

Securities and Markets Stakeholder Group

Advice to ESMA

SMSG advice to ESMA on additional questions relating to greenwashing

1 Executive Summary

1. Definition of Greenwashing

The SMSG advises ESMA (i) to align a definition of greenwashing for the financial sector with definitions that are used in the broader economy, to the extent possible; (ii) to take the definitions provided in the recitals of certain EU regulations as a starting point, subject to certain improvements, and (iii) to link the definition to existing rules that would be violated by instances of greenwashing, so that new rules or sanctions could be introduced only where existing rules are not sufficiently covering all market participants and instances of greenwashing in the financial sector.

On the basis of those principles, the SMSG would propose the following holistic definition of “greenwashing”: “the practice of misleading investors, notably (but not limited to) in the context of gaining an unfair competitive advantage, by making an unsubstantiated ESG claim about a financial product or service”.

The SMSG advises ESMA to explicitly link the definition of greenwashing, for every market participant, to the concrete standards that they would violate when engaging in greenwashing. The SMSG has provided a draft table for two such standards (Annex) and would be happy to assist ESMA in extending this table with other standards that can apply to certain market participants in respect of greenwashing.

2. Is greenbleaching a problem from a supervisory perspective

The SMSG has used the term “greenbleaching” to indicate the phenomenon that fund managers invest in sustainable activities but refrain from claiming so to avoid the related legal risks. The SMSG is of the opinion that as long as there is no legal obligation to disclose how sustainable a product is, not claiming sustainability cannot be considered a “misrepresentation” and should not be sanctioned.

Nevertheless the SMSG advises ESMA to monitor this phenomenon in order to assess whether (or not) sustainable finance legislation reaches its goals.

3. ESMA’s role in view of the declining number of art. 9 funds

Uncertainties about the applicable legislation drive funds away from an article 9 qualification. Even if ESMA is not competent to solve all questions, the SMSG is of the opinion that ESMA has an important role to play in (i) monitoring those evolutions on the markets, examining its causes, and flagging this to the Commission; and (ii) asking questions and giving advice to the Commission.

4. Is intent relevant in the definition of greenwashing?

The SMSG is of the opinion that the definition of greenwashing should be linked as much as possible to existing requirements on non-misleading information, and that the question whether intent is relevant or not, as well as the question how materiality of a potential breach will be assessed, depends on the angle taken/applicable legislation.

The SMSG stresses that it is important in this respect to attribute responsibility to the correct level in the value chain.

2 General Observations

1. On 18 January 2023 the SMSG adopted its advice to ESMA on the ESAs call for evidence on greenwashing.¹ On 27 January 2023 this advice has been discussed with ESMA's Board of Supervisors. While expressing the appreciation for the SMSG's report, one of the members of the Board of Supervisors also raised four additional questions that the SMSG advice gave rise to:

- (1) How can the SMSG advice be used to contribute to a holistic definition of "greenwashing"?
- (2) Is "greenbleaching" a problem from a supervisory perspective, and why?
- (3) How can ESMA deal with the declining number of "article 9" funds?
- (4) In regard of the distinction between intentional and unintentional greenwashing: is intent not mainly relevant from a criminal perspective? How should intent be relevant from a supervisory perspective?

2. The SMSG has decided to set up a WG to follow up on its initial advice in order to provide further input to ESMA on those four questions.

¹ ESMA22-106-4384, available via https://www.esma.europa.eu/sites/default/files/2023-01/esma22-106-4384_smsg_advice_on_greenwashing.pdf

3 Towards a Holistic Definition of Greenwashing

3. In regard of the question how to come to a holistic definition of greenwashing, the SMSG advises ESMA to start from three principles, which also came forward in the SMSG's first greenwashing report:
 - The recitals of recent EU regulations provide different definitions of “greenwashing”, the SMSG deems it important to take those as a starting point to come up with an improved and holistic definition.
 - A definition of greenwashing for the financial sector should, to the extent possible be aligned with greenwashing definitions applicable in the broader economy.
 - From a legal perspective, greenwashing is just one way of misleading investors and/or gaining an unfair competitive advantage. A definition of greenwashing must therefore in the first instance be linked to existing rules that would be violated by instances of greenwashing. Only where these are not considered sufficient, new rules or sanctions could be introduced.

