

Final Report on Greenwashing

Response to the European Commission's request for input on "greenwashing risks and the supervision of sustainable finance policies"



Executive summary

1. **Based on rising expectations for supervisors to step up in ensuring investor protection and market integrity against greenwashing risks**, EU financial markets regulators are taking actions to maintain a trusted environment for sustainable investments. The European Commission (EC) issued a request to the three European Supervisory Authorities (ESAs) in May 2022 to draft a Progress Report and a Final Report delivering advice on greenwashing risks and sustainability-related supervision. In June 2023, ESMA published the Progress Report presenting the common ESA's high-level understanding of greenwashing¹ and mapping areas more exposed to greenwashing risks across the Sustainable Investment Value Chain (SIVC).
2. **Building on the findings from the Progress Report and delivering on the remaining part of the EC's request, the Final Report investigates the role of supervision in mitigating greenwashing risks.** It takes stock of the current supervisory response, based on a survey of National Competent Authorities (NCAs) and builds on preliminary findings from ongoing supervisory activities coordinated by ESMA.
3. **The Final Report also provides a forward-looking view of how supervision could be gradually enhanced in coming years, a journey through which NCAs should also achieve supervisory convergence.** Supervisors' ability to challenge sustainability-related claims is expected to grow in the next years as their expertise deepens. The Final Report identifies a series of actions for NCAs, ESMA and the EC to consider to enhance supervision across key sectors of the SIVC – issuers, investment managers, investment service providers and benchmarks administrators.
4. **Several key findings emerged:**
 - NCAs are already taking steps to prioritise the supervision of sustainability-related claims, performing critical scrutiny of documentation, and exercising professional judgement. In general, the **supervision of sustainability-related claims complements the oversight** provided to other key components of the SIVC. Indeed, the internal governance of supervised entities and, where relevant, external assurance service providers play important roles in ensuring compliance with the relevant requirements. Coming next in the oversight sequencing, NCAs are not required to "re-do" the work undertaken by these entities, but they have a broad responsibility to protect investors and ascertain the proper application of a range of sustainability-related requirements.
 - NCAs and ESMA have been implementing a **risk-based approach to supervision**, focusing their supervisory attention and resources on the most significant risks.
 - NCAs can leverage on their mandate to protect investors and on existing provisions in the EU Regulatory Framework, for sustainability-related supervision and

¹ Greenwashing is 'a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product or financial service. This practice may be misleading to consumers, investors, or other market participants'. As also noted by the ESAs, "sustainability-related misleading claims can occur and spread intentionally or unintentionally, whereby intentionality, negligence, or the lack of robustness and appropriateness of due diligence efforts could, where relevant, constitute aggravating factors in the context of supervisory and enforcement actions." See also Annex 3, for the complete presentation including the eight core characteristics.

enforcement². As a type of miscommunication or misconduct, greenwashing can be captured by **existing EU rules prohibiting misleading information**. Greenwashing can also be addressed by acting on infringements against a series of **specific sustainability-related requirements** introduced in the EU in recent years.

- **So far, NCAs have reported having detected only a limited number of actual or potential occurrences of greenwashing.** This may reflect multiple factors, including low level of signals (e.g., complaints) reaching NCAs, limited financial literacy, constraints on NCAs' resources and expertise for detection, and NCAs' difficulties to access good quality data. Regarding the detection of actual occurrences, it may to some extent reflect early successes by NCAs in preventing greenwashing in certain areas.
 - **Formal enforcement decisions are, up to now, limited as well.** This reflects the fact that NCAs have addressed irregularities related to sustainability-related claims mostly in their ongoing supervision. In addition, NCAs have generally **favoured a gradual approach, accompanying market players** in the implementation of a new, complex regulatory framework. Finally, NCAs face challenges in establishing infringements, where the regulatory framework builds on unclear or ambiguous definitions.
 - To address the need for specialised knowledge, **NCAs and ESMA have started building sustainability-related capacities and expertise** through training programs, recruitments, cooperation with relevant national agencies or dialogue with non-governmental organizations (NGOs). Most NCAs consider, however, that their resources are not sufficient.
 - Effective supervision builds on NCAs' access to relevant, high-quality and comparable data. NCAs almost unanimously identified **access to data** as a challenge in at least one SIVC sector, with data referring either (1) to information that is the subject of supervision (e.g., regulatory disclosures, certain advertisements) or (2) to information that can serve supervisors in their work (e.g., news reports, data on sustainability profile of funds' underlying assets). A growing number of NCAs are considering purchasing third-party data to assist their supervision.
 - The use of **SupTech tools** may increase supervisory efficiency, without replacing professional judgment exercised by supervisors. Only a few NCAs reported using SupTech tools by now. However, the majority of NCAs either are already developing such tools, planning, or considering doing so in the future.
5. **The Final Report sets out recommendations to NCAs.** The following general recommendations are complemented by SIVC sector-specific recommendations whenever necessary. NCAs are invited to continue increasing human resources, capacities and expertise and adapt their organisational structure to the needs of sustainability-related supervision, as deemed appropriate. NCAs are also invited to consider investing in access to data and SupTech tools. Furthermore, NCAs are called upon to further integrate greenwashing risks into their risk-monitoring framework and to gradually deepen their critical

² See the mapping of legal provisions relevant to sustainability-related supervision in Annex 2.

scrutiny of sustainability-related claims. NCAs are encouraged to embed the common ESAs high-level understanding of greenwashing in ongoing supervision.

6. With a view to foster supervisory convergence and support NCAs' efforts, **ESMA is taking actions**. Under the Union Strategic Supervisory Priority (USSP) on ESG disclosures, ESMA prompts supervisory action with common objectives, including Common Supervisory Actions (CSA) in the various SIVC sectors. ESMA will continue implementing its sustainable finance (SF) training plan and SF Knowledge Hub and expand collaboration with the European Environmental Agency (EEA). ESMA will further develop indicators to monitor greenwashing risks and continue supporting the deployment of SupTech tools. ESMA will continue exploring ways to mutualise and improve the access to data relevant to sustainability-related supervision. ESMA will also weigh the need to produce additional guidance for market players and for supervisors in high-risk areas of greenwashing.
7. **Certain recommendations are addressed to the EC, with the objective of supporting supervision.**³ Misleading information should also be explicitly prohibited under the Benchmark Regulation and benchmarks taking into account ESG factors or pursuing ESG objectives (ESG benchmarks) should remain under supervisors' mandate. Enabling machine-readability of sustainability disclosures and data access via the European Single Access Point (ESAP) should be further fostered. Under the Retail Investor Strategy, the EC is invited to give ESMA empowerments to provide additional guidance to market players on marketing communications and to strengthen supervisors' mandates regarding retail investors financial literacy. Capacity building could be better supported by adjusting the Technical Support Instrument (TSI) program and make it better fit to the purposes of EU level supervisory convergence.
8. **Finally, market participants across the SIVC have a responsibility to make substantiated sustainability claims and communicate sustainability information in a manner that is fair, clear, and not misleading.** To live up to that responsibility, market participants should consider high-risk areas identified by the ESMA Progress Report. In line with remediation actions laid out in that same report, they should also adapt their governance and processes (e.g., regarding risk management, due diligence controls over ESG information, validation of marketing messages, remuneration policies), build expertise, upgrade their data infrastructure, and uphold comprehensibility for consumers.
9. **Together with recommendations addressed to market participants, a complete list of the actions for consideration by NCAs, ESMA and the EC is laid out in Annex 1.**

³ Recommendations regarding the EU regulatory framework meant to improve its usability and coherence as well as ability to address greenwashing risks will be communicated to the EC via a separate Opinion by ESMA. This Opinion will build on the preliminary regulatory remediation actions identified in the Progress Report.

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1. Introduction

10. Promoting transparency through effective sustainability disclosures and addressing greenwashing is one of ESMA's key priorities as reflected in its Sustainable Finance Roadmap⁴ 2022-2024 and in the ESMA Strategy 2023-2028⁵. Sustainability-related supervision gradually got started in the last five to ten years and became a priority for the supervisory community. This is illustrated by the fact that **ESG disclosures was selected as an EU-wide supervisory priority** starting in January 2023⁶. After the conclusion of **ESMA's Progress Report that greenwashing risk is driven by the convergence of multiple factors** (including market, regulatory, supervisory, data and methodological aspects) which may be aggravating conduct issues **in the various segments of the SIVC, this Final Report looks into the role of supervision to mitigate greenwashing risks.**
11. The EC stressed in its Renewed Strategy⁷ of July 2021 that supervisors play an essential role in identifying, preventing, investigating, enforcing, and remediating greenwashing. In May 2022, the EC followed up with a **"Request for input related to greenwashing risks and the supervision of sustainable finance policies"** (the EC request)⁸ asking the three ESAs to deliver separate but coordinated responses. In this request, the EC seeks input on (1) the definition of greenwashing and the forms it can take in the financial sector, (2) the risks greenwashing poses to investors and financial markets, (3) the implementation, supervision and enforcement of sustainable finance policies aimed at preventing greenwashing and (4) potential improvements to the regulatory framework.
12. Together, the ESMA Progress Report published on 1st June 2023 and this Final Report address in full the EC request⁹. The Progress Report contains the **common ESAs' high-level understanding of greenwashing (ESAs' understanding of greenwashing)**¹⁰ providing a shared reference point to market participants and supervisors in dealing with the issue. In support of a risk-based approach to supervision¹¹, the Progress Report identified **areas more exposed to greenwashing risks** across the SIVC and the drivers of greenwashing risks (see Figure 1 below). Challenges faced by NCAs in delivering effective and consistent sustainability-related supervision were identified as one among multiple **drivers of greenwashing risks.**
13. The objective of this Final Report is to better understand and provide recommendations to help address these supervisory challenges faced by NCAs, and by ESMA for the supervision of benchmark administrators as well as for supervisory convergence at the EU level. By doing so it responds to the third component of the EC request. The Final Report **takes stock of the current supervisory response to greenwashing risks** by providing an assessment of

⁴ ESMA. [Sustainable Finance Roadmap 2022-2024](#), February 2022

⁵ ESMA. [ESMA Strategy 2023-2028](#), September 2022

⁶ By identifying ESG disclosures as a Union Strategic Supervisory Priority, ESMA and NCAs aim to gradually promote an increased scrutiny on ESG disclosures through effective and consistent supervision. This also implies building supervisory capabilities to fully embed sustainable finance into daily supervisory work and supervisory culture.

⁷ EC [Strategy for financing the transition to a sustainable economy](#), July 2021

⁸ EC [Request to esas on greenwashing monitoring and supervision.pdf \(europa.eu\)](#), May 2022

⁹ ESMA [Progress Report on Greenwashing](#), June 2023

¹⁰ For the complete presentation of the common ESAs high-level understanding of greenwashing, see Annex 3.

¹¹ Under a risk-based approach, NCAs will thoroughly monitor and assess greenwashing risks and prioritise supervisory attention and action where most needed according to the outcome of the risk assessment. For more on this topic and on the mapping of the areas of the SIVC that are most exposed to greenwashing risks, see section 2.3.1 below.

supervisory mandates and powers, supervisory approach, and experience as well as capacities and tools deployed. The Final Report also **adopts a forward-looking perspective by clarifying the pathway in which supervision will be gradually enhanced, as NCAs gain in maturity**. In this respect it sets out recommendations to NCAs, also building on supervisory practices identified as advanced and useful in mitigating greenwashing risks (labelled as “good practices” and highlighted via green text boxes). The Final Report also sets out actions for ESMA and recommendations to the EC that aim to support the exercise of supervisory powers.

FIGURE 1. THE MULTIPLE DRIVERS OF GREENWASHING RISKS



14. The response to the fourth component of the EC request on **regulatory improvements will be completed via a separate Opinion by ESMA to the EC**, building on preliminary regulatory remediation actions identified in the Progress Report¹².
15. The Progress Report also addressed several preliminary **recommendations to market players**. These remain relevant (as listed in Annex 1), as market participants across the SIVC have a responsibility to substantiate sustainability-related claims in a manner that is fair, clear, and not misleading.
16. This Final Report adopts a **cross-cutting perspective**, reflecting the importance of the interconnectedness between the different actors for the efficient functioning of the SIVC and for investor protection. A **sector-specific perspective** is also critical to make sure the conclusions of this report are relevant to supervisors on the ground. This Final Report focuses primarily on the supervision of **issuers, investment managers, investment service providers and benchmark administrators** (also referred to as “sectors”). Supervisory methods and tools differ to some degree, reflecting differences among sectors considering

¹² This ESMA Opinion will also build on the soon-to-be-published Opinion of the Joint Committee of the ESAs on the assessment of the Sustainable Finance Disclosure Regulation (SFDR).

their role in the SIVC, the applicable EU rules and their maturity¹³. For the purpose of this report, the supervisory cycle is understood to start from monitoring greenwashing risks and detecting greenwashing occurrences, to taking supervisory and, where appropriate, enforcement actions.

17. The Final Report builds on answers provided by NCAs to an ESMA survey that gathered input on their supervision of ESG disclosures and greenwashing (NCAs Survey)¹⁴. **Importantly, NCAs' responses reflect the regulatory and supervisory situation and actions taken during the period between 1 September 2022 and 31 August 2023.**

18. **Note to readers:** sector-specific sections should be read in conjunction with the section on cross-sectoral considerations where concepts relevant across the report are explained. A table summarizing recommendations to NCAs and the EC, as well as ESMA actions is available in Annex 1 of this report. The table also reminds the readers of remediation actions addressed to market players, laid out in the ESMA Progress Report.
19. **Terminology clarifications:** **Greenwashing risks** refer to the risks of misleading sustainability claims occurring and misleading investors in their decisions. **Sustainability-related claims** refer to statements, declarations or communications provided either to comply with disclosure requirements or as part of voluntarily communications (e.g., advertisements), while the narrower concept of **sustainability-related disclosures** refers only to statements, declarations or communications provided to comply with disclosure requirements. **Sustainability-related supervision** comprises the supervision of sustainability-related disclosure requirements, the supervision of compliance of sustainability-related claims with provisions tackling misleading information in general, and the supervision of specific sustainability requirements (e.g., suitability assessment or product governance), within the perimeter of existing NCAs' mandates.

¹³ The nature and form of the sustainability-related claims disclosed by the various actors differ in line with their role in the SIVC. Information will also be different whether presented at product or entity levels. For instance, the approach will be different for the supervision of disclosures presented in a prospectus (detailed information subject to legal review by issuers and ex-ante review by NCAs) or of marketing material related to investment funds (which is mainly carried out by NCAs in an ex-post manner).

¹⁴ The survey was launched on 3 August and the response period for NCAs ended on 29 September; all NCAs participated in the Survey, with the exception of the Central Bank of Iceland (which reported not being in the position to participate due to the fact that relevant sustainability-related legislations were only implemented into Icelandic legislation towards the end of the period). ESMA provided responses for the Benchmarks section. The Final Report draws on a synthesis of the answers provided by NCAs in the Survey. The Final Report also reflects some preliminary findings from Common Supervisory Actions (CSAs) and a mystery shopping exercise.

2. Cross-sectoral considerations

20. The below section presents cross-sectoral considerations relating to the supervisory response to greenwashing – taking stock of the current supervisory response to greenwashing risks in relation to the supervisory mandates and powers, supervisory approach and experience as well as capacities and tools deployed. It covers aspects relevant to sector-specific supervision and should be read together with the following sectoral sections. The section also lays out a pathway to further enhance supervision through recommendations to NCAs and the EC as well as ESMA actions.

2.1. Sustainability as a priority of supervision

21. Sustainability-related supervision has become a priority which also triggered the evolution of NCAs' internal organisation to support the implementation of such a priority. 23 NCAs have established a transversal internal structure with the aim to ensure horizontal cooperation and coordination within the NCA as well as a consistent and holistic approach on sustainability topics. Such a transversal structure usually also acts as centre of expertise, advising and assisting other teams, supporting knowledge sharing and capacity building and tracking relevant initiatives. Various departments and teams have a seat in such a structure allowing for the dissemination of information across the authority. Next to such transversal structures, 3 NCAs have also set up a dedicated team responsible for sustainable finance that also includes staff members with environmental and/or social expertise.
22. Since 2019, ESMA is taking sustainability into account across its activities covering direct supervision¹⁵, supervisory convergence, rulemaking, and risk assessment. ESMA devotes significant efforts and attention to supporting effective and consistent supervision of sustainability-related requirements across the EU, under its strategic priority to enable sustainable finance¹⁶. ESMA has both set up a transversal internal structure and a dedicated SF unit.
23. Starting in 2023, the topic of ESG disclosures constitutes a USSP and is expected to remain in place for the coming years. This means that all NCAs are expected to carry out intensified supervisory work on this topic. ESMA takes stock annually of the activities performed. The USSP aims to give impetus to NCAs supervision in this area, with the aim to progressively building and implementing a common supervisory response, with reinforced exchanges and sharing of practices across peers. The USSP also specifies targeted outcomes, including with respect to effective ESG disclosures and mitigation of greenwashing. In the first annual stocktake, NCAs have reported several initiatives to implement this USSP. Those vary from one NCA to another: from communication to the industry to raise awareness and provide guidance, to the performance of horizontal reviews across supervised entities on ESG disclosures, or the development of new advanced digital tools to support supervisors. To put the USSP into action, ESMA is supporting NCAs by coordinating supervisory actions across key sectors. Further details see under section 4.3.2. and the respective sectoral sections.

¹⁵ For the purposes of this Final Report, this means direct supervision of certain benchmark administrators.

¹⁶ Enabling sustainable finance is a thematic driver laid out in the ESMA Strategy for 2023-2028.

2.2. Supervisory mandate and powers

24. To ensure transparency through effective ESG disclosures and to address greenwashing, NCAs can rely on their mandate to protect investors and on existing provisions in the EU regulatory framework that (1) generally tackle misleading information and (2) introduce specific sustainability-related requirements.
25. As a type of misleading information, greenwashing can be captured by existing rules prohibiting misleading information, embedded in the EU consumer and investor protection framework and in certain sectoral legislations, to the extent that the relevant sustainability-related claims fall within the scope of NCAs' supervision. The Directive on Markets in Financial Instruments (MiFID II) contains rules on all information, including marketing communications, addressed by an investment firm and a credit institution providing one or more investment services and/or performing investment activities, to clients or potential clients. It states that the communication must be "fair, clear and not misleading" both in its content and its presentation. Where they can demonstrate that a sustainability claim is misleading, NCAs can rely on MiFID II provisions to address and/or sanction instances of greenwashing. In addition, the PRIIPS Regulation and the UCITS Directive state that the information presented to investors as part of the key investor information document or key information Document must be "fair, clear and not misleading". Finally, the Prospectus Regulation also includes specific requirements specifying that information contained in advertisements shall not be inaccurate or misleading and shall be consistent with the information contained in the corresponding prospectus¹⁷. Importantly, the legislation applicable to benchmark administrators does not contain such a provision, which has been identified as a regulatory gap (see section 6.4.3 below).
26. The Unfair Commercial Practices Directive (UCPD)¹⁸ is the overarching piece of EU legislation regulating unfair commercial practices in business-to-consumer transactions – including in relation to financial services. While the UCPD initially did not contain specific rules on environmental claims, the EC published guidance specifically stating that "green claims must be truthful, not contain false information and be presented in a clear, specific, accurate and unambiguous manner, so that consumers are not misled"¹⁹. Recently, the UCPD has been amended by the Empowering Consumers Directive²⁰, which strengthens consumer protection specifically against untrustworthy or false environmental claims²¹. While only a few NCAs have supervisory and enforcement powers under the UCPD²², as amended, the guidance published by the EC can provide a useful reference for the supervision and enforcement of rules prohibiting misleading information.

¹⁷ Article 22(3) of the Prospectus Regulation.

¹⁸ It prohibits unfair commercial practices (those practices that materially distort or are likely to materially distort the economic behaviour of the average consumer) be it via misleading actions or misleading omissions.

¹⁹ Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market. This Guidance contains a chapter dedicated to environmental claims, which presents a list of examples of environmental claims considered misleading by action or by omission.

²⁰ Directive (EU) 2024/825

²¹ The amendments introduced a definition of environmental claims and added certain misleading environmental claims in Annex I, defining such practices as unfair in all circumstances and prohibited.

²² 4 NCAs confirmed being competent authorities under the UCPD for certain cases of infringements, although to date they have not used it to enforce cases, but sometimes as reference point to assess claims and develop guidance.

