



Brussels, 16 January 2023

# **EACB Answer to Call for evidence of the European Supervisory Authorities (ESAs) on better understanding greenwashing**

## **January 2023**

The **European Association of Co-operative Banks** ([EACB](https://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 27 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 2,700 locally operating banks and 52,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 223 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 87 million members and 705,000 employees and have a total average market share of about 20%.

For further details, please visit [www.eacb.coop](https://www.eacb.coop)

**The voice of 2.700 local and retail banks, 87 million members, 223 million customers in Europe**

**EACB AISBL** – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19  
[www.eacb.coop](https://www.eacb.coop) • e-mail : [secretariat@eacb.coop](mailto:secretariat@eacb.coop)



## Introduction

The EACB welcomes the opportunity to provide feedback to the ESA's call for evidence (CfE) on better understanding greenwashing, which was triggered by the 23 May 2022 request for input from the European Commission relating to greenwashing risks and occurrences in the EU financial sector and on the supervisory actions taken and challenges faced to address those risks. Whilst we provide our answers to some of the questions posed, we wish to first highlight some key priorities below on this topic.

## General comments

The EACB supports the objective of clearly defining greenwashing since claims of this nature have been arising in a context of increasing sustainability-related regulatory developments, increasing companies' commitments, and substantial needs for funding to support the transition to a sustainable economy. That said, the EACB would like to summarise its key priorities regarding this call for evidence:-

- **Avoid overregulation:** On the one hand Europe should take on a pioneering role on greenwashing but on the other, we must always be mindful of the danger of overregulation. For example, the EBA-initiative to integrate ESG risks in Pillar 1 has resulted in a shift to international banks that are not subject to EU regulations. The EACB thus encourages the ESAs to consider that, from a general perspective, the framework should strive for requirements that are designed in a simple and pragmatic manner. This is necessary to ensure that – particularly at origination – certain products are not flagged as at potential risk of greenwashing only because of the administrative requirements to be fulfilled, instead of focusing on the purpose and substance of the transaction. Furthermore, we would like to remind the ESAs that greenwashing is intrinsically linked to instruments that already exist for misleading claims which leads us to our next point.
- **Lead with current regulation:** If a provider does not do what he claims to do with the client, this is in principle a deception or fraud unless the miscommunication towards the client is unintentional. Here, too, there are already rules for "classic" financial instruments. MiFID II, for example, already caters for such situations. We thus encourage the ESAs to already consider the concept of greenwashing not just from sustainable finance regulation but from already-existing regimes such as those under consumer policy and investor protection. While acknowledging the ESAs' mandate limited to the financial sector, we wish to underline that a global definition of greenwashing should also address such risk in the real economy. This is necessary as greenwashing is not inherent solely to financial services, so addressing it in the real economy would reduce greenwashing risk in the financial sector. We note in this regard that the Unfair Commercial Practices Directive (UCPD) is also relevant to address this topic.
- **Intentionality or negligence:** The EACB agrees that there could be greenwashing analysed in the context of trigger, spreader and receiver but the greenwashing risk of each in the communication chain would need to be discussed only once a greenwashing definition is set, and also considering the role of each player. In the case of co-operative banks there are two considerations, for example: (i) proximity to the real economy of the EU's countries, regions, localities and communities by way of financing SMEs and families, which helps maintain a lively and sustainable community-focused society; and (ii) the provision of loans by co-operative banks generates funding to finance ESG activities of



the clients, and so unlike corporates, banks are not the owner of the underlying asset but rather of the loan which is the liability of the client. Thus the banks rely on other parties' ESG activities and so should not be subject to greenwashing claims if the communication is done in good faith and without gross negligence, in the case that the bank is identified as a spreader. Therefore, any definition of greenwashing should be on the basis that the claim is being made under situations of intentionality and/or negligence.

