



Guide on environmental impact claims for financial products in France

About the authors

This guide was co-written by 2DII and ADEME. The CGDD also contributed to the writing of this guide and supports its content.

The French Agency for Ecological Transition (ADEME) is a public institution of industrial and commercial nature (EPIC) placed under the supervision of the Ministries of Ecological Transition and Territorial Cohesion, Energy Transition and Higher Education and Research. ADEME participates in the construction of national and local policies for ecological transition and aims to accelerate the transition to a more sober and supportive society, creating jobs, more human and harmonious.

2° Investing Initiative (2DII) is an international non-profit think tank that works to align financial markets and regulations with the objectives of the Paris Agreement. Working internationally with offices in Paris and New York, 2DII coordinates research projects in the field of sustainable finance. To ensure its independence and the intellectual integrity of its work, 2DII has a multi-stakeholder governance and funding structure, with representatives from a diverse range of financial institutions, regulators, policymakers, academia and NGOs.

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1. Overview of the guide

This guide provides an overview of the standards applicable to environmental impact claims for financial products and offers recommendations on best practices, with two objectives:

- To fight greenwashing, which is a brake to the financing of the green transition by individual and institutional investors.
- To provide a clearer framework for financial institutions, to protect them against the legal and reputational risks associated with greenwashing practices.

It should be noted that the term '**financial product**', as used in this guide, refers to investment funds or fund-based products (such as life insurance products). Banking products (such as saving accounts or current accounts) are not directly covered by this guide.¹

An '**environmental claim**' can be defined as a “practice of suggesting or giving the impression, in the context of a commercial communication or advertising, that a product or service has a positive impact on the environment, or that it is less harmful to the environment than competing goods or services [...]”². The term '**environmental impact claim**' refers to a specific type of environmental claim - those which aim to promote a positive impact on the environment.³

If environmental claims prove to be false or cannot be verified, this is what is known as **greenwashing**. Greenwashing is harmful in several ways:

- It deceives investors and prevents them from investing in products corresponding to their real objectives.
- It damages the investors' confidence, who may ultimately decide to abandon their investment projects.
- It distorts competition between financial institutions. In the long run, it has the effect of discouraging research and innovation.

It is therefore crucial that financial institutions ensure that they avoid any greenwashing practices. It should be noted that this guide focuses on the management of environmental impact claims that present a high risk of greenwashing. Therefore, as explained in Section 3, environmental claims that do not suggest an impact attributable to the individual action of the investment fund are not concerned.

Scope of this guide:

This guide aims to provide a framework for environmental impact claims for investment funds (or fund-based products) distributed in France to individual investors.⁴

However, the recommendations and examples of good and bad practices included in this guide could also be relevant for other types of claims or financial products.

European actors can also draw inspiration from this guide in their practice, and will have to take into account potential specificities at the level of local law.

¹ However, some of the principles and recommendations in this guide may also be relevant to environmental impact claims for banking products.

² Extract and translation of the definition contained in the MDEC compliance criteria on the application of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (UCPD) of 2016. The practical guidance issued by the CNC in 2014 defines an environmental claim as a term (or expression) used to highlight the quality of a product with regard to environmental protection.

³ The concept of environmental impact is defined in Section 3 of this guide.

⁴ It should be noted that this scope was defined on the basis of the reference legal framework (in particular the transposition in France of the UCPD and the compliance criteria of the MDEC of 2016), as well as on the basis of studies and analyses carried out by 2DII on environmental impact claims.

Objectives of this guide:

1. To fight greenwashing, which is a brake to the financing of the green transition by private investors:

The alignment of the financial sector with the climate objectives of the Paris Agreement requires the involvement of a diverse range of actors - private, public, institutional, but also individual. Individual investors have the capacity to finance part of the green transition⁵. In addition, a significant proportion of the population wants to have a positive (social or environmental) impact on the real economy through their investment⁶. The main areas of interest to retail investors are environmental topics such as water, climate change, energy efficiency and renewable energy, the fight against pollution⁷, etc.

It is therefore possible to align the private interests of investors with the common aim of financing the green transition. However, greenwashing is a significant obstacle as it misleads or even deceives retail investors, thereby preventing the financing of the transition.

2. To provide a clearer framework for financial institutions, to protect them against the legal, financial and reputational risks associated with greenwashing practices:

In response to strong demand from private investors, the positive environmental impact is announced or suggested in several commercial communications⁸. However, the notion of the environmental impact of financial products poses a number of problems:

- Firstly, this notion is vague in the absence of a regulatory definition at the French or European level. Practice and academic research offer elements for defining the environmental impact detailed in this guide.
- In addition, proving this impact is complex, however, consumer protection regulations require the provision of proof of any commercial claim⁹.

In terms of environmental impact claims, the risk of greenwashing is therefore high in the financial sector. In the absence of a clear regulatory framework, financial institutions face significant legal uncertainty and are exposed to legal and financial risks in the event of legal proceedings and sanctions. Finally, recent accusations of greenwashing involving actors in the financial sector highlight the reputational risk to which financial institutions are exposed.

The purpose of clarifying the regulatory framework applicable to environmental impact claims is also to help financial institutions communicate more easily about funds that improve the investor's potential environmental impact. Indeed, some institutions could decide to ban all environmental communication in order to avoid any risk of greenwashing. It would then be a question of green bleaching¹⁰.

This guide is therefore intended to support financial institutions in a communication process which is clear, accurate and not misleading.

- It provides an overview of the legal framework and the risks of sanctions (Section 2).
- It explains why it is necessary to pay particular attention to communications relating to the environmental impact of financial products (Section 3).
- It includes recommendations of practices to prioritise or avoid in terms of communications relating to the environmental impact of financial products, and examples of good and bad practices (Sections 4 and 5).

⁵ According to Banque de France's 2020 annual report on regulated savings, the financial investments made by French households totalled EUR 5,665.5 billion as of 31 December 2020. In the Eurostat household report, household financial assets in the EU were valued at EUR 32.157 billion in total in 2020.

⁶ 2DII, 2022, What do your clients actually want?

⁷ 2DII, 2022, What do your clients actually want?

⁸ 2DII, 2021, Sustainable Finance and Market Integrity: Promise Only What You Can Deliver.

⁹ See Article 12 of the Unfair Commercial Practices Directive and Section 2.3 of the MDEC criteria.

¹⁰ Some fund managers invest in sustainable activities but do not advocate them, in order to avoid data problems arising in particular from disclosure obligations.

- It provides information on the methods and tools being developed to substantiate environmental impact claims (Appendix 2).

Why should the recommendations of this guide be followed?

- ✓ To avoid controversies, scandals, and to mitigate reputational risks;
- ✓ To reduce legal and financial risks;
- ✓ To promote a credible and attractive range of products, which have a positive impact on the environment;
- ✓ To contribute to environmental awareness and respect.

Note:

The recommendations and examples of good and bad practices included in this guide are based on an interpretation of the applicable legal framework and on the practical expertise of ADEME and 2DII. They have no legal value and do not pre-empt the decision of a judge and/or any other competent authority. It is therefore up to each financial institution to ensure that its environmental impact claims comply with the applicable legal framework.

2. The applicable legal framework and the risk of sanctions

Overview of the applicable texts:

There is no text that specifically focuses on claims regarding the environmental impact of financial products; nor does any specific provision concern the framework for making claims regarding the environmental impact of financial products. However, various more general texts are applicable to claims of this kind. It is crucial for financial institutions to be aware of these texts, in order to comply with them.

Overview of the applicable provisions of claims made regarding the environmental impact of financial products distributed in France		
Text	Binding force	Relevant sectors
Monetary and Financial Code (transposition of the Markets in Financial Instruments Directive - MIFID II)	Obligation in force	Financial sector
Cross-Border Distribution of Funds (CBDF) Regulation	Obligation in force	Financial sector
ESMA guidance on the CBDF Regulation	Guidance on interpretation and application	Financial sector
Position/recommendation of the French Financial Market Authority (AMF) DOC-2020-03	Position/recommendation	Financial sector
AMF position/recommendation DOC-2011-24	Position/recommendation	Financial sector
Environmental Code	Obligation in force	All sectors
French Climate and Resilience Law	Obligation in force	All sectors
Consumer Code (transposition of the Unfair Commercial Practices Directive - UCPD)	Obligation in force	All sectors
Guidance on the interpretation and application of the UCPD	Guidance on interpretation and application	All sectors
Multi-Stakeholder Dialogue on Environmental Claims (MDEC) compliance criteria	Guidance on interpretation and application	All sectors
Recommendations of the ARPP (French authority regulating advertisement)	Recommendations	All sectors
French National Consumer Council (Conseil National de la Consommation - CNC) guidance ¹¹	Recommendations	All sectors

The rules applicable to environmental impact claims are dispersed across various texts at the French and European level.