Each of those principles will be developed in more detail below.

3.1 Alignment with greenwashing definitions in the broader economy

4. The concept of greenwashing is not only used in the financial sector, but also in the context of the wider transition towards a sustainable economy. In its Green Deal, the Commission stated that “*reliable, comparable and verifiable information*” plays an important part in “*enabling buyers to make more sustainable decisions and reduces the risk of ‘green washing’*”.²
5. The European Parliament also used the term in several resolutions, stating that “*whereas there is a need to tackle misleading environmental claims and to address ‘greenwashing practices’ through effective methodologies, including on how to substantiate such claims*”;³ and emphasizing “*the right of consumers to more precise, harmonised and accurate information about the environmental and climate impacts of products and services throughout their lifecycle*”; calling “*for measures against greenwashing and false environmental claims relating to products offered both online and offline*”; strongly supporting “*the Commission’s intention to make proposals to regulate the use of green*

² Brussels, 11.12.2019 COM(2019) 640 final COMMUNICATION FROM THE COMMISSION The European Green Deal <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>

³ European Parliament resolution of 25 November 2020 Towards a more sustainable single market for business and consumers (2020/2021(INI)) https://www.europarl.europa.eu/doceo/document/TA-9-2020-0318_EN.html, para V.

claims ...”; and stressing “the need to enforce the recently amended Directive 2005/29/EC(27) through proactive measures tackling green claims”.⁴

6. In its new Consumer Agenda on strengthening consumer resilience for sustainable recovery, the Commission defined greenwashing as follows: “consumers need to be better protected against information that is not true or presented in a confusing or misleading way to give the inaccurate impression that a product or enterprise is more environmentally sound, called “greenwashing””.⁵
7. In its 2021 Guidance on the Unfair Commercial Practices Directive⁶, the European Commission noted that “the expressions ‘environmental claims’ and ‘green claims’ refer to the practice of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services. ... When such claims are not true or cannot be verified, this practice is often called ‘greenwashing’. The coordinated screening of websites (‘sweep’) that the Commission and national consumer authorities carried out in 2020 confirmed the prevalence of vague, exaggerated, false or deceptive green claims.” ...

“‘Greenwashing’ in the context of business-to-consumer relations can relate to all forms of business-to-consumer commercial practices concerning the environmental attributes of products. According to the circumstances, this can include all types of statements, information, symbols, logos, graphics and brand names, and their interplay with colours, on packaging, labelling, advertising, in all media (including websites) and made by any organisation, if it qualifies as a ‘trader’ and engages in commercial practices towards consumers.” ...

“The UCPD does not provide specific rules on environmental claims. However, it provides a legal basis to ensure that traders do not present environmental claims in ways that are unfair to consumers. It does not prohibit the use of ‘green claims’ as long as they are not unfair. On the contrary, the UCPD can help traders investing in the environmental performance of their products by enabling them to communicate these efforts to consumers transparently and by preventing competitors from presenting misleading environmental claims.”

⁴ European Parliament resolution of 10 February 2021 on the New Circular Economy Action Plan (2020/2077(INI)) https://www.europarl.europa.eu/doceo/document/TA-9-2021-0040_EN.html, para 28.

⁵ Brussels, 13.11.2020 COM(2020) 696 final COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL New Consumer Agenda Strengthening consumer resilience for sustainable recovery - <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0696&from=EN>.

⁶ Commission Notice, Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (2021/C 526/01) ([https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XC1229\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XC1229(05)&from=EN)).