- **Improve the sustainable finance regulatory framework:** We thus consider that in order to avoid situations of unintentional greenwashing, the current sustainable finance regulatory framework (whilst being extensively developed in so few years) still has to be improved in order to avoid current challenges being experienced in the ongoing implementation by the industry. A firm acting in good faith to comply with its legal requirements or voluntary frameworks should not be at risk of greenwashing due to unclear, inconsistent or unenforceable sustainable finance regulation. Such scenario may lead to reputational risk or even deter financial institutions from increasing transition and sustainability financing.
- **Level playing field:** The markets are already used to various standards such as the green and social bond standards by ICMA. It is pertinent that there is no competitive disadvantages to defining greenwashing in such an unstable regulatory environment in the context of sustainable finance. It is important that there is a level playing field on a global scale when it comes to greenwashing even though we support the EU's proactiveness in the green transition. This level playing field is also important to note between Member States. We note situations of goldplating which would create a situation where comparability of greenwashing claims would not be possible within the EU if allowed. Furthermore, international and European market standards that are widely used are already great contributors to the mitigation of greenwashing risk. We urge the ESAs to consider avoiding a situation where the distribution of such reputable products before the entry into force of a greenwashing definition, would lead to a greenwashing claim. Grandfathering should apply in such situations.
- **Timeline:** Finally, we wonder if this exercise is a bit premature considering that the current sustainable finance regulatory framework is a moving target, and thus, our members are lacking experience to provide a comprehensive assessment of the functionality and shortcomings of the existing regulatory framework. The short timeframe for response to this call for evidence has made it impossible for our members to fully contribute to this initiative but we still wished to provide our feedback at least at a high level. We thus hope that there will be further formal and informal opportunities for stakeholders to contribute on greenwashing after the May 2023 progress report by the ESAs.

## C. ESAs common section of the CfE

<b>A.1</b>	<b>Please provide your views on whether the above-mentioned core characteristics of greenwashing reflect your understanding of and/or experience with this phenomenon and whether you have anything to add/amend/remove.</b>
	The EACB broadly agrees with these characteristics of greenwashing (GW), except for the 3rd that greenwashing can be either intentional or unintentional. In our view, GW can only take place when there is intentionality or negligence, e.g. a firm failing to comply with legal requirements or voluntary frameworks against which it has claimed



	<p>sustainability. But the firm is not at risk of GW if such failure is due to external circumstances over which the firm has no control, just as exceptional circumstances may impact a firm's exposure to other risks. Likewise, a firm acting in good faith to comply with its legal requirements or voluntary frameworks should not be at risk of GW under the following circumstances that characterize our rapidly evolving current environment:</p> <ul style="list-style-type: none"><li>- unclear, inconsistent, and unenforceable regulatory requirements (including definitions) which in some cases do not apply to all market players equally, leading to diverging interpretations by competent authorities and other stakeholders;</li><li>- the current ESG data gap and lack of a single approach to the use of proxies/estimates across sustainable finance regulations;</li><li>- the transition period while the rules are evolving may create a mismatch between authorities' and civil society's expectations from market players to green the economy and the actual impact of market players' actions. There is insufficient recognition at regulatory level of transition finance as contributing to 'greening' the economy which creates a misperception of GW.</li></ul> <p>GW accusations under these circumstances would in our view be wrong because financial institutions are merely the recipients of these situations for which they cannot be held responsible.</p> <p>It is important to address such possible sources of GW claims, not least to reduce the risk of wrongful GW claims that may then lead to reputational risk issues or even deter financial institutions from increasing transition and sustainability financing. To address the risk of wrongful GW claims, legal clarity, legal certainty and appropriate sequencing should be ensured throughout the sustainable finance regulatory framework. Areas for improvements include:</p> <ul style="list-style-type: none"><li>- CSRD will significantly enhance data availability and reliability but issuers' data will be incomplete or unreliable for a few years until it is implemented</li><li>- A single approach on the use of proxies and estimates should be set across EU regulations, and a list of acceptable proxies should be defined at EU level for FIs to choose from, thus improving comparability of disclosures</li><li>- ESG ratings/ data providers should be regulated at EU level to enhance transparency on their methodologies and reliability of ratings and data</li><li>- Introduction/Development of eco-labels for sustainable products, which ensure that "mis-labeling" cannot occur, for example by ensuring that sufficient transparency regarding acquisition requirements of such a label (Is the label in accordance with ISO standards?)</li><li>- Benchmark administrators should be subject to SFDR to enhance transparency and understanding of benchmarks</li><li>- While we strongly support that transition plans that must be science-based (Net Zero aligned and audited) will be required as of 2024 (CSRD), the definition of science-based sectoral transition trajectories would help comparability as well as reduce the risk of unintentional greenwashing.</li></ul>
<b>A.3.1</b>	<b>Do you agree that market participants could be involved in three different ways in greenwashing, as described above? Yes/ No</b>
	No.



