Reclaim Finance – Response to ESAs' Call for Evidence on Greenwashing

Consultation open until January 10th, 2023
Link to the consultation: https://ec.europa.eu/eusurvey/runner/ESAsCfEGreenwashing2022

B. General information on respondents

Fill out this section with the relevant information for you and your organization. If you want your contribution to remain confidential, tick the specific box at the bottom of the page.

C. ESAs common section of the CfE

This section contains general questions on greenwashing that are relevant to financial institutions in general. Specific sections are also available after to give more in-depth feedback relevant to specific financial institutions.

1. Possible features of greenwashing

1.1 Core features or greenwashing

Q A.1: 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.

Reclaim Finance considers the core features of greenwashing laid out in the CfE to be highly relevant to identify greenwashing practices. We especially note that:

- Greenwashing can happen both at the entity and product level. Ignoring one of these levels would create a massive loophole that would allow the development of greenwashing. Greenwashing at the product level means that misleading information is sent to investors and savers, which slows down the redirection of financial flows to sustainable activities and hinders the development of "sustainable" finance. However, greenwashing at the entity level can have even worse effects by: 1) Sending a false signal to the market and regulators about the preparedness of the entity to face and/or benefit from the climate transition, thus influencing the level of assessed financial risks and the value of the entity's assets; 2) Sending a false message that the entity is aligned with sustainability and climate imperatives, thus misleading its clients and public authorities, which has potential impacts on consumer behaviour and can delay climate action.
- As the CfE indicates, greenwashing can result from either the omission of information or from the communication of false or misleading information. In many cases, the information used by an entity to market products that are deemed sustainable – or more broadly the information used to put forward an organisation's "sustainability" commitments – does not need to be false to be misleading. For example, a financial institution that makes a climate-related claim based on the fact that it significantly finances "green" activities would be misleading its clients by failing to show the full impact of its activities, including the support provided to highly polluting activities (such as support for new fossil fuel projects that lock in greenhouse gas emissions for decades).

Beyond the core features already included in the document, we highlight two other dimensions that must be considered:

1. In the context of the current climate emergency and given the many commitments made by EU financial institutions, any investigation of greenwashing by regulators must fully include financial institutions' net-zero claims. First and foremost, this means taking advantage of the UN High Level Expert Group's recommendations on net zero commitments. If regulators consider these recommendations, they will ensure that:

   1) Entities with 1.5°C alignment or carbon neutrality claims adopt science-based plans that match these claims and are based on a credible 1.5°C scenario with no/low overshoot and minimal reliance on negative emissions technologies. Entities must apply these plans accordingly.
   2) Financial institutions with such claims or commitments must immediately stop supporting fossil fuel development and adopt policies to progressively phase-out these fuels.

   At the launch of the UN HLEG report on Net Zero commitments, Antonio Guterres, UN Secretary General, was clear: "So-called 'net-zero pledges' that exclude core products and activities are poisoning our planet. They must thoroughly review their pledges and align them with this new guidance. Let's tell it like it is. Using bogus 'net-zero' pledges to cover up massive fossil fuel expansion is reprehensible."
2. In some cases, greenwashing can arise from the difference between practices at the product and the entity level. For example, a product that can prove its sustainability credentials can be used to greenwash a financial institution's other products and activities. In other words, an asset manager could only refer to a fossil-free and Paris-aligned fund in order to present a "green" image, while the vast majority of its funds continue to invest in coal developers. In such a case, focusing on one product can benefit the asset manager as a whole, despite its other products being incompatible with sustainability claims. Avoiding this type of greenwashing requires ensuring that any financial institution making sustainability claims satisfies a set of minimum requirements at the entity level. These minimum requirements can be defined based on the work of the HLEG report cited above.

Q A.2: Do you have or use a specific definition of greenwashing as part of your activities? If so, please share this definition.

X

1.2 Dimensions of greenwashing

1.2.1. The potential roles market participants can play in greenwashing

Q A.3: Market participants could potentially play three main different roles (trigger, spreader, receiver) in any given occurrence of greenwashing. For instance, a corporate issuer can trigger greenwashing by understating its carbon emissions. This misleading claim could be communicated to both investment managers, ESG data providers and/or other market participants some of whom might continue to spread the misleading claim to the end investors/consumers, who would be the receivers of greenwashing.

Q A.3.1: Do you agree that market participants could be involved in three different ways in greenwashing, as described above?

a) Yes, spreading misleading claims without putting the necessary safeguards and audits in place to verify issuer claims is a form of greenwashing. This is the case especially for highly material information related to climate impacts.

1.2.2. The topics of sustainability-related claims

Q A.4: 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).

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

Q A.4.1: Please specify the underlying drivers of greenwashing in relation to the topics you scored higher.