27. The EU has also introduced a series of specific sustainability-related requirements that address greenwashing. The SF regulatory framework introduced a mandatory disclosure regime for both non-financial and financial companies and for financial products, providing investors with information to make informed sustainable investment decisions (the Corporate Sustainability Reporting Directive (CSRD) and the Sustainable Finance Disclosure Regulation (SFDR)). A set of standards and labels for financial products (EU Climate Benchmarks, EU Green Bond Standard) have been developed to help guide investors. This disclosure regime and standards incorporate, to some extent, disclosures consistent with the EU Taxonomy which provides a shared, science-based classification system for environmentally sustainable activities. By supervising and enforcing the application of these disclosure requirements, NCAs can prevent and address potential greenwashing occurrences. Whether through legislation or guidance, many NCAs have welcomed the introduction of specific disclosure requirements in support of effective supervision, especially in the areas of corporate reporting, sustainability disclosures in prospectuses, sustainability-related disclosures in the funds industry (via the European Sustainability Reporting Standards, the ESMA Statement on sustainability disclosures in Prospectuses, and the Guidelines on the use of ESG- and sustainability-related terms for funds names).
28. Moreover, the Market Abuse Regulation (MAR) includes an obligation for issuers to inform the public as soon as possible of inside information which directly concerns them, and that such information shall be made public in a manner that enables a complete, correct, and timely assessment²³. Enforcement of these disclosure requirements on inside information, when relating to sustainability-related information can help mitigate greenwashing risks. The MAR also prohibits information-based market manipulation, which consists of disseminating false or misleading information related to an issuer or a financial instrument²⁴. As a result, the MAR prohibition of market manipulation may also help addressing the issue of greenwashing, as it will also cover the case of disclosure of false or misleading sustainability-related claims.
29. A mapping of the legislations relevant for the supervision of greenwashing is provided in Annex 2, summarising the legal provisions currently in force²⁵ relevant to the supervision of sustainability-related requirements and enforcement of greenwashing cases.
30. Reflecting responses to the NCAs Survey, the current regulatory framework generally appears to provide the appropriate mandates and powers for sustainability-related supervision and enforcement. Although NCAs diverge in how they interpret their mandates and how they see their role in terms of supervising sustainability-related requirements, the legal basis appears sufficient for NCAs that have set a high ambition for themselves. As demonstrated in several cases, NCAs have been able to rely on rules prohibiting misleading information and specific sustainability-related requirements to supervise sustainability disclosures effectively, requesting clarifications or amendments when deemed necessary. It is worth noting that non-EU authorities that have already enacted sanctions for greenwashing, namely the US Securities and Exchange Commission (SEC) and the

²³ As per Article 17 of the MAR.

²⁴ Defined under Art 12(1)(c) & (d) and 12(2)(d) of the MAR.

²⁵ Other important pieces of legislation worth mentioning have not yet been published in the Official Journal: the ESG Rating Provider Regulation (new requirements to improve the transparency and integrity of the operations of ESG ratings providers and prevent potential conflicts of interests), the Corporate Sustainability Due Diligence Directive (CSDDD) (new conduct duties, regarding due diligence and transition planning processes) and the EU Listing Act (new ESG disclosures in prospectuses, including specific disclosure requirements for non-equity securities that are advertised based on ESG factors).

Australian Securities and Investments Commission (ASIC), have done so based on non-ESG specific legal basis²⁶.

31. Certain gaps as pointed out by a group of 7 NCAs relate to: (1) issues with the transposition of EU legislation into national legislation either for the supervision of non-financial statements under NFRD²⁷ (3 NCAs) or for the supervision of the SFDR disclosures (1 NCA) ; (2) the lack of sufficient, clear, or explicit mandate for supervisors to address greenwashing (2 NCAs) ; (3) specific difficulties in dealing with cross-border issues in the supervision of sustainability reporting covering subsidiaries and parent undertaking domiciled outside the NCA's jurisdiction (1 NCA), and products disclosing under SFDR (2 NCAs) ; and (4) the supervision of marketing material by registered alternative investment fund managers under AIFMD (1 NCA).
32. Feedback received from 4 NCAs also raised the question of whether the ESAs' understanding of greenwashing should be included in the legislation. However, at this stage, the benefits of integrating this high-level understanding into the legislation are not clear. As mentioned above, NCAs have been able to leverage on the current framework to take actions. In addition, such an approach may create confusion among market participants and require substantial legislative work given the numerous level 1 and level 2 texts which would need to be modified. The priority should be to support supervisory convergence, continue building capacities so that supervisors are able to increase the level of critical scrutiny and professional judgement they exert. Where needed, ESMA remains committed to bringing regulatory clarity and consistency to the market and supervisors on sustainability-related provisions.
33. Beyond the question of supervisory mandates and powers, the EU regulatory framework needs to gain in maturity to address certain usability and consistency issues. ESMA's views on this matter will be taken forward by a dedicated ESMA Opinion.

2.3. Supervisory approach and experience

34. In the supervision of sustainability disclosures NCAs can rely on long-standing experience in supervising financial information across the investment value chain. At the same time, sustainability-related supervision presents new challenges. The sustainability profile of entities and products builds on multiple pieces of mandatory and voluntary information, covering both backward- and forward-looking data, as well as longer-term horizons than financial information usually covers. In that context, supervisors tasked with protecting investors face challenges in assessing sustainability-related claims.

2.3.1. Risk-based approach to supervision

35. A risk-based approach is a cornerstone of supervision as it focuses supervisory attention and resources on the most significant risks. It promotes a holistic understanding of the risks present in financial markets and facilitates the efficient use of limited supervisory resources to achieve the authorities' objectives, including protecting investors, ensuring financial stability, and the orderly functioning of markets. A risk-based approach to supervision does

²⁶ The US SEC used the "misleading information" characteristic provisions of the Investment Adviser Act and ASIC used the "false and misleading conduct" basis of the 2001 ASIC Act.

²⁷ The provisions in the Accounting Directive relating to non-financial reporting (based on the amendments introduced by the NFRD) are no longer in force as they have been replaced by the provisions of the CSRD.

not seek to eliminate all risks. Rather, it provides a structured and transparent framework to identify, assess, prioritise, and treat risks with the aim of addressing them appropriately.

36. Monitoring greenwashing risks is an important starting point for a risk-based approach to sustainability-related supervision. For products and entities under their remit, NCAs play a key role monitoring greenwashing risk. ESMA supports them in this role and fosters supervisory convergence, by annually monitoring supervisory risks across key financial market sectors. This monitoring of supervisory risks then informs national risk assessments and prioritisation. In the last few years, ESMA found sustainability-related claims to be among the top supervisory risk areas in several sectors. In addition, the Progress Report served as an in-depth assessment of the risk of greenwashing across the SIVC (as represented in the Figure 2 below). This assessment of risk areas provides key input for supervisors' and ESMA's prioritisation efforts. The sectoral sections below provide summaries of the high-risk areas identified in the Progress Report and a stocktake of NCAs' actions to address them to date.

FIGURE 2. AREAS OF THE SIVC MORE EXPOSED TO GREENWASHING RISKS

| Topics of claims | Issuers | Investment Managers | Benchmark administrators | Investment service providers |
|--|---------|---------------------|--------------------------|------------------------------|
| Governance and resources related to sustainability considerations | | | | |
| Board and senior management's role in sustainability | | | | |
| ESG resources and expertise | | | | |
| ESG strategy | | | | |
| ESG strategy, objectives, characteristics | | | | |
| Sustainability management policies | | | | |
| ESG qualifications/labels/certificates (or 'ESG credentials') | | | | |
| Engagement with stakeholders | | | | |
| Sustainability metrics and targets | | | | |
| Present ESG performance: ESG results, metrics for real-world impact | | | | |
| Pledges about future ESG performance: ESG targets, transition plans | | | | |
| Transversal topics | | | | |
| Impact | | | | |
| Legend | | | | |
| High-risk areas | | | | |
| Medium- to high-risk areas | | | | |
| Areas of lower risk | | | | |

Note: more details on this mapping are accessible in the ESMA Progress Report on Greenwashing (see table 6, P.59).

2.3.2. Supervisory convergence

37. ESMA has a mandate to support supervisory convergence across the EU by building effective and common approaches to supervision of NCAs. ESMA has a diversified toolkit to support

convergence (e.g., USSPs, trainings, supervisory briefings, peer reviews, etc.), allowing to address different convergence needs and objectives.

38. In this context, Common Supervisory Actions (CSAs) are an important tool that ESMA has been deploying in the SF space. Through CSAs, NCAs concertedly take a supervisory action on a sample of entities in their market based on common methodologies and supervisory expectations. As part of their engagement with supervised entities, NCAs can undertake a thorough assessment of entities' practices and activities. Three CSAs are currently in progress in the investment management, investment service providers and benchmark administrators sectors (see also in sectoral sections below). Like a CSA, the identification of European Common Enforcement Priorities has been used in the field of corporate sustainability disclosures with the objective of improving the quality of the information available (see section 3.2.1).
39. Supervisory case discussions are another important tool for supervisory convergence. Bringing potential greenwashing cases for discussion in the relevant ESMA groups helps developing a shared understanding of good practices and practices to avoid, as well as effective supervisory methods and approaches. In those discussions, the ESAs' understanding of greenwashing has sometimes been used as a common reference point.

2.3.3. Efforts to monitor greenwashing risk and detect occurrences

40. As described in the sectoral sections below, NCAs have used a variety of approaches and data to monitor greenwashing risks and detect greenwashing occurrences. Supervisors have been relying on a mix of sources comprising regulatory disclosures and other published information, news reports, complaints, and input from other stakeholders. For example, NGO reports constitute one of the possible sources of relevant information to detect greenwashing practices and/or SIVC actors which are exposed to or may trigger greenwashing risk. Depending on the sector considered, other data sources can be useful to check that information is fair, clear, and not misleading.
41. To qualify greenwashing risk and monitor its evolution over time, ESMA has recently increased its analytical efforts. These efforts have been relying on the use of natural language processing techniques and web-scraping techniques (see 2.4.4 for more on these techniques). Such information can feed into a risk-based approach to supervision, helping NCAs focus their attention where it matters most. ESMA investigated (1) the use of ESG words by EU investment funds in their names and documentation²⁸, (2) the financial impact of greenwashing controversies²⁹, and (3) practices in the field of impact investing, assessing if Sustainable Development Goals (SDG) funds display greater alignment with the UN SDGs, compared to non-SDG funds³⁰. Monitoring the use of ESG-related terms in various documents can provide an indication of the efforts supervised entities are making to disclose relevant

²⁸ The findings show an exponential growth in the use of ESG related words in fund names, rising from 3% of UCITS in 2013 to 14% in 2023. The analysis also shows that fund managers tend to adapt their ESG communication strategies within various documents, depending on the expected readers, highlighting the risk of inconsistency across documents. [ESMA TRV Risk Analysis, [ESG names and claims in the EU fund industry](#), 2 October 2023.]

²⁹ The article proposes a novel approach towards monitoring greenwashing perceptions, leveraging ESG controversies data. The analysis shows an increase of greenwashing-related controversies for European firms between January 2020 and December 2021 which were concentrated in just three sectors, including the financial sector. [ESMA TRV Risk Analysis, [The financial impact of greenwashing controversies](#), 19 December 2023.]

³⁰ The results show a significant increase in SDG funds between 2020 and 2023 and that these funds do not significantly differ from non-SDG peers in terms of their portfolios' alignment with the UN SDGs. [ESMA TRV Risk Analysis, [Impact investing – do SDG funds fulfil their promises?](#) 1 February 2024.]

information to investors, but also to bolster their sustainability profiles. Contrasting the use of ESG terms with portfolio composition can provide critical information on potential misalignment between a fund's disclosures and its actual investments. Separately, monitoring controversies can help understand the evolution of greenwashing perceptions in various segments of the economy. Monitored at an aggregate level, all these data points can provide useful indicators on the level and evolution of potential greenwashing risk.

42. ESMA is in the process of developing an indicator to qualify greenwashing risk in the investment funds industry. This indicator is meant to help assess certain aspects of the quality of sustainability-related claims disclosed by funds and hence greenwashing risks in the funds sector. ESMA is exploring different ways of quantifying this risk including by looking at the consistency of sustainability-related claims across fund documents, unsubstantiated use of vague ESG-related language by fund managers, and alignment between a fund name and its portfolio composition. ESMA considers further exploring the development of indicators to monitor greenwashing risks, also beyond the funds industry. ESMA also considers exploring how it can further support NCAs in their own efforts to monitor greenwashing and detect occurrences, via the sharing of tools, analyses, methodologies, and indicators.
43. Challenges related to data accessibility, availability, quality, and comparability have hampered efforts to monitor greenwashing risks and detect occurrences of greenwashing. These challenges therefore explain to some extent why, so far, NCAs have reported having detected only a limited number of actual or potential occurrences of greenwashing. Regarding data availability, data quality and comparability the implementation of the various pieces of the SF regulatory framework will gradually facilitate monitoring efforts. Regarding data accessibility, progress in the development of machine-readable information, in regulatory documents, and greater accessibility of documents — via the forthcoming ESAP — will give the supervisory community easier access to the raw material necessary for assessments from 2027 onwards³¹. However, challenges will persist as not all corporate information that can potentially contain greenwashing occurrences (for example, marketing material or press releases) will be centralised by the ESAP. Data-sharing arrangements involving ESMA and NCAs as well as strengthening the direct reporting of regulatory information to NCAs and ESMA have also been debated as ways to enhance accessibility.

2.3.4. Complaints collection

44. Article 26 of MiFID II Delegated Regulation contains an obligation for firms to establish complaints handling mechanism and a reporting obligation to competent authorities (although these may not always be the NCAs under ESMA's remit)³². When consumers are dissatisfied with a financial product or service, they may make a formal complaint either to the firm that provided it or to the competent supervisory authority. 2 NCAs reported that the mandate to handle individual complaints was in the remit of another authority in their Member State and

³¹ From July 2027, ESAP will provide access to the annual financial reports of undertakings in scope of the Transparency Directive, including therefore also their sustainability reports. From January 2028, it will provide access to all sustainability reports prepared on the basis of the Accounting Directive. For a summary of all information which will be accessible via ESAP, see : [ESMA65-955014868-12073 ESAs Open Hearing on ESAP, 16 February 2024 \(europa.eu\)](#)

³² Furthermore, under [guidelines](#) published by ESMA and EBA specifying these requirements, it is stated that "Competent authorities should ensure that firms provide information on complaints and complaints-handling to the competent authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant."

would typically refer complaints to such authority³³. Another NCA explained that it shares the responsibility to deal with information shared by consumers on potential infringements with the Office of Competition and Consumer Protection.

45. Sustainability-related complaints may provide useful information on the evolution of greenwashing risks over time and can directly feed into the detection of cases, practices or categories of products warranting further attention from supervisors.
46. By now, only 2 NCAs reported having received greenwashing-related complaints. Another NCA reported having received useful information on potential cases. The complaints and relevant information were reported by shareholders, NGOs, investors, and whistle-blowers. Based on feedback received from 15 NCAs, the low number of complaints may be due to limited ESG literacy and limited awareness by investors, or to the limited size of the SF market in some Member States.

Good practices identified regarding complaints-handling:

An NCA reported having implemented an internal tracking of complaints received that relates to sustainability information. That NCA generally uses complaints data (both complaints reported by supervised entities and complaints received directly by the NCA's mechanism) as one of the inputs used in its risk-based framework³⁴. Within that NCA, managing bodies and senior management are regularly informed about the trends regarding complaints.

An NCA reported having organised regular discussions with the national Ombudsman, given its role in dealing with complaints or occurrences of misleading information (encompassing misleading sustainability-related claims, hence greenwashing). The two public organisations developed a common understanding of the SF regulatory framework and a common approach to deal with potential greenwashing occurrences arising from complaints. The objective was to ensure that consistent actions are taken by the two authorities.

2.3.5. Enforcement actions

47. So far, the number of enforcement actions that can directly be attributed to greenwashing, reported via the NCAs Survey, is limited. NCAs reported having taken or being in the process of taking enforcement actions in relation to two sectors - issuers (5 NCAs) and investment managers (2 NCAs)^{35 36}. Since the NFRD does not envisage uniform supervisory powers across the EU, these figures should not be seen as predictive of future action level under the CSRD.

³³ 1 NCA mentioned the information received would still be treated as a source of information on potential infringements.

³⁴ When launching annual reviews or other supervisory actions, NCAs may then consider such complaints data as part of the methodology to conduct sample selection. Relatively high complaints numbers could be considered as one criterion for inclusion of the sample, next to other criteria.

³⁵ In the context of this report, enforcement actions are broadly understood as actions taken by NCAs, in response to a breach, which (1) lead to formal consequences and (2) may be challenged, if not complied with (including the imposition of pecuniary sanctions). Depending on the sector and on the national legislation applicable, the categories and types of enforcement actions will differ. For instance, based on the understanding previously mentioned, around corporate reporting, enforcement actions may include not only the imposition of pecuniary sanctions but also requests to reissue a report, requests to publish a corrective note or requests to correct the information as part of the next annual report.

³⁶ In addition, based on the data submitted by NCAs for the purpose of compiling the annual activities report of ESMA on 2023 enforcement and regulatory activities in the area of corporate reporting, 16 NCAs indicated that they took enforcement actions related to sustainability reporting. It is important to highlight that these actions refer partly to existence checks and partly to content checks. To be noted as well that these actions were not necessarily labelled as targeted to address greenwashing risks.

48. Several factors explain the current situation. First, NCAs have some tools at their disposal to address greenwashing before enforcement action even needs to be considered. NCAs are taking steps to prevent greenwashing (e.g., via guidance, communication of priorities to market participants etc.) and, in certain areas of supervision, can address potential greenwashing before the information is published (e.g., via *ex-ante* authorisation in prospectuses).
49. Second, while NCAs have different approaches and strategies towards enforcement, they have generally been following a gradual approach to sustainability-related supervision, preferring accompanying market players in implementing a new, complex regulatory framework, while obviously taking a stricter approach where major infringements are unveiled. Formal actions and their publicity can have a deterrent effect on other players, contributing to improve disclosures across a sector. However, the power of regular dialogue with market participants and the audit and assurance provision profession should not be underestimated. It can also result in concrete improvements in the quality of reported information.
50. Finally, when deciding on the most appropriate course of action, NCAs would typically consider the advantages and disadvantages of various options in relation to a specific case, including the timeliness of the remediation measures taken by the market participant. In the case of sustainability-related supervision, it appears that NCAs also face challenges establishing infringements for example where the regulatory framework provides unclear or ambiguous definitions for certain concepts.

2.4. Supervisory capacities and tools

51. The section below provides a cross-cutting overview of the human resources, data and advanced digital solutions deployed by NCAs to address greenwashing. It also describes ESMA's contributions to enhancing NCAs' capacities.

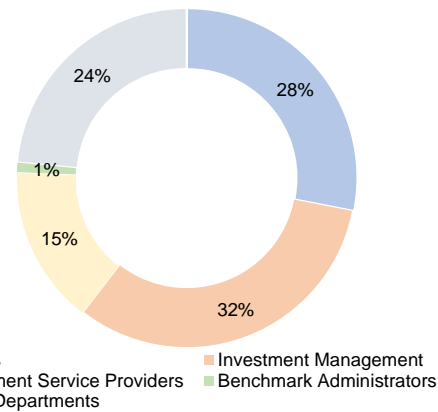
2.4.1. Human resources and capacity building

52. The 29 NCAs that participated to the NCAs Survey have allocated approximately 286 full-time equivalents (FTEs) to sustainability-related regulatory and supervisory activities. The number of FTEs varies significantly across NCAs, ranging from 0.6 (1 NCA) to 45 (1 NCA) FTEs, with an average of 9.5 FTEs per NCA. As reflected in Figure 3 below, 16 NCAs dedicated more than 5 FTEs to the topic. The sectoral distribution in Figure 3 shows that investment management has been the main focus of NCAs (with 32% of FTEs in total), followed by issuers (with 28%). Sector-specific figures are presented in the following sections.

FIGURE 3. TOTAL NUMBER OF FTEs AND THEIR SECTORAL DISTRIBUTION

| Total number of FTEs per NCA, all sectors (ranges) | Number of NCAs |
|--|----------------|
| 0 | 0 |
| >0 – 5 | 13 |
| >5 – 10 | 8 |
| >10 – 20 | 2 |
| > 20 | 6 |

Note: FTEs allocated by NCAs to both supervisory and regulatory activities across all sectors and departments. ESMA FTEs not counted here (ESMA FTEs for direct supervision of sustainability matters in the benchmarks sector is included in the section on benchmark administration).
 Source: NCAs Survey



Note: FTEs allocated by NCAs to both supervisory and regulatory activities across all sectors and departments. ESMA FTEs not counted here (ESMA FTEs for direct supervision of sustainability matters in the benchmarks sector is included in the section on benchmark administration).
 Source: NCAs Survey

53. 25 NCAs indicated that their current resources³⁷ do not correspond to their needs. The reasons mentioned by NCAs are the expansion of the scope of their supervisory responsibilities (4 NCAs), the fact that building expertise for the staff requires time and may not always follow the fast pace of development of regulation³⁸ (6 NCAs), budgetary constraints (7 NCAs) and challenges to hire experienced specialists on ESG topics (3 NCAs).
54. 19 NCAs estimated that by the end of 2024 they would increase the number of FTEs, especially in issuers' supervision. This can be explained by the evolution of relevant legislation in the sector.

Good practices identified regarding capacity building:

In terms of employing environmental and social experts, 9 NCAs hired staff with environmental expertise and 4 NCAs hired staff with social expertise. 4 NCAs further explained that they hired sustainability experts with backgrounds in economics or environmental economics and political or social sciences and their experience covers, inter alia, the UN SDGs, environmental topics (i.e., climate, biodiversity etc.), greenhouse gas (GHG) emissions accounting and reporting standards, areas of human rights and equal treatment. The sustainability experts are tasked with supporting the NCAs across regulatory, policy and supervisory tasks (e.g., desk reviews³⁹, development of monitoring indicators and treatment of complaints). They also undertake capacity-building efforts within the NCA with the aim to increase the general knowledge on environmental and social issues. Lastly, these experts support the NCAs' contributions to various international or European fora on sustainability-related topics.