Most of the French rules applicable to claims regarding the environmental impact of financial products stem from the transposition (or direct application¹²) in France of European texts. Some are specific to the financial sector, such as MIFID II¹³ and the CBDF Regulation¹⁴ and its guidelines¹⁵. Other texts cover

¹¹ The CNC guide is currently being updated for publication in the first quarter of 2023

¹² This is the case for the CBDF Regulation, which is directly applicable.

¹³ Directive 2014/65/EU of 15 May 2014 on markets in financial instruments, transposed in the French Monetary and Financial Code.

¹⁴ Regulation of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings.

¹⁵ ESMA Guidelines on marketing communications, pursuant to the Regulation of August 2021 on cross-border distribution of undertakings for collective investment.

consumer protection: the UCPD¹⁶, accompanied by its guidelines¹⁷ and the MDEC criteria¹⁸. In addition, the Environmental Code includes provisions on the use of environmental claims and advertising¹⁹. In this sense, claims regarding the carbon neutrality of products and services are notably prohibited in principle (under certain conditions).²⁰ In addition to these rules, financial institutions must take into account the rules established by the AMF doctrine²¹, the recommendations of the CNC²², and the ADEME opinion on climate communication²³, as well as the recommendations of the ARPP²⁴. In addition, several French guides address the subject of environmental claims, but they are not specific to the financial sector.²⁵

It should be noted that the provisions contained in the SFDR²⁶ and Taxonomy²⁷ regulations are not applicable to environmental impact claims of financial products. First and foremost, these regulations do not aim to define criteria for the legality of environmental claims. Indeed, the SFDR regulation is limited to defining the information to be communicated pursuant to the different levels of ambition of financial products in terms of sustainability, with a view to transparency. The Taxonomy regulation, on the other hand, provides a classification system for environmentally sustainable activities. In addition, these regulations have yet to clearly incorporate the notion of the environmental impact of the investor.

Definition of an environmental impact claim for financial products:

As a reminder, an '**environmental claim**' can be defined as a “practice of suggesting or giving the impression, in the context of a commercial communication or advertisement, that a product or service has a positive impact on the environment, or that it is less harmful to the environment than competing goods or services [...]”²⁸

There are no French or European regulations which include a definition of an environmental impact claim in the financial sector. It could be defined as: any message or representation, which is not mandatory under European Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a financial product allows its subscriber to have a positive impact on the environment.²⁹

Summary of the rules applicable to environmental impact claims for financial products:

Here is a summary of the main rules applicable to environmental impact claims for financial products:

¹⁶ Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices, transposed in the French Consumer Code (article L.121-1 and following).

¹⁷ Communication from the Commission: Guidance on the interpretation and application of Directive 2005/29/EC

¹⁸ MDEC compliance criteria for the application of the 2016 UCPD.

¹⁹ Titre II, art. 12 of law n° 2021-1104 of 22 August 2021 Law Climate and Resilience

²⁰ Articles L. 229-68 and L. 229-69 of the French Environmental Code.

²¹ AMF position/recommendation DOC-2020-03 and Position/recommendation of the AMF, DOC-2011-24.

²² CNC, 2014 - Guide on environmental claims.

²³ ADEME, 2022 - ADEME's expert opinion and recommendations on the use of the "carbon neutrality" argument in communications.

²⁴ ARPP recommendations on sustainable development - V3, 2020.

²⁵ ADEME, 2020 - Guide on responsible communications. ADEME, 2012 - Anti-greenwashing guide. ARPP/ADEME, 2019 - report on "advertising and the environment".

²⁶ Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector.

²⁷ Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

²⁸ Extract and translation of the definition contained in the MDEC compliance criteria on the application of the 2016 UCPD. The practical guidance issued by the CNC in 2014 defines an environmental claim as a term (or expression) used to highlight the quality of a product with regard to environmental protection.

²⁹ Definition suggested by 2DII, based on the proposal for a directive amending Directive 2005/29/EC: The proposal of March 2022 for a directive amending Directive 2005/29/EC suggests incorporating into positive law the following definition of the notion of an environmental claim: "any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time."

Environmental impact claims for financial products must comply with rules specific to the financial sector:

- They must be clear, accurate and not misleading;³⁰
- They must be consistent with the legal and regulatory documents of the promoted fund;³¹
- They must be proportionate to the integration of sustainability features or goals in the investment strategy.³²

In addition, an environmental impact claim may constitute a misleading commercial practice under French Consumer Law in the following cases:

- If it contains false information;³³
- If it contains information that could mislead the average consumer, even if the information is factually correct;³⁴
- If it omits important information that the average consumer needs to make an informed business decision (the information is withheld or is unclear, unintelligible or ambiguous).³⁵

In the event of legal proceedings, it is up to the professional to provide proof of the accuracy of the environmental impact claim.³⁶

Guidelines³⁷ and compliance criteria³⁸ at European level make it possible to better interpret and apply consumer law rules. The following should be noted in particular:

- Regarding generic claims: Vague and general claims (such as “green”, “responsible”, etc.) should be avoided if they cannot be supported.
- Regarding the proof of claims: Claims should be based on solid, independent, verifiable and generally accepted evidence that takes into account the latest scientific findings and methods.
- Regarding future claims: Claims relating to future results should be avoided, and communications regarding future efforts preferred.
- Regarding the product name: The product name is affected by the obligations above.

Finally, it is prohibited to claim in an advertisement that a product or service is carbon neutral, or to use any wording of equivalent meaning or scope, unless the advertiser fulfils certain conditions (GHG emission report, reduction trajectory, compensation methods).³⁹ In an expert opinion, the ADEME recommends avoiding the notion of carbon neutrality in communications to focus, in a transparent and proportionate way, on the levers for contributing to this neutrality.⁴⁰

³⁰ Articles L. 533-12 and L. 541-8-1 of the French Monetary and Financial Code; see also Article 24 MIFID II and Article 4 of the CBDF Regulation.

³¹ AMF position/recommendation DOC 2011-24, transposition of Section 6.5 of ESMA Guidelines on marketing communications pursuant to the CBDF Regulation.

³² AMF position/recommendation DOC 2020-03, transposition of Section 6.5 of ESMA Guidelines on marketing communications pursuant to the CBDF Regulation.

³³ Article L. 121-2 of the French Consumer Code and Article 6 UCPD.

³⁴ Article L. 121-2 of the French Consumer Code and Article 6 UCPD.

³⁵ Article L. 121-3 of the French Consumer Code and Article 7 UCPD.

³⁶ Article 12 UCPD.

³⁷ Communication from the Commission: Guidance on the interpretation and application of Directive 2005/29/EC, Section 4.1.1

³⁸ MDEC compliance criteria for the application of the 2016 UCPD.

³⁹ Article L. 229-68 of the French Environmental Code.

⁴⁰ ADEME, 2022, Expert opinion on the use of the “carbon neutrality” argument in communications

Summary of monitoring and sanctions:

Prior to its publication, the AMF may request the modification of a claim;⁴¹ and, after the publication, the AMF may sanction a claim that is not clear, accurate and not misleading⁴².

It can also, within the framework of the partnership agreement signed in 2011 with the ARPP, involve the French advertisement ethics regulatory organisation (Jury de Déontologie Publicitaire - JDP⁴³) in the case that an advertisement does not comply with the ARPP recommendations, including the recommendation relating to advertising in the financial sector and the recommendation called “sustainable development”.

The JDP rules on complaints made against broadcast advertisements that do not comply with the ethical rules of the profession as specified in the ARPP Code of Advertising Recommendations.

In court, financial institutions whose environmental impact claims do not comply with the rules set out in this section are exposed to different types of sanctions:

- Prison terms of up to two years;⁴⁴
- Substantial fines of up to 10% of revenue or 80% of advertising expenses incurred,⁴⁵ and even 100% of expenses incurred relating to non-compliance with the carbon neutrality claim ban⁴⁶;
- Indemnities intended to compensate the damage suffered by the investor.

⁴¹ Article 314-6 of AMF General Regulation.

⁴² On the basis of the AMF position/recommendation DOC 2020-03 and Articles L. 533-12 and L. 541-8-1 of the French Monetary and Financial Code.

⁴³ JDP – Jury de Déontologie Publicitaire (www.jdp-pub.org).

⁴⁴ Article L. 132-2 of the French Consumer Code.

⁴⁵ Article L. 132-2 of the French Consumer Code.

⁴⁶ Article L. 229-69 of the French Environmental Code.

3. Challenges specific to environmental impact claims

As part of the promotion of the environmental impact of financial products, which requires compliance with the legal framework detailed in Section 2, financial institutions face various problems:

- It is primarily a question of clearly defining and framing the notion of environmental impact for a financial product (in the absence of a clear definition in the regulations), the evaluation of which differs greatly from a service or consumer product;
- Deducing the elements that would support an environmental impact claim;

a) **Defining and complying with the notion of environmental impact:**

If we refer to the scientific literature on the subject, and in particular to the work of researchers from the University of Zurich⁴⁷, the **impact of the investment can be defined as “a specific change to the environmental parameters, caused by the investor's actions.”**

It is therefore important to distinguish between the environmental impact of the investor and the environmental impact of the company.

