FINAL

Eurosif response to ESAs' Call for Evidence on Greenwashing

INTRODUCTION
Eurosif – the European Sustainable Investment Forum, welcomes the opportunity to respond to the ESAs' Call for Evidence on Greenwashing. Greenwashing has emerged as a major preoccupation among both financial supervisors and industry practitioners. Accordingly, the ESAs work on the topic is timely and Eurosif stands ready to support the ESAs as they develop their understanding of the phenomenon and take action to address it. SUMMARY ➢ Eurosif is highly supportive of the ESAs efforts to **clearly define the concept of greenwashing** and identify its instances. Greenwashing, if not addressed adequately, may undermine confidence in the integrity of sustainable investment markets and counter the objectives of the EU sustainable finance agenda and many of its regulatory actions aimed at mobilising finance for transition towards sustainability, increasing transparency and fighting greenwashing. Accordingly, we welcome the ESAs' Call for Evidence and consider a clear definition of greenwashing at EU level as imperative to prevent greenwashing, unlock the potential of sustainable finance and avoid supervisory fragmentation. ➢ Overall, we believe that the ESAs have elaborated a **sound understanding of greenwashing** and its multiple facets in the Call for Evidence. However, we would like to share some practical considerations given that this Call for Evidence, as well as the reports on greenwashing being prepared by the ESAs, are likely to inform supervisory convergence efforts, enforcement action and possible future regulatory intervention. In addition, we would like to emphasize that it is currently challenging to identify definitive instances of greenwashing given the ongoing implementation of the EU sustainable finance regulatory framework as well as given some of the issues with the EU Sustainable Finance Regulation (SFDR), on which we elaborate further on. That said, especially given the challenges related to SFDR, it seems important to develop a common understanding of what constitutes greenwashing at EU level to support supervisory convergence and avoid market fragmentation. ➢ Eurosif acknowledges that greenwashing can occur both intentionally and unintentionally. However, in common parlance, the term greenwashing is often understood as referring to a deliberate practice whereby an entity or intermediary has intentionally exaggerated sustainability-related claims

in relation to a product, service or itself (often to appeal to consumers and gain a competitive advantage over peers). In addition, as implied by the term, greenwashing often relates to sustainability-related claims with an environmental focus. Accordingly, **Eurosif would advise the use of a different term to refer to unintentionally misleading or erroneous sustainability-related claims.** Given the potential for unintentional greenwashing to occur during the implementation and initial application of the sustainable finance regulatory framework being able to differentiate between deliberate greenwashing and unintentionally misleading or erroneous sustainability-related claims will be essential to allowing sustainable investment practitioners the space and time needed to adapt to the framework. This would also avoid instances whereby financial market participants (FMPs) are penalised despite acting in good faith but in a context of legal uncertainty – thus requiring certain judgement calls on their part when applying existing or anticipated rules. This is all the more important given that financial institutions are dependent on the information provided by issuers, or sourced from data providers, as to the ESG performance of investee companies and, thus, will frequently fall into the 'spreader' category in cases of greenwashing, thus being implicated without having been the original trigger.

- The ESAs acknowledge that financial institutions will often be the **'spreader' of greenwashing** and thus may be involved, unintentionally, in a large share of greenwashing cases. The potential to act as a 'spreader' of greenwashing has been magnified in view of the comprehensive disclosures financial market participants (FMPs) are subject to pursuant to EU regulation (notably the EU Taxonomy and SFDR). Satisfying these disclosures requires FMPs to obtain substantial volumes of data on the sustainability-related performance of underlying investee companies. At present, sufficiently granular, comparable and reliable data on the ESG performance of investee companies is still difficult to obtain. The recently adopted Corporate Sustainability Reporting Directive (CSRD) is expected to rectify this issue. However, it will take several years before the new European Sustainability Reporting Standards (ESRS) are finalised and the new rules area applied by all companies within the scope of this directive. Also, there will always remain a possibility that investee companies may occasionally report inaccurate, unreliable or misleading data, even if it is hoped that the assurance of the sustainability reports would significantly reduce / prevent such occurrences. What is uncertain is whether belonging to the 'spreader' category will imply any liability or constitute grounds for an enforcement action against FMPs. This point should be clarified by the ESAs.

