On Guidelines on funds' names using ESG or sustainability-related terms: Response from 2° Investing Initiative

2° Investing Initiative (**2DII**) is an independent, non-profit think tank working to align financial markets and regulations with the Paris Agreement goals. 2DII coordinates some of the world's largest research projects on sustainable finance. Its team of finance, climate, and risk experts develop research, tools, and policy insights to help financial institutions and regulators hasten and adapt to the energy transition.

2DII has been represented at the EC High Level Expert Group on Sustainable Finance, helped design Article 173 of the Energy Transition Law in France, and collaborates with financial supervisors in Europe and abroad on the application of climate scenario analysis on investment and lending portfolios.

Please do not hesitate to contact Nicola Koch (nicola@2degrees-investing.org), Head of Retail Investing or David Cooke, Law and Policy Lead (david@2degrees-investing.org) for further information on anything contained in this response.

Introduction

2DII appreciates the opportunity to contribute to this consultation and strongly welcomes the ESMA objective to prevent greenwashing. However, the recommended guidelines on fund names won't be sufficient to address in particular impact-washing related risks.

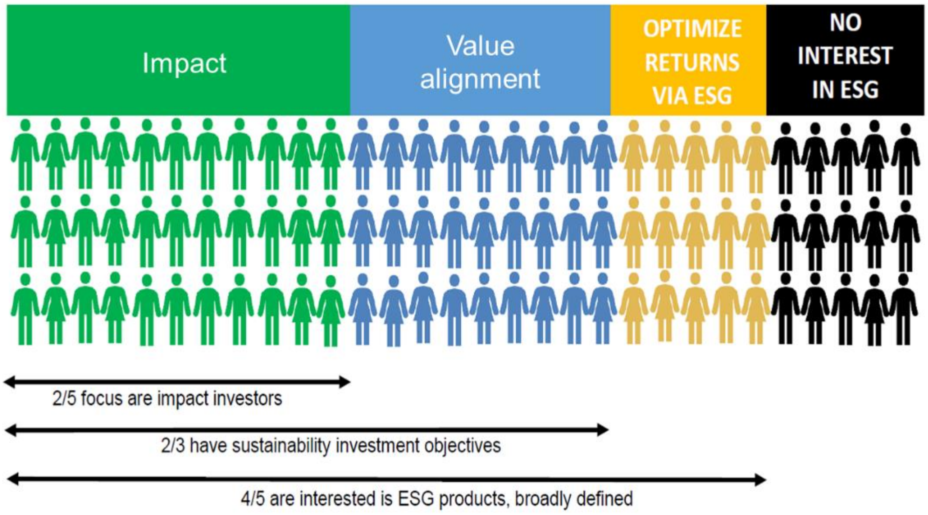
2DII`s primary focus in this consultation: environmental impact-washing

Our work is focused on environmental impact-washing as a key component of greenwashing-related risks due to the high demand for impact, the willingness to pay for it, the low capability to identify impact-washing, the unclear regulatory environment and the resulting high incentives for financial institutions to use (misleading) impact claims. In our view, this issue has also the highest priority for two key objectives of the Commission, namely i) improving the flow of money towards financing the transition to a sustainable economy and ii) improving investor protection.[1]

2DII's key research findings on environmental impact-washing risks:

In 2017, 2DII highlighted in our first greenwashing paper "Non-financial Message in a Bottle", that a large share of retail investors (>40%[2]) want to have a positive impact on the real economy with their investments. We already flagged at this time that **in the absence of a standard definition for investor impact, impact-washing will unlikely be prevented.**

Categorization of sustainability-related objectives of retail investors[3]



Back in 2017, **the ESAs also acknowledged in their "Joint Consultation Paper on PRIIPs with environmental or social objectives" that retail investors seek to achieve two key objectives by investing sustainably: i) to achieve an impact or ii) to align their values with their**

---

[1] See EU Action Plan for Sustainable Finance and the objective of the new EU Strategy for Retail Investors
[2] See results from later surveys across Europe on this topic: 2DII (2020): A Large Majority of Retail Clients Want to Invest Sustainably, AMF (2021): The French and Responsible Investment Products, 2DII (2022): What do your clients actually want?
[3] See for instance usage by some of the most influential researchers in sustainable finance here and here, industry associations such as Eurosif and AMAS/SSF, industry participants such as Natixis and Hermes, regulators such as FCA and Federal Office for the Environment Switzerland (NYP), Ademe (guidelines on impact-marketing claims will be published on the 27.02) and other SF experts. Note that it is debatable whether ESG performance is a true sustainability objective. It can be argued that aiming to increase financial performance through ESG integration is actually a financial objective mixed with the belief that ESG integration can increase returns and/or reduce risks (however, according to our surveys up to 40% of retail investors believe this is the case, which might make it an important reason for sustainable investment decision making).

