurance: All
- e. Pension: Occupational pension scheme
- f. Pension: Entity/fund-level greenwashing
- g. Pension: All

Question 3.2: If you have or are planning to have internal tools allowing the monitoring of greenwashing, please indicate below to what lifecycle stage this monitoring/reporting relates to [multiple choice]:

- a. Manufacturing (product level)
- b. Delivery (product level) - marketing and disclosure
- c. Delivery (product level) - sales
- d. Product management (product level)
- e. Business model (entity level)
- f. Business management (entity level)

Question 3.3: If you have or are planning to have internal tools allowing the monitoring of greenwashing, please provide more information below.

Question 3.4: If you have no internal monitoring (governance processes and/or tools) of greenwashing and you are not planning on implementing such internal monitoring, please provide your rationale:

Question 4: Do you have governance processes to monitor greenwashing in your institution (e.g., sustainable finance committee)?

- a. Yes
- b. No, but you are planning to
- c. No

Question 4.1: If you have or are planning to have internal processes allowing the onitoring of greenwashing, please indicate below to what lifecycle stage this monitoring/reporting relates to [multiple choice]:

- a. Delivery (product level) - marketing and disclosure
- b. Delivery (product level) - sales
- c. Product management (product level)
- d. Business model (entity level)
- e. Business management (entity level)

Question 4.2: If you have or are planning to have internal processes allowing the onitoring of greenwashing, please provide more information below

Question 4.3: If you have no internal processes allowing the monitoring of greenwashing and you are not planning on implementing such internal monitoring, please provide your rationale

Question 5: For the insurance and pensions sector, please indicate if the following types of claims can in your view give rise to greenwashing:

Question.5.1. Misleading claims about the impact of an entity, product or service on environmental or social factors (example: misleading claim about the impact of an entity's activities on the environment)

- a. Yes
- b. No
- c. I don't know

Question 5.2. Misleading claims about the financial impact of sustainability risks on the entity or on the performance of the product or service (example: misleading claim about the impact of a natural catastrophe on the financial performance of a product)

- a. Yes
- b. No
- c. I don't know

Question 5.3: If you said yes or no to question 5.1 and/or 5.2 please explain your reasoning below:

Question 6: In your view is this situation greenwashing, please explain in the below text box: An insurance/pension provider says that it is improving environmental and social factors via its investments in companies. This insurance/pension provider has consequential voting shares in various companies, but it does not use these voting shares to push these companies to become more sustainable.

Question 7: Are there any specificities related to greenwashing in the insurance sector that you would like to highlight? If so, please indicate them below:

Question 8: Are there any specificities related to greenwashing in the pension sector that you would like to highlight? If so, please indicate them below:

PART 4 - ESMA section of the CfE

A. Understanding the drivers and the scale of greenwashing risk

Question 1: Which of the elements listed below, do you consider to be the main driver(s) of greenwashing risks? Please provide a short explanation of your answer: [multiple answers allowed]

- a) New / innovative ESG products in rapidly evolving ESG markets
- b) Entry of new participants such as issuers of ESG products, ESG rating or data providers, etc.
- c) Lack of ESG expertise and skills of market participants**
- d) A rapidly evolving regulatory framework**
- e) Differing interpretations of the regulatory framework**
- f) Desire to exaggerate the sustainability profile at entity/product or service level
- g) Competition (wanting to be better than a comparable issuer/product)
- h) Lack of reliable data**
- i) Mismatch between retail investors' expectations and market participants' ability to deliver real-world impact
- j) Financial literacy
- k) Other, please specify

- Regulatory frameworks are not fully consolidated. There is a quick and highly complex regulatory development, which in some cases can also cause a variety of interpretations.
 - The criteria to determine whether a product or service is "green" are based on scientific-technical concepts. Additionally, as sustainability concepts such as Taxonomy or Net Zero methodologies are developed, there is an evolution of the concepts of what is "green", "sustainable" or "zero emissions" and what is not. This means that the sector must be trained quickly and adapt its management model to the new concepts. This increases complexity and makes it necessary to have specialized and trained staff in ESG issues in the entire value chain.
 - The Non-Financial Reporting Directive has allowed more ESG information to be available on the market. However, there is a lack of harmonization in reporting standards (different transpositions), diversity of standards and lack of a common methodology for certain indicators. EFRAG standards will allow to improve transparency and comparability.

Question 2: As stated before, this CfE uses the term greenwashing broadly, covering sustainability-related claims relating to all aspects of the ESG spectrum. While the sustainable finance legislation gives more prominence to environmental aspects, we would like to understand which aspects of the ESG spectrum may be more prone to greenwashing risks, at this stage? Please rate the three aspects below from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence ; 3 = medium occurrence ; 4 = high occurrence ; 5 = very high occurrence [multiple choice]

- a) Environmental aspects =3
- b) Social aspects =1
- c) Governance aspects =1

Question 3: Greenwashing may apply to claims at both entity- and/or product-level (including service-related). Based on your experience, we would like to understand which level may be more prone to greenwashing risks in various sectors. For each of the market segments listed below,, please select one of the four options, then please provide a short explanation:

| Greenwashing practices are .. | 1) more likely at entity-level | 2) more likely at product/service-level | 3) equally likely at entity and product/service level |
|-------------------------------|--------------------------------|---|---|
| Investment manager | | X | |
| Investment firms | | X | |
| Issuers | | X | |
| Benchmarks administrators | X | | |
| Other | | | |

Please, provide explanation below:

Question 4: For market segments which you see as more prone to greenwashing risks, please provide below any quantitative or qualitative data (and relevant links) you may have and that could help inform our understanding of the scale and frequency of potential greenwashing practices. You may also upload files if relevant in the next field.