Nonetheless it is acknowledged that budgetary constraints and availability of such experts may pose a challenge in the hiring process. NCAs without staff with environmental or social

³⁷ Both human resources (numbers of FTEs, ESG experts etc.) and other type of resources such as data, SupTech tools, etc.

³⁸ 1 NCA raised in addition that the quick evolution of the regulatory framework may require additional resources and expertise which may be in contrast with national caps in terms of FTEs.

³⁹ For example, 1 NCA submitted that the experts can form part of supervisory teams which conduct desk-based analyses of sustainability-related claims. The different team members are exchanging views on identified issues based on their respective background, which also increases the educational function of teams with diverse backgrounds.

expertise are aiming to acquire such expertise through the conduct of trainings, participation in the EC's TSI (see section 4.3.3), by cooperating with universities and establishing knowledge management measures. Certain NCAs refer to their interaction with external sustainable finance experts and relevant authorities (environmental or other), but also to building capacities by participating in various fora such as ESMA working groups or through their ongoing engagement with the supervised entities.

55. To support capacity building by NCAs, ESMA is currently implementing and continuously developing its SF Training Plan for NCAs. Thus, ESMA supports NCAs by developing and consolidating specific knowledge of the complex sustainable finance regulatory framework and ESG factors and building relevant capacities for supervision. In 2023, nine trainings on the EU sustainable finance framework and on topics related to ESG factors have been organised. For instance, among sectoral specific trainings, in 2023, three cross-sectoral trainings took place, i.e., on the Taxonomy Regulation, on social factors and on carbon markets.
56. In support of the capacity building endeavour, ESMA has set up a SF Knowledge Hub ('SF Hub') which is an e-learning platform with more than 600 licences available to users from ESMA and the NCAs. It serves as a place to follow the trainings on SF topics organised by ESMA and allows users to test their knowledge. Hence, the SF Hub is an important tool towards achieving the capacity building priority from the Sustainable Finance Roadmap 2022-24.

2.4.2. Accessing external ESG expertise

57. In the context of delivering on their sustainability-related mandates, NCAs have faced challenges in identifying and hiring the right experts. Beyond the implementation of capacity building programs for existing staff and the hiring of new experts, NCAs have also been accessing sustainability-related expertise via other means.
58. For instance, 19 NCAs explained that they cooperate regularly with other authorities and bodies at domestic level. The authorities mentioned include environmental or social agencies and organisations, various ministries, national banks and other prudential or conduct supervisors. More specifically, 6 NCAs indicated that they are cooperating with environmental agencies and organisations and 1 NCA reported to be cooperating with social organisations. 5 NCAs are planning to establish cooperation frameworks with environmental agencies and organisations.

Good practices identified regarding cooperation arrangements with other authorities:

The set-up and frequency of the exchanges can vary (for example quarterly or ad hoc meetings, formal or informal exchanges). 3 NCAs presented examples of formalised collaboration arrangements with the various authorities. In addition to bilateral collaborations, 6 NCAs mentioned their participation in national taskforces or groups on sustainable finance. Such groups may either be exclusively composed of public bodies or be composed of both public and private sector stakeholders.

The cooperation between the authorities refers to a diverse range of topics and serves several purposes, e.g. covering regulatory developments, exchange and gathering of information on climate risks and other ESG data, development of a common understanding of sustainability risks, delivery of capacity building initiatives and knowledge sharing, exchange of experiences

and practices, specific topics such as transition finance or technical issues (e.g., Taxonomy technical screening criteria). Moreover, 2 NCAs mentioned the undertaking of common projects with other organisations around financial education and literacy, while an NCA reported the cooperation with its national ESG Data Hub.

59. Furthermore, as mentioned above, NGOs are actively supporting sustainability-driven practices and policies and are calling for action to address alleged greenwashing practices. This has made NGOs a more prominent stakeholder group for NCAs. In addition to the reporting of greenwashing suspicions or complaints, NGOs may also be able to contribute to NCAs' internal capacity building efforts, by intervening in trainings and workshops.

2.4.3. Access to ESG data

60. Beyond adequate human resources effective supervision requires NCAs' access to relevant and high-quality comparable data. As of today, 24 NCAs identified access to high-quality data as a challenge, in at least one sector. For example, whether the regulatory disclosures are reported to the NCA by supervised entities or not creates a difference for effective supervision. Importantly, data access issues may relate to information that is subject to NCAs' supervision (regulatory disclosures, other documents with sustainability-related claims such as marketing material) or to information that serves as background or reference points to supervisors (ESG market data, news reports, data purchased from third-party data providers such as on portfolio composition or benchmarks constituents, etc.).
61. Data can feed into supervision at various stages of the supervisory cycle – from sample selection all the way up to the enforcement phase. As a general principle, a higher supervisory ambition will translate into higher data needs for sustainability-related supervision. For instance, data needs will be lower for an NCA that only checks availability of a funds' required disclosures, than for an NCA that checks consistency between a funds' disclosures and the underlying portfolio composition, with a risk-based approach. A growing number of NCAs are considering purchasing third-party data to help in supervision – in the supervision of the funds industry and issuers there are 11 and 9 NCAs that do so, respectively.

2.4.4. SupTech tools

62. The use of advanced digital tools for supervision (SupTech tools) can make financial market regulators' supervisory practices more efficient. Due to the increased volume, complexity and variety of data, regulators have a growing need for tools that can process, monitor, and analyse large datasets of regulatory relevance. In the context of tackling greenwashing risks, SupTech tools can support supervisory activities by helping supervisors detect potential misconduct and determine compliance with regulatory requirements. They have the potential to address some of the prevailing data challenges stemming from i) the limited accessibility of ESG-related information, and ii) the large volumes of text-based information to analyse. At the same time, such tools can only complement human supervision: as detailed below they have certain limitations, and they cannot replace professional judgement on sustainability information by supervisory staff.
63. Regarding data accessibility challenges, web-scraping tools can support supervisors by automatically extracting from web pages information not available in a central location. This can be used to gather information from multiple web pages (e.g., sustainability reports,

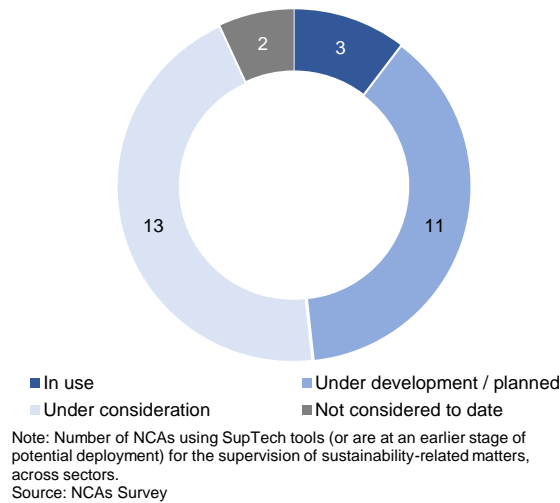
disclosure templates), or to identify and extract specific information from a web page⁴⁰. Such information can then be turned into structured datasets for analysis. However, such uses can be limited by legal, technical, and practical considerations. Among these are terms of services prohibiting web-scraping, anti-web scraping measures, the quality of scraped data and general performance and scalability issues. Therefore, web-scraping does not offer a universal solution to data accessibility issues but may bring added value in specific cases in the absence of a centralised information repository.

64. Regarding challenges related to the large volumes of text-based information to analyse, natural language processing (NLP) techniques allow massive amounts of text to be scanned, saving substantial time for supervision. Such tools can for example complement human intervention by flagging entities or products information that may be misleading, based on predefined criteria. However, they do not replace professional judgement on sustainability information by supervisory staff. There is a need for supervisory follow-up which can still be resource-intensive, especially in the case of long and non-standardised documents. NLP is an umbrella-term for a wide array of techniques with different levels of sophistication. In one of its simplest forms, a text is searched for a specific set of terms of interest which have been previously defined (a “dictionary”) – for instance, terms that are typically associated with environmental and social factors. Beyond their simplicity of implementation, a drawback of this approach is the potentially high number of false positives, which requires successive rounds of testing to refine the list of expressions and improve the accuracy of the output. Nonetheless, NLP tools using dictionary-based approaches can help supervisors quantify trends, identify patterns, and prioritise supervisory actions, e.g., by reducing by several order of magnitudes the number of documents to review manually.
65. NLP techniques of possible relevance for greenwashing supervision also include sentiment analysis, which attributes scores to sentences, paragraphs or documents to gain insight on the overall tone used in each text. This may be used for example to help distinguish between *positive* statements (e.g., impact claims) and *negative* statements (e.g., exclusions). More advanced approaches, such as those making use of machine learning (ML), provide further avenues for the development of more refined language-based analysis⁴¹.
66. In practice, the use by NCAs of such tools for supervision in general and for the detection of greenwashing occurrences specifically is still very limited but growing. According to replies to the NCAs Survey, 3 NCAs reported using SupTech tools for the supervision of investment managers. No such tools are in use currently for the supervision of investment service providers, issuers, or benchmark administrators. 11 NCAs reported that SupTech tools were either already under development or planned. 13 NCAs reported they were considering resorting to such tools in the future. ESMA has also so far prioritised the investment management sector in developing and deploying SupTech tools and is helping NCAs to develop their own capacities and tools in this sector, with the objective to facilitate experience sharing and to foster common approaches and the use of similar tools.

⁴⁰ For example, in a recent article ESMA scraped the UN Global Compact website to connect information on the Sustainable Development Goals that individual companies claim to contribute to and data on investment fund portfolio holdings. See ESMA TRV Risk Article, [Impact investing – Do SDG funds fulfil their promises?](#) 1 February 2024.

⁴¹ For an application of machine-learning models in a similar context, see for example Stambach et al. (2022), [Environmental claim detection](#).

FIGURE 4. NCAs' RELIANCE ON SUPTECH TOOLS FOR SUPERVISION, ALL SECTORS



67. Despite the potential benefits, the development and deployment of effective SupTech tools, especially ML-based NLP models, requires dedicated resources - financial resources are needed for the potential acquisition of commercial solutions. Human resources are needed for the development and/or for the deployment and operating of the tools themselves.

2.5. Pathway to further enhance supervision

68. **In the context of the gradual application of multiple sustainability-related regulatory requirements and the recent growth of ESG financial markets, market participants across the SIVC as well as the supervisory community are on a journey,** gaining in maturity in the application of the regulatory framework, deepening their ESG capacities and more broadly, their understanding of sustainability-related matters and regulation.
69. Market participants across the SIVC bear the responsibility to comply with sustainability-related requirements, to make substantiated claims and communicate sustainability information in a manner that is fair, clear, and not misleading. At the same time, effective and consistent supervision has become critical to protect investors, promote market confidence and avoid regulatory and supervisory arbitrage.
70. **Sound and effective supervision entails going beyond merely checking the existence of regulatory requirements or their timeliness vis-à-vis statutory deadlines.** Under a risk-based approach, NCAs are taking steps to challenge sustainability-related claims, when these raise concerns, and to perform critical scrutiny of documentation and exercise professional judgement.
71. **In terms of oversight, there are, depending on the sector, up to three layers of safeguards that play a role in upholding the quality of sustainability-related disclosures.** The first layer is the internal governance of the supervised entity, the second layer is external assurance/third party verification (as required by sectoral legislation). Supervision by NCAs usually constitutes the third layer. Each layer has distinctive responsibilities and by coming third in this order of oversight, NCAs are not required to "re-do" the work undertaken by the previous layers. Nevertheless, NCAs have broad responsibility to ascertain that sustainability-related claims, falling within the scope of their supervisory remit, are in line with the relevant requirements.

72. **Supervisors' ability to challenge sustainability-related claims is expected to grow in the next years as their expertise deepens and supervision is gradually reaching its full potential.** This period of adjustment should serve NCAs to build supervisory practices that are not only effective but also consistent across the EU, with the objective of supervisory convergence. Going forward, leveraging also on ESMA's support, NCAs will therefore continue, as part of a risk-based approach, developing and deploying risk indicators, supervisory methods and tools that can most efficiently and consistently support supervisory efforts in the EU.
73. **Going forward, NCAs will also build experience in supervising adherence to labels such as the EU Climate Benchmarks, the EU Green Bond (EuGB) or possible product categories under a revised SFDR.** Supervision of labels and product categories, that entail financial market participants meeting eligibility requirements next to disclosure ones, may bring further challenges⁴². Supervision in such context would imply challenging disclosures also with regards to eligibility requirements when there are doubts⁴³. This may relate to a benchmark, a bond or a fund.
74. **Recommendations to NCAs and to the EC as well as ESMA actions identified below are meant to support the journey to deepen supervision on sustainability matters and deliver on the objective of supervisory convergence. They can be considered as potential mitigants to some identified drivers and types of greenwashing risks.**

2.5.1. Recommendations to NCAs

75. **Identified "good practices"** presented in green boxes should inspire NCAs when further developing their sustainability-related supervision.
76. NCAs are invited to enhance human resources and capacities as appropriate. Beyond the implementation of capacity building programs for existing staff, NCAs may consider hiring or contracting dedicated experts on environmental and social topics and/or explore other ways of accessing sustainability-related expertise such as collaboration with authorities that have environmental or social expertise.
77. For cases where supervision requires to process and analyse large volumes of complex information, NCAs are invited to consider the **development or purchase of SupTech tools**. The costs and benefits of such actions may call for concerted efforts at EU level.
78. In their supervisory activities, NCAs are invited to continue **using the ESAs understanding of greenwashing** as reference point in assessing sustainability-related claims vis-à-vis applicable requirements (e.g., embedding the ESAs' understanding in supervisory guidance or handbook and illustrating it with examples building on those provided in the Progress Report)⁴⁴.
79. NCAs are invited to include greenwashing risks (i.e., risk of misleading sustainability claims occurring and misleading investors in their decisions) into their risk-based supervisory framework. To maintain the effectiveness of such a supervisory framework, it needs to cater

⁴² Methodologies for climate benchmarks, Taxonomy alignment for the EuGB or eligibility requirements for the possible future product categories under SFDR.

⁴³ Where a benchmark claims it is an EU Climate Benchmark, supervisors may scrutinise compliance with minimum standards applicable to such benchmarks.

⁴⁴ [ESMA Progress Report on Greenwashing](#), page 11.

for the monitoring of greenwashing risk and detection of potential greenwashing occurrences for which:

- (1) Multiple **data sources** (e.g., complaints, controversies data, NGOs' and media reports) need to be considered, also in order to allow translating ESG market risk indicators into supervisory risk indicators.
 - (2) NCAs are invited to create a **specific 'ESG-related complaints' category within their complaints-handling mechanism** allowing for the assessment of complaints data in a more targeted manner (whether reported by firms or directly to the NCA).
 - (3) NCAs are invited to consider developing so-called "**green dashboards**"⁴⁵ to track ESG market trends and provide contextual elements to their assessment of greenwashing risks.
 - (4) The **high-risk areas identified by the Progress Report**⁴⁶ should continue to be a common basis for NCAs in prioritising supervision in this field.
80. Recognising that NGOs have become a more prominent stakeholder, NCAs are invited to **build on their dialogue with NGOs**, where this can bring useful input for supervision, including the monitoring and detection of greenwashing, or to support capacity building efforts.
81. NCAs are invited to consider whether **their organisational structure effectively supports building up a sound and consistent approach on ESG supervision** and adapt that structure when/as justified. To this end, the involvement of senior management or the creation of a dedicated team can facilitate successful adaptation and change management for the organisation.
82. Without prejudice to confidentiality obligations, NCAs are invited to **give visibility to sanctions that they impose** based on infringements to the regulatory framework that are relevant for greenwashing. Such an approach is important for its deterrence effect, and for communicating certain expectations to market participants.

2.5.2. ESMA actions in support of supervision

83. ESMA will continue to support effective and consistent sustainability-related supervision through the following actions:
- (1) Under the USSP on ESG disclosures, continue **prompting intense supervisory action** under common objectives and assess the type of activities undertaken by NCAs and progress made. ESMA will also foster discussions on challenges and possible solutions when it comes to enforcing sustainability-related regulatory requirements.
 - (2) Further exploring the **development of indicators to monitor greenwashing risks**, going beyond the funds industry. ESMA will also explore how it can further support NCAs in their own efforts to develop indicators, monitor greenwashing and detect

⁴⁵ A green finance dashboard provides a regular overview of developments in green finance markets, covering various products and instruments. It is meant to disseminate information on ESG markets developments and trends, and inform risk assessment and relevant policy, supervision, and supervisory convergence work.

⁴⁶ [ESMA Progress Report on Greenwashing](#), page 59.

occurrences, and foster common approaches, via the sharing of tools, analyses, methodologies, and indicators. ESMA will explore potential **data-sharing arrangements**.

- (3) Further **exploring the deployment of SupTech** tools in the area of SF and helping NCAs to develop their own capacities and tools in this sector (see sections 2.4.4 and 4.3.3, for more on ongoing work). ESMA will continue to facilitate experience sharing and to foster common approaches.
- (4) Exploring the mutualisation of access to data can also help foster the deployment of common SupTech solutions.
- (5) Where relevant, producing **additional guidance for supervisors, notably through supervisory briefings under the ESMA Supervisory Handbook**. Such work is to be informed, among others, by the high-risk areas to greenwashing identified in the Progress Report (e.g., claims made on transition, impact, ESG-engagement, etc.).
- (6) Continue implementing **and further developing capacity building initiatives** under the ESMA SF training plan. In 2024, the trainings with cross-sectoral relevance will cover topics such as the Taxonomy, transition finance or greenwashing. The SF Hub will also be more widely used in 2024 allowing to further deepen and test knowledge.
- (7) Continue building on the **existing collaboration with EEA** (see section 3.3.1 below), to support NCAs supervision, especially as part of the training program. Provided that this is aligned with other EU legislation and under specific confidentiality safeguards, collaboration regarding expertise and data sharing may also be useful and could be considered.

2.5.3. Recommendations to the EC

84. The EC can facilitate supervision in two important ways. First, given the urgent need to invest in enhancing capacities, the EC could consider further **strengthening the TSI Program** with the view of expanding resources for supervisory convergence at the EU level. The Program should specifically cater to developing common approaches and solutions across *all* NCAs, in order to mutualise efforts to build capacity, share data and future methodological developments.
85. Second, the EC is invited to foster standardisation and **machine-readability of sustainability disclosures** in all segments of the SIVC in order to ensure that supervisors can consume data effectively and on a large-scale basis and can implement SupTech solutions. Progress is expected with the implementation of machine-readability requirements for the sustainability reports by issuers under the so-called European Single Electronic Format (ESEF) regime. The Joint Committee of the ESAs has also proposed in its Final Report on the review of SFDR Delegated Regulation in late 2023 that all SFDR disclosures should be prepared in a machine-readable format (see section 4.4.3). Recognising the recently enacted delay of the coming into force of those requirements, ESMA strongly recommends that the application of those requirements is not further postponed.

3. Issuers

86. As the starting point to a well-functioning SIVC, high-quality corporate-level sustainability information is critical. Via their supervision and enforcement of non-financial information⁴⁷, NCAs contribute to a consistent application of the relevant legal requirements and, thereby, to relevant, consistent, and comparable non-financial information. NCAs supervise issuers in two main ways. NCAs supervise the non-financial statement and climate-related matters in financial statements disclosed as part of a company's annual reporting package. NCAs also supervise information disclosed by issuers or offerors in prospectuses. Given the different nature of supervision these two angles entail, such distinction is spelled out in this section.
87. The below stocktake reflects responses to the NCAs Survey and hence supervisory practices and experience prior to the CSRD. Indeed, it reflects supervisory practices under the Non-Financial Reporting Directive (NFRD), certain provisions of the Taxonomy Regulation, as well as the Prospectus Regulation.
88. At the end of 2023, approximately 2,300 listed issuers were within the scope of NCAs' supervision regarding non-financial statements prepared in accordance with the Accounting Directive. The new requirements of the CSRD⁴⁸ will eventually require standardised sustainability reports from about 50,000 companies active in the EU, out of which more or less 10% could be under NCAs' remit, in a first approximation. Regarding prospectus supervision, on aggregate, NCAs approve around 2,500 prospectuses per year (irrespective of whether they are for listing on a regulated market and/or offers to the public)⁴⁹.

3.1. Supervisory mandate and approach

3.1.1. Sustainability reporting

89. When supervising sustainability reporting, NCAs examine disclosures to assess the consistent application of the relevant requirements of the Accounting Directive. Adopted via the NFRD, requirements were introduced for certain issuers to publish non-financial information. Issuers in most Member States published their first non-financial information in 2018 (covering financial year 2017). NCAs started supervising this information, the issuers' non-financial statements, in 2018⁵⁰.
90. In addition, Article 8 of the Taxonomy Regulation, applicable since January 2022, sets out specific disclosure obligations on the degree of taxonomy eligibility and alignment of an entity's economic activities. This information shall be provided within an entity's non-financial statement and therefore the taxonomy reporting generally falls under the remit of the NCAs.

⁴⁷ As part of this Report and in relation to issuers' disclosures, the terms "non-financial" and "sustainability" are used as synonyms in the expressions non-financial information, non-financial reporting or non-financial statement. With the application of the CSRD, the obligation to publish a "Non-financial statement" is replaced by an obligation to publish the "Sustainability Report".