investments. Therefore, the ESAs recommended that product manufactures shall specify in their investment policy statement "*what exact impact is aimed at by the investment*" (technical advice 4). Almost five years later, SFDR was implemented, **yet the regulatory framework still fails to differentiate between the concepts of company "impact alignment" (suitable for value-oriented investors) and investor "impact generation"[4] (suitable for impact-oriented investors)**, giving impact washing a free ride as emphasized again in our greenwashing paper on the "Draft EU ecolabel criteria for financial products" in 2019. In early 2021, we revealed in our environmental impact marketing claim analysis "Sustainable Finance and Market Integrity: Promise Only What You Can Deliver", that environmental impact claims were directly or indirectly used in marketing materials for around 50% green retail fund products available in France. More concerningly, all **350 analysed environmental impact claims were misleading according the principles under the EU Unfair Commercial Practices Directive since they failed to provide any scientific evidence for their claims.** Last year, we showed in our legal analysis "Fighting greenwashing… what do we really need?" that while general finance sector regulation on European level is applicable to environmental impact claims in the finance sector, these **rules are too general and high level to provide effective governance of environmental impact claims**. To address this gap, 2DII will publish together with the French Environment and Energy Management Agency (ADEME) a **"Guide on environmental impact claims for financial products" for the French market on the 27.02** (a European version of the guide will be published by a European working group which is coordinated by 2DII in May – ESMA already expressed interest in this guide and we will keep ESMA in the loop as promised). **Without an effective guideline for environmental impact claims for investment funds distributed in Europe to retail investors, we expect that key risks related to environmental impact washing are likely to materialize:**

Risk 1: Increasing mistrust of retail investor in sustainable finance products

As observed by the Commission in 2013, large majorities of EU citizens (89%) believe that buying environmentally friendly products can make a difference to the environment. In this context, new research findings show that most investors who want to make a difference to the environment are also willing to pay for real world impact.[5] However, as shown in our consumer surveys, interviews and focus groups, the majority of retail investors fall for most common environmental impact marketing claims and feel misled after explanation.[6] Hence, without regulatory intervention, financial institutions have strong incentives to use impact-claims for advertising their products. In fact, as shown by Scheitza et al. last year, the trend of impact-washing is growing in parallel with the fast-growing sustainable investment market[7] and hence the risk of mistrust of retail investor in sustainable finance products is increasing significantly.

Risk 2: Unknown financial and reputational risks

While there has been no legal case against environmental impact-washing in the finance sector filed yet, financial institution might still be sued. Indeed, according to our legal analysis, impact-washing practices might result in significant penalties in some member states. In France, financial institutions are exposed to fines of up to 10% of revenue or 80% of advertising expenses incurred.[8] Thus, there is potentially a significant financial and reputational risk for financial institutions in Europe using

---

[4] See the explanation of the difference between company impact and investor impact and the need for two distinct categories by Eurosif. It is surprising that the Commission is still struggling to address this regulatory gap while other regulators such as FCA, SEC and the Federal Office for the Environment Switzerland (NYP) are already consulting on frameworks how to accommodate the different concepts.
[5] See Heeb et al. (2022, 2021): Do Investors Care About Impact?
[6] See 2DII (2020): A Large Majority of Retail Clients Want to Invest Sustainably
[7] See Scheitza et al. (2022): The impact of impact funds - A global analysis of funds with impact-claim
[8] Article L. 132-2 of the French Consumer Code.

misleading environmental impact-claims. In fact, we expect that it is just a matter of time until there will be a first case on misleading environmental impact claims in front of a European court. For example, the Baden-Wurttemberg Consumer Centre (BWCC), a German consumer protection agency, already brought such a case to the Frankfurt District Court claiming that the Impact Calculator website from DekaBank was misleading to retail investors and seeking 'judicial clarification' on the impact claims DekaBank made about its Deka-Sustainability Impact fund. Yet, DekaBank subsequently removed the Impact Calculator and formally recognised the BWCC's claims. Although this decision terminated the court proceedings this impact washing case caused reputational damage to DekaBank. While financial litigation risks cannot be assessed at the moment, another recent greenwashing case showed the financial implications of the reputational risks which are at stake. When the news of the investigation on the DWS greenwashing case were published, DWS's share price fell by 13.7%.