- That said, FMPs can also act as **triggers of greenwashing** by making exaggerated or misleading claims with respect to their firm-wide policies and practices, the qualifications and expertise of their board or staff on sustainability-related matters, and in relation to the sustainable investment strategies and composition of the investments products that they manufacture and distribute. Such cases, if identified and **reliably proven, should be adequately penalised**.

- **Claims pertaining to the process applied by FMPs and claims related to the outcomes/exposures envisaged by a product, policy or practice may or may not achieve should be differentiated**.

- With regard to **products with sustainability-related claims**, FMPs should adequately explain the features of an investment product. In particular, FMPs should be clear as to the sustainability-related objective(s) of the product, the process or investment strategy being applied and what sustainability-related outcome(s) are being pursued and whether they can be guaranteed. In addition, FMPs should clearly explain to what degree the claim made by an FMP relates to 'sustainability risk' meaning how the environment and social events may impact financial performance versus 'impacts' meaning how the business activity or investment is intended or may impact the environment or society. Such an approach, known as the concept of the "double materiality", constitutes the basis of SFDR and CSRD. In addition, it would be useful to explain and differentiated between an 'investor impact' versus 'company impact' (sometimes referred to as 'investor contribution' and 'enterprise contribution').

- Finally, certain aspects of the sustainable finance regulatory framework heighten the risk of greenwashing at a systemic level. The SFDR has caused a paradigm shift in the market through the introduction of comprehensive disclosure requirements. However, there are aspects of the framework that need refining, as previously addressed by Eurosif in its report on making SFDR fit for purpose. For instance, Article 2(17) of the SFDR provides a definition of 'sustainable investment'. However, the definition and other related requirements set by SFDR, pose certain challenges in terms of its application, for instance absence of harmonised criteria to assess a contribution to a social objective. Products with ESG characteristics, known as Article 8 products, pose even a bigger challenge given that there is no definition of what constitutes ESG characteristics and the criteria are very loose / practically non-existent. Sudden 're-branding' of many funds which previously were not marketed as sustainable into Article 8 products following the entry into application of SFRD (10 March 2021) has been very concerning.

- Certain FMPs have been developing their own internal frameworks/methodologies to qualify 'sustainable investments' or 'ESG characteristics'. This has led to heterogeneity in the market as to approaches to sustainable investment for the purposes of SFDR. This is problematic seeing as the term 'sustainable investment', derived from EU regulation, is being applied to investments that often differ substantively. This may create the impression of uniformity/comparability in the market when no such uniformity exists.

- That said, we are mindful that the ESAs are fully cognisant of the issue as reflected in the Joint ESAs Queries on the interpretation of SFDR sent to the European Commission in September. We acknowledge that the European Commission is also mindful of the challenges in applying SFDR with Commissioner McGuinness having recently announced that the Commission would open a consultation on SFDR in 2023 with a view to informing a future review of the framework. Eurosif looks forward to such a consultation and review of SFDR and stands ready to support EU policymakers in further refining the EU sustainable finance framework in the interest of enabling sustainable investment and tackling greenwashing.

ABOUT EUROSIF

Eurosif is the leading pan-European association promoting sustainable finance at European level - encompassing the European Union (EU), the wider European Economic Area (EEA) and the United Kingdom (UK). Eurosif is a partnership comprised of Europe-based national Sustainable Investment Fora (SIFs). Each of the SIFs has a broad and diverse membership including asset managers, institutional investors, index providers and ESG research & analytics providers. Eurosif's activities involve contributing substantively to public policy and conducting research that enables a better understanding of ESG and SRI markets and the obstacles encountered by sustainability-oriented investors.