Reclaim Finance considers the main drivers of all the topics scored higher to be: 1) Insufficient regulation and inadequate definitions; 2) a lack of enforcement and sanction mechanisms. Concretely:

- ESG strategy, objectives and characteristics: Without standardized definitions identifying greenwashing in companies' ESG strategies and objectives requires a "case by case" assessment that is impossible to conduct for all companies.
- ESG qualifications/labels and certificates: While it is theoretically more difficult to greenwash labelled or certified products, the benchmarks and standards are often too weak to offer real environmental guarantees. The many differences between standards are also difficult to identify and understand for stakeholders, opening the door to unintended greenwashing. Furthermore, as many of the labels are used for retail investment products, even if the criteria are transparent and public, the end investor might simply look at the names of the labels and not dig into the criteria and requirements. Mandatory standards with minimum requirements are needed to avoid this, and could ensure that the labels' names reflect what a retail investor would be expected to understand (e.g. the terms 'sustainable' or 'responsible' should not be linked to products that invest in activities that are widely recognized as not compatible with a 1.5°C carbon budget).
- Engagement with stakeholders: Engagement activities and their effectiveness are rarely supported by transparent, precise and relevant indicators. Moreover, in order to be sure that engagement with stakeholders is meaningful and contributes to sufficient changes, engagement claims must be supported by a detailed escalation strategy. Financial institutions must set clear objectives and deadlines to engage and implement sanctions in case of failure. Today, engagement claims are often unsubstantiated or solely based on a voting policy or contribution to alliances like the CA100+ initiative. None of these are sufficient to demonstrate the reality and effectiveness of engagement activities.
- ESG performance to date: company-reported climate-related data is currently not systematically checked or audited. Many companies don't report sufficient data to allow a full assessment of their ESG/climate performance.
- Pledges about future ESG performance: Without specific enforcement actions, these pledges are voluntary and vague. They do not follow clear or standardized criteria, nor are they bound to an implementation timeline. As many reports – including from the UN HLEG and from finance alliances like the NZAOA – have shown, companies' net-zero pledges are not currently substantiated by coherent transition plans. This means it is very easy for companies to make broad claims which are not implemented.

Q A.5: 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).

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

Q A.5.1: Please explain what types of impacts or harm and their consequences you anticipate as a result of greenwashing practices.

Greenwashing can have various harmful impacts, notably:

1) Carbon budget overshoot: False or misleading climate claims can lure investors, money savers, and public authorities into a false sense of security when it comes to climate action. A company that showcases ambitious climate pledges but does not back them up with a clear and detailed transition plan and does not implement this plan would effectively be emitting more GHGs than planned and communicated. This could contribute to the carbon budget being exceeded, leading to more global warming.
2) Environmental and human rights degradation: False or misleading claims can have a significant impact on the environment and human rights. When looking at climate-related claims, this is notably the case for offsetting where projects have been used to claim a positive environmental impact even though they have effectively resulted in harm to indigenous populations and destruction of biodiversity.
3) Financial risks: Greenwashing could lead to an under-estimate of our exposure to climate-related risks, creating a false sense of preparedness.
4) False valuation: False or misleading information on the climate and ESG performance can impact the valuation of a company and of its assets, especially when this company is involved in activities directly related to climate change. This effectively distorts the market and provides an unfair advantage to companies with misleading communications while exposing other market participants to losses.

Q A.6: 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

Q A.7: Please indicate below if you have any additional comments regarding the relevance of the above topics on which sustainability-related claims are made in the context of a given sector or entity.

X

<u>1.2.3 The way in which a claim can be misleading</u>

Q A.8: 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.

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

Q A.8.1: 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?

X

<u>1.2.4 Which communication channel</u>

Q A.9: 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):

	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	○	○	○	●	○	○
* b) Ratings (ESG ratings and/or other ESG data products)	○	○	○	○	●	○
* c) Benchmarks	○	○	○	●	○	○
* d) Labels	○	○	○	●	○	○
* e) Product information (including internal classifications, and internal target market, product testing and distribution strategy related documentation)	○	○	○	○	●	○
* f) Intermediary/advice information	○	○	○	●	○	○
* g) Marketing materials (including website, social media, advertising)	○	○	○	○	●	○
* h) Voluntary reporting, falling outside previous categories as reported on a voluntary basis	○	○	○	●	○	○
* i) Other (please specify)	○	○	○	○	○	●

Q A.9.1: Please indicate below if you have any comments regarding the communication channels of potentially misleading sustainability-related claims?