Risk 3: Capital misallocation to low-impact products

Our latest greenwashing paper "Fighting greenwashing… what do we really need?" highlighted that the financial regulatory framework is likely to be not fit for purpose to be effectively used against environmental impact-washing on a European level mainly due to the missing integration of the concept of investor impact. As long as no case law exist and the European financial regulatory framework remains unclear on impact washing, financial institutions might perceive environmental impact washing risks to be lower (or don't even identify this risk) than the financial benefits by selling financial products with (misleading) environmental impact-claims. According to our market estimation based on investor surveys across Europe, we expect a trillion EUR unexploited demand potential for green impact-generating (or claiming) financial products, which is likely to flow in low-impact potential financial products without regulatory interventions.[9] As mentioned before, the latest research from Scheitza et al. (2022) documented the prevailing misleading market practices on impact claims of Art 8 and 9 funds.

Risk 4: Risk of incentivizing low innovation on impact products

Finally, without minimum requirements for "impact-generating"[10] products, there is a risk that market participants will not invest in product innovation and focus on low-impact products. As Heeb et al. (2022) showed, impact-oriented investors are willing to pay to have a real-world impact with their savings, however, the willingness to pay is not very sensitive to the magnitude of impact they get. Thus, without further minimum requirements to assess the impact potential of investing products, a fund manager could apply a strategy with low impact potential (e.g. engaging on the implementation of CO2 reporting) to minimize the costs while still exploiting investors' willingness to pay for achieving impact (i.e. for the "warm glow" effect). While their paper reveals that impact-oriented investors are still sensitive for the relative difference between the impact of financial products, most retail investors don't have sufficient knowledge to assess or lack tools to compare the impact between financial products. In case no other market participant will invest in reducing this information asymmetry and to invest in higher impact investing products or strategies and communicate about it, the risk of a "low impact investing market" could materialize, thwarting the Commission's goal to effectively financing the transition to a sustainable economy.

---

[9] See 2DII (2022): What do your clients actually want? and 2DII (2021): I've got the power! Really? – Assessing the impact potential of financial products supporting the energy transition
[10] See Eurosif (2022): Classification Scheme for Sustainable Investments

Responses to specific questions

Q1. Do you agree with the need to introduce quantitative thresholds to assess funds' names?

2DII generally agrees with the introduction of quantitative minimum requirements for funds that use terms like 'sustainable', 'ESG', 'green', 'climate' etc. in their names.

However, implementing thresholds to assess fund names won't be sufficient to address broader impact washing risks. More specific guidance on impact marketing claims is needed. Such guidance needs to go beyond the assessment of fund names (i.e. comprise all relevant marketing documents) and introduce a concept how to assess and substantiate impact claims. To address this gap, 2DII will publish together with the French Environment and Energy Management Agency (ADEME) a "Guide on environmental impact claims for financial products" for the French market on the 27.02 (a European version of the guide will be published by a European working group which is coordinated by 2DII in May. To test the level of compliance with this framework, 2DII will publish an updated impact-claim analysis (see our previous analysis of 350 retail funds here) of the largest Art 8 and 9 funds in Europe in April. Furthermore, to help regulators, standard setters and the industry to better assess the climate impact potential of financial investment products, 2DII will publish a first version of a Climate Impact Potential Assessment Framework at the beginning of March (see final draft here). ESMA, EIOPA and EBA already expressed interest in these outputs and we will keep ESMA in the loop as discussed.

Q2. Do you agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-, or impact-related words in the name of a fund? If not, please explain why and provide an alternative proposal.

We think that a 80% threshold is ok but we are wondering on which basis this threshold was selected (consumer expectation, rating availability, market reality etc.)? It is close the 70% threshold recommended by FCA in their consultation Sustainability Disclosure Requirements (SDR) and close to the 75% threshold the Bafin has recommended for sustainable investment products. However, given that such a threshold can be rather justified due to rating availability than consumer expectation, the thresholds should be periodically reviewed and adapted when more companies are rated.