⁴⁸ These will apply with phase-in approach starting from financial years beginning on or after 1 January 2024.

⁴⁹ This is based on EEA30 Member States and extracted from the 2023 market report on EU Prospectuses [[ESMA50-524821-3029 ESMA Market Report - EU prospectuses 2023.pdf \(europa.eu\)](#)]

⁵⁰ While it is the Accounting Directive that places an obligation on certain issuers to publish non-financial information, it is the transposition into national law of both the Accounting Directive and the Transparency Directive that gives NCAs the powers to enforce this information. The link between the two pieces of legislation is established by the fact that the Accounting Directive generally requires the **non-financial statement to be included in the management report, and the management report is required by the Transparency Directive, thus making it subject to the powers given to NCAs therein**. The non-financial statement may also be included in a separate report though.

91. Under the NFRD, most NCAs reported to have the necessary powers for effective supervision. However, a few NCAs reported issues related to their legal mandate and powers. 4 NCAs reported issues with their legal mandate, e.g., for not having been mandated at all, for lacking enforcement powers, or for not having the ability to supervise the content of reports⁵¹. A significant number of NCAs have also reported challenges due to the absence of standardised reporting requirements under the NFRD, undermining their ability to take enforcement actions.
92. With the entry into application of the new CSRD-ESRS regulatory regime⁵², the quality of issuers sustainability reporting is expected to significantly improve. In addition, the supervision of sustainability reporting is expected to be facilitated in three important ways. First, through amendments to the Transparency Directive, the CSRD has clarified the supervisory obligations and powers and it has aligned them with those in the financial reporting area, thereby addressing a key source of divergence in the level of oversight on sustainability information published by issuers under the NFRD. Second, the CSRD also established the obligation for issuers to comply with a specific set of European Sustainability Reporting Standards (ESRS). This provides enforcers with a clearer basis to identify potential infringements, thereby contributing to effective and consistent supervision in the EU. Third, the CSRD clarifies the obligation of issuers' management and supervisory bodies to ensure the compliance with the applicable sustainability reporting requirements in the Accounting Directive and introduces mandatory third-party assurance of the sustainability information. The CSRD sets out an oversight model for sustainability reporting with essentially three "layers of safeguards" against potential harm to investors – i.e., internal governance of issuers, external assurance and supervision. Each layer has distinctive responsibilities and financial supervisors are not expected to systematically "re-do" the work undertaken by the previous layers⁵³. Nevertheless, securities' market supervisors should perform critical scrutiny, under a risk-based approach, over the sustainability reporting to identify infringements vis-a-vis the applicable requirements.
93. Current challenges to effective supervision of sustainability reporting are not necessarily representative of the future ability of the supervisors to address greenwashing risk in this area, as many of the legal impediments are expected to be addressed with the CSRD. However, supervisors are facing a steep learning curve. They must build capacity and acquire experience for the implementation of several novel, complex legislations. It is to be expected that an adjustment period will be necessary to enable supervision to reach its full potential under the new requirements.
94. In preparation for the first reporting season under the ESRS, ESMA has developed a training programme for NCAs focused on better understanding the ESRS and the underlying

⁵¹ Once transposed into national law, the CSRD will provide additional powers to one of these NCAs, including (1) powers to supervise the content of the sustainability reports and (2) enforcement powers. In the case of another of these NCAs, supervisory powers related to sustainability reporting are until now under their Ministry of Finance's remit. At the time of writing of this Final Report, the Ministry is preparing a draft law in relation to the transposition of CSRD whereby that NCA is supposed to get supervisory powers over future issuers' sustainability reporting, but the moment of any official nomination would be once after such law is adopted by the National Parliament. In the case of the AFM, this NCA declared that its mandate was limited, deviating from EU common practices, amongst others because it relies on the Enterprise Chamber of the Court of Appeals to require additional information and documentation from issuers and has no ability to carry out on-site inspections.

⁵² In December 2022, the CSRD introduced a more comprehensive reporting, supervision and assurance regime for sustainability reporting compared to that envisaged by the NFRD.

⁵³ As mentioned in the Draft Guidelines on Enforcement of Sustainability information: "an enforcers' work differs from assurance on scope as the enforcer performs a priority-based examination [...] also differs from assurance on objective as the enforcer does not issue an opinion with a positive or negative assurance on the sustainability information."

sustainability matters. In addition, the CSRD mandates ESMA to promote supervisory convergence by issuing guidelines on the supervision of sustainability reporting by NCAs. ESMA is currently in the process of finalising its new Guidelines on Enforcement of Sustainability Information (GLES I).⁵⁴ The GLES I aim to support supervisory convergence to ensure the common, uniform, consistent application of sustainability-related requirements under the Transparency Directive. The GLES I also aim to bring the level of supervision on sustainability reporting in line with the more established supervision of financial reporting.

95. Given the increasing relevance of the interplay between financial and sustainability reporting, ESMA and NCAs are also paying particular attention to the reflection of climate-related matters in financial reporting and the consistency between sustainability reporting and financial reporting. This consistency is important because – without prejudice for the respective boundaries between financial statements and the sustainability information presented in management reports – one potential source of greenwashing is the existence of diverging information across an issuer's annual financial report with respect to sustainability matters⁵⁵.

3.1.2. Prospectus supervision

96. In prospectus supervision, NCAs scrutinise prospectuses to assess whether they include the disclosure required under the Prospectus Regulation (PR), i.e., whether the information in the prospectuses meet the standards of completeness (including the “necessary information test”⁵⁶), consistency, and comprehensibility⁵⁷ referred to in the PR. If an NCA determines that a prospectus does not meet the legal disclosure requirements, it provides the issuer or offeror with comments to address these shortcomings. The issuer or offeror then amends the prospectus to address the comments and provides the NCA with a document setting out how each comment has been addressed. This process is repeated until the NCA no longer has comments, and the prospectus is approved. A prospectus can only be published after approval by the NCA.
97. The inclusion of sustainability-related disclosure in prospectuses does not change the supervisory approach previously described. However, there are currently no specific sustainability disclosure requirements for prospectuses, which can lead to diverging interpretations across market players regarding the sustainability-related claims, which is appropriate to disclose, especially in relation to non-equity securities with a sustainability component such as green or transition use-of-proceeds bonds and sustainability-linked bonds.

⁵⁴ In December 2023 ESMA opened a [public consultation on Guidelines on Enforcement of Sustainability Information \(GLES I\)](#).

⁵⁵ ESMA issued in October 2023 a report analysing disclosures of climate-related matters in the financial statements, [ESMA32-1283113657-1041](#) – The Heat is On: Disclosures of Climate-Related Matters in the Financial Statements.

⁵⁶ The ‘necessary information test’ is set out in Article 6(1) PR and states that “... a prospectus shall contain the necessary information which is material to an investor for making an informed assessment of: (a) the assets and liabilities, profits and losses, financial position, and prospects of the issuer and of any guarantor; (b) the rights attaching to the securities; and (c) the reasons for the issuance and its impact on the issuer.” Furthermore, the PR explains that the necessary information may vary depending on (a) the nature of the issuer, (b) the type of securities, (c) the circumstances of the issuer, and (d) where relevant, whether or not the non-equity securities have a denomination per unit of at least EUR 100 000 or are to be traded only on a regulated market, or a specific segment thereof, to which only qualified investors can have access for the purposes of trading in the securities.

⁵⁷ Article 20(4) PR. Please see Annex 2 for more details. Moreover, the criteria for the scrutiny of the completeness, consistency and comprehensibility of draft prospectuses are set out in Article 36, 37 and 38 of Commission Delegated Regulation 2019/980, supplementing the Prospectus Regulation.

98. ESMA is taking actions to promote convergence in the supervision of sustainability-related disclosures in prospectuses. ESMA has been facilitating discussions of supervisory cases and exchanges of experiences. Building on these discussions, ESMA also issued a Statement on Sustainability disclosure in prospectuses in July 2023 (the ESMA Statement)⁵⁸. The Statement provides guidance about the expected disclosure in relation to ‘use of proceeds’ bonds⁵⁹ and sustainability-linked bonds. Finally, ESMA observes that some issuers include sustainability-related claims in their advertisements that are not included in their prospectus and notes that if this disclosure is material under Article 6(1) PR, it should first be included in the relevant prospectus. One challenge of supervising the advertisement published in relation to prospectuses is that NCAs may not have the advertisements in their possession so that they will need to first identify the advertisements before reviewing them.
99. The EU Green Bond Regulation and the amendment of the content of prospectuses to consider ESG factors as introduced in the draft Listing Act⁶⁰ will facilitate and enhance supervision from a greenwashing perspective. While the publication of the Statement has helped address the gap, the absence of specific sustainability disclosure requirements in the legislative framework, has been a source of uncertainty for NCAs as to what they can expect and enforce concerning sustainability related disclosures in prospectuses.
100. More specifically, the draft Listing Act introduces the ability to incorporate an issuer’s non-financial reporting in prospectuses and includes specific disclosure requirements for non-equity securities that are advertised as taking into account ESG factors or pursuing ESG objectives⁶¹.

3.2. Supervisory practices and experience

101. NCAs’ current supervisory practices differ in terms of depth of the analysis they carry out and methodologies deployed. As mentioned, some NCAs’ legal mandates are limited. Among those that are not in that category, some NCAs have developed dedicated checklists to support screening regulatory documents. Different techniques are applied to identify areas where particular risk of infringements could exist. These included assessing consistency with external information such as disclosures by peers to identify outliers. NCAs reported that they challenge the content of sustainability-related claims, where these may raise doubts.
102. In response to a fast-evolving legislation and to the increased volume and complexity of corporate sustainability disclosures, NCAs also reported that supervisory practices have been evolving. In response to the NCAs Survey, 15 NCAs declared having updated their internal supervisory processes.

⁵⁸ ESMA. [ESMA Public Statement on Sustainability disclosure in prospectuses](#), July 2023. In the Statement, ESMA reminds issuers and their advisers to “consider sustainability-related matters when preparing prospectuses to the extent that the effects of those matters are material, even if the disclosure requirements in Commission Delegated Regulation 2019/980 (CDR 2019/980)7 do not explicitly refer to sustainability-related matters.” The Statement further underlines certain relevant requirements for equity prospectuses and non-equity prospectuses with an ESG component or objective.

⁵⁹ ‘Use of proceeds’ bonds are non-equity securities whose proceeds are applied to finance or re-finance green and/or social projects or activities. Examples include green bonds, social bonds, and sustainability bonds.

⁶⁰ Proposal for a regulation of the European Parliament and Council amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises, COM/2022/762 final.

⁶¹ Considering that the PR is in the process of being amended, it will be necessary to assess the impact of these changes before deciding whether it is necessary to take additional supervisory or legislative action in relation to sustainability-related disclosure in prospectuses.

3.2.1. Risk-based prioritisation of supervision

103. In line with the supervision of financial information, NCAs carry out a sampling exercise whereby they each year select for examination a subset of the companies' sustainability reporting under their remit. In the issuers sector, ESMA specifically promotes and coordinates risk-based supervision via internal guidance and regular supervisory case discussions coupled with the annual identification of European Common Enforcement Priorities (ECEPs). The ECEPs are announced publicly via the publication of an annual statement⁶². To ensure examination of all issuers under supervision over a pre-defined timeframe, risk-based selection is complemented by rotation-based selection over a certain time horizon. A random selection of issuers for examinations is implemented as well so that any given issuer has the chance to be selected in any given year. In 2023, the examination rate (i.e., the proportion of issuers examined) was 17% for content examination.
104. In prospectus supervision, no similar prioritisation exercise is in place at EU level. In general, the supervision of prospectuses is carried out on an *ex-ante* basis (i.e., prospectuses are reviewed by NCAs before they are published) and is not based on a sample but applies to all prospectuses. NCAs typically assess the risk associated with each prospectus based on criteria such as the type of securities, the issuer's financial condition and whether there is an offering to retail investors.
105. In its Progress Report, ESMA identified several high-risk areas for greenwashing which warrant specific attention in the issuers sector. Among those, forward-looking information and pledges about future ESG performance (e.g. net-zero commitments and so-called "transition plans") appeared to be particularly exposed to greenwashing risk. Other high-risk areas comprised (1) information about contributions to the UN SDGs (both past and forward-looking); (2) information about issuers' exposure to climate-related risks, sustainability risks (3) information about issuers' stakeholders' engagement and lobbying activities; and (4) information regarding the governance of sustainability: lack of comprehensive progress monitoring frameworks and effective incentive schemes for senior management; overstating of expertise gathered on management bodies.
106. From the information gathered in response to the NCAs Survey, 9 NCAs confirmed encountering at least one of the Progress Report high-risk areas in their supervisory activity for the issuers' sector, while others did not. Furthermore, ESMA recently published its annual activity report on supervisory activity of NCAs in corporate reporting, including on sustainability reporting⁶³. Findings confirmed current limitations to the quality of forward-looking disclosures, especially regarding climate-related targets and transition plans. The quality of the disclosures and their comparability still varies significantly (e.g., the disclosure of emissions targets is not always followed by backward-looking metrics on GHG emissions, with still around 10-12% of companies in the sample disclosing emissions targets in qualitative terms; for a significant proportion (40%) of the transition plans examined, the information is considered insufficiently specific to assess the claims made in the plan)⁶⁴.

⁶² In October 2023, ESMA published a statement on ECEPs for the 2023 non-financial statements. In this statement, ESMA urges NCAs, issuers and auditors to consider the following topics: the impact of climate matters in IFRS financial statements, disclosures related to article 8 of the Taxonomy Regulation, disclosures of climate-related targets, actions and progress and disclosures related to scope 3 GHG emissions. [ESMA. [ECEP 2023 Public Statement](#), 25 October 2023.]

⁶³ ESMA32-193237008-8269 – [Report on 2023 Corporate reporting enforcement and regulatory activities](#), March 2024.

⁶⁴ *Idem*.

107. Under the new CSRD-ESRS regulatory framework, the flow of forward-looking information is expected to increase (e.g., requirements related to transition plan for climate change mitigation, GHG emission reduction targets, etc.). This type of information will be particularly useful for investors and other stakeholders to assess sustainability-related risks, opportunities and impacts as well as to keep issuers accountable for their commitments. Forward-looking information will also increase the complexity of the supervisory work, particularly in the context of preventing and mitigating greenwashing risk. This is because such information is based on projections and are characterised by a degree of uncertainty about future regulatory, market, technological developments.

3.2.2. Supervisory actions and practices

108. In their responses to the NCAs Survey, NCAs provided illustrations of the various supervisory actions and practices implemented.

109. To prevent greenwashing in sustainability reporting, NCAs have taken steps to communicate about their supervisory priorities and expectations. 3 NCAs publish reports with supervisory priorities and expectations for the upcoming year, on an annual basis. In some cases, 3 NCAs have also published ad hoc reports and guidance (e.g., on transition plan disclosures, climate-related targets, etc.). In these reports, NCAs generally inform supervised entities of the disclosures to which they will pay particular attention in their review of sustainability-related disclosures - reflecting among others the EU priorities developed with ESMA. NCAs also identify good practices followed by issuers in their sustainability disclosures and things to avoid.

110. When conducting their examinations of sustainability reporting and sustainability disclosures in prospectuses, supervisors would assess whether the public disclosures comply with the applicable requirements based on the information that is available to them. These examinations would consider several factors, including the understandability of the disclosures and their consistency with other information presented by the same issuers and by other issuers in the same industry as well. In most cases, when doubts regarding compliance with the applicable requirements arise, supervisors may request additional information to the issuer, engage in discussions with the management and supervisory bodies of the issuers as well as with their auditors (where the non-financial information is audited). 1 NCA explained that it may review outlier figures (especially in relation to GHG emissions). 2 NCAs reported they ensure the comprehensibility, consistency and completeness of the information, without systematically verifying the truthfulness of sustainability information that issuers are required to provide but assess with special attention certain disclosures where they appear to raise doubts. 3 NCAs also stated they do not reperform calculations on ESG related data disclosed by the company.

111. Concerning Prospectus supervision, 2 NCAs clarified that supervisors should not be responsible for the veracity of the information contained in the prospectus, and that responsibility for the content of the prospectus lays with the issuer.

112. At the end of the examination, if the NCA concludes that a company's non-financial information does not comply with the legal requirements of the NFRD, it may apply an enforcement action towards the company aimed at restoring the fairness and transparency of the non-financial disclosure and/or at prompting issuers to strengthen the disclosure around sustainability, including administrative sanctions, where appropriate.

Good practices identified regarding the conduct of thematic reviews:

8 NCAs reported carrying out thematic reviews to monitor reporting practices and whether these are in line with the applicable requirements.

Attending issuers meetings with analysts, where financial and non-financial information and business strategies are presented to investors, can usefully feed into the thematic reviews. Supervisory teams with staff members that have detailed knowledge and experience related to corporate governance, financial information and sustainability aspects can support consistent examination of both the financial and non-financial statements.

The findings of such reviews can support the improvement of market practices when they are communicated to issuers and where clear priorities are defined going forward. In addition, such reviews can help assess if and where further guidance is needed to support compliance with the legislation.

3.2.3. Greenwashing occurrences

113. As part of their response to the NCAs Survey, 8 NCAs reported having identified potential or actual occurrences of greenwashing relating to issuers supervision. NCAs are continuing to monitor greenwashing closely – in n response to the NCAs Survey they reported a total of 45 occurrences related to either sustainability reporting or disclosures contained in prospectuses and accompanying advertising. These occurrences mainly reflected issues such as selective disclosures, the omission of important information for investors or the lack of substantiation of sustainability claims. The excessively broad use of disclaimers in prospectuses was also flagged by 1 NCA as a recurring issue.
114. Concerning sustainability reporting, occurrences were detected notably during the review of regulatory documents. Concerning prospectuses, these occurrences were detected during the scrutiny of the prospectuses, at the authorisation stage, or the related advertisement messages. 5 NCAs said that within this scrutiny process, they had detected inconsistencies, insufficient information, or vague sustainability claims in the advertisements.
115. According to NCAs' responses, the detection of greenwashing occurrences may be hampered to some extent by the lack of detailed methodology or guidance on greenwashing occurrences detection (2 NCAs), limited resources and expertise (2 NCAs), the lack of detection tools (2 NCAs) and/or the absence of explicit legislation on the topic at national or EU level (2 NCAs). In relation to sustainability reporting more specifically, 4 NCAs also reiterated the limitations to their supervisory and enforcement powers. In the area of prospectuses, 2 NCAs explained that the pre-approval process mitigated greenwashing risks. Finally, 1 NCA explained that it did not record greenwashing occurrences as such.
116. NCAs' responses also show that several NCAs are taking action to enhance their greenwashing detection capabilities. 7 NCAs established or updated procedures to consider the supervision of sustainability-related claims and 3 NCAs are considering the use of SupTech solutions to enhance detection.
117. With regards to occurrences of greenwashing reported in the NCAs Survey, most NCAs interacted with issuers and additional information was required. 1 NCA reported convening meetings with the issuer's statutory auditors and selecting the issuer for further monitoring. 7 NCAs have requested clarifications or corrections regarding definitions, policies, metrics,

methodologies, scope of the targets and the action plans meant to deliver on such targets. 4 NCAs have requested more balanced representation and better substantiation of sustainability claims in prospectuses and annual reports⁶⁵. 1 NCA stated that the issuer was asked to improve or delete certain misleading information in the advertising messages.

3.2.4. Enforcement actions

118. So far and in response to the NCAs Survey, 5 NCAs reported a total of 13 enforcement actions under the issuers sector. In the case of sustainability reporting and non-financial statements, issuers are usually requested to address NCAs' comments as part of the next annual financial report. In fewer cases, issuers are asked to publish a corrective note or supplementary statement, in anticipation of the next annual report or to reissue the non-financial statement targeted by the action.
119. Furthermore, ESMA's annual report on the supervisory activity of NCAs in the area of corporate reporting gives an overview of supervisory and enforcement actions taken in 2023⁶⁶. During 2023, enforcers undertook 515 examinations of non-financial statements, including 389 examinations related to checking whether the information provided met the requirements of the Accounting Directive. Those 515 examinations led to enforcement actions for 97 issuers, involving 14 NCAs. Most actions required the issuer to make a correction in a future non-financial statement. In two cases, the NCA requested the publication of a corrective note and in two other cases, the NCA asked for reissuance of the of the non-financial statement. In addition, 6 NCAs have reported 10 enforcement actions that are in progress of being taken.
120. In this report, ESMA also provides a stocktake on the supervisory activities of NCAs in relation to the 2022 ECEPs related to sustainability reporting: climate-related matters, reporting scope and data quality issues and Disclosures relating to Article 8 of the Taxonomy Regulation⁶⁷. Overall, in relation to ECEPs, there were 9 NCAs taking 23 enforcement actions based on the examination of the 127 issuers in the overall sample, all in the form of requiring the issuer to correct the relevant matter in the future non-financial statement. In addition, examinations in relation to 18 issuers were still ongoing at the end of 2023⁶⁸.