- **The environmental impact of the company** corresponds to the change⁴⁸ (positive or negative) that the company's activities cause to society, the environment and the climate (in particular the progression of a company's CO2 emissions).
- **The environmental impact of the investor** is defined as the changes⁴⁹ that the investor's actions bring about for the business of the company - for example the actions of an investor may reduce the CO2 emissions of a company's production model.

There is indeed a link between the environmental impact of a company and that of an investor, but the environmental impact of the investor cannot be directly and simply equated with that of the invested company without ensuring that the environmental impact of the company is indeed caused by the action of the investor.

⁴⁷ The Investor's Guide to Impact, by Florian Heeb and Julian Kölbel. The framework for the creation of an EU Ecolabel for financial products also refers to: JRC - Technical Report No. 4 on the development of the EU Ecolabel for financial products.

⁴⁸ This can be a positive or negative environmental impact, but this guide focuses on positive/favourable impacts.

⁴⁹ This can be a positive or negative environmental impact, but this guide focuses on positive/favourable impacts.

Finance For Tomorrow explains that the **impact finance rests on 3 pillars**:⁵⁰

- **Intentionality:**

On the level of the investor, intentionality means the investor's desire to help generate a measurable environmental benefit. Regarding invested (or financed) companies, wilfulness means a company's desire to contribute to one or more environmental objectives as an integral part of its business model. Impact investors have the clear objective of responding to a sustainable development issue. This is what differentiates impact investing from investment approaches based on a generic ESG (environmental, social and governance) integration process.⁵¹

This intention must be systematic and concern all of the fund's investments. It is expressed at the time of making the investment decision (ex-ante).

- **Additionality:**

To be able to discuss the impact of the investor, it is necessary to be able to demonstrate his/her/their additionality: in other words, the responsibility of the investor for actions taken to improve the impact of the company.

Questioning the additionality of an investment means trying to answer the following question: If the asset had not been financed (or invested) by this financial actor through this financial product, what would have been the difference in outcome in the real world?

Therefore, the good environmental performance of a company in which the financial product is invested, or even its improvement over time (i.e. the impact of the company), cannot sufficiently characterise the positive impact of the investor. Indeed, this improvement could have been made in the absence of this investment, for example as a result of the actions taken by another investor (substitutability) or of the actions of other company stakeholders who are unrelated to the investment (a change of management, a new regulation, a media campaign carried out by NGOs, etc.).

Additionality is even more complex and questionable for investments made on the secondary market, which involve an exchange of assets between investors but do not lead directly (and even less automatically) to new financing for invested companies or, more broadly, to changes in practice. The investor invests in a company with a positive impact but, for their part, they do not provide - and are not *directly* responsible for - any additional financing. However, they may contribute - theoretically and subject to identical and simultaneous behaviour on the part of a significant number of other investors - to improving the company's financing conditions.⁵²

More generally, strategies which are specific to listed markets⁵³ and are recognised in scientific writing as having a potential impact (for example shareholder engagement or the price signalling)⁵⁴, present difficulties related to the evaluation of additionality (see the box below).

Although it can pose major challenges in terms of evaluation, the criterion of additionality is decisive for evaluating the impact of a financial product, as it makes it possible to ensure that an investment has a positive impact on the real economy.

⁵⁰ Finance For Tomorrow - Pledge for the development of impact finance. It should be noted that Finance For Tomorrow refers not only to the environmental impact, but also to the social impact. For the sake of clarity, this guide focuses solely on environmental impact claims. The content of this guide could, however, be used to a large extent within a framework for managing social impact claims.

⁵¹ Definition of impact finance, Groupe de Place Impact, F4T, September 2021.

⁵² In theory, a secondary market investor can have an indirect effect on corporate decisions by altering prices and trading volumes. In practice, this indirect effect is difficult to prove, as it depends on the behaviour of other investors, and is, in all likelihood, very marginal.

⁵³ Unlike unlisted markets, listed markets are primarily characterised by public information on the companies listed, higher liquidity, and larger-sized companies.

⁵⁴ These strategies have been identified as suitable for the listed market by the work of the IMP and supported by research carried out at the University of Oxford. They are presented in Appendix 2.

- **Impact measurement:**

Measuring the impact involves assessing the environmental effects on the real economy, on the basis of the impact objectives pursued. In essence, the impact objectives pursued are positive, irrespective of whether they represent a search for an increase in the positive externality (over time or compared to a reference scenario) or a significant reduction in the negative externality of the business.

The evaluation can be qualitative or quantitative and may address the impact of the products and services offered by the company, as well as, in certain cases, the significant impact of these production processes. The results of this impact measurement must be communicated and used by the investor in the management of their investments.⁵⁵

In conclusion, an impact investment must i) explicitly be aimed and in a detailed manner, at an impact on the real economy, ii) seek additional effects on the real economy through additional actions and iii) measure the additional effects on the real economy.

b) Identifying the elements to support an environmental impact claim

Regulations require financial institutions to be able to substantiate their business claims.⁵⁶ This therefore also applies to environmental impact claims. Even if the three pillars presented above were originally intended to qualify an impact investment, they are also relevant for identifying the elements to support an environmental impact claim.

By relying on the definition of impact investing, an environmental impact claim should be substantiated by demonstrating i) a clear and detailed intention to have an impact on the real economy, ii) the additional actions taken, and the additional effects obtained, iii) based on the most scientific measure (or evaluation) possible of the additional effects obtained.

Financial institutions should then take into consideration the difficulty of proving the additionality of the investor's action and to be sure, before making any environmental impact claim, that they have the required proof.

⁵⁵ Definition of impact finance, Groupe de Place Impact, F4T, September 2021.

⁵⁶ Article 12 UCPD.

Participation in collective action

The impact of an investment, supported by the search for additionality of its own individual action, requires the use of relevant means and strategies⁵⁷, in addition to the provision of proof of the causal link between action taken by the financial product and the results obtained.

However, given the nature of listed markets, which are large and have a highly diluted shareholding, it is also accepted that the strategies adapted to these (shareholder engagement, price signal, etc.) most often require participation in a collective approach whereby the simultaneous intervention of other investors is a necessary condition for achieving the impact objective pursued by the fund (willingness to improve the cost of capital of the most virtuous companies, participation in a collective commitment, etc.).

This condition regarding participation in or contribution to a collective, as opposed to individual impact, can prove to be a real challenge in terms of the requirement of proof of additionality, which is necessary to ensure the impact of a financial product and therefore support an impact claim. Although this requirement does not call into question the potential of these strategies, it underlines the importance of being able to distinguish an impact claim (where the causality of the individual action is clearly identified) from that of participation in a collective effort without proof of additionality in the results.

This guide is primarily intended to provide a framework for environmental impact claims, i.e. claims promoting the achievement of a positive environmental impact. These claims must be supported by proof of the additionality of the results (proof of the causal link between the actions of an investor and the results). However, knowing the need to promote the ambitious possible actions on the listed markets, and knowing that the listed markets are mainly those in which retail investors are directed and invested, we can only encourage:

On the one hand, public and private initiatives to develop minimum standards and labels to validate the contribution of an investment fund to the collective action aimed at obtaining a positive environmental impact and managing the associated appropriate communication and differentiation. This differentiation is between investment funds that do not have the same involvement in the collective effort, and impact investment funds capable of providing proof of the additionality of the results.

On the other hand, academic research on the development of robust additionality assessment methods in the context of participation in collective action.

⁵⁷ These strategies have been identified as having a potential impact and having been adapted for different financial markets (listed and unlisted) by the work of the IMP and supported by research carried out at the University of Oxford. They are presented in Appendix 2 of this guide.

4. Our recommendations

Given the issues specific to environmental impact claims in the financial sector (see Section 3) and the lack of a clear legal framework (see Section 2), financial institutions and investors lack clarity on the legality of this type of claim. This section aims to provide recommendations that will help to guide financial institutions in making business impact claims.

Although this guide does not predetermine the decision of a judge or a competent authority, these recommendations are intended to reduce the legal, reputational and financial risks for financial institutions.

1. Evidence - Defining the scope of the environmental impact claim in terms of what can be proven:

Before making any commercial claims (including determining the name of the investment fund), ask yourself: What am I able to prove?

Also, before formulating an environmental impact claim of a financial product, it is advisable to ask yourself whether the elements constituting impact can be proven. Is it possible to demonstrate i) a clear and detailed intention to have an impact on the real economy, ii) the additional actions taken and the additional effects obtained, iii) based on the most scientific measure (or evaluation) possible of the additional effects obtained?