Furthermore, if the figure is below 100%, minimum sustainability safeguards of specific exclusion criteria selected by the client must be introduced for the remaining investments of the fund. Do No Significant Harm criteria of the EU taxonomy may be relevant to use, in particular for new assets of a given company; exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2) may be relevant as well, depending on the category of ESG fund we focus on.

Q3. Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word "sustainable" or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

We disagree to the idea of an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word "sustainable" or any other sustainability-related term in the name of the fund. We recommend to stick with the 80% threshold or applying the 70% threshold recommended also in the FCA proposal (or to choose the 75% threshold Bafin has recommended for sustainable investment products). However, given that such a threshold can be rather justified due to rating availability than consumer expectation, the thresholds should be periodically reviewed and adapted when more companies are rated.

Furthermore, if the figure is below 100%, minimum sustainability safeguards of specific exclusion criteria selected by the client must be introduced for the remaining investments of the fund. Do No Significant Harm criteria of the EU taxonomy may be relevant to use, in particular for new assets of a given company; exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2) may be relevant as well, depending on the category of ESG fund we focus on.

Q4. Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.

As described under Q5, we recommend to link the naming and marketing rules not only to a threshold but to a broader categorization or labelling of financial products which use ESG or sustainability-related names, such as the FCA proposed.

In terms of thresholds construction, we are concerned about ongoing market practices by asset managers and label providers by deriving thresholds from practical considerations or small expert bodies. For instance, we observe a significant mismatch between the way how sometimes asset managers and label providers think about exclusion thresholds and how retail investors think about these issues. Therefore, **we recommend to conduct surveys and focus groups and interviews among retail investors to test the proposed thresholds**. Based on our experience from quantitative and qualitative research on sustainability preferences in 14 EU countries, we expect that the idea of "at least 50% of minimum proportion of sustainable investments for the use of the word "sustainable" or any other sustainability-related term" would be perceived as misleading.

Q5. Do you think that there are other ways than the proposed thresholds to achieve the supervisory aim of ensuring that ESG or sustainability-related names of funds are aligned with their investment characteristics or objectives? If yes, please explain your alternative proposal.

We recommend to link the naming and marketing rules not only to a threshold but to a broader categorization or labelling of financial products which use ESG or sustainability-related names. For instance, we believe that in this context the approach by the FCA in their consultation paper "Sustainability Disclosure Requirements (SDR) and investment labels" is a great advancement for the sustainable finance market. They propose to restrict the use of sustainability-related terms in the naming and marketing of products offered to retail investors that do not use a sustainable investment label (i.e. being classified as "sustainability focus", "sustainability improver" or "sustainability impact" product). This aims to ensure that product names and marketing align with, and are proportionate to, the product's sustainability-related objectives and strategy and is going beyond threshold mechanisms.

We don't believe that the existing regulation on product disclosure under SFDR (e.g. using Art 8 or 9) can be used in a similar way without amending the regulation. As described in our paper "Fighting greenwashing… what do we really need?", SFDR does not accommodate impact-oriented objectives. In contrast, the FCA derived their classification system from different product characteristics and objectives, accommodating retail investors who want to align their investment with their values (i.e. "sustainability focus" category) and those who want to have an impact (i.e. "sustainability improver" and "sustainability impact" category). SFDR Art 8 or 9 describes only product characteristics but not product objectives.

Q6. Do you agree with the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name? Should such safeguards be based on the exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2)? If not, explain why and provide an alternative proposal.

Yes, minimum sustainability safeguards are needed for all funds ESG or sustainability-related term in their name, despite potentially for funds with a clear indication to integrate ESG only for financial considerations. Those products might integrate ESG factors only with the objective to increase financial opportunities or reduce risk (the majority of the SRI market). These product should be not considered as "sustainable" nor indicate that they are suitable for impact or value-oriented investors. However, there should be specific guidelines for these products as well, since transparency on ESG integration is still in most cases very low.

4.3 Additional recommendations related to fund names

21. In order to consider the specificities of certain ESG or sustainability strategies the following aspects could also be addressed in the Guidelines depending on feedback to this consultation:

b. Funds using the word "impact" or "impact investing" or any other impact-related term in their name should meet the proposed thresholds and additionally make investments with the intention to generate positive and measurable social or environmental impact alongside a financial return.

Q10. Do you agree with having specific provisions for "impact" or impact-related names in these Guidelines? If not, please explain why.