<b>A.3.2</b>	<b>If no, could you please further elaborate on the roles market participants could play in greenwashing, including on potential alternative or additional roles to the ones identified above?</b>
	<p>We agree that financial institutions may be involved as trigger, spreader or receiver but this is closely related to the definition of GW which is the key first step to all the rest. Considering that such definition does not exist at the moment, and that financial market participants are not the only players in the economy, it is very difficult to answer this question and we are not sure that examining these different roles is helpful at the moment.</p> <p>At a minimum, it should be made clear that trigger, spreader and receiver do not imply the same level of responsibility and should therefore be treated differently. For instance, a trigger clearly implies a higher degree of responsibility than a spreader or a receiver. In addition, the question of intentionality or negligence should be included in these different roles to target cases of GW through intentionality or negligence. Finally, the respective terms also need to be clarified as for instance a receiver may also be a spreader.</p> <p>Finally we wish to highlight that the models of trigger, spreader and receiver may risk leaving out the fact that the co-operative banks' features include proximity to the real economy of the EU's countries and regions by financing SMEs and families which helps maintain a lively and sustainable community-focused society. The provision of loans by our co-operative banks generates funding to finance ESG activities of the clients, and so unlike corporates, banks are not the owner of the underlying asset but rather of the loan which is the liability of the client. Thus the banks rely on other parties' ESG activities and so should not be subject to GW claims if the communication is done in good faith, in the case that the bank is identified as a spreader.</p>
<b>A.4.</b>	<b>Please indicate the degree to which you consider each topic described above, as prone to the occurrence of greenwashing. Please provide a score from 1 to 5 (where 1 = very low occurrence; 2 = low occurrence; 3 = neutral; 4 = high occurrence; 5 = very high occurrence).</b>

	1	2	3	4	5	Don't know
Board and senior management's role in sustainability (Topic 1, i)						X
ESG corporate resources and expertise (Topic 1, ii)						X
ESG strategy, objectives, characteristics (Topic 2, i)						X
Sustainability management policies (Topic 2, ii)						X
ESG qualifications / labels / certificates (Topic 2, iii)						X
Engagement with stakeholders (Topic 2, iv)						X



ESG performance to date (including metrics for impact claims) (Topic 3, i)						X
Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii)						X

<b>A.4.1</b>	<b>Please specify the underlying drivers of greenwashing in relation to the topics you scored higher.</b>
	We selected "don't know" in our response to the options because whilst we agree that GW risk may happen at any point in the above-mentioned, it is very difficult to rank the options in the absence of a GW definition. Besides, the current unstable and at times unclear sustainable finance regulatory framework, together with the current lack of ESG data, would influence the ranking while in our view these circumstances should not give rise to GW claims.
<b>A.5</b>	<b>For the same list of topics listed in the previous question, please provide a score from 1 to 5 on the potential harm/impact of a misleading claim made on that topic (where 1 = very low impact; 2 = low impact; 3 = neutral; 4 = high impact; 5 = very high impact).</b>

	1	2	3	4	5	Don't know
Board and senior management's role in sustainability (Topic 1, i)						X
ESG corporate resources and expertise (Topic 1, ii)						X
ESG strategy, objectives, characteristics (Topic 2, i)						X
Sustainability management policies (Topic 2, ii)						X
ESG qualifications / labels / certificates (Topic 2, iii)						X
Engagement with stakeholders (Topic 2, iv)						X
ESG performance to date (including metrics for impact claims) (Topic 3, i)						X
Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy alignment plans) (Topic 3, ii)						X

<b>A.5.1</b>	<b>Please explain what types of impacts or harm and their consequences you anticipate as a result of greenwashing practices.</b>
--------------	--