It is recommended that financial institutions making environmental impact claims do so following this procedure:

- Gather evidence (ex-ante) on expected commitments and objectives in relation to improving the potential investor impact;
- Gather evidence (ex-ante) on planned actions/strategies to enhance the potential investor impact;
- Gather evidence (ex-ante) on each hypothesis of the causal link between additional action taken and the expected results (i.e. the hypotheses on which the strategy for improving the potential impact is based);
- Gather (ex-post) evidence on how additional action is taken;
- Gather evidence (ex-post) on the results and explain how they support or contradict the initial hypotheses;
- Put an independent control system in place (at least an internal audit on the gathering of evidence and evaluation methods).

The aim of this evidence-based approach is to avoid any ambiguity between assumptions and facts, and to make it possible to build up, on an ongoing basis, a large sample of evidence to continuously improve the investment approach and, in the case of a check, a solid basis to support the claim.

This also involves questioning which methods of proof are to be used. It is appropriate to use the latest scientific approaches for this. As a reminder, the question of proof is particularly complex when it comes to the additionality of the impact of the investor. In Appendix 2, we suggest ways of thinking about the methods for substantiating environmental impact claims.

Given this requirement of proof and the means which need to be implemented to ensure it, only investment funds with a strong ambition in terms of improving the potential impact of the investor should use environmental impact claims.

In practice: the right questions to ask for successful communication

What kind of evidence do I have? Is this evidence of the means undertaken to have an additional impact on the real economy, and/or evidence of the results generated? The scope of my environmental impact claim will depend on the level and quality of the proof that I have; and before any communication, I need to ask the right questions.

Regarding intentionality:

Can I provide - especially through my pre-contractual documents - proof of my intention of impact, namely the additionality in the means used and the intention to measure the results obtained?

Regarding the additionality of the means implemented:

Can I demonstrate the additionality of my investment strategy? Have I developed a theory of change to ensure the potential of my strategy? Does this depend on the action of other investors?

Regarding the quality of the measurement of the results:

Have I put in place a way of measuring the results and, in the case of an observed impact, am I able to demonstrate that the results obtained depend on my actions? Is this a clue or concrete evidence?

2. Additionality - Being transparent regarding the additionality criteria

It should be kept in mind that a significant portion of retail investors express an intention to make a positive impact through their investment. However, this notion is complex and is based on an additionality requirement, which implies that the positive change claimed in the real world depends on the investor's actions.

It is therefore important to remember that:

- The financing of activities defined as environmentally⁵⁸ sustainable does not make an additional or even essential contribution to their development, if there are no difficulties in accessing financing in the first place, or if the funds are not offered at rates which are much lower than those used by other actors on the market;
- The refusal to finance activities that are harmful to the environment does not prevent these activities from being funded if the data suggest that other actors, through the effect of substitutability, can finance these activities and therefore compensate for the lack of financing caused by the refusal of certain investors;
- The investment (or financing) strategy will not trigger more environmentally friendly practices for the invested (or financed) companies if the decision to introduce these practices has already been taken or is mainly motivated by other factors.

The absence of proof of additional effect of the investor's action on the results of the collective action (via the price signal or the shareholder commitment) will not make it possible to support communication on the environmental impact of the financial product. It is better to promote the implementation of this type of strategy by another means of communication.

The following practices should therefore be adopted:

- Refrain from suggesting that the environmental impacts of the companies benefiting from the investment can be automatically credited to the investment strategy of the *financial product and therefore implying that these impacts are directly caused by the investor*.
- Refrain from equating a change in the asset portfolio (for example, the divestment of a company owning a coal-fired power plant) with environmental impacts on the real economy (the reduction of greenhouse gas emissions) when these impacts are not proven (the plant having been bought by another investor instead of being shut down).

⁵⁸ According to the Taxonomy Regulation (EU) 2020/852.

- Refrain from equating an increase in allocation to certain financial assets (for example, increase in exposure to green bonds, or assets under management in environmental funds) to an increase in financing in the real economy (e.g. increased financing for environmentally sustainable projects that were previously underfunded).

It is therefore necessary:

- To retain all evidence of additionality;
- To use the most rigorous methods to determine the additionality of the effects obtained;
- To remember that evidence of additionality is only imperfect and that the additionality of past investments does not bode well for the additionality of future investments.

In practice: the right questions to ask for successful communication

It must be possible to inform investors in complete transparency of additionality, which is central and specific to financial products in the impact assessment. It is therefore important to ensure, in addition to the evidence and before communicating on the impact of the product, that the following questions can be answered adequately:

Regarding intentionality:

Is the desire for additionality of the investment strategy clearly mentioned in the mandatory regulatory documents (KIID, prospectus, periodic reports, etc.)?

Regarding results:

When communicating, do I take care to differentiate what is solely the impact of the issuers in which I invest (impact of the company) from the impact that the individual investor can have on the real economy by investing in the financial product (investor impact)?

3. Proportionality - Ensuring communication is proportionate with the potential environmental impact of the investment strategy

Communication on improving the environmental impact of the financial product must be proportionate to the means used to achieve it⁵⁹. Also, given the importance of the means to be implemented (both for the realisation of the impact and for its evaluation), communication about product impact can only be done if the search for impact is at the heart of the product strategy.

Furthermore, the communication must take into account that the impact of an investment strategy most often requires joint action and a mass effect to be achieved, particularly on listed markets.

Finally, the communication must also consider the current state of scientific research relating to the subject of impact in finance, as well as the very nature of financial markets (i.e. the difficulty of proving and guaranteeing an impact). Thus, communication on creating a financial impact should avoid any excess. It should be restrained.

Retail investors must be clearly informed of the limitations of investment strategies. **The use of warnings and legal notices can be useful but must accompany clear, accurate and non-misleading communication.** In particular, it is advisable to append the following warning to impact claims: **“the methodologies and evidence currently available do not allow for accurate and reliable assessment of the environmental impacts of fund-wide investments.”** In addition, any reference to past environmental performance should be accompanied by the following statement: **“Past environmental performance does not foretell future environmental performance.”**

In practice: the right questions to ask for successful communication

⁵⁹ AMF, 2020, position/recommendation DOC-2020-03, see also ARPP, 2020, Sustainable Development Recommendation V3.

In order to ensure that the communication on the environmental impact of the financial product respects the principle of proportionality, the following questions should be asked beforehand:

Regarding intentionality:

Is my impact objective central to my investment strategy and presented as such in the mandatory regulatory documents (KID, prospectus, periodic reports, etc.)?

Regarding the means implemented:

Are all the means employed well oriented towards achieving the environmental impact objective? And are their limits sufficiently explained?

Regarding results:

Does my communication on environmental impact take into account the difficulties encountered in its assessment which are inherent in the financial markets in which the product operates (in particular listed markets) and the current state of scientific research on the subject?

For example, if the achievement of my objective is conditioned on the action of other investors, does my communication take this into account?

4. Clarity - Using precise, clear and simple terms to talk about environmental impact

Claims should always use **appropriate vocabulary that accurately reflects reality in order to avoid ambiguity. Vague terms that do not refer to substantiated benefits should be avoided.** The term “environmental impact”, which is vague and generic, should therefore be avoided if the improvement of the investor’s potential for environmental impact cannot be substantiated.

In addition, communication must be clear and understandable even for a person with a low level of knowledge in sustainable finance. Therefore, the complexity and technicality of measuring additionality should not be used to mislead investors. And the notion of the investor’s environmental impact should not be confused with that of the investee company’s environmental impact. A reference to more detailed information (website) is desirable in order to address the complexity of the claim and not to impair its legibility.

Finally, it is also important to avoid confusing the terms “financing” and “investment.” “Financing” reflects real cash flow, which is not the case for the term of “investment”, which can correspond to an exchange of securities without creating a new cash flow in reality.

In practice: the right questions to ask for successful communication

Communications must be understood by all, regardless of their level of knowledge. Nor should they be misleading. In this regard, the following questions should be asked:

Does the communication take into account the difficulty of understanding the terms and concepts associated with the impact of a financial product, such as the notion of additionality and the complexity of its measurement? Does it include a reference to more detailed, popular definitions?

Whether the vocabulary used is appropriate to the notion of investor impact and does not mislead, such as the incorrect use of the term financing for investment operations on the secondary market?

5. Consistency - Ensuring consistency of environmental impact claims with mandatory regulatory information

Environmental impact claims must be consistent with the information contained in KIDs, prospectuses and periodic reports. It is also advisable to contact the AMF prior to formulating an environmental impact

claim in order to confirm the possibility of using such a claim given the information contained in the product documentation.

Moreover, it is important to stress that the concept of environmental impact (in the sense of the investor's positive impact on the environment) should not be confused with other concepts. Indeed, since the concept of impact is not currently defined in French and European regulations, it is important to avoid creating confusion between the concept of investor impact and the existing regulatory categories (and in particular so-called Article 9 SFDR products), even indicators of principal adverse impact (PAI). Article 9 products refer to what could generally be regarded as theme-based investments more likely to match the objectives of investors seeking alignment of value rather than impact. PAI indicators, on the other hand, reflect the negative impacts of the underlying assets (companies or projects) held by the fund.