Yes, we definitely agree with having specific provisions for "impact" or impact-related names in these Guidelines similar to the approach by the FCA. 2DII will publish together with the French Environment and Energy Management Agency (ADEME) a "**Guide on environmental impact claims for financial products**" for the French market on the 27.02 (a European version of the guide will be published by a European working group which is coordinated by 2DII in May). To test the level of compliance with this framework, 2DII will publish an **updated impact-claim analysis** (see our previous analysis of 350 retail funds here) of the largest Art 8 and 9 funds in Europe in April. Furthermore, to help regulators, standard setters and the industry to better assess the climate impact potential of financial investment products, 2DII will publish a first version of a new **Climate Impact Potential Assessment Framework** at the beginning of March (see final draft here). ESMA, EIOPA and EBA already expressed interest in these outputs and we would be happy to **coordinate any effort for guidelines on impact marketing.**

However, **we strongly disagree with the proposition that meeting a threshold and showing an intention to generate positive and measurable social or environmental impact would be sufficient for using the word "impact" or "impact investing" or any other impact-related term**. There is a broad consensus across researches and practitioners on the three main criteria for impact investing products.[11] Products which claim to generate positive impacts on sustainability issues should meet minimum requirements for i) intentionality ii) additionality and iii) measurement. **Thus, the suggested requirement to explain only the intention to generate positive impact would be not sufficient according to key stakeholders in the impact investing field.**

Furthermore, **we also strongly disagree with the "Example 5: Global Impact Fund" on page 28**. The description of the objectives and policy is about "impact alignment" (i.e. company impact) and not about "impact generation" (i.e. investor impact). The need to distinguish between company

[11] See e.g. Bush et al. (2022), Impact investments: a call for (re)orientation; Eurosif (2022), Classification Scheme for Sustainable Investments or GIIN, The Core Characteristics of Impact Investing

impact and investor impact has been repeatedly emphasized across multiple stakeholder groups over the last years. **Thus, the provided example of the "Global Impact Fund" is irritating since it would be a strong negative example of a misleading fund which misuses "impact" in it's name.** According to our work for the "Guide on environmental impact claims for financial products", the provided example could even lead to various risk of sanctions.

Overview of the applicable texts (with focus on France):

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[12]	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 application[13]) in France of European texts. Some are

[12] The CNC guide is currently being updated for publication in the first quarter of 2023
[13] This is the case for the CBDF Regulation, which is directly applicable.

specific to the financial sector, such as MIFID II[14] and the CBDF Regulation[15] and its guidelines[16]. Other texts cover consumer protection: the UCPD[17], accompanied by its guidelines[18] and the MDEC criteria[19]. In addition, the Environmental Code includes provisions on the use of environmental claims and advertising[20]. In this sense, claims regarding the carbon neutrality of products and services are notably prohibited in principle.[21] In addition to these rules, financial institutions must take into account the rules established by the AMF doctrine[22], the recommendations of the ARPP[23], the recommendations of the CNC[24], and the ADEME opinion on climate communication.[25] In addition, several French guides address the subject of environmental claims, but they are not specific to the financial sector.[26]

It should be noted that the provisions contained in the SFDR[27] and Taxonomy[28] 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 […]." [29]

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.[30]

---

[14] Directive 2014/65/EU of 15 May 2014 on markets in financial instruments.
[15] Regulation of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings.
[16] ESMA Guidelines on marketing communications, pursuant to the Regulation of August 2021 on cross-border distribution of undertakings for collective investment.
[17] Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices.
[18] Communication from the Commission: Guidance on the interpretation and application of Directive 2005/29/EC
[19] MDEC compliance criteria for the application of the 2016 UCPD.
[20] Titre II, art. 12 of law n° 2021-1104 of 22 August 2021 Law Climate and Resilience
[21] Articles L. 229-68 and L. 229-69 of the French Environmental Code.
[22] AMF position/recommendation DOC-2020-03 and Position/recommendation of the AMF, DOC-2011-24.
[23] ARPP recommendations on sustainable development - V3, 2020.
[24] CNC, 2014 - Guide on environmental claims.
[25] ADEME, 2022 - ADEME's expert opinion and recommendations on the use of the "carbon neutrality" argument in communications.
[26] ADEME, 2020 - Guide on responsible communications. ADEME, 2012 - Anti-greenwashing guide. ARPP/ADEME, 2019 - report on "advertising and the environment".
[27] Regulation (EU) 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector.
[28] Regulation (EU) 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.
[29] 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.
[30] 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