	GW, whether perceived or actual, leads to reputational risk which undermines trust in the entity concerned and more globally trust in the ESG products market while also discrediting the financial services industry. This may drive investors away from that entity and from the ESG product concerned. As a result, there would be reduced incentives for financial institutions to increase transition and sustainability financing thus hindering the transition to a sustainable economy. This is why the EACB supports efforts to enhance trust in the ESG products market.
<b>A.6</b>	<b>In addition to the three topics and eight sub-topics above, do you identify any additional topics which would be relevant to potential greenwashing issues?</b>
	No.
<b>A.8</b>	<b>On a scale from 1 (i.e. "not at all relevant") to 5 ("very relevant"), please indicate the extent to which you find each of the misleading qualities of a sustainability-related claim listed below relevant to greenwashing practices.</b>

	1	2	3	4	5	Don't know
Selective disclosure or hidden trade-off (cherry-picking positive information and/or omitting relevant negative information)						X
Empty claims (exaggerated claims and/or failure to deliver on such claims)						X
Omission or lack of disclosure						X
Vagueness or ambiguity or lack of clarity						X
Inconsistency across various disclosures and communications (marketing, regulatory, website, etc.)						X
Lack of fair and meaningful comparisons, thresholds, scenarios and/or underlying assumptions						X
No proof (unsubstantiated)						X
Misleading/ suggestive non-textual imagery and sounds (including the use of specific colours like green)						X
Irrelevance						X
Outdated information						X
Misleading / suggestive use of ESG-related terminology (naming-related greenwashing)						X
Outright lie (falsehood)						X

<b>A.8.1</b>	<b>Please provide further comments to the identified misleading qualities of communication in the context of greenwashing. In particular, should any of the qualities be added, amended or deleted from the list and if so, why?</b>
	We agree that all these qualities may be relevant but in the absence of a GW definition it is very difficult to rank them, especially considering that some of them may be





	subjective (eg (f) "lack of fair and meaningful comparisons"; (h) "non-textual imagery and sounds"). We also think that it is important to always consider transparency and good faith. For instance, with respect to answer (j), if the entity acknowledges in the product documentation that outdated information has been used but explains why it is so and what it intends to do to address it, it should not be considered GW as there is clearly no intention to mislead.
<b>A.9</b>	<b>Regarding the above dimension and the list of channels through which misleading claims can be communicated to other segments of the sustainable value chain, please indicate the likelihood that a given channel serves to communicate misleading sustainability claims made at entity level and/or at product/service level. Please score each channel from 1 (rather unlikely) to 5 (very likely):</b>

	1	2	3	4	5	Don't know
a) Regulatory documents (including Key Investor Documents or Key Information Documents, Prospectuses, Financial statements, Management Reports, Non-Financial Statements, Benchmark statements and methodology documents, insurance-product information documents, pension benefit statements, etc.) and/or any mandatory disclosures		X				
b) Ratings (ESG ratings and/or other ESG data products)				X		
c) Benchmarks			X			
d) Labels				X		
e) Product information (including internal classifications, and internal target market, product testing and distribution strategy related documentation)			X			
f) Intermediary/advice information			X			
g) Marketing materials (including website, social media, advertising)			X			
h) Voluntary reporting, falling outside previous categories as reported on a voluntary basis		X				
i) Other (please specify)						

<b>A.9.1</b>	<b>Please indicate below if you have any comments regarding the communication channels of potentially misleading sustainability-related claims?</b>
--------------	---





	We agree that all these channels may be relevant but in the absence of a GW definition it is difficult to rank them. Following our understanding of what GW is (cf Q A1), we consider that the more regulated the channel, the less prone to GW it may be. However, regulation is not the only tool to mitigate GW risk and cannot be seen as GW-proof. Transparency is essential: when there is a sustainability claim, there must be full transparency as to the regulatory or voluntary framework against which that claim is made (i.e. substantiated claims). Also, any issue that may lead to shortcomings of the sustainability-related claim, e.g. data-related issue, should be disclosed.
<b>A.10</b>	<b>For each of the stages of product lifecycle and with regard to the business model and management, please indicate the likelihood of the occurrence of greenwashing. Please provide scores ranging from 1 (rather unlikely) to 5 (very likely):</b>