8. In its Proposal for a directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM(2022) 143 final) the Commission refers to greenwashing practices as “misleading environmental claims”.⁷ It also mentions that “*the general rules in the Unfair Commercial Practices Directive on misleading practices can be applied to greenwashing practices when they negatively affect consumers, using a case-by-case assessment. However, there are no specific rules in the Directive or in its Annex I (the blacklist) defining such practices as unfair in all circumstances. Recent screening of websites by Consumer Protection Cooperation Network authorities to detect misleading environmental claims confirmed there is a need to strengthen the rules to facilitate enforcement in this area. Furthermore, a recent Commission study assessed 150 environmental claims and found that a considerable share (53.3%) of them provide vague, misleading or unfounded information on products’ environmental characteristics across the EU and in a wide range of product groups (both in advertisement as well as on the product).” and “Consumers are faced with unclear or poorly-substantiated environmental claims (‘greenwashing’) from companies”.*

Recital 1 of the Proposal states that “*in order to tackle unfair commercial practices which prevent consumers from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims (‘greenwashing’), non-transparent and non-credible sustainability labels or sustainability information tools, specific rules should be introduced in Union consumer law.*”

3.2 Existing definitions of Greenwashing in the financial sector

9. There are also already several definitions of greenwashing in specific financial regulation, all of which are similar to a certain degree, with some variations. However, the SMSG is of the opinion that these definitions could be improved, and that an encompassing definition of greenwashing for the financial sector should be aligned with the above definitions that apply more broadly.
10. Recital 11 to Taxonomy Regulation EU/2020/852 defines greenwashing as

“the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met”

Recital 7 of Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending the MiFID II Delegated Regulation (EU) 2017/565 defines greenwashing as:

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0143&from=EN>

“the practice of gaining an unfair competitive advantage by recommending a financial instrument as environmentally friendly or sustainable, when in fact that financial instrument does not meet basic environmental or other sustainability-related standards”

Recital 2 to Corporate Sustainability Directive (EU) 2022/2464 does not give a fully-fledged definition, but refers to greenwashing as:

“greenwashing of financial products that unduly claim to be sustainable”

11. The SMSG has four important proposals to make linked to the above definitions:

- (1) In the above definitions, greenwashing is linked to “gaining an unfair competitive advantage”.

The SMSG is of the opinion that this is, however, only one of two key components of greenwashing:

- Competition component: “Gaining an unfair competitive advantage focuses on the perspective of the financial market participant engaging in greenwashing, and the distortion of competition resulting from greenwashing as a consequence of gaining unfair competitive advantages
- Information component: At least as important is the (mis)information component of greenwashing, which focuses on the investors receiving misleading information.

The SMSG is of the opinion that the “misleading information” component of greenwashing should be an essential part of any holistic definition of greenwashing – as is also the case in all definitions mentioned in section 3.1. It should also be understood in line with those definitions, meaning that also unclear, vague or poorly substantiated information on products’ ESG claims can be considered misleading.

If this second component would not be inserted, several instances of greenwashing would not be covered. In situations where there would be only one player in the market (no competition), or where all market players would be engaging in greenwashing, no-one would gain an unfair competitive advantage from greenwashing, but greenwashing would still be problematic from an investor protection perspective.

The SMSG is therefore of the opinion that **“the practice of gaining an unfair competitive advantage” should be replaced with “the practice of misleading investors, notably (but not limited to) in the context of gaining an unfair competitive advantage”**.

- (2) The first two definitions above take the perspective from the regulation in which they feature, by making reference to “*marketing* financial products” c.q. “*recommending* financial instruments”. A holistic definition should use terminology that captures the entire value chain. The SMSG is of the opinion that the definition should therefore more generally refer to “**making claims**” about financial products⁸ or services.
- (3) The SMSG is of the opinion that a holistic definition of greenwashing should not merely refer to claims that a financial product is “environmentally friendly” (taxonomy definition), nor to claims that a financial product is “environmentally friendly or sustainable” (MiFID definition). Instead, it should refer to “making **ESG** claims” about financial products. ESMA should, in this regard, consider replacing the term “greenwashing” with “ESG-washing”.
- (4) Both the definition of the taxonomy regulation and the MiFID II definition of greenwashing define greenwashing as marketing / recommending financial products as environmentally friendly or sustainable when in fact the product “does not meet basic environmental or other sustainability-related standards”. The SMSG is of the opinion, however, that greenwashing also exists when such products meet basic environmental or other sustainability-related standards, but do not meet the ESG claims that have been made about the product. As already stressed in the previous SMSG report on greenwashing, the standard should therefore be “what you say should be what you do”. A holistic definition of the greenwashing could then be: “**the practice of misleading investors, notably (but not limited to) in the context of gaining an unfair competitive advantage, by making an unsubstantiated ESG claim about a financial product or service.**”