In practice: the right questions to ask for successful communication

Since the investor's environmental impact is not yet clearly defined in French and European regulations, there is no specific regulatory category or list of mandatory disclosures related to this concept. However, this absence should not be a pretext for introducing confusion around the concept of the investor's environmental impact. The following questions will help you ensure a consistent commercial communication with your mandatory documents:

Did I mention, in the mandatory regulatory documentation, the concepts constituting the investor's environmental impact, namely intent, additionality and the measurement of results?

Did I avoid justifying the investor's environmental impact solely by belonging to a product category of the SFDR Regulation (in particular avoiding confusion with the product category of Article 9 of SFDR)?

Have I contacted the AMF to ensure that my environmental impact claim follows the law (this is not mandatory but advisable)?

5. Examples of good and bad practices

The tables below provide examples of good and bad practices in environmental impact claims for investment funds.

- Table 1 presents practices to avoid. Some of these practices are prohibited in principle or deemed unfair in all circumstances (with or without exemptions). Others may be subject to sanctions if certain conditions are not met. The first column gives examples of these practices (most of them have been observed in the market and anonymised). This is an illustrative and non-exhaustive list. The second column presents legal explanations and references to understand why practices should be avoided.
- Table 2 presents an example of good practice for the formulation of environmental impact claims.

These examples are indicative and do not exempt financial institutions from an internal compliance review.

Table 1: Bad practices

Practices	Examples	Legal provisions
<p>False communications</p>	<ul style="list-style-type: none"> • Claiming that a change in portfolio allocation automatically leads to positive changes in the real world: “Our sustainable funds aligned with the 2° scenario are suitable for people who want to direct their money towards achieving environmental objectives, through strategies that combine financial performance <u>and real-world benefits.</u>” • Claiming that a lower GHG emission level than that of its competitors is equivalent to a reduction in GHG emissions in reality: “Based on an investment of 5,000 euros in the fund: The emissions of held companies are 40% lower than the market reference, <u>which is equivalent to a reduction of auto emissions by 10,000 km.</u>” • Claiming that ESG integration, theme-based investment or exclusion strategies have a direct positive effect on the real world: “The fund is based on a theme-based strategy <u>aimed at achieving positive environmental outcomes.</u>” 	<p>Commercial claims must be correct, clear and not misleading.⁶⁰</p> <p>Claims that are false or likely to mislead the average consumer are misleading marketing practices.⁶¹</p>
<p>Vague or unclear communications</p>	<ul style="list-style-type: none"> • “If you believe in the future, invest in the future with the xxx fund.”⁶² • “Our group is proactively contributing to the national goals in combating global warming.” • “We aspire to be responsible managers for our clients by ensuring that the way we place our assets creates positive societal impact and financial performance.” • “Green bonds allow you to participate in the fight against climate change and the environmental crisis. .” 	<p>Commercial claims must be correct, clear, and not misleading.⁶³</p> <p>Omissions that may mislead the average consumer are misleading marketing practices. This may involve omitting or concealing material information or providing it in an unclear, unintelligible or ambiguous manner.⁶⁴</p>

⁶⁰ Article L533-12 and L. 541-8-1 of the Monetary and Financial Code.

⁶¹ Article L121-2 of the French Consumer Code and Article 6 UCPD.

⁶² European Commission (DG JUST), 2014, Consumer market study on environmental claims for non-food products, Appendix 5, p. 80.

⁶³ Article L533-12 and L. 541-8-1 of the Monetary and Financial Code.

⁶⁴ Article L121-3 of the French Consumer Code and Article 7 UCPD.

Table 1: Bad practices

Practices	Examples	Legal provisions
Unsubstantiated, generic claims	<ul style="list-style-type: none"> • “Green investment” • “Environmentally friendly” • “Positive environmental impact” 	<p>Environmental claims are likely to be misleading when they consist of vague and general claims of environmental benefits, without benefits being properly substantiated. For example: “environmentally friendly”, “good for the environment”, “eco”, “green [...]”, and even the broader claims of “conscious” and “responsible.”⁶⁵</p>
Carbon neutrality claims	<ul style="list-style-type: none"> • “Carbon neutral” • “Positive carbon balance” • “Climate neutral” 	<p>It is prohibited to claim in an advertisement that a product or service is carbon neutral, or to use any wording of equivalent meaning or scope, unless the advertiser fulfils certain conditions (GHG emission report, reduction trajectory, compensation methods).^{66,67}</p>
Communications on future results	<ul style="list-style-type: none"> • “Green bonds guarantee you a positive impact on the planet.” 	<p>Professionals should give preference to communications on environmental achievements rather than communications on future environmental performance, which by definition cannot be supported by evidence. This does not prevent companies from communicating about future environmental efforts. However, in order to avoid any risk of accusations of greenwashing, companies should only do so if they have established a realistic plan with clear objectives and deadlines, involved relevant stakeholders and organise a follow up of its commitments by a third party.⁶⁸</p>

⁶⁵ Section 4.1.1 Communication from the Commission: Guidance on the interpretation and application of Directive 2005/29/EC.

⁶⁶ Article L 229-68 of the French Environmental Code.

⁶⁷ ADEME, 2022, Expert opinion on the use of the “carbon neutrality” argument in communications

⁶⁸ MDEC compliance criteria for the application of the 2016 UCPD.

Other risky practices		
Practice	Examples	Legal provisions and explanations
<p>Confusion between article 9 SFDR and impact</p>	<ul style="list-style-type: none"> • “Article 9-compliant investment funds go even further: They show a desire to have a real social or environmental impact.” • “The third category includes impact products with a clearly identified sustainable development objective (so-called Article 9 products).” 	<p>Some players use commercial claims that create confusion between SFDR Article 9 products and products that improve the investor’s impact potential. These claims imply that all Article 9 products are impact products. Such claims could be considered misleading. Indeed, although some products classified as Article 9 SFDR may be impact products (i.e. products demonstrating the impact of the investor), not all Article 9 products are automatically impact products. Article 9 of the SFDR makes no reference to the concept of investor impact. Some products (such as theme-based funds) can be classified in article 9 SFDR although they do not demonstrate the search for, or the achievement of, a positive impact of the investor in the real world.⁶⁹</p>

⁶⁹ 2DII, June 2021, does the SFDR help the impact-focused retail investor?

Table 2: Best practice for communicating on impact

Principle	Example of claim	Proof requirement ⁷⁰	Warnings to be used in addition to an accurate, clear, and not misleading claim
<p>The scope of the environmental impact claim will depend on the level and quality of the evidence supporting it, that is, the ability to:</p> <ul style="list-style-type: none"> • Demonstrate a clear and detailed intention to have an impact in the real economy, • the additional actions carried out and, • the additional effects obtained, based on the most scientific measure (or assessment) of the additional effects obtained. <p>In all cases, given the difficulties in assessing the impact of the investor, the claim should remain cautious.</p> <p>It should be noted that <u>the financing mechanisms of growing new/undersupplied capital markets and providing flexible capital seem to be the most capable of providing tangible proof of additionality at investor level and therefore be able to substantiate an impact claim.</u></p>	<p>“This fund contributes and aims for a positive impact in the real economy.”</p> <p>Note: The claim must be supported by the evidence indicated in the column “Proof requirement” and accompanied by the warnings indicated in the column “Warnings to be used in addition to an accurate, clear and not misleading claim.”</p>	<ol style="list-style-type: none"> 1) clear and detailed intention to improve the investor’s environmental impact through investment 2) implementation of additional actions to improve investor impact 3) measurement of additional effects obtained in the real economy through investment (investor impact) <p>This involves comparing the results obtained to a baseline scenario and substantiating the causal link between actions and results.</p>	<ul style="list-style-type: none"> • It is advisable to accompany such claims with the following disclaimer: “the methodologies and evidence currently available do not allow for accurate and reliable assessment of the environmental impacts of fund-wide investments.” • In addition, any reference to past environmental performance should be accompanied by the following statement: “Past environmental performance does not ensure future environmental performance.”

⁷⁰ Starting points on methods for substantiating an environmental impact claim are suggested in Appendix 2 of this guide.

6. Conclusion

In a context of climate emergency, the subject of environmental impact is essential and influences consumption as well as investment choices.

However, the environmental impact of financial products, whose assessment differs from that of other goods and services, is currently not framed on a legal level. By relying on the most recent work on assessing the impact of a financial product, and the regulations applicable to commercial claims, this guide attempts to fill this gap.

The recommendations presented in this guide are intended to support and help financial institutions formulate clear, cautious and transparent messages to investors. This caution, coupled with transparency requirements, must not prevent the best players from standing out and continuing to develop an innovative offer.