	1	2	3	4	5	Don't know
a) Product manufacturing				X		
b) Product delivery – marketing: advertisements, nonregulatory information				X		
c) Product delivery – regulatory disclosure				X		
d) Product delivery – distribution channels			X			
e) Product delivery – sales: information asymmetry (this includes under or over emphasis of certain product features)			X			
f) Product delivery – sales: misselling due to misleading information/disclosure			X			
g) Product delivery – sales: misselling due to unsuitable product			X			
h) Product delivery – sales: incentives at point of sale			X			
i) Product management – product monitoring, product review, ongoing product disclosure				X		
j) Business model at entity level – value chain, group structure, innovation/digitalization, outsourcing				X		
k) Business management at entity level – culture, governance arrangements, systems and processes				X		

<b>A.11</b>	<b>Are there any relevant elements or features of greenwashing which have not been referenced in the questions above?</b>
-------------	---



	No.
--	-----

<b>A.13</b>	<b>Do you want to raise any additional points that was not included in this survey?</b>
	<p>The EACB welcomes the opportunity to express our feedback on the topic of greenwashing. On the one hand Europe should take on a pioneering role on greenwashing but on the other, we must always be mindful of the danger of overregulation and incurring competitive disadvantages due to this (level playing field). For example, the EBA-initiative to integrate ESG risks in Pillar 1 has resulted in a shift to international banks that are not subject to EU regulations.</p> <p>The EACB thus encourages the ESAs to consider that, from a general perspective, the framework should strive for requirements that are designed in a simple and pragmatic manner. This is necessary to ensure that – particularly at origination – certain products are not flagged as at potential risk of greenwashing only because of the administrative requirements to be fulfilled, instead of focusing on the purpose and substance of the transaction.</p> <p>The EACB would also like to emphasise that stripping greenwashing down to its basic form even before sustainability is concerned, shows that GW is intrinsically linked to instruments that already exist for misleading claims. If a provider does not do what he says he claims to do with the client, this is in principle a deception or fraud unless the miscommunication towards the client is unintentional. Here, too, there are already rules for "classic" financial instruments. MiFID II, for example, already caters for such situations. We thus encourage the ESAs to already consider the concept of greenwashing not just from sustainable finance regulation but from already-existing regimes such as those under consumer policy and investor protection. While acknowledging the ESAs' mandate limited to the financial sector, we wish to underline that a global definition of greenwashing should also address such risk in the real economy. This is necessary as greenwashing is not inherent solely to financial services, so addressing it in the real economy would reduce greenwashing risk in the financial sector. We note in this regard that the Unfair Commercial Practices Directive (UCPD) is also relevant to address this topic.</p> <p>Finally, we wonder if this exercise is a bit premature considering that the current sustainable finance regulatory framework is a moving target, and thus, our members are lacking experience to provide a comprehensive assessment of the functionality and shortcomings of the existing regulatory framework. The short timeframe for response makes it impossible for our members to fully contribute to this initiative but we still wished to provide our feedback at least at a high level. We thus hope that there will be further formal and informal opportunities for stakeholders to contribute on GW after the May 2023 progress report by the ESAs.</p>

#### **D. EBA section of the CfE**



<b>D.9</b>	<b>Greenwashing can also generate financial risks to institutions. For credit institutions, what would be the risks most impacted by greenwashing? [For each of the following items, please provide a score from 1 (i.e. 'Extremely irrelevant') to 5 (i.e. 'Extremely relevant') or 0 ('Don't know'), and elaborate if deemed appropriate].</b>
------------	--

	1	2	3	4	5	0 (Don't know)
Operational risk including losses related to litigation and liability risks				X		
Conduct risk			X			
Reputational risk					X	
Strategic and business risk				X		
Funding risk			X			
Liquidity risk			X			
Credit risk			X			
Market risk			X			
Other (please specify below)						

**Please briefly elaborate on your assessment. On an optional basis, you may also indicate what types of risks other (non-credit) institutions would be most materially exposed to as a result of greenwashing in your opinion.**

We expect that operational risk, conduct risk, reputational risk and strategic risk would be most impacted by GW, while we would not expect financial risks exposures to the same extent. However, this will very much depend on the scale and scope of the GW definition case and the particular circumstances.