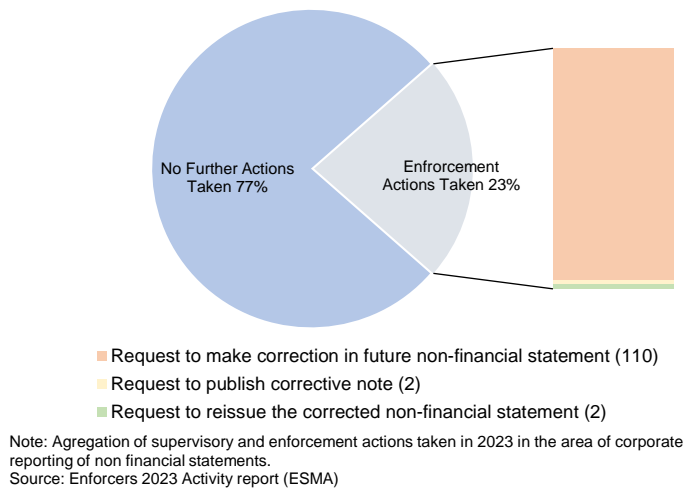
⁶⁵ This was achieved for example by mentioning more clearly potential challenges in delivering on targets, by adding information on the use of proceeds of instruments labelled as "green" and on consistencies between the prospectus disclosures and the issuer green finance framework.

⁶⁶ ESMA32-193237008-8269 – [Report on 2023 Corporate reporting enforcement and regulatory activities](#), March 2024. This report provides an overview of the activities, from 1 January 2023 to 31 December 2023.

⁶⁷ ESMA32-63-1320 - European common enforcement priorities for 2022 annual financial reports – 28 October 2022.

⁶⁸ More findings are presented in ESMA32-193237008-8269 – [Report on 2023 Corporate reporting enforcement and regulatory activities](#), March 2024.

FIGURE 5. ENFORCEMENT ACTIONS IN NON-FINANCIAL CORPORATE REPORTING



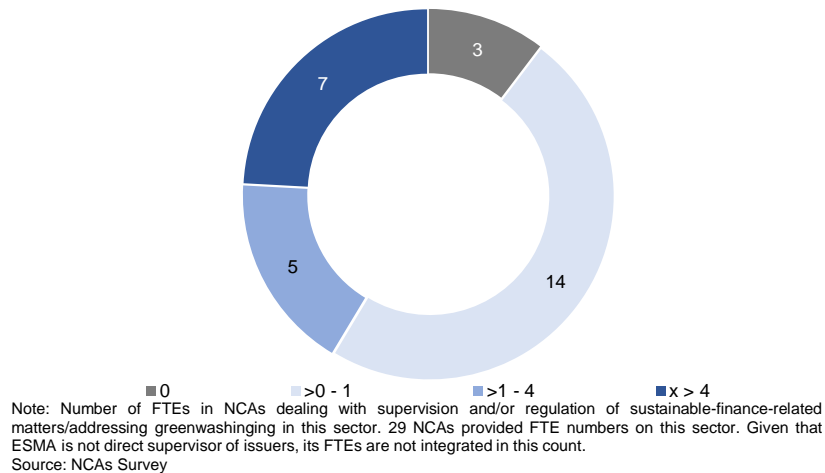
121. In general, NCAs have abstained from imposing more punitive measures involving administrative fines or legal actions in court. To date, NCAs have generally favoured either (1) engaging in constructive dialogue with issuers and / or (2) taking formal actions of various intensity with or without the imposition of specific sanctions. As explained in section 2.3.5 above, this reflects several factors, including the fact that NCAs initially prefer accompanying market players as they implement a new, complex regulatory framework. While formal actions and their publicity can have deterrent effect and while NCAs take a stricter approach where major infringements are unveiled, the power of regular dialogue with market participants and the audit profession should not be underestimated. Regarding prospectus supervision, since prospectuses are reviewed on an ex-ante basis, NCAs can effectively address greenwashing before the information is publicly disseminated to the market, sparing supervisors the necessity to sanction.

3.3. Supervisory capacities and tools

3.3.1. Human resources

122. In total, NCAs across the EU have allocated approximately 80 FTEs to sustainability matters regarding issuers, covering both regulatory and supervisory activities. The number of allocated FTEs varies hereby significantly across NCAs, ranging from 0 (3 NCAs) to 15 FTEs (1 NCA), with an average of 2.8 FTEs per NCA. This average is skewed by a few NCAs with higher numbers, while, as reflected in Figure 6 below, 14 NCAs report having up to 1 FTE allocated in this sector.

FIGURE 6. FTEs DEALING WITH SUSTAINABILITY-RELATED ACTIVITIES, ISSUERS



123. 2 NCAs have hired staff with environmental expertise specifically dedicated to the issuer's sector, providing advice on policy and supervisory matters, among other responsibilities. However, no staff with social expertise have been hired for the specific purpose of supervising issuer disclosures.
124. For prospectus supervision, 15 NCAs stated that, in view of the complexity and technical nature of certain environmental disclosures, they face specific challenges regarding ESG knowledge or appropriate competencies. For supervision of non-financial statements, 18 NCAs indicated that they will face issues due to the technical complexities of the reporting requirements set out under the CSRD-ESRS regime.
125. As mentioned above, ESMA has developed a training programme for NCAs focused on better understanding the ESRS and the underlying sustainability matters. As part of these trainings, ESMA has invited external experts, including from EU agencies and institutions such as the European Environmental Agency (EEA), the EU Agency on Fundamental Rights (FRA) and the European Commission's Joint Research Centre (JRC).

3.3.2. Access to ESG data

126. 14 NCAs consider that they do not have the necessary data available for effective supervision, while 15 NCAs consider they do. Among the former, 8 NCAs reported having issues related to data availability, accessibility, interoperability, and comparability when reviewing non-financial statements and prospectuses. To support their supervision, 10 NCAs have subscribed to specific databases (e.g., centralised access to Taxonomy disclosures). Challenges related to data availability and comparability are expected to considerably improve under the new CSRD-ESRS regime. Data accessibility will be facilitated via the implementation of the ESAP.

3.3.3. SupTech tools and solutions

127. The use of SupTech tools for the supervision of issuers is very limited, with no NCAs using such tools now. 19 NCAs are not currently considering the use of SupTech tools. In total, 10 NCAs are considering or planning to use such solutions. Among them, 7 NCAs already have concrete plans to implement SupTech tools in the near future, while pilots are currently

being tested by 2 NCAs. 5 NCAs declared that they face resource constraints to further develop this kind of tools.

3.4. Pathway to further enhance supervision

128. **Under a risk-based approach to supervision, NCAs have been taking steps to challenge sustainability-related claims in non-financial statements and prospectuses, when they raise their concerns.** Recent regulatory changes are expected to facilitate supervisors' work, for both sustainability reporting and sustainability-related disclosures in prospectuses.
129. **While issuers ultimately bear the responsibility for the reliability and the accuracy of the information they publish, supervisors are expected to perform critical scrutiny of documentation and exercise professional judgement** when reviewing sustainability reports and sustainability-related disclosures in prospectuses. Merely checking the existence of required sustainability disclosures is not sufficient. NCAs are invited to therefore continue, as part of a risk-based approach and where relevant, **developing and deploying risk indicators, methodologies and tools** that can most efficiently support the performance of critical scrutiny (e.g., for the identification of outliers, benchmarking issuers' disclosures against external information⁶⁹ or monitoring of pre-defined red-flags across pieces of corporate information, etc.). Especially for sustainability reporting supervision, such risk indicators, methodologies and tools are also important at the sampling stage, when selecting the issuers and pieces of information that warrant further examination based on the assessment of greenwashing risks. Along this journey, NCAs and ESMA will cooperate to develop common approaches and practices to support supervisory convergence.
130. **The recommendations to NCAs and ESMA actions identified below are meant to support supervision of sustainability-related claims by issuers and deliver on the objective of supervisory convergence. They should be read together with cross-sectoral recommendations and actions laid out in section 2.5 above.**

3.4.1. Recommendations to NCAs

131. NCAs are invited to consider the **good practices** identified, labelled in 'green text boxes' with regards to the conduct of thematic reviews and communications of priorities and expectations to supervised entities.
132. To support effective supervision in the context of an evolving regulatory framework, NCAs are invited to continue **enhancing human resources and capacities as appropriate** (see section 2.5.1 for more details on the levers to do so). NCAs are also invited to contribute actively to **supervisory case discussions at EU level**, both for supervision of sustainability reporting and prospectuses.
133. NCAs are also invited to consider further **investments in their access to data and to consider the benefits and feasibility of SupTech tools** in the supervision of issuers sustainability disclosures, in the context of broader plans to deploy such tools (see section

⁶⁹ Such information may include publicly available information on peers or the sector as a whole, information produced by third-parties (e.g., sustainability information contained in investment recommendations provided by analysts, ESG ratings and credit ratings that consider ESG factors).

2.5.1). In that context, NCAs are invited to cooperate to build common solutions and approaches.

134. To the extent that they do not already do so, under a risk-based approach, NCAs should check the **content of advertisements associated with a prospectus for consistency with the information** contained in the corresponding prospectus, where they are advertised as taking into account sustainability factors or pursuing sustainability objectives. With regards to equity prospectuses, NCAs should also check the content of such advertisements for consistency with any non-financial reporting included in the prospectus⁷⁰. If NCAs do not have this information, they should consider requesting advertisements from issuers on a risk-focused basis.

3.4.2. ESMA actions in support of supervision

135. ESMA will continue to support effective and consistent sustainability-related supervision through the following actions:

- (1) Building on measures already in place, supporting NCAs in **building capacities** vis-à-vis the new sustainability reporting requirements, and organising an educational programme on the ESRS in 2024 in the form of a series of trainings. Additional trainings will be organised also on transition finance and the EU Green Bonds Regulation.
- (2) Supporting NCAs in establishing **converged supervisory practices** through the forthcoming GLESI. The implementation of the GLESI will be supported through internal workshops with NCAs. Convergence in supervision will also be further stimulated through the regular discussion of supervisory cases (both regarding decisions and emerging issues) brought forward by NCAs.
- (3) Supporting NCAs in the implementation of a **risk-based approach to supervision**, especially via the definitions of ECEPs. High-risk areas identified in the Progress Report will be further considered as part of the annual ECEPs cycle. ESMA will also explore the feasibility and benefits of defining **common themes warranting further attention in prospectus supervision** (e.g., considering disclosure areas more prone to greenwashing risks).
- (4) Exploring the feasibility and benefits of **mutualising data and developing SupTech solutions** for the supervision of sustainability disclosures by issuers (both for sample selection and/or during review of documents).
- (5) Continue building on the **existing collaboration with EEA** (see section 2.5.2 above), in the context of supervising corporate sustainability-related claims.
- (6) Given the new changes to the regulatory and supervisory regime, monitoring continuously any specific needs and convey any specific **requests from NCAs to the EC in due course**, especially to ensure timely clarifications of the legislative framework.

⁷⁰ As laid in the ESMA Statement, “to the extent that sustainability-related disclosures published in an issuer’s non-financial reporting in accordance with the Non-Financial Reporting Directive and the future sustainability reporting under the Corporate Sustainability Reporting Directive (CSRD) are material in the context of Article 6(1) PR, issuers should include those disclosures in equity prospectuses.”

- (7) Continuing to **facilitate discussions of supervisory cases** relating to the sustainability disclosure provided in prospectuses to both support convergence in the approaches taken by NCAs and to build the sustainability capacity of prospectus teams. Based on these discussions, ESMA should monitor the sustainability disclosure provided in relation to securities and provide public guidance to the market where the level of disclosure appears to fall below the standard expected in the Prospectus Regulation, especially in the period after the new disclosure requirements for non-equity securities with a sustainability component or objective enter into application.

4. Investment Management

136. At the end of 2023, total assets under management in Europe amounted to approximately EUR 27.8 trillion, and, in 2022, 4,519 asset management entities were operating within the scope of NCAs' supervisory remit⁷¹.

4.1. Supervisory mandate and approach

137. Since its entry into application in March 2021, NCAs supervise investment managers and financial products for sustainability-related disclosure obligations set out in SFDR. Moreover, NCAs supervise that the information provided to investors is fair, clear, and not misleading. Other sustainability related obligations became applicable in August 2022 because of amendments introduced through the AIFMD and UCITS Directive as well as MiFID II. As a result, NCAs also supervise how investment management companies/AIFMs integrate sustainability risks in their organisation and decision-making process. In response to the NCAs Survey, most NCAs reported having adequate mandates, but 2 NCAs said that they would benefit from having a specific explicit mandate to address greenwashing.
138. ESMA is committed to provide the market and supervisors with practical application guidance and consistency, to help prevent greenwashing. In line with the outcome of the Progress Report on Greenwashing, one of ESMA's priorities for the investment funds industry is to address misleading naming practices. Fund names are a powerful marketing tool, central to retail investors' investment decisions. ESMA recently published Guidelines addressing this area of concern⁷².

4.2. Supervisory practices and experience

139. In July 2023, ESMA and NCAs launched a Common Supervisory Action (CSA) on sustainability-related disclosures and the integration of sustainability risks⁷³ in the investment management sector. The goal of the CSA is to assess the compliance of supervised entities with relevant provisions in the SFDR, the Taxonomy Regulation and UCITS Directive and AIFMD. As the CSA is still on-going, a complete assessment of its outcome will be produced towards the end of 2024. In the meantime, NCAs' feedback on a first set of questions have

⁷¹ See EFAMA Report "Asset Management in Europe: An overview of the asset management industry", December 2023

⁷² ESMA Final Report. [Guidelines on funds' names using ESG or sustainability-related terms](#), 14 May 2024.

⁷³ [ESMA and NCAs to assess disclosures and sustainability risks in the investment fund sector \(europa.eu\)](#)

been reviewed to gather information on greenwashing risks and the findings have informed this Final Report (see section 4.2.3).

4.2.1. Risk-based prioritisation of supervision

140. The “Supervisory Briefing on Sustainability risks and disclosures in the area of investment management” (Supervisory Briefing on Sustainability Disclosures), published in 2022, is designed around a risk-based approach to supervision. It sets out supervisory expectations, by providing guidance to NCAs regarding the supervision of sustainability-related disclosures and integration of sustainability risks⁷⁴.
141. Furthermore, the Progress Report on Greenwashing identified several high-risk areas which may warrant specific attention from supervisors and fund managers. These include product-level claims about on sustainability characteristics or objectives (including climate change mitigation objectives), real-world impact or engagement activities. They also include entity-level net-zero targets and transition plans disclosures, disclosures about engagement action plans and regarding sustainability-based remuneration systems. The CSA was designed before the publication of the Progress Report and does not exhaustively consider these risk areas. However, as part of the CSA, NCAs have been able to focus some of their attention on several of these areas – namely product-level engagement claims and forward-looking climate-related claims (see paragraphs 148 and 149 below).

4.2.2. Supervisory actions and practices

142. Beyond the on-going CSA, NCAs have carried out supervisory actions⁷⁵ of various nature having an angle for the prevention of greenwashing such as engagement with the industry to communicate supervisory expectations on new legal requirements (8 NCAs); webinars and bilateral exchanges (3 NCAs); seminars for supervised entities where CSA observations on greenwashing risk were presented (1 NCA).
143. In addition, 10 NCAs have carried out thematic reviews or in-depth assessments of different aspects of SFDR and the UCITS and AIFM Directive e.g., on compliance with a set of SFDR requirements (6 NCAs), Article 3 of SFDR (1 NCA), Article 6 of SFDR (1 NCA), products disclosures (4 NCAs), disclosures under Article 8 (3 NCAs), website disclosures (2 NCAs); use of ESG/ sustainability terms in product names (3 NCAs); on compliance with the integration of sustainability risks under the UCITS requirements (3 NCAs); checking that funds’ portfolios comply with sustainability indicators and additional criteria set out in funds

⁷⁴ The [Supervisory Briefing](#) recommends that NCAs check the following: (1) verification of the compliance of the pre-contractual disclosures for financial products disclosing under Article 8(1) and 9(1)-(3) SFDR (and Article 5 and 6 TR); (2) verification of the consistency of information in the fund documentation and marketing material. In this context, NCAs also take into consideration the fund name, the fund’s sustainable investment policy, objectives, and strategy; (3) verification of the compliance with the websites’ disclosures obligations; (4) verification of the compliance with the periodic disclosures’ obligations. *[Also important from a greenwashing perspective that]* Portfolio analysis may also be carried out bearing in mind the risk-based approach to supervision. “The responsibility for portfolio analysis lies primarily with the management companies (or AIFMs), but NCAs need to ensure that portfolio holdings reflect the name, the investment objective, the strategy, and the characteristic displayed in the documentation to investors. For example, following the identification of specific risks, or if the fund claims to invest in sustainable investments, NCAs may directly perform an analysis of the compliance with the requirements for sustainable investments of the portfolio itself and may engage with fund managers by requiring explanations and/or documentation to validate the composition of their portfolio”.

⁷⁵ These were reported as part of responses to the NCAs Survey and cover the period between 1 September 2022 and 31 August 2023.

documentation (1 NCA); on data collections on precontractual and periodic disclosures (1 NCA); on greenwashing risks in investment management companies (1 NCA).

144. 5 NCAs mentioned the importance of ex-ante reviews when licensing or registering a fund as this control is considered an important safeguard from potential greenwashing cases and the early detection of those. 3 NCAs carried out investigations or inspections.

Good practice identified regarding portfolio and documentation analysis:

An NCA reported that it is currently implementing a greenwashing screening tool on the funds market to supervised sustainability-related disclosures by financial products, which combines (1) NLP techniques that screen funds documentation on the one hand, and (2) an analysis of the portfolio sustainability profile (e.g., analysis of the portfolio is built on sustainability scores for various sustainability indicators attributed to the funds' holdings). The data on the sustainability profile of assets is coming from a commercial third party.

4.2.3. Common Supervisory Action on sustainability risks and disclosures

145. This section builds on NCAs' feedback on greenwashing related questions in the context of the on-going CSA exercise. Generally, NCAs have found that there is still room for improvement for entities to comply with relevant sustainability-related requirements under SFDR, UCITS and AIFMD.
146. 4 NCAs noted varying degrees of non-compliance or shortcomings in meeting supervisory expectations or found margin for improvement. In their review, 2 NCAs already explored whether funds apply the draft Guidelines on funds names. 2 NCAs reported having performed checks on funds compliance with SFDR and TR provisions upon their authorisation and in periodic reports. Among actions taken to prevent greenwashing, NCAs mentioned thematic reviews, on-site inspections, dedicated FAQs, specific webinars, and communiques on the implementation of sustainability-related provisions in the investment fund industry (2 NCAs) as well as bilateral engagement with supervised entities. 3 NCAs issued national guidance specifying SFDR requirements further.
147. NCAs are contemplating additional actions, including on-site inspections of investment managers (3 NCAs), requests for additional information or further analysis (3 NCAs), and recommendations / administrative and remediation measures (2 NCAs). Another NCA identified shortcomings from the CSA exercise and reported having notified the relevant managers to change the fund documentation. Shortcomings identified by NCAs include inconsistency between marketing material and other disclosures, lack of information on procedures and controls in place, lack of information on binding elements of investment strategy and on data and methodologies limitations. 1 NCA is envisaging issuing several supervisory orders under SFDR and the UCITS Directive, where non-compliance was identified. Such orders would concern the disclosure of ESG information in pre-contractual information, internal processes to ensure good governance of the investee companies, inconsistency between marketing material and pre-contractual disclosures under SFDR, misleading practices regarding funds names and processes and governance to ensure the integration of ESG factors into risk management. Finally, 1 NCA requested follow up when given policies or documents were in the process of being updated.
148. Some NCAs noticed bad practices mirroring the high-risk areas identified in the Progress Report on greenwashing: marketing material inconsistent with regulatory disclosures

(1 NCA), misuse of SFDR categories as labels (2 NCAs). 1 NCA also flagged as a severe inconsistency the fact that a fund mentions in the investment strategy that it actively tracks an index, but no index is designated in the SFDR disclosures as a reference benchmark. In the case of funds tracking indexes, the NCA was satisfied that the reference to the index methodology was provided (1 NCA).

149. With regards to product-level net-zero or climate neutrality claims, 7 NCAs noted that no funds were identified as making such claims now, in their markets. 3 NCAs noted the lack of concrete targets, or specifics about coverage, timeframe, or intermediate milestones. In other markets, a limited number of funds making such claims were identified (3 NCAs).

Good practice identified regarding climate-related forward-looking claims:

An NCA reported that in supervising funds sustainability-related disclosures, it identified a fund with a net zero investment policy and reviewed the fund's documentation and engaged with the fund's manager to better understand the methodology applied. The review covered key aspects of the investment strategy, the methodologies and frameworks used to deliver on the targets (and limitations thereof). The review carried out by that NCA has led to the identification of potential limitations regarding emissions data and investee companies targets data (especially when mergers and acquisitions led to change of baseline). The NCA is planning to follow up to enhance related disclosures.

150. 4 NCAs mentioned difficulties in ascertaining the quality of the data and in comparing ESG data, methodologies, definitions and therefore in using them as evidence. According to one of them, where entities use multiple data suppliers, the task of supervisors is even more complex. 2 NCAs noted that they have concerns in relation to disclosures of data sources, data limitations and controls in place, as they do not yet have a clear view of what their supervisory expectation should be on such matters. 8 NCAs noted that most supervised entities recognise data limitations, but practices differ in terms of how they communicate those and what controls they put in place and disclose.