Various channels can communicate greenwashing because the - either mandatory or voluntary - standards are inprecise or insufficient:

- Regulatory documents;
- ESG ratings;
- Benchmarks;
- Labels.
- Financial product advertising

<u>1.2.5 At which stage of the lifecycle and where in the business model/management does greenwashing occur</u>

Q A.10: 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):

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

Q A.10.1: Please indicate below if you have any comments on the above question
X
<u>1.2.6 Further considerations</u>
Q A.11: Are there any relevant elements or features of greenwashing which have not been referenced in the questions above?
a) Yes
Q A.11.1: If yes, please provide below more information on your answer including, if possible, a short illustration:
We would like to underline that:
1) Please refer to Q.A.1 on the need to regulate net zero claims made by financial institutions.
2) Please refer to Q.A.1 on the need to regulate greenwashing arising from oversized communication at a product level.
<u>2. Examples of potential greenwashing practices</u>
In this section, you can provide various examples of greenwashing. Each exemple will require you to fill out specific questions. ***You can provide additional examples by responding yes to Q 12.17, this will open a new set of questions (from Q12.2 to Q12.16)****.*
Q A.12: Are you able to identify and characterize at least one example of potential greenwashing practice?
a) Yes, I can provide examples of potential greenwashing practice
Q A.12.2: (If yes) if you have, briefly describe this example of potential greenwashing practice, including the potentially misleading sustainability-related claims identified, a short description of the product, service or entity (as applicable) and of the claim. Please also provide information on how you identified / found out about this case.
Example 1
On February 10th 2021, Canadian midstream company Enbridge secured a three-year $1.0 billion Sustainability Linked Credit Facility (SLC) with CIBC, Scotiabank (Bank of Nova Scotia), Bank of Montreal (BMO Capital Markets), RBC Capital Markets and TD Securities.
Enbridge's February operation was not done publicly and no document was published to clearly describe how this credit was "sustainable". The company only indicated that it would incorporate its "ESG goals". The "sustainability" of the SLC therefore appeared to be based on Enbridge's ESG strategy.
This strategy was presented in November 2020. It included two environmental objectives regarding its direct GHG emissions (scope 1 and 2): "To reduce the intensity of GHG emissions from our operations by 35% by 2030" and "To achieve net zero emissions from our business by 2050".
While these announcements may look good, they are in fact empty words which allow the company to continue developing highly polluting projects and energy supplies:

1. Enbridge's GHG reduction and net zero targets only apply to scope 1 and 2 emissions. They do not apply to the lion's share of its emissions which come from the use of the products it sells to utility companies and the electricity grid transmission and distribution losses. Enbridge itself states that scope 1 and 2 emissions represent less than 2% of the lifecycle emission intensity of oil sands.
2. Reducing GHG intensity does not mean that the absolute level of emissions generated by the company will diminish. For example, Enbridge could consume energy with a lower carbon footprint but increase its consumption, thus maintaining – or even increasing – its level of emissions.
3. To reach "net-zero" for its scope 1 and 2 emissions, Enbridge relies on carbon offsets – namely "nature-based solutions" and renewable credits. Therefore, Enbridge won't actually bring its scope 1 and 2 emissions down to near zero but will instead buy credits that supposedly offset all of its residual emissions. However, these credits will only allow Enbridge to count "avoided emissions" and not to balance the climate impact of GHG emissions, making its "net-zero" claim baseless.

More importantly, Enbridge's climate plan includes building new pipelines and fossil gas distribution infrastructure. While the company likes to show off its renewable investments, the majority of the company's 2020 growth projects are still related to oil and gas – representing 82% of its total estimated expenditure – and 97% of the company's 2019 investments were devoted to oil and gas. Research has shown that Enbridge's overall credit facilities provide it with the liquidity needed to carry out its fossil fuel infrastructure projects, including the notorious "Line 3" project. This pipeline will take oil from Canada's tar sands region to Wisconsin, enabling the consumption and production of a fuel that emits 3.2 to 4.5 times more GHG than conventional oil. After six years of opposition to the project by tribal nations and community environmental groups, Enbridge began construction in December 2020, despite COVID risks, legal challenges and sustained Indigenous-led opposition. This project is an environmental catastrophe: its construction will add 193 million tons of GHG to the atmosphere annually - the equivalent of 50 new coal plants. According to Honor The Earth, the pipeline also violates the treaty rights of the Anishinaabeg by endangering critical natural and cultural resources. Ironically, Enbridge's ESG goals include contributing "to Indigenous reconciliation through employment strategies and training".

Enbridge appears to ignore the scientific studies which show that fossil fuel production must be drastically reduced and suggests that generating slightly less GHGs when transporting them is enough to align its operations with the Paris Agreement. The claims made in its ESG strategy are misleading at best and do not provide a sound basis for the SLC.

It is worth noting that the financial institutions that participated in the SLC are the five biggest funders of Enbridge: from 2016 to 2020 they provided $48.45 billion to the company – including $9.11 billion in 2020 alone. These financial institutions then used the support provided to Enbridge to justify sustainable claims, thus creating further greenwashing (see for example RBC's communication on sustainable finance: http://www.rbc.com/community-sustainability/_assets-custom/pdf/OurCommitment_EN.PDF).