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

	Low	Medium	High	Don't know
1. For the credibility of sustainable financial markets			X	



2. For end-investors			X	
3. For individual customers			X	
4. For individual institutions		X		
5. For national (if applicable) financial stability	X			
6. For the EU financial stability	X			

**Please briefly elaborate on your assessment.**

GW can impact market integrity and have a detrimental effect on market function. It can be significantly detrimental to consumers & end investors, and to financial institutions (or non-financial institutions) which follow the rules. For instance, GW can create distrust in the market for sustainable products or even in market participants more broadly at customer and investor level and also create unfair competition, eventually hindering the mobilisation of sustainability-minded customers & investors, and potentially undermining the objective of reorienting capital flows towards sustainable investments. Although the impact would very much depend on the circumstances, we do not expect a significant risk to financial stability.

**D.11 What are the main challenges to address greenwashing risk? [For each of the following items, please provide a score from 1 (i.e., 'Extremely irrelevant') to 5 (i.e., 'Extremely relevant'), or 0 ('Don't know')]**

	1	2	3	4	5	0
1. Lack of relevant and reliable data on the sustainability credentials, performance and/or impact					X	
2. Uncertainty/ambiguity about sustainability standards, sustainability benchmarks, and Sustainability eligibility criteria					X	
3. Lack of internal resources and knowledge to implement and monitor sustainability standards			X			
4. Lack of third party verification or supervision				X		
5. Inappropriate legal basis and tool to investigate and take legal actions against greenwashing		X				
6. Other (please specify below)				X		



**Please specify 'Other':**

Situations of goldplating at national level are occurring by way of additional NCA guidance beyond the current regulation. This is a challenge when it comes to defining GW.

**Please briefly elaborate on your assessment:**

Availability of reliable and comparable ESG data, as well as regulatory ESG classification methodologies, are key challenges that give rise to GW accusations but also key challenges in fighting these greenwashing accusations and ultimately the risk of clients losing confidence in ESG financial instruments. This is paramount for regulations that already demand ESG disclosures at product level even in the absence of official public data and clear methodological approaches, such as ESG under CRR2 Pillar 3, MIFID ESG and SFDR.

**D.12 For institutions, which of the following types of tools and processes are used internally to address greenwashing?**

	Tools and processes for (only) greenwashing specifically
X	Tools and processes related to <u>regular</u> business conduct, risk management and regulatory compliance
	None

**D.14 In your opinion, to what extent is (or will) the EU regulations (or projects) on sustainable finance (e. g., Taxonomy regulation, EU Green Bond Standard, Eco-label project, SFDR and associated level 2 regulations, Pillar 3 ESG risks requirements under CRR, CSRD) help addressing greenwashing risk within EU banks, investment firms and payment service providers? Please also comment on the expected benefits as well as on the potential shortcomings you may see in these regulations/ projects presently?**

Stability of the legal framework is essential to prevent GW risk by way of 3 main actions:

1. Avoid adding complexity to an already rich framework:
  - a. Conduct of business rules and investor protection rules to apply irrespective of whether an ESG-related case or not
  - b. ESG-related transparency requirements: SFDR, CSRD, Pillar 3, BMR, EUGBS can help to prevent GW risk
  - c. Risk management: Pillar 3 disclosures; Integration of climate and environmental risks into banks' risk management; Climate stress tests can help address GW risk.
2. Ensure stability of current regulatory framework by ensuring that what is claimed as green in year n (with transparency on why it is claimed to be green, e.g. Reference to the EU taxonomy or to another framework that is publicly available) cannot be accused of being GW in year n+X due to the evolution of the framework in the meantime. For example in the case of issuance of green or social bonds which widely use the ICMA international standards, the distribution of such bonds prior to any GW definition and considering the lack of the EUGBS should continue to be in place without the risk of GW. In such case,