4.2.4. Greenwashing occurrences

151. NCAs are continuing to monitor greenwashing closely - in response to the NCAs Survey, thirteen NCAs identified occurrences of potential greenwashing with 1 NCA having identified actual greenwashing cases. These occurrences were detected via supervisory activities (8 NCAs), whistle blowers (1 NCA), other authorities (2 NCAs) and media reports (1 NCA).
152. 4 NCAs found that unclear definition of 'sustainable investment' under Article 2 (17) of the SFDR as a challenge for the identification of occurrences of greenwashing. 5 NCAs also noted that they do not record instances where potentially misleading information is identified during the fund application process. These are addressed via amendment requests to supervised entities. Therefore, these were not reported as greenwashing occurrences.
153. In response to the occurrences identified, 9 NCAs requested investment managers to change their sustainability related information, including funds names (5 NCAs), methodologies (1 NCA) or their investment processes (1 NCA). One of these NCAs have requested two managers to take immediate measures regarding lack of appropriate website disclosures and their PAI-statements at entity-level. Another NCA requested 40 managers to take various actions such as to identify the specific SDGs and the most relevant SDG targets they wish to impact and through which indicators or metrics these targets will be achieved; to reinforce

exclusion policies; to improve website information under SFDR; to explain why the ESG objectives set out in the prospectus were not met. 1 NCA asked a manager to amend product disclosures on website and on the pre-contractual and periodic template. It also requested eight management companies' clarifications and/or amendments on ESG and sustainability profiles represented in marketing communications. It also addressed 19 AIFMs, in the context of marketing authorisation, to have a clearer representation of ESG profiles in the offering documents. Another NCA engaged with an investment manager on its compliance with SFDR such as on pre-contractual disclosures and its statement under Art.4. Another NCA sent out 17 letters to banks providing investment management services, as a result of findings with regard to disclosure requirements.

4.2.5. Enforcement actions

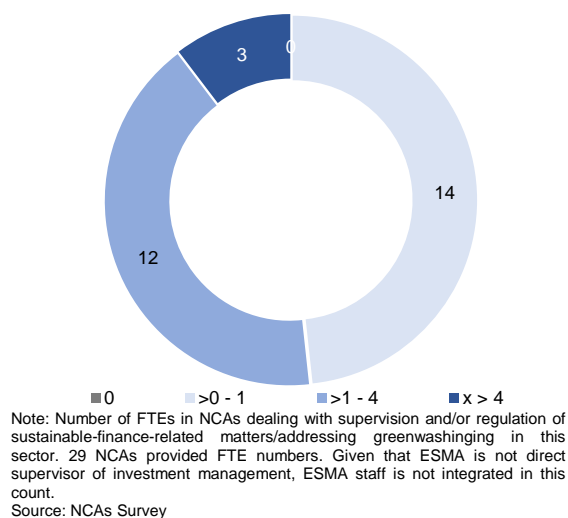
154. In response to the NCAs Survey, 2 NCAs reported having taken enforcement actions - i.e., by issuing orders. 2 other NCAs are in the process of taking actions. None of the NCAs reported to have submitted cases to law enforcement authorities.

4.3. Supervisory capacities and tools

4.3.1. Human resources

155. Based on reported numbers, NCAs across the EU have allocated approximately 92 FTEs to sustainability matters, covering both regulatory and supervisory activities, regarding investment management. While all NCAs reported to have allocated FTEs, the number of these varies significantly across NCAs, ranging from 0,25 (3 NCAs) to 35 FTEs (1 NCA), with an average of 3.2 FTEs per NCA. This average is skewed by a few NCAs with higher numbers. This could be attributed to differences in the availability of sustainability products, market size or to the different stage of development in the sustainable finance markets in the EU Member States. In addition, some NCAs authorise investment funds ex ante and therefore devote significant resources to this review. As reflected in the figure below, 14 NCAs report having no more than 1 FTE allocated in this sector.

FIGURE 7. FTEs DEALING WITH SUSTAINABILITY-RELATED ACTIVITIES, INVESTMENT MANAGERS



156. 2 NCAs reported to have staff with environmental expertise in the respective teams and 1 NCA has additionally staff with social expertise.

4.3.2. Access to ESG data

157. NCAs have differing views on how challenging access to ESG data is, whereby 10 NCAs indicated that there is sufficient ESG data available to them to perform supervisory duties and/or sufficiently accessible, while 17 NCAs indicated difficulties related to (1) data availability and accessibility, 2) data quality and comparability. Several NCAs mentioned having to purchase investee companies' data from third-party data providers to support supervision. 1 NCA reported that the ESG data available to the NCA can be considered appropriate just as starting point for supervision. Another NCA referred to the difficulty of finding SFDR disclosures on financial market participants' websites because they are not directly obliged by the SFDR to report the location of that information on websites to the NCA. No such reporting obligations to NCAs are set out in sectoral legislation.

158. Importantly, divergent views regarding data needs (and therefore, perception about data difficulties) by NCAs seemingly reflects different supervisory practices. When reviewing funds' sustainability disclosures, not all NCAs have taken steps to check - with a risk-based approach - consistency with portfolio composition data. Such checks, also foreseen by the Supervisory Briefing on Sustainability Disclosures, requires additional data on the portfolio. While supervisory powers granted to NCAs allow them to request relevant sustainability data to supervised entities, including on portfolio composition, the fact that this data is not readily accessible to NCAs, under the current SF regulatory framework, creates additional burden for supervisors.

Good practices identified regarding access to data:

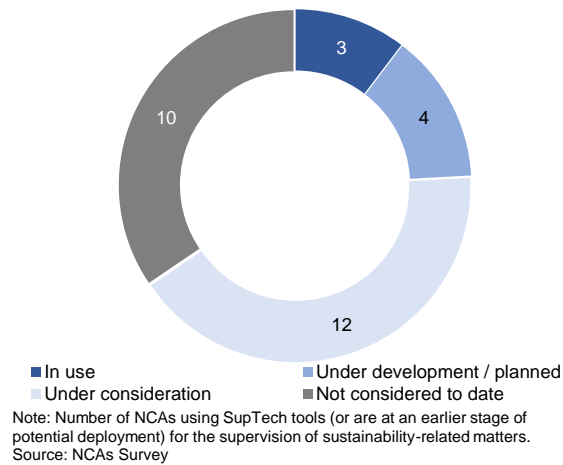
An NCA reported that it is implementing a data management project to support a risk-based supervision, which covers data collection (partly via web-scraping), data analysis and user-friendly reporting of findings. The solution aims at covering data from companies and funds under supervision (i.e., UCITS, AIFs and pension funds). The data is collected from various sources, including ESG data providers. Based on that data, the NCA aims to develop a greenwashing risk scoring system.

Another NCA reported having addressed data accessibility issues by building an internal database covering sustainability information provided by supervised entities.

4.3.3. SupTech tools and solutions

159. The use of SupTech tools for the supervision of funds managers is still limited but shows potential for future growth. 3 NCAs confirmed using SupTech solutions, namely the use of NLP technology for the review of fund documentation. 16 NCAs are considering or planning to use SupTech tools in the future, while a pilot is currently being tested by one of these NCAs.

FIGURE 8. NCAs' RELIANCE ON SUPTECH TOOLS FOR SUPERVISION, INVESTMENT MANAGERS



160. With respect to the investment management sector, ESMA has been collecting a large amount of information to build a set of language-based indicators on the use of sustainability-related terms. Thanks to these efforts, NLP techniques are already being used by ESMA to assess the language used by fund managers in funds names and documentation, including UCITS prospectuses, key investor information documents, marketing material, and periodic publications⁷⁶ and hence also support NCAs in their supervision.

161. As part of the 2023 EU TSI Program⁷⁷, ESMA is collaborating for two years with 7 beneficiary NCAs to support the development of supervisory tools and methodologies to detect potential greenwashing practices by supervised financial market participants in the funds management industry⁷⁸. The objective is to develop methodologies and analytical tools which supervisory authorities can use to retrieve, analyse and process information to detect potential greenwashing practices. Furthermore, ESMA will work with 2 additional NCAs on the development of methodologies and tools to assess the consistency between sustainability disclosures and the portfolio composition of funds disclosing under SFDR Article 8 and 9⁷⁹.

Good practice identified regarding the use of SupTech tools:

9 NCAs reported having enrolled for the TSI Project carried out by ESMA to build capacity on the development and deployment of SupTech tools (either for the analysis of funds disclosures and/or for the deployment of portfolio analysis tools) and detect potential greenwashing practices in the funds industry.

4.4. Pathway to further enhance supervision

162. While financial market participants ultimately bear the responsibility for the reliability and the accuracy of their sustainability disclosures, NCAs have a responsibility to

⁷⁶ See ESMA TRV Risk Article, [ESG names and claims in the EU fund industry](#), 2 October 2023.

⁷⁷ This program is funded by the European Commission's DG REFORM. See [work programme for the 2023 TSI](#) under Regulation (EU) 2021/240.

⁷⁸ ESMA will support NCAs by "developing methodologies and supporting analytical tool(s) enabling [them] to retrieve, analyse, and process relevant reporting and financial product information, to identify inconsistencies and missing information, and/or to spot potential greenwashing practices within financial markets."

⁷⁹ See [work programme for the 2024 TSI](#) under Regulation (EU) 2021/240.

ascertain that sustainability-related disclosures are in line with the relevant requirements laid down in the SFDR and Delegated Regulation. Supervisors should perform critical scrutiny of documentation and exercise professional judgement when reviewing sustainability sustainability-related claims in line with the criteria set out in the Supervisory Briefing on Sustainability Disclosures. NCAs should increasingly **challenge funds disclosures based on portfolio composition and underlying investments ESG data.** In line with the above-mentioned Supervisory Briefing, NCAs should consider any available information from internal control functions, depositaries, and external auditors.

163. **Recommendations to NCAs and to the EC as well as ESMA actions identified below are meant to support supervision of sustainability-related claims in the funds industry and to deliver on the objective of supervisory convergence. They should be read together with cross-sectoral recommendations and actions laid out in section 2.5.**

4.4.1. Recommendations to NCAs

164. NCAs are invited to consider **good practices** identified, labelled in green text boxes. Especially, NCAs are invited to consider the deployment of **SupTech tools to support supervision of the funds industry.** They are also invited to participate in the **TSI project**, to deploy such tools based on common methodologies.

165. Based on observed **good practices** related to access to data, NCAs are encouraged to **maintain databases** for effective supervision. Such databases may not only contain data subject to supervision (mandatory disclosures, certain advertisements), but also data useful to conduct effective supervision (portfolio-related data, market data).

166. Indeed, where relevant, such databases may also **support portfolio analysis.** For that purpose, NCAs are invited to request **portfolio composition data** from supervised entities when supervising a specific disclosure and to complement that information on the sustainability profile of underlying assets from third-party providers. In that context, NCAs are invited to continue discussing and **strengthening data-sharing arrangements.** In addition, by compiling information over time, such databases may provide a useful track record of the sustainability-related claims and underlying sustainability profiles of entities and products.

4.4.2. ESMA actions in support of supervision

167. ESMA will continue to support effective and consistent sustainability-related supervision through the following actions:

- (1) ESMA will continue to carry out **methodological developments** on its **indicators and SupTech tools** to further enhance its monitoring of greenwashing in the funds industry. ESMA will continue to help NCAs develop their own capacities regarding SupTech tools deployment and will foster common approaches. Especially, ESMA will work with NCAs on the development of methodologies and tools to assess the consistency between sustainability disclosures and the portfolio composition of funds disclosing under SFDR Article 8 and 9.
- (2) ESMA will support NCAs' readiness to carry out portfolio analysis and NCAs' efforts to monitor greenwashing risks in the funds industry by:

- i. Continuing to explore the benefits and feasibility, as it has already started doing, of potential **information exchanges** especially with regards to the sustainability profile of underlying assets.
 - ii. Considering how to **improve the flow of data on portfolio composition** to NCAs, under its empowerment following the AIFMD review to prepare a report on the development of an integrated collection of supervisory data and its related empowerments to develop technical standards⁸⁰.
- (3) Following up on the completion of the CSA on sustainability risks and disclosures, ESMA will **consider any need for follow-up action** with the view of providing increased regulatory consistency and awareness to firms and to facilitate supervision and enforcement, where relevant. As part of the preliminary findings, NCAs identified a number of potential topics to be further assessed towards the end of 2024⁸¹.
- (4) In terms of capacity building efforts, in 2024, ESMA will strive to organise further **trainings relevant for the supervision of investment management**, notably on SFDR, the Taxonomy Regulation.

4.4.3. Recommendations to the EC

168. To facilitate sustainability-related supervision, the EC is invited to swiftly adopt the Regulatory Technical Standards (RTS) proposed by the Joint Committee in the recent Final Report on SFDR⁸². This would support **machine-readability of SFDR disclosures**, facilitating NCAs and end-users' access to disclosures data on companies' websites and, especially, via the ESAP starting in 2028. This will be essential for fostering the use of NLP and SupTech tools for the supervision of the funds industry. It would also make **available relevant, comparable disclosures for funds with net zero or climate neutrality claims and support NCAs supervision** as well as mitigation of related greenwashing risks.

5. Investment Service Providers

169. As of March 2024, across the EU, over 5000 MiFID investment firms are registered as having active status⁸³.

5.1. Supervisory mandate and approach

170. Since the entry into application of the sustainability-related amendments to MiFID II in 2022, NCAs are supervising compliance with relevant sustainability-related requirements by investment firms and credit institutions providing investment services (hereinafter 'investment service providers'), especially on the topics of the assessment of suitability and product

⁸⁰ Under article 69a of the revised AIFM Directive and article 20b of the revised UCITS Directive.

⁸¹ Requirements regarding appropriate controls and effective measures to prevent and mitigate conflicts of interest in investment managers firms when they use ESG ratings or ESG scores of funds and benchmarks; appropriate data control or data due diligence by funds managers; and the presentation of ESG information in marketing communications.

⁸² The Joint Committee has also proposed in its Final Report on the review of SFDR Delegated Regulation in late 2023 that all SFDR disclosures should be prepared in a machine-readable format. JC 2023 55: [JC 2023 55 - Final Report SFDR Delegated Regulation amending RTS \(europa.eu\)](#)

⁸³ See ESMA Registers, 27 March 2024

governance. ESMA has updated its guidelines on the abovementioned topics⁸⁴ to provide further implementation guidance.

171. In their supervision, NCAs consider investment firms' internal processes and procedures to assess their compliance with sustainability-related requirements in the provision of investment services. They consider the following areas: the information that clients receive when they express sustainability preferences; the mapping of ESG-related features of products; the collection and update of information done by firms on their clients' sustainability preferences; the assessment made to fulfil the client's sustainability preferences or to allow them to adapt their preferences where no financial instrument meets them. NCAs supervise investment service providers also to ensure that financial instruments and structured deposits ("products") are designed to meet the needs of an identified target market of end clients within the relevant category of clients, that the strategy for distribution of financial instruments is compatible with the identified target market, and that the investment service provider takes reasonable steps to ensure that the financial instrument is distributed to the identified target market⁸⁵.
172. NCAs also consider in their supervision the information provided by firms to clients, including marketing communications, for which firms are required to ensure, that this information is fair, clear, and not misleading. Finally, NCAs exercise supervision for the amendments introduced under MiFID II regarding the integration of sustainability factors in a firm's organisation as well as SFDR requirements.
173. Regarding their supervisory mandate, all NCAs reported to have sufficient legal powers and a clear mandate to conduct supervision of investment service providers. However, 3 NCAs highlighted challenges with regards to the application of their mandate to the supervision of marketing materials.

5.2. Supervisory practices and experience

5.2.1. Risk-based prioritisation of supervision

174. The Progress Report identified several high-risk areas for greenwashing which warrant specific attention when supervising investment service providers. Such risks were predominantly related to product-level claims. Issues would typically arise at the point of sale between retail clients and financial advisors, when the advisor would overstate the extent to which the advice offered to retail investors takes sustainability into account or when it would not provide suitable personalised advice to clients in line with their sustainability preferences, when presenting the sustainability features of products recommended to clients. In that latter case, greenwashing risk may stem from incorrect or misleading internal classifications of sustainable products (e.g., funds and securities) that financial advisors use in their advice. Additional light was shed on these risk areas as part of the common supervisory activities

⁸⁴ Both sets of guidelines entered into application on 3 October 2023

⁸⁵ In this respect, ESMA updated its Guidelines on product governance in order to introduce, among others, sustainability aspects that need to be taken into account by product manufacturers and distributors when carrying out the target market assessment, like the specification of any sustainability-related objectives of target clients a product is compatible with (although for products which consider sustainability factors, investment services providers are not required to identify a negative target market with respect to their sustainability-related objectives). NCAs need to check that investment services providers set the correct market of a product and that they are marketed with an appropriate distribution strategy.

NCAs have conducted in 2023 (see section 5.2.3 below) and additional activities are planned for 2024 (see section 5.4.2).

5.2.2. Supervisory actions and practices

175. In addition to the common supervisory activities in which 27 NCAs participated (described in section 5.2.3 below), 22 NCAs reported to have carried out supervisory activities to prevent miscommunication and mis-selling of sustainably marketed products and to address greenwashing risk. Supervisory actions reported as part of responses to the NCAs Survey included thematic reviews (14 NCAs), on-site inspections (4 NCAs), seminars and workshops to raise awareness of investment sustainability-related requirements (10 NCAs) and the inclusion in the authorisation process the review of websites and marketing communications and the conduct of a survey on the websites of investment firms (1 NCA).
176. In 2023, the three ESAs published an [interactive factsheet](#) to help enhance retail investors ESG and financial literacy. The factsheet is meant to answer consumers' most frequently asked questions about SF. It provides tips to consumers considering buying financial products with sustainability features, including loans, investments, insurances, and pensions. The factsheet has been translated in all EU languages, and the ESAs are working with national supervisory authorities to help promote it across the EU.

Good practice identified regarding sustainability-related supervision:

Following up the conduct of thematic reviews on the application of sustainability-related requirements, the publication of outcomes (e.g., industry letters, communication on good or bad practices and expectations) and the organisation of workshops with the industry can help improve overall level of compliance.

1 NCA reported carrying out checks, at the authorisation stage, on how sustainability is integrated into processes for the provision of investment services, on an ad hoc basis. Where needed, it allowed to request corrective actions even before the firm starts providing investment services.

2 NCAs reported integrating ESG aspects into the requirements on knowledge and competences for staff giving investment advice, as part of the certification of financial advisors, to help mitigate greenwashing risks.

5.2.3. Common supervisory activities on marketing materials

177. In 2023, ESMA and NCAs launched a CSA and a Mystery Shopping Exercise (MSE)⁸⁶ on marketing communications. One objective of the CSA and complementary MSE was to assess the application of MiFID II requirements applicable to marketing communications including advertisements (the CSA also considered governance aspects such as questions on the role of control functions and senior management). Both the CSA and MSE have also been used to gather evidence on the topic of greenwashing, by looking at sustainability claims

⁸⁶ 7 NCAs participated in the MSE. MSEs allow ESMA and NCAs to monitor firms' practices, help identify at an early-stage new risks and issues (including possible areas where mis-selling can occur) and allow to get more information on how firms applied the requirements in practice. For a complete account of the findings from the CSA and MSE, see the ESMA report published on 27 May 2024: [ESMA35-335435667-5931 Final Report on the 2023 Common Supervisory Action and Mystery Shopping Exercise on marketing \(europa.eu\)](#).

made in marketing and assessing whether the claims were compliant with the applicable MiFID II requirements. Preliminary findings on this topic are included below.

178. The majority of NCAs which took part to the CSA and the MSE reported that they took or plan to take follow-up actions. These follow-up actions refer to the overall results of the CSA and MSE, and not specifically regarding the greenwashing results. A few NCAs noted that, based on the results of the CSA, they are not planning to take any subsequent action. While a few NCAs that took part in the MSE stated that they are still pondering subsequent actions. Generally, all NCAs that already took follow-up actions, reported that they communicated the results of both exercises (if applicable), CSA and MSE, to the selected firms (normally using individual feedback letters or weaknesses notices) providing feedback of the findings along with recommendations for improvements or requests for remedial actions or specific measures in case of deficiencies detected or breaches.
179. Where needed, NCAs will undertake follow-up actions on individual cases to ensure that regulatory breaches as well as shortcomings or weaknesses identified are remedied. NCAs have also reported other follow-up actions, regarding the results of the CSA, such as publishing a communication or organising workshops/seminar to share the findings, good and bad practices, trends, and supervisory expectations addressed with the market. 1 NCA stated to have updated a national Q&A, and another NCA noted to have disclosed its national guidelines on marketing communication requirements, including practices that should be avoided. Other NCAs also stated the plan to carry out a desk-based thematic review of marketing communications and advertisements by surveying all market participants in 2024.
180. Examinations conducted by NCAs have shed additional light on the risk areas identified in the Progress Report on Greenwashing (see section 5.2.1). On the presentation of sustainability-related claims in a clear, fair, and non-misleading manner, NCAs have observed both good practices and room for improvement. Both the MSE and CSA reported examples showcasing positive behaviour such as the use of fact sheets by firms. These fact sheets provided for example information on sustainability characteristics and the UN SDGs to which they related as well as firms' statement that the green bond in question was certified by an independent body and that the projects financed by the green bond were evaluated and selected based on their compliance with the eligibility criteria. On the other hand, several NCAs reported examples in which ESG related information and claims were not backed up with the data or sources supporting sustainability claims. For example, NCAs reported the publication of general statements on sustainable impact of funds (e.g., with reference to UN SDGs) in market communications, without a precise description of what this means in concrete terms for the promoted products. Another example provided by NCAs includes the publication of messages suggesting better performance or lower volatility for sustainable investments compared to traditional ones without enough substantiation.