Eurosif and its members are committed to the growth and development of sustainable finance and support the ambition of global and European policymakers in enabling a fully transparent and reliable sustainable investment market through appropriate and well-designed regulation and industry practice. If you wish to find out more please visit our website at Eurosif.org.

Question 1
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?
Eurosif answer
Eurosif agrees with the core characteristics of greenwashing identified by the ESAs. As described in the Call for Evidence, greenwashing may be said to have occurred when a misleading sustainability-related claim has been made, either intentionally or unintentionally, in relation to an entity, product or service. We agree that sustainability-related claims can be misleading due to the omission of pertinent information, lack of clarity, vagueness, ambiguity and/or oversimplification. Sustainability-related claims can also be deliberately deceptive and such, when proved, should be adequately penalised. While greenwashing can occur intentionally and/or unintentionally, we have concerns over sustainability-related claims that are deliberately deceptive being in a similar category to sustainability-related claims that are unintentionally misleading. In popular parlance, the term greenwashing

is understood to imply a deliberate attempt to mislead and deceive consumers on the part of a commercial entity. Accordingly, in view of the increasing media scrutiny on greenwashing, we would encourage the ESAs to refer to <u>unintentionally</u> misleading sustainability-related claims with a term other than greenwashing which should be reserved for cases of <u>deliberately</u> deceptive sustainability-related claims.

In addition, we appreciate the ESAs have considered the different ways in which an entity and/or product can potentially be associated with a case of greenwashing, as either a; (i) trigger, (ii) spreader, and (iii) receiver. Financial market participants as intermediaries in the sustainable investment value chain can belong to any of these categories depending on the circumstances of a particular case of greenwashing.

Financial intermediaries can themselves be a trigger of greenwashing through misleading sustainability-related claims in relation to firm-wide commitments, policies and/or practices, including but not limited to: the qualifications and expertise of the board, management and staff (particularly at point of sale), as well as in relation to products that they manufacture and distribute. Sustainability-related claims may be outright false or vague and nebulous, particularly if not substantiated by related disclosures. Such cases, whenever proven, should be adequately penalised.

Financial intermediaries also have significant potential to be 'spreaders' of greenwashing whereby they risk being implicated in a case of greenwashing despite acting in good faith and having had no intention to mislead their clients. In view of the disclosure requirements applicable to financial market participants (FMPs) subject to the SFDR and the EU Taxonomy, financial companies may be exposed to greenwashing risks which may be due to unreliable sustainability-related information on the investee companies, provided directly by them or data provider.
While the quality, comparability and reliability of the sustainability-related information is expected to improve with the application of the CSRD, the directive will only start applying gradually as of 2024, at the beginning covering companies in scope of the Non-Financial Reporting Directive (NFRD) with the scope being progressively broadened thereafter.

Financial intermediaries could also be a 'receiver' of greenwashing, particularly in cases where an investment decision was influenced or determined by the sustainability-related claims made by underlying investee companies.

Question 2
A.2 – Do you have or use a specific definition of greenwashing as part of your activities? If so, please share this definition.
Eurosif answer
Eurosif does not have a specific definition of greenwashing. However as mentioned above, based on the use of the term in popular parlance, greenwashing generally implies a deliberate attempt to make misleading or false sustainability-related claims in relation to an entity, product or service. While greenwashing can occur inadvertently in that sustainability-related claims may be unintentionally misleading, the term greenwashing is often understood as referring to cases where an entity has exaggerated or lied about its commitment to sustainability or products' objectives or ESG performance.