Sadly, Enbridge's SLC is not the only example of greenwashing in "sustainability-linked" facilities and bonds. For example, in December 2020, NRG was the first North American company to issue a sustainability-linked bond, despite the fact that the company did not have a plan to exit coal power generation which still accounts for 34% of its portfolio. Reclaim Finance lists other problematic cases of "sustainable" debt here: https://reclaimfinance.org/site/en/our-fights/green-bonds-watch-out-it-could-be-a-trap/.

Example 2

French company Michelin's "Royal Lestari Utama" project in Indonesia was sold as a major reforestation and sustainable forest project and was financed with $95 million of "green bonds". After an alarming report by the environmental NGO Mighty Earth in 2020, an 18-month investigation by Voxeurop uncovered evidence that the project actually contributed to deforestation:

https://voxeurop.eu/en/greenwashing-european-green-finance-paying-deforestation-indonesia-case-michelin/ / https://voxeurop.eu/en/michelin-greenwashing-how-project-decried-for-environmental-impact-became-flagship-european-green-finance/

Example 3

The Hong Kong Airport Authority (HKAA) announced on January 4th, 2022, that it was raising money from investors to finance the expansion plans for Hong Kong International Airport (HKIA). While increasing air traffic growth is one of the biggest threats to our carbon budget, the operation included a US$1 billion "green" bond, in a high-flying greenwashing attempt to attract investors. With the project wrecking serious climate and biodiversity-related damage, especially for the threatened Chinese White Dolphin, the success of this sale encapsulates the failures of so-called "green finance": 11 banks participated in the bond – including BNP Paribas which has committed to being carbon neutral by 2050. Some 60% of the "green" money raised was provided by "ESG-aligned investors". This example illustrates the limitations of the system of green certification for green debt products. The Second Party Opinion provider, Sustainalytics, qualified HKAA's Framework as "credible and impactful" without even addressing the issues related to the project. Second Party Opinions are often limited to verifying the alignment of the framework with market practices in terms of disclosure and financial structuring, rather than assessing the environmental and climate credentials of the bonds. See details of this greenwashing case here: https://reclaimfinance.org/site/en/2022/01/12/how-banks-painted-an-airport-green/.

Example 4

A consortium of European media screened 838 European funds classified as sustainable (Article 9) by their managers under the Sustainable Finance Disclosure Regulation (SFDR) for aviation and fossil fuel companies. They found nearly 50% of the funds analyzed included at least one investment in a coal, oil or gas company.

TotalEnergies, the world's seventh largest developer of oil and gas production projects, appears in both Amundi and BNP Paribas' "sustainable" funds. The Japanese company Marubeni, which plans to build up to 1,300 MW of new coal-fired power generation capacity, is included in BlackRock and Amundi funds.

It should be noted that:

- European legislation did not initially define any criteria for what qualifies as sustainable, and the European Securities and Markets Authority (ESMA) has called on national regulators to conduct their own audits to prevent greenwashing.
- The Dutch regulator announced in September that it was launching an investigation into funds following concerns about their sustainability.
- In France, the chairman of the AMF declared that fossil fuels had no place in sustainable funds, but did not reinforce the restrictions for these funds.
- The findings come a year after an investigation launched by German and US regulators into the ESG funds of German asset manager DWS, which was the first investigation by authorities in Europe into a case of greenwashing via funds.
- Widespread declassification of Article 9 funds attracted media attention and raised the question of whether misleading information was being provided to investors.

The investigation is available: https://www.lemonde.fr/les-decodeurs/article/2022/11/29/autour-des-fonds-d-investissement-verts-un-grand-flou-juridique-qui-favorise-le-greenwashing_6152079_4355770.html.

Example 5

In recent years, financial institutions have increasingly made public net zero pledges and committed to adopt measures to align their activities with science-based targets to meet the 1.5°C objective (mainly via the Glasgow Financial Alliance for Net Zero initiatives). Their clients therefore expect some science-based milestones to be reached by these institutions, on top of the decarbonization

targets that have been published by each firm. These milestones have now been defined, both by the Race To Zero campaign and by the UN's HLEG in its latest report.
Yet, analysis shows that almost none of the financial institutions comply with these milestones or minimum standards. In fact, instead of making commitments to reach them in the near term, members have threatened to leave their alliances (e.g. US banks) or even decided to quit (e.g. Vanguard).