3.3 Linking the greenwashing definition with existing standards

12. As mentioned above, greenwashing is just one way of misleading investors and/or gaining an unfair competitive advantage. The abovementioned “holistic” definition of greenwashing should therefore not be used as a new standard to sanction market participants who engage in greenwashing practices. The SMSG is of the opinion that certain standards already exist that deal with the problem of misleading information and / or gaining an unfair competitive advantage. **The SMSG therefore advises ESMA to link the definition of greenwashing, for every market participant, to the concrete standards that they would violate when engaging in greenwashing.**

⁸ The SMSG uses the term “financial products” as an encompassing term, including financial instruments in the sense of MiFID II, structured deposits as referred to in MiFID II, insurance-based investment products as defined in the IDD, and all other financial products marketed, sold or advised upon by financial market participants in the sense of the SFDR (including pension funds, for instance).

This would have several advantages.

- (1) By linking a holistic definition of greenwashing to existing rules applicable in the different levels of the value chain, the definition would not result in simply another layer of rules on top of existing rules, but, on the contrary bring clarity in the multiple rules that today already address greenwashing, including
 - i. Who can take action on the basis of those rules
 - ii. What sanctions can be taken on the basis of those rules
 - iii. What conditions apply (what is considered “misleading”; is intent needed or not; who has the burden of proof, ...)
- (2) Moreover, it would clearly indicate which market participant is responsible for what instance of greenwashing, in each level of the value chain. This was already put forward as a key point in the previous SMSG advice on greenwashing (para 40-41).
- (3) On the basis of this overview, the Commission could then decide if and at what levels greenwashing cannot yet be sanctioned sufficiently adequate, and introduce targeted rules to fill the potential gaps.

The SMSG advises ESMA to draft a table with a clear oversight, per market participant, of the concrete standards on misleading information / unfair competition which already apply to those market participants and which could be used to sanction certain instances of greenwashing. Such a table could also include information on (i) whether ESMA and/or NCAs have competence to sanction those rules, (ii) what conditions apply (e.g. is there a materiality test, is intent required?), and (iii) what sanctions may apply. In the annex to this advice, the SMSG has drafted such a table for two important standards applicable to certain market participants: the unfair commercial practices directive and MiFID II. The SMSG advises ESMA to do the same for other relevant standards which could be applied to sanction greenwashing, including (but not limited to) the SFDR, NFRD/CSRD, the Prospectus Regulation, the MAR, UCITS/AIFM Directives, the PRIIPs Regulation and competition law. The same should be done for texts under the competency of the other ESAs.

4 Supervisory relevance of “Greenbleaching”

13. “Greenbleaching” is not a defined term. It has been used by the SMSG to indicate the phenomenon that fund managers invest in sustainable activities but refrain from claiming

so to avoid the related legal risks (for instance arising from data problems, conflicts of law or reputational concerns). In Section 5 below, a concrete example is discussed in more detail, where art. 9 funds increasingly requalify as art. 8 funds.