	<p>the ICMA standards actually go beyond current frameworks because they even cover social objectives, thus further preventing GW.</p> <p>3. The future definition of GW must include the current references to GW found in recitals of the Taxonomy regulation and in SFDR to ensure consistency.</p> <p>Moreover, our experience of the implementation of the sustainable finance framework has been so far that of unclear, inconsistent, or unenforceable regulatory requirements in addition to a non-negligible sustainability data gap. As explained under Q A.1, GW entails intentionality or negligence so that a firm acting in good faith to comply with its legal requirements or voluntary frameworks should not be at risk of GW under circumstances that are beyond its reach. To address the risk of wrongful GW claims (which may lead to reputational risk or even deter financial institutions from increasing transition and sustainability financing), the following improvements are required:</p> <ul style="list-style-type: none"><li>- CSRD will significantly enhance data availability and reliability but issuers' data will be incomplete or unreliable for a few years until it is implemented</li><li>- A single approach on the use of proxies and estimates should be set across EU regulations, and a list of acceptable proxies should be defined at EU level for FIs to choose from, thus improving comparability of disclosures</li><li>- ESG ratings/ data providers should be regulated at EU level to enhance transparency on their methodologies and reliability of ratings and data</li><li>- Introduction/Development of eco-labels for sustainable products, which ensure that "mis-labeling" cannot occur, for example by ensuring that sufficient transparency regarding acquisition requirements of such a label (Is the label in accordance with ISO standards?)</li><li>- Benchmark administrators should be subject to SFDR to enhance transparency and understanding of benchmarks</li><li>- Define and ensure the respective actor's responsibility along the entire sustainable investment chain</li><li>- While we strongly support that transition plans that must be science-based (Net Zero aligned and audited) will be required as of 2024 (CSRD), the definition of science-based sectoral transition trajectories would help comparability as well as reduce the risk of unintentional greenwashing.</li></ul> <p>We have noted that work is also underway in several further relevant areas including:</p> <ul style="list-style-type: none"><li>- ESMA GL on the name of ESG funds;</li><li>- EBA technical work on green loans and mortgages;</li><li>- CSDDD</li><li>- Commission revision of the Prospectus Regulation including dedicated requirements, where relevant, for ESG-related debt securities;</li><li>- A legislative proposal is expected on oversight of ESG Ratings and ESG Data providers in 2023</li><li>- The proposal for a Directive on empowering consumers for the green transition</li><li>- A legislative proposal for a Regulation on substantiating environmental claims is expected in 2023</li><li>- IOSCO GL on good sustainable finance practices.</li></ul>
--	---

<b>D.15</b>	<b>Beyond the existing and forthcoming implementation of the EU sustainable finance regulations, what actions could be taken to further mitigate greenwashing risk? [For each of the following items, please provide a score</b>
-------------	--



	<b>from 1 (i.e., 'Extremely irrelevant') to 5 (i.e., 'Extremely relevant'), or '0' if you do not know].</b>
--	---

	1	2	3	4	5	0
1. Develop further labels						
2. Improve supervisory oversight						
3. Develop regulatory guidance						
4. Further increase transparency						
6. Other (please specify below)					X	

**Please specify 'Other' here:**

The most effective action would be to start with developing regulatory guidance at the ESAs' level that would be fully consistent with any guidance, where relevant, developed by national competent authorities. This would help ensuring a consistent implementation through soft law as we are still in the "learning zone" when it comes to implementing a complex new regulatory framework. Developing further labels may help although this needs to be examined on a case-by-case basis. Indeed, there are already multiple labels at Member States level and too many labels could create confusion on the market. In addition, while labels have the merit of simplicity, they would be confronted to the same issues listed in response to the previous question related to the need for improvements to the regulatory framework, including the ESG data gap issue. These are what needs to be addressed as a priority.

**ESMA section of the CfE**

<b>F.1</b>	<b>Which, of the elements listed below, do you consider to be the main driver(s) of greenwashing risks? [multiple answers possible]</b>
------------	---

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

<b>F.3</b>	<b>Greenwashing may apply to claims at both entity- and/or product-level (including services). Based on your experience, we would like to understand which level may be more prone to greenwashing risks in various market</b>
------------	--





**segments. For each of the segments listed below, please select one of the four options.**

	1) Greenwashing practices are... more likely at entity-level	2) ... more likely at product /service level	3) ... Equally likely at entity and product /service levels	Not Applicable
Investment managers[1]  [1] For Investment Management, entity-level claims refer to claims made by asset managers under the scope of SFDR. Product level claims refer to claims regarding investment products like investment funds.	X			
Investment firms[2]  [2] For investment firms, entity-level claims refer mostly to claims made by product distributors and manufacturers. Product-level claims refer to claims regarding: a) products: all financial instruments (within the meaning of Article 4(1)(15) of MiFID II) (b) services: portfolio management and investment advice.		X		
Issuers [3]  [3] For Issuers' disclosure and governance, entity-level claims refer to claims made by issuers under the scope of NFRD, the upcoming CSRD and/or the Taxonomy Regulation (TR). Product-level claims relate to financial securities and instruments that fall under the remit of ESMA.			X	
Benchmarks administrators[4]	x			