Thus, good communication on the environmental impact must allow investors to be correctly informed, all while encouraging the promotion and development of innovative products, which in the long term, are capable of making a real contribution to the fight against global warming and the protection of the environment.

Finally, this guide also aims to highlight the need for clear regulations in order to set up a clear framework for the environmental impact claims of financial products. This requires the intervention of the legislator/regulator at the European and/or French level to introduce:

1. A clear definition of investor impact;
2. A method for assessing the investor's environmental impact for listed and unlisted markets;
3. A dedicated label to enhance the most ambitious impact approaches.

References

Legal sources

French law

Environmental code

- Article L.229-68⁷¹:

“1. - It is prohibited to assert in an advertisement that a product or service is carbon neutral or to use any wording of equivalent meaning or scope, unless the advertiser makes the following readily available to the public:

- 1. a greenhouse gas emissions report including the direct and indirect emissions of the product or service;*
- 2. the approach by which the greenhouse gas emissions of the product or service are primarily avoided, then reduced and finally compensated. The trajectory of reducing greenhouse gas emissions is described with the aid of quantified annual progress targets;*
- 3. the modalities of offsetting residual greenhouse gas emissions respecting minimum standards defined by decree.”*

- Article L.229-69:

“The administrative authority may impose a fine of €20,000 for a natural person and €100,000 for a legal person on failure to comply with the prohibition and the obligations laid down in this Section. These amounts may be increased to the full amount of the expenditure devoted to the illegal operation.”

Consumer Code: Article L121-2

“A commercial practice is misleading if it is committed in any of the following circumstances:

- 1. where it creates confusion with another good or service, a trademark, a trade name or another distinctive sign of a competitor;*
- 2. where it is based on false or misleading allegations, indications or representations concerning one or more of the following elements:[..]*

b) the essential characteristics of the good or service, namely: Its substantial qualities, its composition, its accessories, its origin, in particular with regard to the rules justifying the affixing of the words “made in France” or “Origine France” or of any equivalent mention, sign or symbol, within the meaning of the Union Customs Code on the non-preferential origin of products, its quantity, method and date of manufacture, the conditions of use and suitability for use, its properties and the expected results of its use, in particular its environmental impact, as well as the results and main characteristics of the tests and checks carried out on the good or service; [...]

e) the scope of the advertiser's commitments, including environmental commitments, the nature, process or purpose of the sale or provision of services; [...]”

Monetary and Financial Code:

- Article L533-12

“All information, including promotional communications, sent by an investment service provider to clients, including prospective clients, shall be accurate, clear and not misleading. Promotional communications shall be clearly identifiable as such.”

- Article L541-8-1

“Financial Investment Advisors should:

- 1. Act in an honest, loyal and professional manner, serving the best interests of customers*

⁷¹ Article 12 of law n° 2021-1104 of 22 August 2021 French Climate and Resilience Law

2. Carry out their activity within the limits authorized by their status, with the necessary skill, care and diligence, in the best interests of their clients, in order to offer them a service offer adapted and proportionate to their needs and objectives;

[..]

6. Ensure understanding of the financial instruments they propose or recommend, assess their compatibility with the needs of clients to whom they provide advice mentioned in I of Article L. 541-1, in particular according to the defined target market, and ensure that financial instruments are only offered or recommended when it is in the best interests of the client

[..]

8. Ensure that all information, including communications of a promotional nature addressed to their customers, in particular their potential customers, present exact, clear and non-misleading content. communications of a promotional nature are clearly identifiable as such.”

European law

Directive 2014/65/EU of 15 May 2014 on markets in financial instruments

“1. Member States shall require that investment firms, when providing investment services or, where appropriate, ancillary services to clients, act in an honest, fair and professional manner which is in the best interests of those clients

[..]

3. All information, including advertising, provided by the investment firm to clients or potential clients shall be correct, clear and not misleading. Advertising information is clearly identifiable as such.”

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, Article 19.4

“The management company shall comply with the obligations laid down in the fund rules or the instruments of incorporation, as well as with the requirements set out in the prospectus, which are consistent with the applicable legislation in accordance with paragraphs 1 and 3.”

Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market:

- Article 6

‘A commercial practice shall be deemed to be misleading if it contains false information, and is therefore misleading or in any way, including by its general presentation, misleads or is likely to mislead the average consumer, even if the information presented is factually correct with respect to one or more of the following and that in either case it leads or is likely to lead him to make a business decision that he would not otherwise have made

a) the existence or nature of the product;

b) the main characteristics of the product, such as its availability, advantages, risks, performance, composition, accessories, after-sales service and complaint handling, method and date of manufacture or service, delivery, fitness for use, use, quantity, its specifications, geographical or commercial origin or the results which may be expected from its use, or the results and essential characteristics of tests or checks carried out on the product;

c) the extent of the undertakings of the professional, the motivation for the commercial practice and the nature of the sales process, as well as any statement or symbol suggesting that the professional or product is directly or indirectly sponsored or supported;

d) the price or the method of calculating the price, or the existence of a specific price advantage;

e) the need for service, spare part, replacement or repair;

f) the nature, qualities and rights of the professional or his representative, such as his identity and assets, qualifications, status, accreditation, affiliation or links and industrial, commercial or intellectual property rights or the awards and distinctions he has received;

g) the rights of the consumer, in particular the right of replacement or refund under the provisions of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, or the risks which the consumer may incur.

2. A commercial practice shall also be deemed to be misleading if, in its factual context, having regard to all its characteristics and the circumstances, it leads or is likely to lead the average consumer to take a commercial decision which he would not otherwise have taken, and it involves:

- a) any marketing activity relating to a product, including comparative advertising, that is confusing with another product, brand, trade name or other distinctive sign of a competitor;
- b) failure by the professional to comply with commitments contained in a code of conduct by which he has undertaken to be bound, meaning:
 - i) that these commitments are not mere aspirations, but are firm and verifiable, and
 - ii) the professional indicates, in the course of a commercial practice, that he is bound by the code.”

- Article 7

“ 1. A commercial practice shall be deemed to be misleading if, in its factual context, taking into account all its characteristics and the circumstances and the limitations of the means of communication used, it omits material information which the average consumer needs, having regard to the context, to make an informed business decision and therefore leads or is likely to lead him to make a business decision that he would not otherwise have made.

2. A commercial practice shall also be regarded as a misleading omission where a trader, having regard to the aspects referred to in paragraph 1, conceals material information referred to in that paragraph or provides it in an unclear, unintelligible, ambiguous or untimely manner or where he does not indicate his true commercial intention where this is not already apparent from the context and where, in either case, the average consumer is or is likely to be led to take a commercial decision which he would not have otherwise taken.

3. Where the means of communication used for the purpose of commercial practice imposes space or time limits, it is appropriate, in order to determine whether information has been omitted, to take account of these limits and of any measures taken by the trader to make the information available to the consumer by other means.

4. When an invitation to purchase is issued, the following information shall be considered to be substantial, provided that it is not already apparent from the context:

- a) the main characteristics of the product, to the extent appropriate having regard to the means of communication used and the product concerned;
- b) the geographical address and identity of the professional, such as his business name and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
- c) the price inclusive of all taxes, or, where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where applicable, any additional transport, delivery and postal costs; or where such costs cannot reasonably be calculated in advance, a statement that such costs may be borne by the consumer;
- d) the terms of payment, delivery, performance and processing of claims, if they differ from the conditions of professional diligence; e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

5. Information provided for by Community law relating to commercial communications, including advertising or marketing, and a non-exhaustive list of which is set out in Annex II, shall be deemed to be substantial.”

- Article 12

“Member States shall confer on the courts or administrative authorities powers enabling them, in judicial or administrative proceedings referred to in Article 11:

- a) to require the professional to provide evidence as to the accuracy of his factual allegations in relation to a commercial practice if, having regard to the legitimate interest of the trader and any other party to the proceedings, such a requirement appears appropriate in the circumstances of the particular case, and
- b) to consider factual allegations to be inaccurate if the evidence required under point (a) is not provided or is deemed insufficient by the court or administrative authority.”

Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

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Appendix 1: Glossary

Sustainable activity (EU Taxonomy)

An economic activity that contributes to an environmental objective of the European Taxonomy (climate change mitigation, adaptation to climate change, sustainable use and protection of aquatic and marine resources, transition to a circular economy, prevention and reduction of pollution and protection and restoration of biodiversity and ecosystems), provided that such investments do not significantly undermine any of these objectives and that beneficiary companies follow good governance practices.

Environmental claim

The practice of suggesting or giving the impression, in the context of commercial communication or advertising, that a product or service has a positive impact on the environment or that it is less harmful to the environment than competing goods or services [...]⁷²

Environmental impact claim

Any message or statement not required under Union or national law, in particular text, image, graphic representation or symbol, in any form, including a label, trademark or name, in the context of commercial communication, who claims or suggests that a financial product allows its policyholder to have a positive impact on the environment.⁷³

AMF

The French Market Authority (AMF) is responsible for the supervision of financial markets, the protection and information of individuals regarding savings and the regulation of financial transactions. It also participates in the harmonisation of financial regulations at the European and international level.