14. Greenbleaching can lead to a situation where a product is actually “greener”/” more ESG” than the product provider claims. Even if this can – to a certain extent – be considered misleading, the SMSG is of the opinion that supervisors should be very careful in their dealing with this phenomenon. The phenomenon of “greenbleaching” is often the result of fund managers preferring to err on the cautious side: if insufficient ESG data are available, or if certain ESG data is considered insufficiently reliable, fund managers may prefer not to make any ESG claims, to make sure that they cannot be accused of greenwashing. Therefore, as long as there is no legal obligation to disclose how sustainable a product is, not claiming sustainability cannot be considered “misrepresentation”, and should not be sanctioned.
15. Nevertheless, the SMSG is of the opinion that greenbleaching is relevant for, and should be followed up by ESMA. On its website, ESMA claims that “the transition towards a greener and more sustainable economy has become a priority for the European Union (EU). ESMA aims to ensure that the financial markets support and promote this shift by integrating environmental, social and governance (ESG) factors across its core activities.” ESMA moreover mentions as one of its three major missions⁹, to ensure orderly markets: promote the integrity, transparency, efficiency and good functioning of financial markets and robust market infrastructures.” The SMSG is of the opinion that ESMA should therefore monitor whether (or not) sustainable finance legislation reaches its goal.
16. The SMSG is of the opinion that *if* greenbleaching is a widespread phenomenon – to know whether this is the case, it should be monitored by ESMA – the result may be an overly restrained market for sustainable products. In 2021 BaFIN produced a study showing that certain new EU legislation drove retail investors out of the bond market.¹⁰ Some claimed this was not problematic, because they were indeed not exposed to the risks of the bond market, but if certain legislation results in artificially restraining the product range available to groups of investors, this can as such be considered problematic.
17. The role of legislative and supervisory authorities in the phenomenon of greenbleaching should also be examined. The Commission’s Q&A of July 2021 has significantly enlarged the perimeter of art. 8 funds: “*The term ‘promotion’ within the meaning of Article 8 [...] encompasses, by way of example, direct or indirect claims, information, reporting, disclosures as well as an impression that investments pursued by the given financial product also consider environmental or social characteristics in terms of investment,*

⁹ ESMA’s 2021 annual report https://www.esma.europa.eu/sites/default/files/library/esma22-439-962_2021_annual_report.pdf

¹⁰https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2021/fa_bj_2104_Unternehmensanleihen_Kleinanleger_en.html

policies, goals, targets or objectives or a general ambition". NCAs have interpreted this as follows: if for instance a fund considers PAIs or follows an exclusion strategy, it should already be considered an art. 8 fund and follow the relevant SFDR transparency requirements. Since "art. 8" and "art. 9" are today almost considered ESG "labels", this may create situations where funds do not intend to make sustainability claims, but are considered an art. 8 "ESG" fund nevertheless. NCAs expect the market to comply with Q&A's (as interpreted by the NCA), as a consequence of which those "soft law" instruments very quickly become de facto hard law.

5 ESMA's role in view of declining number of article 9 funds

18. Many SMSG members note that the number of art. 8 funds is increasing, whereas the number of art. 9 funds is decreasing: less and less funds dare to take the risk to claim a qualification as art. 9 funds.¹¹ The question arises whether ESMA can and should do something about this.
19. The SMSG is of the opinion that there are currently too many uncertainties in respect of the conditions to qualify as an article 9 fund. An article 9 fund should exclusively invest in sustainable investments. It is, however, unclear whether and to what extent that means that liquidity, hedging strategies and adaptation and transition strategies are still allowed for article 9 funds. There is, for instance, no definition of "hedging" for article 9 funds; it is unclear whether an investment in government paper is allowed for article 9 funds (is a Member State a sustainable investment?).
20. Next to regulatory developments also those uncertainties drive funds away from an article 9 qualification and explain their preference for article 8. The risk arises that the article 8 category becomes meaningless, while the article 9 category becomes empty. This is an example of how regulatory uncertainties may lead to greenbleaching, which may in the end result in less transparency and clarity for retail investors regarding the ESG intensity or ESG strategy of different funds, and a lack of availability of sustainable investments in the sense of the SFDR (see para 16 above). As mentioned under the previous question on greenbleaching, the SMSG is of the opinion that ESMA has an important role to play in monitoring those evolutions on the markets, examining its causes, and flagging this to the Commission.

¹¹ [Bloomberg Intelligence](#) found 70% of all Article 9 ETFs have been downgraded to an Article 8, with \$57bn of assets across more than 70 ETFs downgraded in the fourth quarter of 2022 alone. See N. Turner, "Article 9 downgrades a result of "signing up with no plan"", ESG CLARITY, 30 January 2023, <https://esgclarity.com/article-9-downgrades-a-result-of-signing-up-with-no-plan/>

21. Moreover, even if ESMA is not competent to solve most of those questions, notably introducing minimum ESG requirements to differentiate between articles 6, 8 and 9 – they are in the remit of the Commission rather than of ESMA – the SMSG is of the opinion that ESMA could play an important role in asking questions and giving advice to the Commission.

