

# Key Findings

Fighting greenwashing ... what do we really need?



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A review of the legislative and regulatory framework applicable to environmental impact claims of financial products and concrete propositions to fight greenwashing more efficiently

# Context

- With increasing client preferences for sustainable investment, it is little surprise to observe a concurrent **increase in marketing claims by financial institutions relating to the environmental credentials** of their financial products and services.
- At the same time, the **problem of greenwashing is fast climbing the policy and regulatory agenda**. Addressing greenwashing is a key focus for the European Commission which comes despite the raft of sustainable finance disclosure requirements introduced under the Sustainable Finance Disclosure Regulation (SFDR) and Taxonomy Regulation and voluntary ecolabels in the finance sector.
- In the finance sector context, it is useful to distinguish **environmental impact claims** as a specific sub-category of broader environmental claims which refer to the **practice of suggesting that a financial product or service has a real-economy impact which is positive for the environment**.

# Environmental impact claims in the finance sector

- **Environmental claims in the finance sector do not always relate to environmental impact** Many environmental marketing claims in the finance sector do not communicate information about environmental impact per se, but rather about various environmental features which a financial product might have.
- **Investor impact is not the same as investee company impact** In the climate context, investor impact can be defined as the change that the investor causes in the activities of real-economy actors (most often the investee company benefitting from the investment) that directly or indirectly reduces GHG emissions. Meanwhile investee company impact is the change that the company has caused in the real economy. Note that either investor impact or investee company impact can be positive (e.g. a reduction in emissions) or negative (e.g. an increase in emissions).
- **Difficulties demonstrating investor environmental impact** Because investor impact is not the same as investee company impact, this means that allocating environmental impact in the finance sector is a challenge. Investigating investor impact is a nascent research field and as such numerous gaps and uncertainties remain about the effectiveness of different climate actions and impact mechanisms.

# Critical analysis of the financial regulatory framework

- **General finance rules** (MIFID II, CBDF Regulation and Prospectus Regulation) are applicable to environmental impact claims in the finance sector, but these rules **are too high level to provide effective governance of environmental impact claims.**
- **Sustainable finance rules are not adapted to environmental impact claims.** The principal sustainable finance regulation (Sustainable Finance Disclosure Regulation (SFDR), Taxonomy Regulation and proposed EU Green Bond Standard) does not integrate the concept of investor impact. Therefore, it is not aligned with the theories of attribution differentiating investee company impact and investor impact. While the SFDR and the Taxonomy Regulation require that certain investments demonstrate a positive impact of the investee company, there is **no requirement to demonstrate the positive environmental impact of the investor.**
- **An emerging trend of using SFDR categories as marketing labels** create additional confusion and **greater risk of greenwashing especially when combined with environmental impact claims.**
- While the **EU Ecolabel** currently appears to be a means to (partially) integrate a better conception of investor impact into the regulatory framework, it is only a **voluntary framework** that will not apply to all financial products. Moreover, the ultimate **outcome of the EU Ecolabel for financial products is currently unsure** due to controversies in relation to the decision to classify nuclear and gas power as green activities under the Taxonomy Regulation.

# Critical analysis of EU consumer protection regulation

- Consumer protection regulation stemming from the **unfair commercial practices directive (UCPD)** is also applicable to environmental impact claims in the finance sector.
- The Commission gathered a multi-stakeholder group on environmental claims which provided recommendations in relation to how the general UCPD provisions apply in the context of environmental claims (the MDEC Principles). **The MDEC Principles** are not legally binding, however they are key for the interpretation and application of UCPD rules. They also inform the new Commission Notice on the interpretation and application of the Unfair Commercial Practices Directive (**UCPD Guidance**).
- **Two key obstacles prevent an effective and efficient application of UCPD rules and MDEC Principles to environmental impact claims in the finance sector: (1) the lack of definition of investor impact in the legislation and (2) the difficulties associated with substantiating investor impact.**

# Problems for regulatory oversight and investor redress

- The main problem for effective **regulatory oversight and enforcement** does not stem from inadequate supervisory powers or ability to impose sanctions. Rather (as shown in previous slides) the **regulatory framework is not sufficiently comprehensive to demonstrate an environmental impact claim is in breach of a clear set of regulatory provisions.**
- The **same problem** is apparent for **investor redress**. In addition, most investor redress claims are likely to be compensatory through seeking to recover lost monies or another form of damages. This means that, currently, a retail investor's legal claim against a financial institution because of a misleading environmental impact claim will not be successful unless that retail investor has suffered a financial loss. **Proving the financial loss would be extremely difficult.**



# Recommendations (1/3)

Integrate  
recommendations  
in the EU  
sustainable  
finance policy  
agenda

- There are several initiatives which are apparent in the EU sustainable finance policy agenda which are relevant to the line of enquiry of this paper. These include the *Strategy for Financing the Transition to a Sustainable Economy* and the upcoming *Strategy for Retail Investors*.
- However, there is no indication that the precise detail of the activities under these initiatives will extend to a specific focus on environmental impact claims of financial products.
- In this context, the recommendations are conceived so that they are either a standalone recommendation or so that the planned activities under each of the above strategies include a focus on their relevance to improving the regulatory framework which applies to environmental impact claims. In this regard, it would be highly beneficial to **establish a body/working group at EU level to ensure coordination in the research activities and outputs.**

# Recommendations (2/3)

1

Set specific rules for environmental claims in the finance sector

- **Create an EU framework for environmental claims in the finance sector with a focus on environmental impact claims** The Commission should provide specific rules at EU level to regulate environmental claims in the finance sector with a focus on environmental impact claims.

2

Create a category for impact-oriented financial products, methodologies and tools

- **Create a category for impact-oriented financial products and provide methodologies and tools to evaluate the potential of impact** The Commission should integrate the notion of environmental impact in the broader EU finance framework through (1) creating a category a category for impact-oriented financial products; and (2) developing methodologies and tools to evaluate the impact potential.

3

Establish guidance for responsible environmental impact claims in the finance sector

- **Establish guidance for responsible environmental impact claims in the finance sector** To assist financial institutions with regulatory compliance, clear guidance for responsible environmental impact claims must be developed. This guidance can build upon the methodologies and tools to evaluate potential of investor impact and foster a harmonized approach across all Member States.



# Recommendations (3/3)

4

Review investor redress mechanism in the context of environmental impact claims

- **Review investor redress mechanism in the context of environmental impact claims** In anticipation of the forthcoming Retail Investment Strategy, the Commission needs to ensure there is no barrier in the redress framework to retail investors who want to bring a claim against financial institutions in respect of misleading environmental impact claims. The Commission work plan in relation to improving financial literacy must include provision for sustainable finance literacy and knowledge of investor redress mechanisms.

5

Improve regulatory oversight of environmental impact claims

- **Improve regulatory oversight of environmental impact claims** The focus on greenwashing in the Commission's Strategy for Financing the Transition to a Sustainable Economy and ESMA's Sustainable Finance Roadmap 2022-2024 must address the specific issue of supervision of environmental impact claims. The Commission should ensure that competition authorities are included in the coordination process for public authorities envisioned in the Strategy for Financing the Transition to a Sustainable Economy.

# About our funders and contact details

**Access the paper here :**

<https://2degrees-investing.org/resource/fighting-greenwashing-what-do-we-really-need>

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