[4] For Benchmarks, entity-level claims refer to claims made by benchmark administrators. Product-level claims refer to claims regarding benchmarks.				
Other				

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

	1	2	3	4	5	0
a) Equity (common shares, other equity instruments)		X				
b) Fixed income (green bonds, social bonds and other use of proceeds (UoP) bonds, Sustainabilitylinked bonds, common corporate bonds, common government bonds or other fixed income securities)				X		
c) Derivatives (ESG Derivatives including those with an ESG Underlying and with an ESG Performance target, other derivatives)			X			
d) Alternative investments (infrastructure, private equity)			X			
e) Funds: UCITS funds, AIFs, ETFs, Private Equity funds or other funds (e.g. Hedge Funds, ELTIFs)				X		
f) Benchmarks: Paris-aligned (PAB), Climate Transitioning (CTB) Climate Benchmarks, other climate benchmarks or ESG benchmarks			X			
g) Other MiFID II instruments (e.g. securitisations)			X			
h) Other products/ services (please specify below)						X

<b>F.6</b>	<b>Greenwashing practices can be transmitted over more than one segment of the sustainable finance value chain. Various options are described below representing various greenwashing transmission trajectories of</b>
------------	--



	<b>sustainability-related claims, where the first entity is always the trigger with subsequent entities being either in the role of spreader and/or receiver of the claims. Based on your experience, we would like to understand which transmission trajectory may be more prone to greenwashing risks. For each trajectory listed below, please provide a score from 1 to 5 (where 1 = very low occurrence ; 2 = low occurrence; 3 = medium occurrence; 4 = high occurrence; 5 = very high occurrence)</b>
--	--

	1	2	3	4	5	0
a) Issuer X -> Issuer Y[1] --> Investor or benchmark administrator  [1] At entity level, Issuer Y might be claiming to engage with its suppliers, including Issuer X, about a given E or S topic (e.g. human rights violations). Assuming Issuer X makes misleading claims about this topic, these claims can thus be spread by Issuer Y	X					
b) Issuer --> Benchmark administrator --> Investment manager --> Investor				X		
c) Benchmark administrators --> MiFID II manufacturer (e.g. ETF provider) --> Investment manager --> Investor				X		
d) Benchmark administrator --> Investment manager --> Investor				X		
e) Investment manager --> Institutional investment managers[2] -> Investor  [2] The institutional Investment managers could select the first asset manager as an underlying investment in their products (e.g. fund of funds), which are then sold to final investors				X		
f) Investment manager --> MiFID II Distributor (e.g. Investment firm) --> Retail Investor				X		
g) ESG ratings provider --> Investment manager --> Investor				X		
h) ESG ratings				X		



provider --> Benchmark Administrator --> Investor						
i) Issuer --> Investment manager --> Investor				X		
j) Issuer --> MiFID II Distributor (e.g. Investment firm) --> Retail Investor				X		
k) Other (please specify below)						X

<b>F.8</b>	<b>Which industry initiative(s) do you see as instrumental in tackling greenwashing?</b>
	The initiatives particularly on standard setting undertaken by the International Capital Market Association (ICMA) have been instrumental in tackling greenwashing.
<b>F.9</b>	<b>Which do you think are the market mechanisms that can help mitigate greenwashing risks (e.g. reputational issues) and how do you believe supervisors can help in this respect?</b>
	We already give recommendations in terms of improving definitions and labels under our answers to questions A.1, D.14 and D.15. However, we wish to add that market standards such as those published by ICMA are very helpful in mitigating greenwashing risks and should be taken into account as they are widely used in the markets.

**Contact:**

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department ([Marieke.vanBerkel@eachb.coop](mailto:Marieke.vanBerkel@eachb.coop))
- Ms Tamara Chetcuti, Senior Adviser, Financial markets ([Tamara.Chetcuti@eachb.coop](mailto:Tamara.Chetcuti@eachb.coop))