6 Is “intent” relevant in the definition of greenwashing?

22. As mentioned above, the SMSG is of the opinion that the definition of greenwashing should be linked as much as possible to existing requirements on non-misleading information etc. That also means that the question whether intent is relevant or not, will depend on the angle taken. If a consumer organisation, for instance, introduces a cease and desist order under the Unfair Commercial Practices Directive, intent is not important.¹² If a supervisor takes action against misleading information under MiFID II, intent is not important either – the effect on the investor (are they misled?) is what matters.¹³ If damages are claimed for unfair competition, negligence or intent will often be relevant.

23. Whether or not intent is relevant under the different potentially applicable provisions, it is in any case of the utmost importance to clearly attribute responsibility to the correct level in the value chain. If a fund manager or an investment firm acts in good faith but receives incorrect data from higher up in the value chain (from issuers, data, index and service providers, other intermediaries, product manufacturers or distributors...), responsibility should be put at the correct level in the value chain. Moreover, investment objectives are obligation of means, not of result. Even if such objectives are under certain circumstances not realised, this does not necessarily mean that an investment fund manager was greenwashing. Finally, not all instances of incorrect or misrepresented information will automatically be considered greenwashing. Depending on the applicable regulatory framework, a materiality test may apply (see for examples, the table in the Annex to this advice).

24. It is, however, also important that investor expectations are well managed, so that investors do not expect more than what product providers claim (for instance in respect of art. 8 funds). NCAs and ESMA have an important educational role to play in this respect.

¹² The benchmark of art. 6-7 UCPD is whether the commercial practice is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

¹³ See Recital 68 of MiFID Implementing Regulation (EU) 2017/565: “Information should be considered to be misleading if it has a tendency to mislead the person or persons to whom it is addressed or by whom it is likely to be received, regardless of whether the person who provides the information considers or intends it to be misleading”.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 15 March 2023

[signed]

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Annex: Overview of how the UCPD and MiFID II can be relevant when dealing with greenwashing

This table could be completed by ESMA for other relevant regulatory standards (including MAR, Prospectus Regulation, UCITS/AIFM Directives, PRIIPs Regulation, competition law, ...).

<u>Market participant</u>	<u>Applicable rule</u>	<u>ESMA/NCA competence</u>	<u>Materiality?</u>	<u>Intent?</u>	<u>Possible sanction</u>
All market participants that sell products or provide services to "consumers"	Unfair commercial practices directive 2005/29/EC: art. 6-7 on misleading actions and omissions	No (in many MS a different authority is competent) Consumer organisations and competitors can launch an injunction procedure to stop the unfair commercial practice Consumers that have suffered losses can claim damages in accordance with national law	Practice causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, because of - False information OR - Even if information is factually incorrect deceives. or is likely to deceive the average consumer in any way, including the overall presentation	Intent is irrelevant	Stop the practice Damages (on the basis of national civil law)
Investment firms / credit institutions that provide investment services or sell structured deposits	MiFID II – art. 24 (3): fair, clear and not-misleading information	Yes	Tendency to mislead the persons to whom it is addressed or by whom it is likely to be received (recital 68 MiFID Implementing Regulation (EU) 2017/565) The MiFID II implementing regulation provides implementing rules, including the following: the information provided to (potential) retail or professional clients should be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received (art. 44 (2) d) MiFID Implementing Regulation (EU) 2017/565).	Intent seems irrelevant ¹⁴	Administrative sanctions or measures (art. 69-71 MiFID II) Damages (on the basis of national civil law)

¹⁴ See Recital 68 of MiFID Implementing Regulation (EU) 2017/565: "Information should be considered to be misleading if it has a tendency to mislead the person or persons to whom it is addressed or by whom it is likely to be received, regardless of whether the person who provides the information considers or intends it to be misleading".

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