ESG Analysis

Such analysis includes gathering information on how an investment target manages and behaves in environmental, social and governance terms. When an investment institution wants to know to what extent potential investments (e.g. companies, countries and issuers) are exposed to ESG risks and opportunities and how they are managed, it performs an ESG analysis.

ARPP

The ARPP is the professional regulatory authority established in the advertising sector. This professional regulation of advertising is coordinated with civil society. It creates ethical rules, contained in the ARPP Code of Advertising Recommendations, ensuring daily, their proper application before and after the broadcast of advertisements. These recommendations make it possible to specify, clarify and make operational a hard law rule or to offer a lasting alternative to hard law in particular areas without compromising its centrality. The ARPP has enriched its scope of action by strengthening the monitoring before the showing of the main multi-media national campaigns containing an environmental claim defined in the scope of the ARPP "Sustainable Development" Recommendation, regardless of the dissemination medium used.

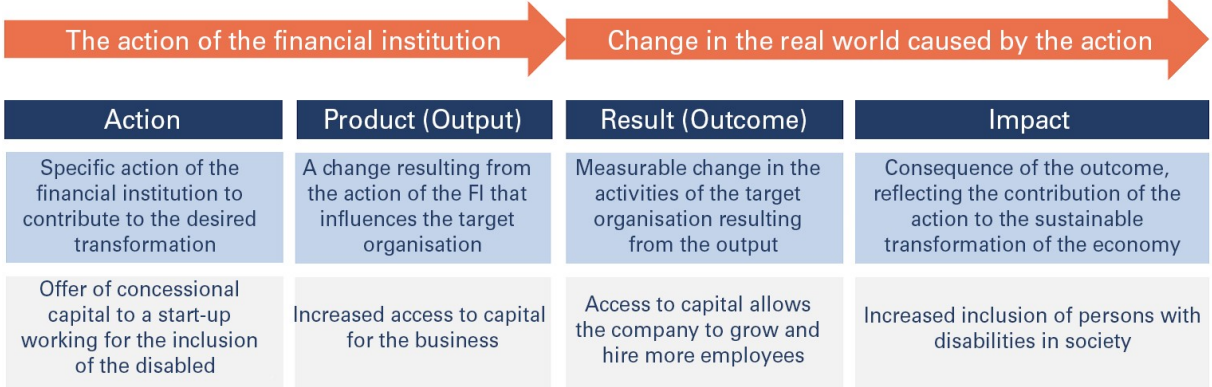
⁷² Extract and translation of the definition contained in the MDEC compliance criteria on the application of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (UCPD) of 2016. The practical guidance issued by the CNC in 2014 defines an environmental claim as a term (or expression) used to highlight the quality of a product with regard to environmental protection.

⁷³ Definition suggested by 2DII, based on the proposal for a directive amending Directive 2005/29/EC: The proposal of March 2022 for a directive amending Directive 2005/29/EC suggests incorporating into positive law the following definition of the notion of an environmental claim: "any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time."

After the campaigns have been broadcast, the Jury of Advertising Ethics (JDP), composed of personalities independent to the profession, decides on complaints from any natural or legal person under the ARPP Code, in compliance with the principle of adversarial and possible referral to the Reviser of the advertising ethics, also independent. This jury does not deal with the issue of non-compliance with legal rules, which is the sole responsibility of the courts and the administration. However, the recommendations of the ARPP Code can be used as a reference in certain articles of law, regulations or even in case law and the judge can take note of the “opinions” rendered by the ARPP in the event of a lawsuit before the courts.

Causal chain

A chain of changes caused by each other linking the actions specific to the financial institution and the intended impact objectives. See the visual below.



CNC

The French National Consumer Council (Conseil National de la Consommation - CNC) is a joint advisory body attached to the Minister responsible for Consumer Affairs. It is composed of a college of approved consumer protection associations, a college comprising the most representative professional organizations of industrial, commercial, craft and agricultural activities and private services, as well as companies providing public service missions, and ex officio members.

Contribution

Participation in a collective action likely to generate a sustainable transformation without research, analysis or management of the additionality of individual action.

Shareholder engagement

It consists in influencing companies by using shareholder dialogue and voting rights, in order to encourage them to improve their ESG practices. This engagement may take the form of direct interaction between an investor and an investment recipient firm or a collaborative engagement, in which a number of investors come together to conduct a joint dialogue.

ESMA

European Securities and Markets Authority. It is the independent European Financial Market Regulatory Authority.

Exclusions

The practice of excluding from the investment universe companies that do not meet minimum socio-environmental criteria. These may include sectoral exclusions (alcohol, tobacco, weapons, GMOs, nuclear, etc) or normative exclusions (non-compliance or non-ratification of international treaties and conventions).

Impact

The impact is an approach of sustainable transformation of an agent with a search for additionality of its individual action.

Impact at issuer level (invested company):

The additional effects on stakeholders of the issuer's activities and its achievements after taking into account a counterfactual scenario (a scenario in which the issuer's activity would not take place).

Impact at the fund level

The additional effects on the stakeholders of the invested issuers attributable to the fund's shares after taking into account a counterfactual scenario (if the fund had not made its investments).

JRC

The Joint Research Centre is the internal scientific service of the European Commission. It carries out independent, evidence-based research and scientific advice that contributes to supporting EU policy-making.

Primary financial market

The primary market, as opposed to the secondary market, is the meeting place between companies seeking capital to ensure their development and capital holders, particularly through IPO or capital increases. All public limited companies issue shares but not all are listed on the stock exchange.

Secondary financial market

Securities issued on the primary market are then traded on the secondary market, which can be considered the second-hand market for price determination. The issuer is no longer involved.

Organised (or listed) financial market

Market for which a service provider, the stock exchange, and now, the "market company", organises the confrontation between supply and demand, the fixing of the price and or part of the operations that are associated with the realisation of the transaction.

OTC financial market (unquoted)

Market in which a face-to-face between buyer and seller is organised, with or without rules of operation, with or without integration into a de facto network ensuring the outcome of the transaction.

Realisation (output) at the issuer level (invested company)

Products and services generated by the company's activities.

Example: The number of training courses delivered for a company/association offering digital training.

Outcome at issuer level (invested enterprise)

The effects on the issuer's stakeholders of its activities and achievements.

Example: The number of beneficiaries who have increased their digital skills for a company/association offering digital training.

ESG score

Result of ESG analysis. The methodology used to calculate such a score (weighting, indicators...). As they are not harmonised, the results of this analysis may vary from analyst to analyst.

Best-in-class strategy

An approach in which the environmental, social and governance (ESG) performance of a company or issuer is compared to that of its peers (for example, in the same industry or category) on the basis of a sustainability score. All companies or issuers with a rating above a defined threshold are considered investable. This threshold can be set at different levels (for example 30% of the best performing companies or all companies that achieve a minimum ESG score).

Theory of change

Strategy for planning the change process highlighting the causal chain linking the fund's own contribution actions and the desired impact objectives.

According to ISO 14097: "A strategy for planning the change process that highlights the causal chain linking the financial institution's own contribution actions and the desired impact objectives."

Votes

These are investors who address their environmental, social and governance (ESG) concerns by actively exercising their voting rights (attached to the holding of a share or a share in the company).

Appendix 2: Starting point on the methods to substantiate an environmental impact claim

We can cite several works that financial institutions could rely on to substantiate their environmental impact claims.

Warning: The methods and tools presented in this appendix are, for the most part, still under construction. Moreover, they are market practices, so their use does not prejudge compliance with legal provisions prohibiting greenwashing.

The work of the Impact Management Project developed by the works of researchers from the University of Zurich on mechanisms allowing investors to have a positive impact through their investments.

Academic research, in particular the work of the Impact Management Project, which was further developed by researchers from the University of Zurich, has identified the additional actions that an investor can have through a financial investment, i.e. the various mechanisms that allow an investor to improve his impact potential. **These mechanisms, ranked in descending order in terms of the current level of proof on their ability to generate impact, are:**

1. Grow new/undersupplied capital markets
2. Provide flexible capital (the provision of financing on advantageous terms for project promoters);
3. Active engagement with invested companies (in the form of shareholder engagement or non-financial support);
4. Finally, signal to other stakeholders that impact matters (in particular via a price signal sent to the market through the capital allocation choices made by the financial product)

However, the mechanisms with the best-established effectiveness (points 1 to 3 above) are not widely used or not used at all today by the products most frequently offered to individual retail investors. Indeed, most consumer sustainable financial products rely mainly on capital allocation strategies on secondary markets that are only likely (when the necessary conditions are met) to change market prices, more or less significantly. These financial products therefore use **the price reporting mechanism, which is considered by research to have an uncertain potential impact at best, given the need for joint action by a large share of the market and the absence of a common and homogeneous investment signal.** These are products based on:

- Exclusions;
- Selection on ESG scoring bases (best in class, best-in universe...);
- Theme-based investment;
- Investment aligned with a 1.5° scenario;
- Investment in green bonds.