5.2.4. Greenwashing occurrences

181. NCAs are continuing to monitor greenwashing closely - as part of their response to the NCAs survey, 2 NCAs reported to have identified actual occurrences of greenwashing in their market and 6 NCAs indicated to have identified potential occurrences of greenwashing. NCAs reported having identified these through on-site inspections (2 NCAs), targeted reviews including under the CSA on marketing materials (2 NCAs), information from consumer protection associations and whistle-blowers (1 NCA) and/or off-site supervision (3 NCAs), such as website and social media monitoring and/or review of regulatory documents and

marketing materials. NCAs also cited external audit reports, mystery shopping campaigns, and monitoring of the press as potential sources to spot greenwashing occurrences.

182. 20 NCAs informed that they did not identify any such occurrence. Various aspects were put forward to explain the reasons such as 7 NCAs referred to the moderate size of their ESG markets, 5 NCAs to the absence of complaints and 1 NCA to capacity constraints. 5 NCAs mentioned their supervisory focus being on areas different to greenwashing for investment services. Another NCA highlighted its ongoing efforts to reduce ex-ante the occurrence of cases of greenwashing/mis-selling of ESG products also by means of dedicated controls at the stage when firms are being authorised to the provision of investment services. The aim is to verify how sustainability-related requirements are integrated within internal processes, so as to be able to identify and address any potential flaws which may lead to greenwashing /mis-selling even before new firms start operating in the market. 1 NCA explained the fact that no checks were carried out because of the lack of clear and detailed guidelines on the qualitative assessments to be performed.
183. 12 NCAs reported to have taken actions to enhance their detection systems, procedures for greenwashing occurrences. 3 NCAs reported that they are exploring the use of SupTech tools, and 1 NCA that it is already using SupTech tools to monitor marketing materials in general. With respect to complaints collection, 2 NCAs submitted to have implemented in their complaints management system that greenwashing-related complaints are recorded as a specific category or with a flag. However, it should be noted that no complaints related to greenwashing in the area of investment services providers have been reported so far. 1 NCA explained that this is probably due to the fact that investors are not yet familiar with the concept of greenwashing.

5.3. Supervisory capacities and tools

5.3.1. Human resources

184. In total, NCAs across the EU have allocated about 43 FTEs to sustainability matters, covering both regulatory and supervisory activities, regarding investment service providers. The number of allocated FTEs varies hereby across NCAs, ranging from 0 (1 NCA) to 5 FTEs (1 NCA), with an average of 1.49 FTEs per NCA. Most NCAs (15) dedicate no more than 1 FTE for this sector.
185. 1 NCA reported to have staff with environmental expertise dedicated to supervision of investment services providers that, among others, provide advice on policy and supervisory matters. No staff with social expertise has been hired for the specific purpose of sustainability-related supervision in this sector. 20 NCAs mentioned the necessity to improve their ESG knowledge and skills and 6 NCAs the issue of limited resources.

5.3.2. Access to ESG data

186. 20 NCAs deemed the sustainability-related data available to perform their supervisory duties to be enough and/or sufficiently accessible, whereas 9 NCAs believed that improvements are necessary. 2 NCAs explained that such data are very limited, 2 NCAs highlighted that given the current deficiencies in ESG data and ratings (lack of transparency and reliability), their relevance to assess sustainability claims is limited. 1 NCA specified that not having enough

available data poses the specific challenge of not being able to provide enough information to support a criminal case. In that context, 6 NCAs subscribed or intend to do so.

5.3.3. SupTech tools

187. The use of SupTech tools for the supervision of investment service providers is still limited but shows potential for future growth. No NCA currently uses SupTech tools in this sector, while 9 NCAs are planning to implement such tools in the near future and 6 NCAs considering a possible implementation. 11 NCAs identified these tools as potentially beneficial in their activities, especially in monitoring advertising campaigns, in screening SFDR disclosures or in text-searching annual reports and websites.

5.4. Pathway to further enhance supervision

188. **While investment firms ultimately bear the responsibility for the reliability and the accuracy of their sustainability-related claims, NCAs have broad responsibility to ascertain that sustainability-related claims are in line with the relevant requirements.** While investment firms ultimately bear the responsibility of their compliance with regulatory sustainability-related requirements, supervisors should perform **critical scrutiny of documentation and exercise professional judgement** when reviewing sustainability-related claims in marketing material. Merely checking the existence of required sustainability disclosures or processes is not sufficient.

189. In this context, the progressive development and employment of SupTech tools is expected to advance NCAs' monitoring on whether information made available to investors is clear, fair, and not misleading, while the use of MSE, where available to NCAs, can support assessing compliance of the advisory process with sustainability-related requirements. In addition, a consistent supervisory approach on the knowledge and competence of advisors strengthens investor protection. In parallel, initiatives building on financial literacy for retail investors are indispensable building blocks in raising awareness to greenwashing risks and ensuring investors' protection.

190. NCAs should therefore continue, as part of a risk-based approach, developing and deploying risk indicators, methodologies and tools that can most-efficiently support effective supervision. Monitoring retail trends will also allow NCAs to keep abreast with market developments and thus arising risks to investors.

191. **Recommendations to NCAs and to the EC as well as ESMA actions identified below are meant to support sustainability-related supervision regarding investment service providers and to deliver on the objective of supervisory convergence. They should be read together with cross-sectoral recommendations and actions laid out in section 2.5.**

5.4.1. Recommendations to NCAs

192. NCAs are invited to consider **good practices** identified, labelled in green boxes. Especially, NCAs are invited to consider **minimum requirements for ESG knowledge and competencies of financial advisors**⁸⁷, including on the integration of sustainability factors

⁸⁷ This is also an objective of the EC's Retail Investor Strategy.

and client's sustainability preferences into the advisory processes. Such requirements would help prevent greenwashing and could be part of the certification of advisors.

193. Building on the recently published interactive factsheet, NCAs are invited to dedicate resources and develop initiatives to increase **retail investors' financial literacy** with regards to sustainable products and investments⁸⁸. Enhancing retail investors knowledge is key to support their informed participation and mitigate greenwashing risks.
194. Furthermore, NCAs are invited to complement their assessment of ESG information disclosed or provided by investment service providers with the **analysis of third parties and external verifiers**, where needed.

5.4.2. ESMA's actions in support of supervision

195. ESMA is currently studying the feasibility of a Eurobarometer **survey to assess retail investors' perceptions, practices and knowledge related to sustainable finance**. Regularly updated data would help supervisors monitor the evolution of retail investors' ability to comprehend product-level sustainability claims and their perception on the effective integration of sustainability considerations into financial services.
196. ESMA will launch a **CSA**⁸⁹ on the integration of sustainability in firms' suitability assessment and product governance processes and procedures in 2024.

5.4.3. Recommendations to the EC

197. In the context of the Retail Investor Strategy, the EC can further facilitate NCAs supervision in two ways. First, as already laid out in the ESMA technical advice⁹⁰, the EC is invited to give ESMA an explicit mandate to **develop guidelines on marketing communications**. Such guidelines could be kept updated to consider ongoing developments in investment service providers' marketing practices, including on sustainability-related requirements.
198. Second, in relation to the **promotion of financial literacy**, ESMA recommends the EC to undertake additional initiatives to foster financial education across Member States. Given that not all NCAs have a mandate related to financial education, the Retail Investor Strategy is an opportunity to ensure that all NCAs have such a mandate.

6. Benchmark administrators

199. As of March 2023, there were a total of 12 benchmark administrators providing EU Climate Transition benchmarks (EU CTB) and EU Paris-aligned benchmarks (EU PAB) available in the market, half of which are subject to European supervision under the Benchmarks Regulation: 5 supervised by NCAs and 1 supervised by ESMA under the third country recognition regime.
200. As of August 2023, 6 NCAs supervise fewer than 5 entities providing benchmarks taking into account ESG factors or pursuing ESG objectives (ESG benchmarks) (including EU CTB and

⁸⁸ This is also an objective of the EC's Retail Investor Strategy.

⁸⁹ [ESMA to launch Common Supervisory Action on MiFID II sustainability requirements \(europa.eu\)](https://europa.eu)

⁹⁰ ESMA35-42-1227

EU PAB) and 4 NCAs supervise between 6 and 10. ESMA supervises 11 entities and has submitted responses to the Survey under its direct supervisory capacity⁹¹.

201. According to a recent study commissioned by the EC⁹², ESG benchmarks represent about 10% of the benchmark offering in the EU and demand is on the rise.⁹³ They have been used by product managers to guide portfolio composition, to screen constituents and as a source of data for mandatory disclosures for financial products. They have supported funds managers for both passive and active strategies. In that context, ensuring the quality of the ESG disclosures in the benchmark sector is key to investors protection and market integrity.

6.1. Supervisory mandate and approach

202. The Benchmark Regulation (BMR) supports the allocation of capital towards a more sustainable economy in two ways. First, it introduces two categories of regulated climate benchmarks, the EU climate transition benchmark⁹⁴ ('EU CTB') and the EU Paris-aligned benchmark⁹⁵ ('EU PAB') which incorporate climate objectives related to GHG emissions reductions and the transition to a low-carbon economy. More specifically, when marketing EU CTB and EU PAB in the EU, administrators are eligible to use these labels provided that the marketed EU CTB and EU PAB benchmarks comply with the BMR requirements. The BMR lays down minimum standards on how the administrator should construct the methodology of the benchmark⁹⁶.

203. Second, the BMR aims to enhance transparency through ESG disclosure requirements. According to the Commission Delegated Regulation (EU) 2020/1816 and Commission Delegated Regulation (EU) 2020/1817, all benchmark administrators, including those providing EU CTB and EU PAB⁹⁷, but with the exception of administrators of interest rate and foreign exchange benchmarks, are required to disclose in their benchmark statement whether or not their benchmarks or families of benchmarks pursue ESG objectives or take

⁹¹ Only the following NCAs were invited to submit responses to this section as direct supervisors of benchmark administrators of ESG benchmarks and EU CTB/PAB: FMA (AT), FSMA (BE), BaFin (DE), AMF (FR), HCMC (EL), AFM (NL), Finanstilsynet (NO), CNMV (ES), KNF (PL) and Finansinspektionen (SE). In addition, ESMA submitted responses only to this section under its direct supervisory capacity.

⁹² PwC EU Services. Commissioned by the EC. Study on the feasibility minimum standards and transparency requirements of an EU ESG Benchmark. December 2022.

⁹³ About half of respondents in the survey of benchmark users conducted for this report said their demand will increase by up to 30% of their AuM. [Source: PwC, December 2022]

⁹⁴ According to Article 1 (23a) of the BMR, 'EU Climate Transition Benchmark' means a benchmark which is labelled as an EU Climate Transition Benchmark and fulfils the following requirements: (a) for the purposes of point 1(b)(ii) of this paragraph and of Article 19b, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a decarbonisation trajectory; and (b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2);

⁹⁵ According to Article 1 (23b) of the BMR, 'EU Paris-aligned Benchmark' means a benchmark which is labelled as an EU Paris-aligned Benchmark and fulfils the following requirements: (a) for the purposes of point 1(b)(ii) of this paragraph and of the delegated act referred to in Article 19c, its underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio's carbon emissions are aligned with the objectives of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, approved by the Union on 5 October 2016 (7) (the 'Paris Agreement');

(b) it is constructed in accordance with the minimum standards laid down in the delegated acts referred to in Article 19a(2); and (c) the activities relating to its underlying assets do not significantly harm other environmental, social and governance (ESG) objectives.

⁹⁶ Commission Delegated Regulation (EU) 2020/1818.

⁹⁷ To ensure a comprehensive and consistent assessment of all disclosure requirements applicable to ESG benchmarks, for EU CTB / PAB the aforementioned disclosure requirements need to be complemented with the specific transparency and disclosure requirements included in Chapter III of the Commission Delegated Regulation (EU) 2020/1818. The Commission Delegated Regulation (EU) 2020/1816, Commission Delegated Regulation (EU) 2020/1817 and Commission Delegated Regulation (EU) 2020/1818 are applicable since 23 December 2020.

into account ESG factors, and whether or not the benchmark administrator offers such benchmarks. They are also required to provide an explanation of how the key elements of the methodology reflect ESG factors.

204. The benchmark administrator providing benchmarks or a family of benchmarks considering ESG factors or pursuing ESG objectives is required to publish appropriately on its website the information required in the benchmark statement template provided in Annex I of the BMR Level 2. In addition, the administrator is required to publish the ESG factors taken into account in the methodology, an explanation on how those ESG factors are used for the selection, weighting or exclusion of underlying assets and has provided the source of the data including the name of the data provider and a link to the methodology used if available. In addition, the BMR stipulates that the administrator should include in its methodologies whether the family of benchmarks considers ESG factors or not and that the benchmark methodology is published on the relevant entities' websites. The supervisory assessment of ESG disclosures is informed by the professional judgement of the supervisor and aims at concluding whether the disclosed information is consistent with the BMR.
205. NCAs and ESMA reported not having a clear mandate to supervise greenwashing occurrences as the BMR does not refer to "clear, fair and non-misleading" information. For example, there is no BMR mandate to enforce or sanction greenwashing in the name of the benchmark or the related marketing materials.

6.2. Supervisory practices and experience

6.2.1. Risk-based prioritisation of supervision

206. The supervision of benchmarks' administrators and their compliance with the BMR follows a risk-based approach by specifying supervisory priorities based on the impact and probability of risks of the activity. To facilitate such risk assessments, ESMA's Progress Report on greenwashing identified – from an EU perspective – the highest risk areas, including for benchmarks⁹⁸. Benchmark naming issues, particularly in view of the lack of explicit reference under the BMR to "clear, fair and not misleading information" requirements, was found to be one of the most important greenwashing risk areas to address. ESMA has launched a CSA on BMR ESG disclosures⁹⁹ which is also expected to support in the identification of the most relevant risks and inform NCAs risk-based approaches in the supervision of greenwashing in the benchmark administrators' sector.

⁹⁸ More specifically, the benchmark-level ESG strategy defined by the extent and nature of a benchmark's consideration of environmental or social characteristics, or the overall sustainable objective may sometimes be vague, exaggerated or incomplete. Moreover, greenwashing risk can occur in the form of exaggerated claims made by benchmark administrators about the real-world impact of their ESG benchmarks or when the actual companies composing a benchmark are different from stakeholders' expectations or not sufficiently transparent. Benchmark naming issues, particularly in view of the lack of explicit reference under the BMR to "clear, fair and not misleading information" requirements, is one of the most important greenwashing situations to address, while greenwashing can also arise from the overall poor transparency of methodologies regarding ESG data (e.g., assumptions and estimates used for providing ESG data points like GHG emissions) due to the use of external data providers, which is a cross-sectoral issue that is particularly relevant for benchmarks and funds. Furthermore, the omission to publish the actual values of ESG metrics in regulatory periodic disclosures is identified as a risk area as well.

⁹⁹ [ESMA to launch and participate in Common Supervisory Action on ESG disclosures for Benchmarks Administrators \(europa.eu\)](https://europa.eu/press-room/en/infographic-esma-to-launch-and-participate-in-common-supervisory-action-on-esg-disclosures-for-benchmarks-administrators)

6.2.2. Supervisory actions and practices

207. In their responses to the NCAs Survey, NCAs provided illustrations of various practices. In relation to the prevention of greenwashing, 3 NCAs and ESMA reported that they carried out activities aimed at enhancing transparency of sustainability-related claims or preventing greenwashing risks in the reference period. The activities included either communication with individual supervised entities or outreach and guidance to the market in general. ESMA recalled its reply to the BMR review consultation of the EC raising that labelled benchmarks (EU CTB / PAB) need to have a prefix in their names to address greenwashing risks. 7 NCAs stated that they did not carry out such activities in the reference period. The reasons NCAs gave for not carrying out such activities were the low number of administrators in general, the low or no number of ESG benchmarks (2 NCAs) or the recency of the requirements (1 NCA). 3 NCAs indicated that they were anticipating the results of the CSA.

Good practices identified in the context of ongoing supervision:

NCAs are promoting regular interactions and engage in a continuing dialogue with the supervised entities where ESG disclosures are reviewed, and, if needed, they are supplemented or corrected by the supervised entity. In addition, an NCA reported assessing the information published on the supervised entity's website on an ongoing basis. Together with the traditional supervisory methods, NCAs employ a variety of tools to detect the occurrence of greenwashing, for example internet research and SupTech tools (ESMA).

Despite the lack of explicit reference under the BMR to "clear, fair and not misleading information" requirements and thus not a mandate to enforce the requirement, NCAs reported to check¹⁰⁰ whether the use of ESG terms in the benchmarks' names corresponds with the disclosure of ESG factors with a view to identify potential cases of inappropriate administrators' practices where the benchmarks names include ESG terms whereas no ESG factors are disclosed¹⁰¹. When a potential case is identified, then the NCA raises this issue to the administrator and a solution is proposed¹⁰².

An NCA monitors that the supervised entity has access to a wider range of data sources and has put in place appropriate systems and specific controls which execute data validation checks to avoid errors and inconsistencies. The aim is that the benchmark administrator is engaging with different data providers and has put in place criteria for their selection, compares the data received and has implemented an appropriate and consistent process for the selection of the data that will be included for the benchmark calculation.

In the context of the CSA and regarding the publication of the information required in the benchmark statement template provided in Annex I of the BMR Level 2, NCAs check that the

¹⁰⁰ In their responses to the NCAs Survey, 8 NCAs and ESMA indicated that if a benchmark administrator without disclosing the relevant ESG factors for ESG benchmarks, includes an ESG terms in the benchmark's name or marketing materials (e.g., factsheet), then they would proceed to a supervisory action, i.e desk-based checks, interaction with the benchmark administrator, on-site visits. 2 NCAs indicated that their actions would depend on the results of the CSA.

¹⁰¹ 1 NCA submitted that when the benchmark administrator operating in the jurisdiction intends to provide a new benchmark, the NCA will be informed in advance to register the new benchmark. In the benchmark registration process the name of the benchmark as well as the underlying market will be checked by the NCA. If the name of the new benchmark suggests that the benchmark is an ESG benchmark, the NCA further analyses, if the benchmark methodology and the underlying market includes ESG criteria as proposed by the name. If there is any suspicion of greenwashing for new benchmarks or any other related issue (e.g. regarding the ESG transparency rules), it will be directly addressed with the administrator in the registration process. As there is only one benchmark administrator in the relevant jurisdiction, and the total number of new registered benchmarks is very limited, they have the resources to check and analyse every benchmark.

¹⁰² Further guidance on how to address such instances is expected to result from the CSA.

administrator has provided at least the ESG factors that are not flagged as voluntary and listed in the Annex II of the Commission Delegated Regulation (EU) 2020/1816 and the data sources and standards used for the calculation of the ESG factors. The supervisory assessment is informed by the professional judgement of the supervisor and aims at concluding whether the disclosed information is consistent with the BMR.

6.2.3. Greenwashing occurrences

208. NCAs are continuing to monitor greenwashing closely, in response to the NCAs Survey, 2 NCAs reported to have identified potential occurrences of greenwashing. 1 NCA reported that the occurrence related to misleading naming of benchmarks, while 1 NCA submitted that due to the unclear and ambiguous information provided by the benchmark administrator, the benchmark could falsely be regarded by potential investors as an ESG benchmark despite not falling under the BMR¹⁰³. The potential greenwashing occurrences were detected via reviews of internet materials and regulatory documents published by benchmark administrators and NCAs raised the issue to the administrator.
209. Other NCAs gave several reasons for not identifying actual or potential occurrence of greenwashing: low number of administrators in general, low number of or no ESG benchmarks (7 NCAs); the low priority given to the sector as part of a risk-based approach to supervision (1 NCA); the fact that legislation is still very recent or not yet applicable (1 NCA) and the fact that a CSA being planned, supervisory actions have been on hold until it is kicked-off (1 NCA).
210. While NCAs appeared to be anticipating the launch of the CSA to detect occurrences in that sector, 2 NCAs did report recent initiatives regarding detection of greenwashing. One of them has implemented a greenwashing check in the benchmark registration process. The other NCA reported that it analyses ESG disclosure information provided by the administrator on its website every six months.
211. In terms of supervisory actions, the two NCAs that mentioned having detected greenwashing occurrences in their market either presented to the administrator the related findings during a regular supervisory exchange (1 NCA) or requested clarifications and additional information from the administrator and continued to monitor the benchmark administrator's disclosures (1 NCA). 10 NCAs and ESMA reported that they had not taken any supervisory measures and enforcement actions.

6.2.4. Common supervisory action on BMR ESG disclosures

212. ESMA has launched a CSA on BMR ESG disclosures which is expected to further enhance supervisory convergence in this area. The CSA investigates how benchmark administrators comply with the Commission Delegated Regulations (EU) 2020/1816 and 2020/1817 and the specific transparency requirements for EU CTB/PAB under Commission Delegated Regulation (EU) 2020/1818. These requirements apply to benchmarks taking into account ESG factors or pursuing ESG objectives, including to EU CTB / PAB which by design pursue ESG objectives.

¹⁰³ In this case the name of the benchmark did not contain ESG-related terms.