More details on the Vanguard case:
Vanguard left the Net Zero Asset Manager Initiative after being a member for almost 2 years (it had joined the initiative in March 2021). While net zero claims must be followed by actions such as setting up a plan for the end of support to new fossil fuel projects, Vanguard has benefited from being part of the initiative while not implementing any concrete measures, as Reclaim Finance analyzed here. An investigation of greenwashing by regulators must include net-zero claims, especially if investors can simply "cancel" their commitments when asked for accountability.
Currently, the biggest European asset manager, Amundi, is a member of the Net Zero Asset Manager initiative but continues to invest in companies involved in coal expansion via its passive funds and hasn't committed to stop investing to support new oil and gas supply projects. Amundi's engagement policy does not ask its investee companies to stop developing oil and gas projects. It even approved TotalEnergies' climate plan in 2022 despite the oil major's expansion plans.

Example 6
More and more financial institutions are adopting sector policies, including fossil fuel policies, which are used by stakeholders such as rating agencies and by other companies and financial institutions to select their business partners. But analysis undertaken by Reclaim Finance shows several trends that suggest greenwashing:

1. Gaps are often seen between the stated claims/goals and the actual actions implemented. Reclaim Finance carries out in depth analysis of the fossil fuel policies of financial institutions (see here for coal policies and here for oil and gas policies). For example, while HSBC AM has recently adopted a policy with a commitment to exit coal, the criteria to exclude coal developers are too vague to assess its true impact and seem to adopt a conservative definition of companies involved in coal expansion.
2. Some policies are published years before they will be implemented, such as BNP Paribas AM which applied its oil and gas policy four years after publishing it. This gap between the publication and the implementation, if not properly described in the policy, can be considered as greenwashing as one would expect a policy to be applied immediately.
3. Some financial institutions appear to be breaching their own policies. One example of this is Credit Agricole, who our research found had made several coal deals that should have been excluded by its coal policy. Despite its commitments, Crédit Agricole has continued to finance companies, such as Glencore and Marubeni, despite their coal mine and coal power plant developments around the world. Our analysis revealed the need for regulators to monitor the actual application of the policies adopted by the financial institutions, and to apply sanctions where policy breaches occur.
4. Some financial institutions publish updates to their policies that modify the criteria used. If these modifications make the policy less ambitious compared to a common understanding of the original policy, there is greenwashing. For example, Amundi's 2020 coal policy indicated clearly the exclusion of "companies developing or planning to develop new thermal coal capacities along the entire value chain", its new coal policy published in July 2022 clarified that the exclusion criteria do not apply to companies planning to develop new thermal coal capacities but that these companies are "monitored annually".
5. In many cases, financial institutions tend to present their sectoral policies as having a much larger impact or scope than they have. This is notably the case for fossil fuel policies.

For example, in France:

- The French Banking Federation defended the green credentials of French banks using several misleading arguments, such as: 1) Referring to the limited relative exposure of the banks to fossil fuels (outstanding loans) but failing to mention the amount of financing going to the sector in absolute terms and over recent years (flows). This provides only half of the picture; 2) Underlining commitments for the unconventional oil and gas sector which do not cover the whole scope of unconventional oil and gas; 3) Comparing the amounts going to "green" funding with the banks' fossil fuel exposure, while the amounts included as "green" finance go well beyond the energy sector and therefore are not comparable with the amount declared for fossil fuels; See our analysis: https://reclaimfinance.org/site/2022/10/25/la-federation-bancaire-francaise-tente-de-verdir-limage-des-banques-francaises/
- Several regional and local authorities in France recently decided to select their financial partners (e.g. their banks) using non-financial criteria, including criteria related to how the financial institutions' treat fossil fuel development. They sent standardized questionnaires to collect information from the banks. In their responses, several banks indicated that they do not finance any coal or/and that they do not finance any company developing new fossil fuel projects while it was clear (from the work of Reclaim Finance, such as the Coal Policy Tool) that they were. It seems these banks were – intentionnally or not – misleadingly overstating the impact of their fossil fuel policies.

Q12.3 to Q12.16 = *provide clarifications on the characteristics of the greenwashing example provided*
X

Q A.13: Do you want to raise any additional points that was not included in this survey?

E. EIOPA section of the CfE

Question E.1: Please outline below whether the occurrence of greenwashing can also lead to other risks for insurance or pension providers (e.g., reputational risks, litigation risks, solvency risks):
Insurers play the role of "facilitator" in the economy: their insurance products can contribute directly or indirectly to the construction and/or operation of fossil fuel assets. Once in operation, these assets need insurers to renew their cover each year.
These insurance activities are notably developed by large European insurers such as AXA, Allianz, Generali, Zurich and can be grouped in a sub-category of "corporate insurance": Specialty insurance. This is different from "personal insurance" which allows individuals to take out insurance against various risks (house, car, civil liability).
The companies/assets insured by "specialty insurance" can directly increase the risks for "personal insurance" clients (because the insurance company will bear legal and reputational risks).
A lot of insurers, who are also major investors, have made commitments to achieve net zero by 2050 following a 1.5°C trajectory for both their insurance and investment portfolios. As described in the common section of this survey, insurers must also follow the UN HLEG recommendations on net zero claims to ensure that they are not accused of greenwashing.
Without these minimum requirements and safeguards, net zero claims can be considered as greenwashing. It is particularly true for insurers and reinsurers, as these risk managers are aware of climate risks.
Given that climate risk concerns are growing among regulators, (re)insurers' greenwashing practices could lead to potential legal actions in the future.