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:

Environmental impact claims for financial products must comply with rules specific to the financial sector:
- They must be clear, accurate and not misleading; [31]
- They must be consistent with the legal and regulatory documents of the promoted fund; [32]
- They must be proportionate to the integration of sustainability features or goals in the investment strategy.[33]

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;[34]
- If it contains information that could mislead the average consumer, even if the information is factually correct;[35]
- 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). [36]

In the event of legal proceedings, it is up to the professional to provide proof of the accuracy of the environmental impact claim.[37]

Guidelines[38] and compliance criteria[39] 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).[40] In an expert opinion, the

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.”

[31] 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.

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

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

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

[35] Article L. 121-2 of the French Consumer Code and Article 6 UCPD.

[36] Article L. 121-3 of the French Consumer Code and Article 7 UCPD.

[37] Article 12 UCPD.

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

[39] MDEC compliance criteria for the application of the 2016 UCPD.

[40] Article L. 229-68 of the French Environmental Code.

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.[41]

Summary of monitoring and sanctions:

Prior to its publication, the AMF may request the modification of a claim;[42] and, after the publication, the AMF may sanction a claim that is not clear, accurate and not misleading[43].

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 - JDP[44]) 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;[45]
- Substantial fines of up to 10% of revenue or 80% of advertising expenses incurred,[46] and even 100% of expenses incurred relating to non-compliance with the carbon neutrality claim ban[47];
- Indemnities intended to compensate the damage suffered by the investor.

Challenges specific to environmental impact claims

As part of the promotion of the environmental impact of financial products through their names or relevant marketing material, which requires compliance with the legal framework detailed in the previous section, 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 Zurich[48], 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.

---

[41] ADEME, 2022, Expert opinion on the use of the "carbon neutrality" argument in communications
[42] Article 314-6 of AMF General Regulation.
[43] 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.
[44] JDP – Jury de Déontologie Publicitaire (www.jdp-pub.org).
[45] Article L. 132-2 of the French Consumer Code.
[46] Article L. 132-2 of the French Consumer Code.
[47] Article L. 229-69 of the French Environmental Code.
[48] 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.

- **The environmental impact of the company** corresponds to the change[49] (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 changes[50] 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.

Finance For Tomorrow explains that the **impact finance rests on 3 pillars:**[51]

- **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. [52]
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.).

---

[49] This can be a positive or negative environmental impact, but this guide focuses on positive/favourable impacts.
[50] This can be a positive or negative environmental impact, but this guide focuses on positive/favourable impacts.
[51] 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.
[52] Definition of impact finance, Groupe de Place Impact, F4T, September 2021.

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.[53]

More generally, strategies which are specific to listed markets[54] and are recognised in scientific writing as having a potential impact (for example shareholder engagement or the price signalling)[55], 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.

- **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.[56]

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) <u>Identifying the elements to support an environmental impact claim</u>

Regulations require financial institutions to be able to substantiate their business claims.[57] 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

---

[53] 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.
[54] Unlike unlisted markets, listed markets are primarily characterised by public information on the companies listed, higher liquidity, and larger-sized companies.
[55] 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.
[56] Definition of impact finance, Groupe de Place Impact, F4T, September 2021.
[57] Article 12 UCPD.

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.

<u>2DII's recommendations for guidelines for using the word "impact" or "impact investing" or any other impact-related term (example: France)</u>

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. **<u>Evidence - Defining the scope of the environmental impact claim in terms of what can be proven:</u>**

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 environmentally[58] 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.

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

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).
- 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 it[59]. 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

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?

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

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)?

Q11. Should there be specific provisions for "transition" or transition-related names in these Guidelines? If yes, what should they be?

Yes, we agree to a specific provisions for "transition" or transition-related names in these guidelines similar to the "sustainability improver" category introduced by the FCA. Differentiating between sustainable improvers and sustainable impact products is a very useful step. **We agree to the need of differentiating pure impact products meeting requirements of intentionality, additionality and INVESTOR impact measurement and "contribution/improver/transition" products meeting requirements of intentionality, additionality and COMPANY impact measurement.** Given the nature of financial products, it will be very difficult to quantify and measure investor impact, which will lead to a small proportion of product (e.g. microfinance funds) meeting this requirement. However, **from an impact and consumer perspective, it makes sense to steer capital towards "contribution/improver" products meeting under specific requirements**. For this reason, we will work with ADEME and other French stakeholder on a second guide on "contribution" claims for financial products until October this year.