N/A

Question 5: With regards to product-level sustainability-related claims, we want to better understand which asset classes, financial products categories may be more prone to greenwashing risks. For each of the asset classes and/or financial products regarding which your expertise is relevant, please provide a score from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence ; 3 = medium occurrence ; 4 = high occurrence ; 5 = very high occurrence of greenwashing). [multiple answers allowed]:

- a) Equity (common shares, other equity instruments) =3
- b) Fixed income (green Bonds, Social Bonds and other Use of Proceeds (UoP) bonds, Sustainability-linked bonds, Common corporate bonds, Common government bonds or other fixed income securities) = 2
- c) Derivatives (ESG derivatives including those with an ESG underlying and with an ESG performance target, other derivatives) = 1
- d) Alternative investments (infrastructure, private equity) = 1
- e) Funds: UCITS funds and AIFs (excluding ETFs), ETFs, Private Equity funds or other funds (e.g. Hedge Funds, ELTIFs); = 2

- f) Benchmarks: Paris-aligned (PAB), Climate transitioning (CTB) Climate Benchmarks, other climate benchmarks or ESG benchmarks = 2
- g) Other MiFID II instruments (e.g. securitisations) = 1
- h) Other products/services (please specify)

Question 6: Greenwashing practices can be transmitted over more than one segment of the sustainable finance value chain. Various options are described below representing various greenwashing transmission trajectories of sustainability-related claims, where the first entity is always the trigger with subsequent entities being either in the role of spreader and/or receiver of claims. Based on your experience, we would like to understand which transmission trajectory may be more prone to greenwashing risks. Please provide a score for each transmission trajectory listed below from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence; 3 = medium occurrence; 4 = high occurrence; 5 = very high occurrence [multiple answers allowed] (multiple responses possible)

- a) Issuer X-Issuer Y-Investor or benchmark administrator = 2
- b) Issuer- Benchmark Administrator-Investment manager - Investor = 1
- c) Benchmark administrators-MiFID II manufacturer (e.g. ETF provider)-Investment manager-investor = 2
- d) Benchmark administrators- Investment manager-Investor = 2
- e) Investment manager-Institutional Investment managers-Investor = 2
- f) Investment manager-MiFID II Distributor (e.g. Investment firm) -Retail Investor = 1
- g) ESG rating provider-Investment manager-Investor = 3
- h) ESG rating provider-benchmark administrator -Investor = 3
- i) Issuer-Investment manager -Investor = 2
- j) Issuer - MiFID II Distributor (e.g. Investment firm) -Retail Investor = 1
- k) Other

Question 6.1: If the answer was k) other, please specify:

B. Consideration of greenwashing risks by financial market participants and issuers

Question 7: Does your organisation perceive greenwashing as a potential source of risk?

- a) Yes, and we have started developing a structured approach to tackling the issue
- b) Yes, but we have not yet developed a structured approach to the issue
- c) No
- d) Other, if so specify

As previously stated, the CNMV Advisory Committee has not the mandate to identify greenwashing risks. Nevertheless, as an advisory body that integrates representatives from all kind of participants in the Spanish securities markets (financial institutions, markets and infrastructures, customers and investors, issuers, professionals, Investment Guarantee Fund and regional governments) we have had the opportunity to debate on this topic and exchange different points of view. The result of this discussion has been reflected in response to question A.1.

We will continue delving into this important topic (according to our advisory mission) following its developments at institutional and market levels.

Question 7.1: If you answered a) or b) to Q7: what category of related risks do you anticipate could result from greenwashing issues? [multiple answers allowed]

- a) Financial risks

- b) Reputational risks
- c) Legal risks
- d) Other, if so specify

N/A

Question 7.2: If you answered a) or b) to Q7: what types of potential negative impacts do you anticipate as a result of greenwashing issues?

N/A

Question 7.3: If you answered a) to Q7: What safeguards / risks mitigants have you (or are you planning to) put in place to address greenwashing risks?

N/A

Question 8: Do you know of any industry initiative that could be instrumental in tackling greenwashing?

There are several useful market-driven initiatives that helps financial institutions clarify criteria or increase knowledge about sustainable finance.

In Spain, the Advisory Committee would highlight the cases of FINRESP and BCFE, the Financial Centers for Sustainability in Madrid and Barcelona within the United Nations initiative for the creation of Financial Centers for Sustainability (FC4S). FINRESP and BCFE promote green and sustainable finance, supporting the identification of good financial practices and identifying innovative methods and solutions.

Question 9: Which do you think are the market mechanisms that can help mitigate greenwashing risks (e.g. reputational issues) and how do you believe supervisors can help in this respect?

- Market reputation. Perhaps the main driver to mitigate this risk is the reputational impact of greenwashing episodes, in terms of credibility before customers, authorities and the market as a whole.
- Sustainability training / financial education for investors and other participants in the value chain, regarding sustainability concepts. The development of programs for a better education in sustainability is of paramount importance in order to ensure an informed demand of sustainable products.
- Market standards created through industry partnerships (as explained in previous question 8).

Question 10: What could policymakers and regulators do more to alleviate greenwashing risks?

As it has been highlighted across this questionnaire, the Advisory Committee considers it crucial to ensure an adequate harmonization and completion of a clear regulatory framework that provides legal certainty to all market players.

Without doubt, the best contribution to the mitigation of greenwashing risks is to develop a scientific, standardized and comprehensible definition on what is sustainable. This is a mandatory prerequisite in order to be able to present sustainability attributes in investment products in a legal certainty, credibly and transparently.