Question E.2: Do you have governance processes to prevent and monitor greenwashing in your institution (e.g., sustainable finance committee)?

Question E.3: Do you have internal tools to monitor greenwashing in your institution (e.g., systems and controls and/or key risk indicators flagging potential greenwashing)?

Question E.4: Do you have governance processes to monitor greenwashing in your institution (e.g., sustainable finance committee)?

Question E.5: For the insurance and pensions sector, please indicate if the following types of claims can in your view give rise to greenwashing:

Question E.5.1: Misleading claims about the impact of an entity, product or service on environmental or social factors (example: misleading claim about the impact of an entity's activities on the environment)
Yes
Question E.5.2: Misleading claims about the financial impact of sustainability risks on the entity or on the performance of the product or service (example: misleading claim about the impact of a natural catastrophe on the financial performance of a product)
Yes
Question E.5.3: If you said yes or no to questions 5.1 and/or 5.2, please explain your reasoning below:
A lot of insurers, who are also among the major investors, have made commitments to achieve net zero by 2050 following a 1.5°C trajectory for both their insurance and investment portfolios. As detailed in the common section of this survey, insurers must also follow the UN HLEG recommendations on net zero claims.
Despite the widely recognised scientific consensus around the need to stop developing new fossil fuel production projects, many insurers, who are members of the NZIA and NZAOA and who have committed to reach the net zero emissions goal by 2050, still continue to insure and invest in oil and gas companies which are developing new oil and gas fields.
Question E.6: In your view is this situation greenwashing: An insurance/pension provider says that it is improving environmental and social factors via its investments in companies. This insurance/pension provider has consequential voting shares in various companies, but it does not use these voting shares to push these companies to become more sustainable.
Yes
Question E.6.1: If you answered yes or no to question E.6 please explain your reasoning below:
Most insurers are still not putting in place sufficient means to develop robust shareholder engagement policies.
Very few engagement policies are followed by consistent voting practices.
In 2020, AXA voted against a shareholder resolution which Instructed Total SA (now TotalEnergies) to Set and Publish Targets for Greenhouse Gas (GHG) Emissions Aligned with the Goal of the Paris Climate Agreement.
In 2021 and 2022, AXA and Allianz approved TotalEnergies' Sustainable Development and Energy Transition Plan (also called Say On Climate) which still forecasts around 75% of its annual capital expenditures dedicated to new fossil fuel resources (oil and gas) for the period 2022-2025 (approximately €10 billion/year). AXA and Allianz voted in favor of TotalEnergies' Say On climate which does not stop the company from investing billions in new oil and gas production even though it is not in line with the latest IEA's recommendations to reach net zero emissions by 2050.
Engaging companies in the transition means exercising influence with these companies to encourage them to change their practices through clear demands (environmental objectives and deadlines for achieving them) accompanied by a process of sanctions in cases where the management of these companies opposes these demands.
Below is an example of a robust shareholder engagement policy:
Publicly describe the requests to companies and the deadline for responding. For the oil and gas sector, the following requests should be made of companies:
- Commit to halving their overall emissions by 2030, following scenarios aligned with 1.5°C with little or no overshoot and low reliance on negative emissions.
- Publish and consult annually with their shareholders on climate plans containing detailed information.
- Publish fossil fuel phase-out dates to ensure that oil and gas production is eliminated by 2050 and fossil fuel electricity and heat production by 2040 at the latest globally. Phase-out strategies should also be outlined, including plans to reduce global fossil fuel production.

Investors should systematically vote against the climate plans described above if they are not aligned with a 1.5°C target. Under no circumstances should a company with a strategy that still allows for the development of new projects be considered aligned.

Requests should be coupled with sanctions that result, after a defined period, in full divestment. Sanctions may include:

- Voting against approval of financial statements and auditors' reports (and upstream publication of the voting position).
- Voting against the appointment of directors.
- Public statements on the need to align strategies with a 1.5°C target.

Shareholder engagement through the holding of shares is not the only power that insurers have. They also often hold large quantities of listed bonds and could make the purchase of these bonds conditional on very precise demands, such as asking for an end to the development of new fossil resource projects (new coal mines, oil and gas fields). The share of the insurers' portfolios held in equities is a minority share of the asset portfolio of which almost 70% to 80% is composed of bonds.