We largely agree with FCA's proposed labelling and classification of sustainable investment products. **We agree to the idea of setting a clear intention/sustainability objective for each categories, however, we are less convinced about the introduction of a primary and secondary channel for sustainability outcomes. Furthermore, we would recommend to not discriminate between impact mechanisms (i.e. stewardship, undersupplied markets, flexible capital and market signalling (market and non-market) in the improver and impact categories. We believe that it would make more sense to discriminate between the categories based the on the proof of additionality and impact measurement (either company or investor level) than based on impact mechanisms.**

We recommend for the sustainable focus category to require clear intentionality to invest in sustainable assets without further additionality criteria but with requirements of robust company impact measurements. This definition would also match the "impact alignment" category propose by Eurosif's "Classification Scheme for Sustainable Investments".

We recommend for the sustainable improver category to require clear intentionality to improve the sustainability performance of the underlying assets with ambitious requirements for the additionality of the actions and for robust company impact measurements.

We recommend for the sustainable impact category to require clear intentionality to improve the sustainability performance of the underlying assets with ambitious requirements for the additionality of the actions and for robust investor impact measurements (guaranteeing that only product use impact claims which can provide intentionality, additionality and investor impact measurement). The sustainable impact category would be also close to the "impact generating" category propose by Eurosif's "Classification Scheme for Sustainable Investments". However, we would not recommend to discriminate between the actions taken which result to additional outcome, i.e. stewardship, undersupplied markets, flexible capital and (under very specific conditions) capital allocation. Generally, we had the feeling that "providing flexible capital" was missing as subcategory of financing undersupplied markets.

Yet, the approach for "sustainability improvers" would discriminate products focusing on undersupplied markets which have no investor impact measurements. Furthermore, the approach for sustainable impact would discriminate products focusing on effective stewardship with a strong impact measurement approach. We don't understand the reason for this discrimination which would also strongly affect the number of products available. To give you a feeling of how many products can be expected by applying (only) ambitious requirements for intentionality and additionality of actions, you can find a list of 24 retail products we could identify in the Swiss financial market here (mostly applying underserved and flexible finance, yet no investor impact measurements). Thus, a too rigid discrimination between impact mechanisms (for no obvious reason) would have led to almost no products for the Swiss market (which is however not the key argument why we recommend to no discriminate between different impact mechanisms).

We recommend that the regulator sets minimum requirements to proof additionality based on "success factors" to guarantee a high impact potential for each impact mechanism applying in a specific product. We will publish a Climate Impact Assessment Framework in Mid February to assess the impact potential of a particular product based on the impact mechanisms used by the product (using IMP investor contribution categories) and the exploitation of the impact potential (based on success factors derived from literature review on each investor contribution category). You can access the final draft (currently under review) and related documents (such as discussion papers on each impact mechanism and the derived success factors and underlying assessment criteria) here. **We believe that our work can be helpful for your next steps and we would be glad to support you in this process.**

Our changes recommended for each category in the FCA proposal:

Sustainable focus

The key distinguishing features of this category of product are:

- Sustainability objective. Alongside its financial risk/return objective, a 'sustainable focus' product will have an objective to invest in assets that meet a credible standard of environmental and/or social sustainability, or that align with a specified environmental and/or social sustainability theme.
- Primary channel for sustainability outcomes. This category of product would pursue its sustainability goals primarily via the market-led channel of influencing asset prices, and thereby reducing the relative cost of capital of sustainable economic activities/projects.

- Secondary channel for sustainability outcomes. Products in this category will also typically pursue continuous improvements in the sustainability performance of assets through investor stewardship activities.

It makes sense to have a category for retail investors who are interested in positive screenings to align with their values or signal support for (relatively) sustainable companies based on solid company impact assessments. This distinction from risk based ESG company assessments would reduce the confusion for retail investors who think that ESG products are sustainable products in a sense that the underlying companies are sustainable. However, there is a potential confusion between "sustainability goal" and "sustainability objective" in this category. While the sustainability objective (the intention) is to align with sustainable assets, the sustainability goal is to influence the company behaviour through either price signalling or stewardship. Thus, there might be a confusion between the sustainable focus and the improver category. We recommend for the sustainable focus category to require clear intentionality to invest in sustainable assets without further additionality criteria but with requirements of robust company impact measurements. This definition would also match the "impact alignment" category propose by Eurosif's "Classification Scheme for Sustainable Investments".
We recommend to overthink the separation between primary and secondary channels and delete it for sustainable focus products since they do not aim (proof additionality nor investor impact measurement) to change company behaviours.