Similarly, the shareholder commitment mechanism, also adapted to the listed market, also has significant limitations with regard to the requirement of proof of additionality of the individual share. The mechanisms “1 - Grow new/undersupplied capital markets” and “2 - Provide flexible capital” seem capable of providing tangible proof of additionality at the individual level. However, these mechanisms are adapted to the unlisted market, which is currently not really intended for private savings, with a few exceptions.

The evaluation grid of the potential to contribute to a sustainable transformation:

The Finance For Tomorrow grid which provides a general and multi-criteria assessment (intentions, process, results obtained) of the potential contribution to the sustainable transformation of a fund:

The work of the impact place group convened at the initiative of Finance For Tomorrow has resulted in an “assessment grid of the potential contribution to a sustainable transformation”⁷⁴. This grid, and the accompanying notice, allow investment funds to assess their contribution/impact potential and adapt their communication accordingly. The grid strives to qualify the three pillars of impact (wilfulness, additionality and measurement), based on 32 questions organised around four main sections:

- A - Theory of Change (with two subsections: “Definition of general objectives” and “Definition of actions deployed”) which assesses the quality and robustness of the fund’s theory of change;
- B - Operational implementation that assesses the gap between the fund’s theory of change and the actions actually implemented;
- C - Follow-up of results (with two sub-sections: “Results monitoring procedure” and “Quality of results obtained”);
- D - Communication and consistency that analyses the quality of communication associated with the fund from the point of view of the impact and alignment of other fund and GSP practices with the stated objective of contributing to sustainable transformation.

Section A identifies on what and how the fund intends to have an impact; Section B details the actions that have actually been deployed to this end (beyond ambitions and promises only) and Section C presents the procedures for measuring results in terms of contribution to the transition and what they have revealed so far.

Logically, evidence of environmental intentions can only be used to justify environmental intentions (not actual environmental impact). Similarly, evidence on actions with potential environmental impact may not be used for anything other than evidence that actions with potential environmental impact have actually been carried out. Finally, the observation of positive environmental results goes only so far. It is a gross observation with no certainty that the observed result can be credited to the fund.

In other words, the evidence that the fund will be able to gather will justify either I) the intention to have an environmental impact, or ii) the implementation of actions with a high potential for environmental impact, or iii) the achievement of results at the level of the companies invested. And it must not be used, without distinction, to justify the environmental impact of the fund.

The definitive proof of the impact of the fund cannot be deduced directly from these three types of evidence (taken alone or together), since there is no reason to exclude any positive results observed at the level of the invested companies being due to factors external to the fund (for example, a change of direction of the companies invested), regardless of its intentions and the actions deployed.

On the other hand, simultaneously obtaining good ratings in these three blocks (or sections of the grid) contributes to providing a bundle of evidence that suggests a positive environmental impact of the fund. The fund has shown a strong intention to have environmental impact; it has also deployed actions with high impact potential. And an improvement in the impact of the companies invested has indeed been observed. In this case, the level of confidence in the fund’s ability to improve the investor’s impact potential is high.

⁷⁴ Finance For Tomorrow, task force impact: A scale grid for assessing the potential contribution of a fund to sustainable transformation. Available here: <https://institutdelafinancedurable.com/actualites/publications-groupe-de-place-impact/>

ISO 14097, a framework of principles and requirements for the assessment and reporting of climate change-related investments and financing activities

This standard is part of a logic of double materiality and stipulates that: “any financing or investment decision has an impact, positive or negative, on the climate and/or can in turn be affected by climate change.” The double materiality of an investment is to ask the question of the impact of its investment decisions in the real economy.

The ISO 14097 standard for financial institutions provides principles, requirements and guidance for defining, monitoring, evaluating and reporting on the actions of financial institutions related to climate change and their respective contributions to achieving climate goals. They can be applied by financiers who undertake deliberate climate actions, as well as by financiers without climate goals or strategies

The framework is built around the Theory of Change (TOC) approach, which allows formalising and describing the causal links between the objective established by the financier, the climate action that the financier plans to undertake to achieve the objective, the result(s) of the action and finally the result that will lead to the impact. One must therefore ensure this causal link. In this sense, the standard also emphasises that the impact must be based on additionality, that a financier does not automatically attribute credit to the company’s climate actions (i.e. changes in greenhouse gas emissions in the real economy) if the climate action of the financier was not one of the main drivers or was the only driver of the variation in GHG emissions.

The funder describes and documents a plan to achieve its strategic objectives. The plan describes the means that will be employed to achieve the objectives and should include, inter alia:

- climate actions that will be used to achieve the objectives of the portfolio and the beneficiary company (climate actions include the elements of capital allocation, commitment, conditional financing without being prescriptive on the strategies used);
- the method(s) put in place to establish the cause and effect relationship or the link between the climate action(s), the resources mobilised and their strategic objectives and targets, which must:
 - indicate how expected achievements and outcomes will be taken into account in the process of justifying the actual impact of climate action; and
 - understand the data collection processes, the type of data needed, the sources of data and information, and the frequency of monitoring climate actions.

Finally, the standard proposes a framework for the communication of climate action in the form of a “climate report” which should include a description of the cause and effect relationship or the link between the climate action of the financier and the actual production, result and impact.

It states that if causality cannot be established, an indication of factors that do not permit causation must be provided.

Thus the search for additionality in the results is required and must be transparent. The financier is also required to mention whether his/her/their action is individual or is part of a collective framework.

Methods of impact assessment

To demonstrate positive environmental outcomes as a result of their actions, financial institutions can draw on decades of expertise from the valuation profession, which has a long tradition of evaluating social change.

Indeed, evaluation is a discipline that has been developed over decades with established societies (European Evaluation Society, UK Evaluation Society, American Evaluation Association, Société Française de l'Evaluation, etc.) and dedicated academic journals (American Journal of Evaluation, Evaluation, Evaluation review, New Directions for Evaluation, etc.). Impact assessment is particularly widespread in the field of public policies (development aid, support for innovation, etc.). Flagship publications from international organisations such as the OECD⁷⁵, the World Bank⁷⁶ and the Asian

⁷⁵ OECD (2019), “Better Criteria for Better Evaluation - adapted definitions and principles for use”, DAC Network on Development Evaluation

⁷⁶ World Bank (2012, 2016), impact evaluation in practice

Development Bank⁷⁷ have helped to structure the field and harmonize practices. A similar trend of decision-making based on quantified results has been observed in the field of philanthropy for about fifteen years. Note that impact investing was initiated by the Rockefeller Foundation in 2007.

Impact assessments are a special type of assessment that seeks to validate and quantify the existence of a cause-effect relationship between an intervention and an outcome. They are based on **quantitative, experimental (such as randomised controlled trials) or quasi-experimental (such as double-difference or synthetic control) methods** that assess effects against a counterfactual (estimated) scenario where intervention would not have occurred.

Other, less quantitative methods can also help support the contribution of an intervention to an outcome. They include **qualitative methods** (surveys, interviews, focus groups) that interview stakeholders as well as **methods of validating the theory of change** that verify that the various anticipated steps have occurred.

While quantitative methods can provide strong evidence as to whether an effect has occurred, qualitative and validation methods of the theory of change cannot provide such a conclusion but are more focused on understanding how the effect occurred (or did not take place). In this respect, the two types of analysis are complementary and evaluation experts recommend combining them to obtain an optimal understanding of the relationship between the intervention and the observed outcome.

⁷⁷ White, H., and Raitzer, D., (2017). Impact Evaluation of Development Interventions: A Practical Guide, ADB

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The other members of the Finance ClimAct Consortium and the European Commission are not responsible for the use that may be made of the information contained herein.

The Finance ClimAct project contributes to the implementation of the French National Low Carbon Strategy and the European policy on sustainable finance. It aims to develop tools, methods and new knowledge that will enable (1) energy-intensive industries to promote investment in energy efficiency and the low-carbon economy, (2) financial institutions and their supervisors to integrate climate issues into their decision-making processes and align financial flows with energy-climate objectives, and (3) savers to integrate environmental objectives into their investment choices. The consortium, coordinated by the French Agency for Ecological Transition, also includes the French Ministry of Ecological Transition, the French Financial Markets Authority, the French Prudential Control and Resolution Authority, the 2° Investing Initiative, the Institute for Climate Economics, the Institute for Sustainable Finance and RMI. Finance ClimAct is a first-of-its-kind program with a total budget of €18 million and €10 million in funding from the European Commission.

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