Question E.7: Are there any specificities related to greenwashing in the insurance sector that you would like to highlight? If so, please indicate them below:

Example 1 - An AXA France promotional video published on August 28, 2022 is an example of greenwashing practiced by a subsidiary of the AXA Group. This advertisement, broadcast on television, indicates that AXA France supports the increasingly sustainable and responsible behavior of its French clients. At the same time, the AXA Group, through its specialty insurance branch AXA XL, continues to insure large companies developing new oil and gas fields as well as new fossil fuel infrastructure (pipelines, LNG terminals, etc...) that directly contributes to global warming.

On the one hand, AXA France is inviting individuals to take ever more responsible actions, the AXA Group is still not taking the measures needed to reach its own carbon neutrality objective by 2050: the end of insurance cover for new gas fields.

Example 2 - On July 30, 2018: AXA, through its "AXA for Science" fund, promoted its support for enabling scientific activities, in particular those that: "seek solutions to better prevent risks and reduce them. [...] Preserving species, guaranteeing clean air, improving the living conditions of people with disabilities, increasing life expectancy or even putting robotics at the service of mankind, these themes outlined in the advert are not just wishful thinking. They correspond to tangible work financed by the AXA Research Fund. And the issues they address are often very concrete."

AXA says it is concerned about respecting science and scientific recommendations and that is why it has provided €250 million in funding since the creation of the Axa Science Fund in 2008 ito solve environmental and social problems such as the preservation of species, air purity and life expectancy... These themes are closely linked to climate change and the increase in the average temperature of the globe has direct impacts on these issues. Yet by continuing to insure and invest in new fossil fuel projects (oil, gas, and in particular LNG), AXA is continuing to fuel climate change, which is responsible for the loss of biodiversity, the deterioration of living conditions on earth and the increase in illnesses linked to air quality for example.The specialty insurance branch of the AXA XL group, which insures large energy companies, including those developing new oil and gas fields, achieved a turnover of around €21 billion for the year 2021 alone. The communication around the "AXA for Science '' fund, which represents an insignificant part of the AXA group's activities, is put forward to "green" the image of a group despite providing ongoing insurance for new gas fields. This is despite the latest recommendations from the International Energy Agency: "Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required."

Example 3 - June 2022: Zurich, one of Europe's largest insurers and a major European investor with over CHF 300 billion in assets under management, says it will plant a tree for every new life insurance policy opened by its customers. In other words, Zurich's customers are being encouraged to think they are taking the right decision for the planet by opening a life insurance policy with Zurich, supporting tree planting. Yet Zurich does not have a sectoral policy on oil and gas requiring it to reduce its exposure to companies developing new conventional and unconventional oil and gas projects in its investment portfolios (including life insurance). Zurich is therefore continuing to invest in companies that are developing new fossil fuels, jeopardizing the achievement of the net zero goal by 2050 .

Example 4 - October 2022: AXA XL touts its capabilities to support clients and businesses in their transition to net zero. But AXA XL does not mention that it still provides insurance for new gas fields and for companies involved in the gas sector. Indeed, the AXA Group has committed to restricting its insurance coverage for new oil projects but does not mention new gas fields, even though the development of these field is incompatible with achieving carbon neutrality by 2050 following a 1.5°C trajectory.

Example 5 - The Insurance-associated Emissions standard developed by the Partnership for Carbon Accounting Financials (PCAF): This proposed standard for emissions associated with insurance portfolios will allow many insurers to present themselves as more sustainable than they really are as it could lead to misleading reporting or understatement of carbon emissions associated with insurance activities for the following reasons:

- Many lines of business (LoB) are excluded from the scope of reporting, including engineering lines that are essential for the construction of new fossil infrastructures (coal, oil and gas). Despite the small relative share of this business in insurers' overall insurance portfolios, these lines can represent a significant share of the insurance portfolio's carbon emissions.
- Reinsurance treaties are excluded from the scope of reporting yet these represent the majority of the reinsurers' turnover.
- There is no obligation to take into account the scope 3 carbon emissions of insurers' clients. This is a problem given that scope 3 carbon emissions from the oil and gas sector can represent up to 80% of emissions (from the combustion of oil and gas).

This standard, which is currently being developed and which excludes certain key insurance activities from reporting, including some which facilitate the development of activities that directly contribute to climate change, does not, as things stand, make it possible to achieve the climate objectives set by initiatives such as the Net Zero Insurance Alliance.

Note: These standards were co-constructed by a working group of 16 members of the insurance and reinsurance industry with the support of an international consulting firm, Guidehouse, which acted as the secretariat for the working group, while having a conflict of interest.