Question 3
A.3.1 – Do you agree that market participants could be involved in three different ways in greenwashing, as described above? a. Yes **b. <u>No</u>**

Eurosif

A.3.2 – **If no**, could you please further elaborate the roles market participants could play in greenwashing, including on potential alternative or additional roles to the ones identified above?
Eurosif answer
Eurosif agrees that market participants can belong to one or more of the categories described by the ESAs; as a trigger, spreader and/or receiver of greenwashing. Market participants can be the trigger of greenwashing by making false or erroneous sustainability-related claims in relation to a product or service they provide or in relation to company-wide policies and practices. They can also be a spreader in cases where misleading sustainability-related disclosures on the part of another entity have resulted in inaccurate financial product or FMP entity-level disclosures. Market participants can also be considered as receivers of greenwashing in that they may be among the entities or individuals misled by a false or erroneous sustainability-related claim both when investing in their own right or on behalf of clients. However, Eurosif would also like to highlight that market participants can also fulfil a screening role and thus would propose an additional category of 'screener' or 'filter' of greenwashing. External auditors and assurance providers, ESG data and research providers and ESG rating providers are an important intermediary in the market in that they often assess the sustainability-related claims made by an issuer and/or provide an independent assessment (albeit one dependent on information provided by said issuer or affiliated entities). Accordingly, they act as a screen or filter that plays an important role in identifying potential greenwashing and mitigating greenwashing risks.

Question 4
The Topics of sustainability-related claims

Topic 1: Claims about an entity's governance and remuneration around ESG and about an entity or a product's dedicated resources to sustainability matters;

i. Board and senior management's role in sustainability;
ii. ESG corporate resources and expertise

Topic 2: Claims about the sustainability strategy, objectives, characteristics or qualifications of a product, an entity, or a services;

i. ESG strategy, objectives, characteristics
ii. Sustainability management policies
iii. ESG qualifications / labels / certificates
iv. Engagement with stakeholders

Topic 3: Claims about sustainability-related metrics based on historical data or future targets;

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

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).

Eurosif answer

a. Board and senior management's role in sustainability – **[3]**
b. ESG corporate resources and expertise – **[4]**
c. ESG strategy, objectives, characteristics – **[5]**
d. Sustainability management policies – **[4]**
e. ESG qualifications / labels / certificates – **[3]**
f. Engagement with stakeholders – **[3]**

g. ESG performance to date (including metrics for impact claims) – **[5]**
h. Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, taxonomy-alignment plans, etc) – **[5]**

a. Board and senior management's role in sustainability

To the extent that Eurosif has encountered claims pertaining to the Board and senior management's role in sustainability they tend to be somewhat vague and reflect a notional commitment to sustainability. However, we anticipate that corporate reporting as mandated by the CSRD will ensure companies provide more specific information on what a notional commitment to sustainability entails in practical terms once in application.

b. ESG corporate resources and expertise

To the extent that Eurosif has encountered claims pertaining to ESG corporate resources and expertise, they tend to be high-level and difficult to verify. Accordingly, such claims could be misleading but it difficult to ascertain whether this is the case based on the current level of disclosure by issuers.

c. ESG strategy, objectives, characteristics

Entities often claim to pursue ESG objectives (for instance, by contributing to the UN Sustainable Development Goals (SDGs)) as part of an overarching strategy or through specific projects/financial contributions. At present, it is difficult to assess the substance of these claims and there is a distinct possibility that such claims may be superficial in many instances.

d. Sustainability management policies

Entities often claim to have policies in place to manage sustainability-related risks and/or impacts. These claims are rarely accompanied by more detailed information as to what these policies actually are and how they are implemented across the company.

e. ESG qualifications / labels / certificates

The use of ESG qualifications, labels and certificates is a common practice in the market. Multiple ESG qualifications, labels and certificates are administered by public authorities and compliance with the requisite standards is verified. In other instances; qualifications, labels and certificates are certified by private entities. In Eurosif's view, use of an ESG qualification, label or certificate is permissible and a claim to meet the requirements of a particular ESG qualification, label or certificate may be entirely accurate. Accordingly, it may not technically constitute greenwashing if an organisation, product or service has an ESG qualification, label or certificate. That said, the standard or ambition of the qualification, label or certificate with respect to sustainability or ESG matters may not be satisfactory from the standpoint of consumers/clients and/or supervisory authorities.