Sustainable Improvers

The key distinguishing features of this category of product are:

- Sustainability objective. Alongside its financial risk/return objective, a 'sustainable improvers' product will have an objective to deliver measurable improvements in the sustainability profile of its assets over time, including through investor stewardship.
- Primary channel for sustainability outcomes. This category of product would pursue its sustainability goals primarily via the channel of investor stewardship. The product's stewardship approach would be directed towards encouraging and accelerating improvements in the environmental or social sustainability profile of its assets, including through participation in system-wide initiatives, with flow-on positive implications for environmental and/or social sustainability.
- Secondary channel for sustainability outcomes. Portfolio construction and asset selection in 'sustainable improvers' products would be geared towards identifying those assets that are best-placed to improve their sustainability profile over time. So, a secondary channel would be the market-led channel of influencing asset prices and the relative cost of capital of more sustainable economic activities/ projects.

As stated before, it makes sense to create a new category which is not "pure" impact investing but more than impact alignment for retail investors who want to maximize their impact potential but who accept impact reporting on company level instead of investor level while acknowledging that due to the missing investor impact measurement their individual contribution cannot be quantified. Besides retail investor interests, there is also a good argument to steer capital to products with the highest impact potential while acknowledging that due to the missing investor impact measurement the product contribution cannot be quantified (yet?). However, scientific evidences might be strong enough for the different impact mechanisms and their "success factors" to use this level of evidence to back "contribution/improver" claims (to be distinguished from impact claims).

We recommend for the sustainable improver category to require clear intentionality to improve the sustainability performance of the underlying assets with ambitious requirements for the additionality of the actions and for robust company impact measurements. Therefore, we would erase the last part of the sustainability objective part "including through investor stewardship" or complementing it

(...), underserved markets, flexible capital or capital allocation (again, under very specific conditions, see for more infos on success factors for impact with capital allocation our discussion paper mentioned above). Furthermore, we don't understand why FCA recommended only a solid theory of change for the impact product category. We recommend that a solid theory of change should also be part of the intentionality requirements for sustainability improvers. In the annex, FCA also mentions a solid theory of change as requirement of robust stewardship, therefore, the requirement for theory of change should be clarified.
We recommend to overthink the separation between primary and secondary channels and replace them by the different impact mechanisms to be applied.

Sustainable Impact

The key distinguishing features of this category of product are therefore:

- Sustainability objective. Alongside its financial risk/return objective, a 'sustainable impact' product will have an objective to achieve a pre-defined, positive and measurable environmental and/or social impact.
- Primary channel for sustainability outcomes. This category of product would pursue its sustainability goals by directing typically new capital to projects and activities that offer solutions to environmental or social problems, often in underserved markets or to address observed market failures. Products would be expected to have a stated theory of change, and to pursue a highly selective asset selection strategy aligned with that theory of change.
- Secondary channel for sustainability outcomes. Driving continuous improvements in the sustainability performance of assets through investor stewardship activities would be a secondary channel.

We recommend for the sustainable impact category to require clear intentionality to improve the sustainability performance of the underlying assets with ambitious requirements for the additionality of the actions and for robust investor impact measurements (guaranteeing that only product use impact claims which can provide intentionality, additionality and investor impact measurement (FYI we will publish a guideline and principles on impact marketing claims Mid February). Therefore, we would erase the last part of the sustainability objective part "often in underserved markets or to address observed market failures" or complementing it (...), stewardship, flexible capital or capital allocation (again, under very specific conditions, see for more infos on success factors for impact with capital allocation our discussion paper mentioned above). The sustainable impact category would be also close to the "impact generating" category propose by Eurosif's "Classification Scheme for Sustainable Investments". However, we would not recommend to discriminate between the actions taken which result to additional outcome, i.e. stewardship, undersupplied markets, flexible capital and (under very specific conditions) capital allocation.

We recommend to overthink the separation between primary and secondary channels and replace them by the different impact mechanisms to be applied.