This same consulting firm worked for the State of North Dakota in 2022 looking at the coal industry in this state in order to identify in particular:

- Factors related to rising insurance costs for the lignite/coal industry in the state of North Dakota
- Solutions to address the sector's lack of insurance capacity to preserve the industry in North Dakota

According to the IEA's Net Zero Emissions scenario, no new coal plants should be approved after 2021 and a coal phase-out in developed countries (OECD countries) should be completed by 2030 at the latest. Meanwhile, Guidehouse, is working with the insurance industry to quantify the emissions associated with insurance products, while conducting studies to help the coal industry find new insurance solutions.

F. ESMA section of the CfE

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

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

- ☑ 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)
- ☐ h) Lack of reliable data
- ☐ i) Mismatch between retail investors' expectations and market participants' ability to deliver real-world impact
- ☐ j) Other, please specify below

0 out of 500 characters used.

Please elaborate briefly on the answer to question F.1

Rather than a rapidly evolving regulatory framework, Reclaim Finance stresses that it is the lack of regulation and related sanctions that drive the risks of greenwashing. Financial institutions are incentivized to exaggerate the sustainability characteristics of their products and to define what they consider as sustainable investments themselves, not based on scientific criteria. Competition in the field of ESG can also lead to investors rushing to create new ESG or "green" products before they have the right tools and policies in place. It also pushes them to promote these products disproportionately , while understating the impact of their investments as a whole.

Question F.3.

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

Question F.4. For market segments which you see as more prone to greenwashing risks, please provide below any quantitative or qualitative data (and relevant links) you may have and that could help inform our understanding of the scale and frequency of potential greenwashing practices. You may also upload files if relevant in the next field.

Investment managers are particularly prone to greenwashing risks because they sell their investment products to investors and decide which classification they will use for each of their products.

Example #1: Article 9 funds investing in companies involved in fossil fuel expansion are a clear case of greenwashing. See detailed case in Example 3 of the ESAs' common section.

Example #2: Many asset managers tend to focus their corporate communication on indicators that do not reflect the impact of their actions but simply state what actions have been implemented. The actions are not described precisely, but are linked to sustainability claims, that may create the impression of impact. For example, Amundi states on this webpage that in 2021 they engaged with 547 companies on their transition to a low carbon model. This is reported under a section called "Setting ambitious climate targets". When analyzing Amundi's 2021 engagement report, these engagement activities are not precisely described and could be brief emails or phone calls with no response from the companies. In describing the "Outcomes of the 2021 voting campaign", Amundi highlights the number of climate resolutions it has backed but does not describe what it has done for those companies whose activities remain incompatible with a low carbon transition, such as fossil fuel developers for example.

<u>Question F.5.</u> 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).

	1 = very low occurrence	2 = low occurrence	3 = medium occurrence	4 = high occurrence	5 = very high occurrence	Not applicable
a) Equity (common shares, other equity instruments)	○	○	○	○	●	○
b) Fixed income (green bonds, social bonds and other use of proceeds (UoP) bonds, sustainability-linked bonds, common corporate bonds, common government bonds or other fixed income securities)	○	○	○	○	●	○
c) Derivatives (ESG derivatives including those with an ESG underlying and with an ESG performance target, other derivatives)	○	○	○	○	●	○
d) Alternative investments (infrastructure, private equity)	○	○	○	○	●	○
e) Funds: UCITS funds, AIFs, ETFs, Private Equity funds or other funds (e.g. Hedge Funds, ELTIFs)	○	○	○	○	●	○
f) Benchmarks: Paris-aligned (PAB), Climate transitioning (CTB) Climate Benchmarks, other climate benchmarks or ESG benchmarks	○	○	○	○	●	○
g) Other MiFID II instruments (e.g. securitisations)	○	○	○	○	○	○
h) Other products/services (please specify below)	○	○	○	○	○	○

<u>Question F.6.</u> 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 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 you 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)

	1 = very low occurrence	2 = low occurrence	3 = medium occurrence	4 = high occurrence	5 = very high occurrence	Not applicable
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*	○	○	○	○	◉	○
b) Issuer --> Benchmark administrator --> Investment manager --> Investor	○	○	○	○	◉	○
c) Benchmark administrators --> MiFID II manufacturer (e.g. ETF provider) --> Investment manager --> Investor	○	○	○	○	◉	○
d) Benchmark administrator --> Investment manager --> Investor	○	○	○	○	◉	○
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*	○	○	○	○	◉	○
f) Investment manager --> MiFID II Distributor (e.g. Investment firm) --> Retail Investor	○	○	○	○	◉	○
g) ESG ratings provider --> Investment manager --> Investor	○	○	○	○	◉	○
h) ESG ratings provider --> Benchmark administrator --> Investor	○	○	○	○	◉	○
i) Issuer --> Investment manager --> Investor	○	○	○	○	◉	○
j) Issuer --> MiFID II Distributor (e.g. Investment firm) -- > Retail Investor	○	○	○	○	◉	○

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