f. Engagement with stakeholders

Entities may claim to have engaged with stakeholders with respect to sustainability. However, said engagement may only be partial and/or limited in nature. Provided market participants are transparent in terms of what engagement with stakeholders has actually entailed the risk of greenwashing may be relatively limited.

g. ESG performance to date

Eurosif sees significant potential for greenwashing when it comes to entities' claims regarding their ESG performance to date. In many instances, entities will provide specific data points and quantitative information attesting to their strong ESG performance or improvements overtime. Often, entities apply their own KPIs and methodologies when gathering this information. Accordingly, there is a strong possibility that the data points produced by entities may reflect the particularities of the approach taken by the entity, which may not fully align with a more general understanding.

h. Pledges about future ESG performance

Eurosif believes that pledges about future ESG performance imply significant greenwashing risks, albeit risks that must be carefully managed.

Question 5
A.5 – For the same list of topics 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). a. Board and senior management's role in sustainability – **[4]** b. ESG corporate resources and expertise – **[4]** c. ESG strategy, objectives, characteristics – **[5]** d. Sustainability management policies – **[5]** e. ESG qualifications / labels / certificates – **[4]** f. Engagement with stakeholders – **[4]** g. ESG performance to date – **[5]** h. Pledges about future ESG performance (ESG targets, including net-zero commitments; transition plan, Taxonomy alignment plans, etc.) – **[5]** A5.1 – Please explain what types of impacts or harm and their consequences you anticipate as a result of greenwashing practices;
Eurosif answer
Eurosif considers misleading sustainability-related claims related to a performance and or expected impact of the product or service to consumers/clients to be the most potentially harmful – particularly in instances when the sustainability-related claim has been decisive in motivating the consumer/client choice of the product/service. In such cases, the entity making the claim and the consumer/client have been involved in a transaction in which the sustainability-related claim may have had an important influence. Accordingly, the consumer/client is concerned directly by the misleading claim. In addition, Eurosif considers misleading claims with regard to ESG strategy, objectives, characteristics, and sustainability management policies highly problematic also, given their ultimate effect on the products' strategics and performance also.

Finally, there is a growing concern about the misstated sustainability-related qualifications whether by the investment specialists or at the board or senior management level. Overall, this is also very problematic as eventually people in those positions have a bit influence over the design of the policies, strategies and products.

Question 6
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? **a. <u>YES</u>** b. NO A6.1 – If yes, please provide below more information on your answer including, if possible, an example.
Eurosif answer
Eurosif understands that greenwashing arises when a misleading sustainability-related claim has been made by an entity but not in cases where the sustainability-related performance of an entity is unsatisfactory from the standpoint of a consumer or client (absent any misleading claim). In the context of financial markets, greenwashing allegations must be assessed relative to the sustainability-related claims made by a financial institution vis-à-vis supervisory authorities, clients and the wider market. In many instances, the claims made by FMPs pertain to a process that they will apply in a financial product or when providing a service. It is reasonable on the part of supervisory authorities and/or clients to presuppose that this process will lead to a certain outcome. However, a distinction should be made between sustainability-related claims that promise or strongly suggest a certain outcome will be achieved/guaranteed

versus claims that commit to a certain process being applied. However, when making claims as to the process that will be applied, FMPs often imply that there staff, particularly Chief Investment Officers (CIOs) are sufficiently well qualified to carry out effective ESG investment strategies.

Question 7
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.
Eurosif answer
No response

Question 8

Eurosif

A.8 – On a scale from 1 (i.e. "not 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. 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?
Eurosif answer
a. Selective disclosure or hidden trade-off (cherry-picking positive information and/or omitting relevant negative information) – **[5]** b. Empty claims (exaggerated claims and/or failure to deliver on such claims) – **[5]** c. Omission or lack of disclosure – **[5]** d. Vagueness or ambiguity or lack of clarity – **[4]** e. Inconsistency across various disclosures and communications (marketing, regulatory, website, etc.) – **[4]** f. Lack of fair and meaningful comparisons, thresholds, scenarios and/or underlying assumptions – **[4]** g. No proof (unsusbsantiated) – **[4]** h. Misleading / suggestive non-textual imagery and sounds (including the use of specific colours like green) – **[4]** i. Irrelevance – **[3]** j. Outdated information – **[4]** k. Misleading / suggestive use of ESG-related terminology (naming-related greenwashing) – **[5]** l. Outright lie (falsehood) – **[5]** Each of the misleading qualities above has the potential to be highly relevant as a greenwashing practice. The most egregious forms of greenwashing are likely to involve sustainability-related claims that constitute outright lies (point l), empty claims (point b), selective disclosure or hidden trade-offs (a), misleading / suggestive use of ESG-related terminology (h), and omission or lack of disclosure (point c) (which would also imply non-compliance with EU regulatory requirements).

Other misleading qualities may need to be qualified more carefully. If such misleading qualities are present and the result of a deliberate practice of an entity then they are certainly grounds for enforcement action. However, in certain cases, these misleading qualities may be present, or perceived to be present, for other reasons. For instance, if certain information is incomprehensible to consumers/clients, it may be perceived as lacking clarity. Furthermore, the EU sustainable finance regulatory framework envisages comprehensive disclosures that will improved the sustainability-related disclosures of the investee companies, FMPs, financial products and other assets. The application of the new regulatory requirements is expected to result in an improved market transparency and hence to prevent many of the misleading qualities above. For instance, selective disclosure or hidden trade-offs (point a), vagueness or ambiguity or lack of clarity (point d.), and misleading / suggestive use of ESG-related terminology (point k) should be avoidable through the application of with the latest EU regulatory requirements, including SFDR and its corresponding level 2 measures the Regulatory Technical Standards applying as of January 2023). That said, inconsistency across various disclosures and communications (point e) is a significant potential source of greenwashing – intentional or otherwise. Outdated information (point j) would imply non-compliance with EU regulatory requirements.

Question 9
A.9 – Regarding the above dimension and the list of channels through which a misleading claim 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);
Eurosif answer
a. Regulatory documents (incl. KIDs, 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 – **[4]**

b. Ratings (ESG ratings and/or other ESG data products) – **[4]**
c. Benchmarks – **[3]**
d. Labels – **[3]**
e. Product information (incl. Internal classifications, and internal target market, product testing and distribution strategy-related documentation) – **[5]**
f. Intermediary/advice information – **[4]**
g. Marketing materials (incl. Website, social media, advertising) – **[5]**
h. Voluntary reporting, falling outside previous categories as reported on a voluntary basis, - **[5]**
i. Other (please specify).

Question 10
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)
Eurosif answer

a. Product manufacturing – **[4]**
b. Product delivery – marketing; advertisements, non-regulatory information – **[5]**
c. Product delivery – regulatory disclosure – **[3]**
d. Product delivery – distribution channels – **[5]**
e. Product delivery – sales; information asymmetry (this includes under or over emphasis of certain product features) – **[4]**
f. Product delivery – sales; misselling due to misleading information/disclosure – **[4]**
g. Product delivery – sales; misselling due to unsuitable product – **[3]**

h. Product delivery – sales; incentives at point of sale - **[4]** i. Product management – product monitoring, product review, ongoing product disclosure – **[3]** j. Business model at entity level – value chain, group structure, innovation/digitalisation, outsourcing - **[3]** k. Business management at entity level – culture, governance arrangements, systems and processes – **[4]** A10.1 – Please indicate below if you have any comments on the above question;

Question 11
A.11 – Are there any relevant elements or features of greenwashing which have not been referenced in the questions above? a. YES b. NO
Eurosif answer
No response