213. In Q1 2025, ESMA will publish a report summarising the results of the CSA. With this report, ESMA will aim to enhance supervisory convergence of ESG disclosures and transparency requirements in the benchmark's statements and the methodology (including on the description of the ESG related information at family of benchmarks or benchmarks level). The report will also elaborate on supervisory expectations on various areas including the administrators' approach to the ESG disclosure depending on the characteristics of the benchmark (for example benchmarks applying exclusions or exposed to specific sectors) and the availability of ESG data to benchmark administrators.

6.3. Supervisory capacities and tools

6.3.1. Human resources

214. NCAs across the EU and ESMA have allocated approximately 3 FTEs to sustainability matters, covering both regulatory and supervisory activities, regarding benchmark administrators. The 10 NCAs and ESMA allocated FTEs in this sector, with ESMA serving as the direct supervisor. The number of allocated FTEs varies across NCAs, ranging from 0 (2 NCAs) to 1.25 FTEs (1 NCA), with an average of 0.22 FTEs per supervisor. Most NCAs report having more than 0.5 and less than 1.25 FTEs allocated in this sector.

215. No NCA reported having environmental or social experts dedicated to the supervision of the sustainability information in relation to benchmark administrators. Concerning human resources, the main challenge faced by 5 NCAs (and ESMA) is the insufficiency of relevant ESG and climate-related competencies and skills to supervise ESG disclosures and EU CTBs/EU PABs.

6.3.2. Access to ESG data

216. With respect to NCAs having access to ESG data, it should be noted that in discharging their supervisory duties, 10 NCAs and ESMA reported that they could request the necessary data from supervised entities to perform their supervisory tasks. This means that the supervisor is able to request from the supervised entity the underlying ESG data used in order to check that the administrator ensured the quality, accuracy and timeliness of the input data is appropriate¹⁰⁴. 6 NCAs and ESMA consider the data available to perform their supervisory duties are enough and/or sufficiently accessible. 3 NCAs consider the data available is not enough and/or sufficiently accessible. 1 NCA would wait for the results of the CSA to form an opinion.

217. In addition, access by the supervisor to accurate ESG data can support and be complementary to effective supervision, for example when screening the names of benchmarks. In this regard, NCAs highlight as a challenging aspect having access to ESG databases and data methodologies which allow the calculation of ESG data disclosure points. In particular, 1 NCA mentioned that having access to third-party data providers can be costly and it should be analysed whether the benefits outweigh the costs in case there is only one administrator having only one ESG benchmark being non-significant. 5 NCAs and ESMA reported that they had access to ESG databases.

¹⁰⁴ 2 NCAs submitted that benchmark administrators may face challenges in terms of engaging with ESG data providers and accessing appropriate data due to associated costs.

6.3.3. SupTech tools and solutions

218. None of the NCAs supervising benchmark administrators has implemented a SupTech tool. The reasons put forward by NCAs related to limited resources and the low number of ESG-focused or EU CTB/PAB benchmarks currently in the market. For these reasons, the potential benefits of SupTech solutions, in terms of time saved for manual screening of benchmarks disclosures, may still be more limited than in other sectors.
219. Nevertheless, in the context of the BMR review, a proposal is being debated to standardise the use of EU CTB- and EU PAB-related terms as part of benchmarks names and the associated marketing material. Such standardisation of the sustainability-related claims associated to EU Climate Benchmark is expected to improve the relevance of SupTech tools for supervision in that sector, supporting supervisors with the screening of names and marketing material to help identify non-compliance and some potential greenwashing occurrences (including potentially the benchmarks factsheets).

6.4. Pathway to further enhance supervision

220. **Supervisors tasked with protecting investors should not merely verify the existence of benchmark administrators' sustainability disclosures.** Progressively and as their expertise and access to data improves, NCAs will be able to go a step further in challenging administrators' claims, in particular on how ESG factors are considered under its methodology.
221. **Recommendations to NCAs and to the EC as well as ESMA actions identified below are meant to support sustainability-related supervision regarding benchmark administrators and to deliver on the objective of supervisory convergence. They should be read together with cross-sectoral recommendations and actions laid out in section 2.5.**

6.4.1. Recommendations to NCAs

222. Based on **good practices** observed to date (see section 6.2 above), NCAs are invited to continue engaging in a supervisory dialogue with the supervised entities and communicate supervisory expectations and verifying the appropriate use of ESG terms and the existence of internal controls within the supervised entities.
223. With respect to the supervision of EU CTB/PAB labels and compliance with minimum standards, NCAs are recommended to conduct an¹⁰⁵:
- (1) Assessment of **the exclusion of some sectors or activities** of the constituents of the benchmark;
 - (2) Assessment that the benchmark **applies the reference temperature scenario** prescribed by the minimum standards;
 - (3) Assessment that **the equity allocation constraint** i.e., the exposure to the sectors listed in Article 3 of the Commission Delegated Regulation (EU) 2020/1818 is at least equivalent to the exposure of the underlying universe. For that purpose, NCAs may

¹⁰⁵ This assessment could be based on sample of benchmarks.

rely on the information provided by the administrator to demonstrate compliance with this provision.

- (4) Assessment of the **determination of the decarbonisation trajectory and calculation of the GHG emissions** including the phase in requirement on scope 3 emissions. NCAs are not required to re-calculate the GHG intensity or absolute GHG emissions but could ensure that the calculation is comparable and consistent by verifying for example that the administrator is using the same currency for all underlying assets and the calculation is updated on a yearly basis¹⁰⁶.

224. With respect to supervision of ESG disclosures, NCAs are invited to check that the supervised entities demonstrate the calculation methodology of the ESG factor, have in place effective systems and controls ensuring that ESG factors are correctly implemented and provide an example of the calculation when explaining how ESG factors are used for the selection, weighting, or exclusion of underlying assets. Moreover, NCAs are invited to verify that there is consistency between the ESG factors considered by the administrator and key elements of the methodology.
225. In addition, NCAs could recommend to the benchmark administrator **the use of the template found in Commission Delegated Regulation (EU) 2020/1817** to explain how the key elements of the benchmark's methodology reflect the ESG factors. This standardised format facilitates the access to the ESG disclosure both by supervisors and investors.
226. Moreover, **NCAs could monitor that for the cases where the benchmark's constituents are directly disclosing ESG-related information**¹⁰⁷, the benchmark administrator, for these constituents, is using the company-disclosed information and no longer estimates from ESG data providers. This could be performed by asking the administrator to set up a process to monitor future disclosures of companies. When the constituents of the benchmark are selected based on their ESG ratings and the NCA could have access to ESG ratings database, NCAs could check that the constituents used are correct.

6.4.2. ESMA actions in support of supervision

227. Building also on the results of the CSA on BMR ESG disclosures, **ESMA will support the capacity building efforts** of NCAs by providing dedicated training on supervision of ESG disclosures by benchmark administrators.
228. With regards to benchmarks' names and the use of ESG terms, ESMA is will continue to explore the benefits and feasibility of **deploying SupTech tools** supporting the sustainability-related supervision for benchmarks. In that context, ESMA would try to foster experience sharing and common approaches among NCAs.

6.4.3. Recommendations to the EC

229. For NCAs and ESMA to be able to effectively supervise and contribute to transparency in sustainability disclosures, a clear mandate is essential. Hence an **explicit reference to**

¹⁰⁶ Article 4 of Commission Delegated Regulation (EU) 2020/1818.

¹⁰⁷ These disclosures are also expected to increase following the implementation of the CSRD.

“clear, fair and not misleading information” requirements under BMR should be incorporated.

230. In October 2023, a legislative proposal was published to amend the BMR aiming to reduce the administrative and regulatory burden imposed both on EU benchmark users and on EU benchmark administrators. According to the EC proposal, all benchmarks considered as non-significant would be out of the scope of the regulation except for the EU CTB/PAB. As all ESG benchmarks are used in the EU in financial products for a reference value below 50 billion EUR, they are all considered as non-significant benchmarks. Consequently, the ESG disclosure requirements will no longer be applicable to ESG benchmarks and thus no longer under the supervisory scrutiny. The only exception would be the labelled benchmarks i.e., EU CTB / PAB. **Therefore, this proposal leaves ESG benchmarks outside of the BMR scope without any supervisory powers regarding these benchmarks.** From a supervisory perspective, NCAs and ESMA consider this as a problematic aspect stemming from the legislative proposal.

7. Annex 1 – Summary of actions to be considered by market participants, NCAs, ESMA and the EC

Table 1 - Remediation actions for market participants confirming those set out in Progress Report on Greenwashing

| Topic (section of the Progress Report) | Remediation actions to mitigate greenwashing risks |
|--|--|
| General | <ul style="list-style-type: none"> • Substantiate sustainability-related claims and communicate sustainability information in a manner that is fair, clear, and not misleading. • Consider high-risk areas identified by the Progress Report. |
| Upgrading firms' governance, processes, skills, IT systems (4.7.2) | <ul style="list-style-type: none"> • Invest in building capacities and expertise, IT systems fit for managing the new flow of sustainability information. • Implement monitoring processes and report regularly on progress, where relevant. • Further integrate ESG risks into risk management systems and controls. • Adapt governance structures and processes to mitigate greenwashing risks (e.g., committees and guidance). • Fulfil due diligence responsibilities on ESG data with the same level of ambition and care as for financial information. |
| Establishing reliable, comprehensive sustainability data (4.7.3) | <ul style="list-style-type: none"> • Where relevant, increase the recourse to external verification. • Enhance transparency regarding ESG data methodologies, the use of estimates. |
| Supporting comprehensibility for retail investors (4.7.4) | <ul style="list-style-type: none"> • Contribute to addressing financial and sustainability literacy gaps among retail investors (e.g., through providing contextual disclosures). • Exercise caution with the use of aspirational language in advertising. |

Table 2 - Pathway forward to further enhance supervision

Note to readers: the following acronyms are used in the table below – investment managers (IVM), investment service providers (ISP) and benchmark administrators (BA)

| Sections | Description of recommendations to NCAs and the EC, ESMA actions |
|-------------------------------|---|
| Cross-sectoral considerations | |
| To NCAs 2.5.1 | <p><u>NCAs are invited to:</u></p> <ul style="list-style-type: none"> • Enhance human resources and capacities, via capacity-building programs, hiring or contracting of SF experts and collaboration with relevant national agencies in charge of sustainability matters. Consider good practices regarding collaboration arrangements with specialised agencies (e.g., data- and knowledge-sharing, implementing training and financial and ESG literacy programs) and participation in national taskforces. [All sectors] • Consider good practices related to complaints-handling: on the implementation of internal tracking of greenwashing-related complaints, on the use of complaints data as inputs into in risk-based framework, and on the cooperation with other national organisations to ensure consistent responses. [All sectors] |

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| | <ul style="list-style-type: none"> • Consider the development or the purchase SupTech tools [All sectors] and participate in the ESMA-coordinated projects, e.g. under the Technical Support Instrument (TSI) program to build capacities and foster common methodologies [IVM] • Consider further investment in access to data, covering both information is the subject of supervision (e.g., regulatory disclosures) and information that can serve supervisors (e.g., market data, etc.) [All sectors] • Continue using the ESAs understanding of greenwashing as reference point. [All sectors] • Integrate greenwashing risks into their risk-based supervisory framework. Take actions to ensure effective monitoring, prompting supervisory actions (i.e., covering multiple data sources, inserting an ‘ESG-related’ flag within complaints-handling mechanism, combining with ‘green dashboard’ to track ESG market trends and considering risk-areas identified in the Progress Report). [All sectors] • Build on dialogue with NGOs, where this can bring useful input to support monitoring of greenwashing risks, detection of greenwashing occurrences, and capacity building. [All sectors] • Monitor whether organisational structure should be adapted to the evolving needs of SF supervision. [All sectors] • Give visibility to sanctions against infringements of the SF regulatory framework. [All sectors] |
| <p>ESMA actions 2.5.2</p> | <p><u>ESMA will:</u></p> <ul style="list-style-type: none"> • Prompt supervisory action with common objectives under the USSP on ESG disclosures. [Issuers, IVM, ISP] • Continue developing indicators to monitor greenwashing risks, where possible going beyond the funds industry. [All sectors] • Explore the deployment of SupTech tools and help NCAs develop own capacities and foster common methodologies [All sectors]. • Continue supporting access to data for NCAs and further explore data-sharing arrangements for mutualisation of access to data [All sectors] • Produce additional guidance for supervisors, where relevant, under the ESMA Supervisory Handbook. [All sectors] • Develop capacity building under the ESMA SF training plan and SF Hub, notably on ESRS, SFDR and the Taxonomy Regulation, ESG factors under BMR [All sectors]. • Further building collaboration with EEA. [All sectors] |
| <p>To EC 2.5.3</p> | <p><u>The EC is invited to:</u></p> <ul style="list-style-type: none"> • Further strengthen the TSI to support supervisory convergence across the EU and to foster standardisation and machine-readability of sustainability disclosures. [All sectors] |
| <p>Issuers</p> | |
| <p>To NCAs 3.4.1</p> | <p><u>NCAs are invited to:</u></p> <ul style="list-style-type: none"> • Consider good practices regarding the conduct of thematic reviews and the communication of their findings as well as expectations to supervised entities, regarding the participation to investors’ calls, and on the set up of supervisory teams with mixed professional background. • Contribute actively to supervisory case discussions at EU level, both for supervision of sustainability reporting and prospectuses supervision. • Unless they already do so, check content of advertisements associated to prospectuses for consistency with the information contained in the prospectuses, where they market the sustainability features and objectives of the business. |

| | |
|-------------------------------------|---|
| ESMA actions 3.4.2 | <p><u>ESMA will:</u></p> <ul style="list-style-type: none"> • On sustainability reporting: Support NCAs in building capacities vis-à-vis the new sustainability reporting requirements and organise an educational programme on the ESRS in 2024 in the form of a series of trainings. Establish converged supervisory practices through the forthcoming GLESI. • On prospectus disclosures: Facilitate discussions of supervisory cases in order to both support convergence in the approaches taken by NCAs and to build the sustainability capacity of prospectus teams. Provide public guidance to the market where the level of disclosure appears to fall below the standard expected in the Prospectus Regulation. • On both sustainability reporting and prospectus disclosures: <ul style="list-style-type: none"> - Continue supporting the implementation of a risk-based approach to supervision, via the ECEPs and explore the feasibility and benefits of defining common themes warranting further attention in prospectus supervision. - Continuously monitor, convey specific requests from NCAs to the EC in due course. |
| Investment Managers | |
| To NCAs 4.4.1 | <p><u>NCAs are invited to:</u></p> <ul style="list-style-type: none"> • Consider good practices regarding the deployment of portfolio analysis (with the deployment of SupTech tools and by investing in data access), the scrutiny of forward-looking fund-level climate-related claims, the maintenance of internal databases, participation to TSI projects. • Maintain internal databases covering both data subject to supervision (disclosures, advertisements) and data relevant for the conduct of effective supervision (portfolio, market data). • Where portfolio analysis appears relevant, take measures to access data on portfolio composition and sustainability profiles of the underlying assets, including by developing data-sharing arrangements involving other authorities. |
| ESMA actions 4.4.2 | <p><u>ESMA will:</u></p> <ul style="list-style-type: none"> • Continue to develop indicators and SupTech tools to support efforts to monitor greenwashing risk in the funds industry. ESMA will continue to help NCAs develop their own capacities regarding SupTech tools and will foster common methodologies. • Support NCAs' readiness for portfolio analysis by (1) further exploring information exchanges especially related to the sustainability profile of underlying assets and (2) considering how to improve the flow of data on portfolio composition to NCAs, under its empowerment following the AIFMD review to prepare a report on the collection of supervisory data. • Consider, as justified, follow-up actions to the CSA on sustainability risks, to provide increased consistency in the application of regulatory provisions, awareness to firms, to facilitate supervision. |
| To the EC 4.4.3 | <p><u>The EC is invited to:</u></p> <ul style="list-style-type: none"> • Swiftly adopt the Regulatory Technical Standards (RTS), to improve access to machine-readable SFDR disclosures, for end-users and NCAs, helping foster the use of SupTech tools. |
| Investment Service Providers | |
| To NCAs 5.4.1 | <p><u>NCAs are invited to:</u></p> <ul style="list-style-type: none"> • Consider good practices regarding the communication of findings and expectations from thematic reviews, the integration of ESG criteria into the certification of financial advisors, and the verification at the authorisation stage of the integration of sustainability considerations into the processes underlying financial advice. |

| | |
|---------------------------------|--|
| | <ul style="list-style-type: none"> • Dedicate resources and develop initiatives to increase retail investors’ financial literacy with regards to sustainable products and investments. • Complete their assessments of ESG information disclosed by investment service providers with data/analysis from third parties (e.g. ESG rating providers) and external verifiers, where needed. |
| ESMA actions 5.4.2 | <p><u>ESMA will:</u></p> <ul style="list-style-type: none"> • Consider the feasibility of a Eurobarometer survey to assess retail investors’ perceptions, practices and knowledge related to sustainable finance. • Launch CSA on the integration of sustainability in firms’ suitability assessment and product governance processes and procedures in 2024. |
| To the EC 5.4.3 | <p><u>The EC is invited to:</u></p> <ul style="list-style-type: none"> • Give ESMA an explicit mandate to develop guidelines on marketing communications. • Undertake additional initiatives to foster financial education across Member States, especially ensuring that all NCAs have a clear mandate on the topic. |
| Benchmark administrators | |
| To NCAs 6.4.1 | <p><u>NCAs are invited to:</u></p> <ul style="list-style-type: none"> • Consider good practices regarding regular dialogue with supervised entities, website reviews and the assessment of (1) the consistency between ESG factors disclosures and the use of ESG-related terms in benchmarks’ names, (2) administrators’ compliance with mandatory disclosure of ESG factors and (3) administrators’ appropriate implementation of data quality controls. • With respect to the supervision of EU CTB/PAB labels, verify compliance with minimum standards related to exclusions, the reference temperature scenario, equity allocation constraints, the decarbonisation trajectory and GHG emissions accounting. • Check that the supervised entities demonstrate the calculation methodology of the ESG factor and have in place effective systems and controls to ensure ESG factors are correctly implemented. • Verify the consistency between administrators ESG factors and their methodology. • Recommend to the benchmark administrators the use of a template found in (EU) 2020/1817. • Monitor that, when feasible, the administrator is using company-disclosed information and no longer estimates from ESG data providers. |
| ESMA actions 6.4.2 | <p><u>ESMA will:</u></p> <ul style="list-style-type: none"> • Continue to explore the benefits and feasibility of deploying SupTech tools supporting the sustainability-related supervision for benchmarks. • Consider, as justified, follow-up actions to the CSA with the view supporting consistency in the application of regulatory requirements and awareness to firms and facilitating supervision |
| To the EC 6.4.3 | <p><u>The EC is invited to:</u></p> <ul style="list-style-type: none"> • Incorporate a provision prohibiting misleading information under BMR. • Address the loophole resulting from the recent review of BMR which leaves non-significant benchmarks out of scope of the BMR and without any supervisory oversight |

8. Annex 2 – Legal provisions relevant to the supervision of greenwashing

The mapping below provides a high-level description of the main provisions that may be relevant when dealing with instances of greenwashing. ^{108 109}

| Cross-sectoral | | | | |
|----------------------------|--|--|---|---|
| Legislation | Entities and products in scope | Main relevant requirements | NCAs' mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| Taxonomy Regulation | Undertakings which are subject to the obligation to publish a sustainability statement or a consolidated sustainability statement pursuant to Article 19a or Article 29a of Directive 2013/34. | Any undertaking which is subject to an obligation to publish a sustainability statement shall include in that statement (whether individual or consolidated) on how and to what extent the undertaking's activities are associated with economic activities that qualify as environmentally sustainable (Art 8). The content and presentation of the information to be disclosed, including the methodology to be used in order to comply with them, is included in the Disclosures Delegated Act. | National Competent Authorities (NCAs) are expected to supervise the compliance of the sustainability statement, in accordance with the Transparency Directive (TD). The list of supervisory powers can be found in Art 24(4) of the TD. | The sanctioning regime can be found in Art 28 of the Transparency Directive (as for the Corporate Sustainability Reporting Directive - see row below). |
| | Financial market participants that make available financial products (as defined in SFDR). | The Taxonomy supplements the rules on transparency laid down in SFDR, by introducing pre-contractual and periodic disclosures on the proportion of investments that fund environmentally sustainable economic activities within the meaning of the Taxonomy (Art 5. See also 6 and 7 for products promoting environmental characteristics | Member States shall ensure that NCAs referred to in Article 14(1) of SFDR (i.e. designated in accordance with sectoral legislation, e.g. AIFMD and UCITS Directive) monitor the compliance of financial market participants with the requirements in Articles 5, 6 and 7 of the Taxonomy (Art 21(1)). | Member States shall lay down the rules on measures and penalties applicable to infringements of Articles 5, 6 and 7 (Art 22). <u>Cooperation</u> : Competent authorities shall cooperate with each other and provide each other, without undue delay, with information that is |

¹⁰⁸ Legal notice - This Annex aims to provide an overview of the main provisions of the sectoral acts within ESMA's scope of action that may be relevant to greenwashing. It aims to provide a user-friendly guide and, in this context, certain provisions have been summarised and/or omitted. For the full text of the provisions referred to in this Annex, the reader should consult the authentic text of the legal acts published in the Official Journal of the EU. Although this Annex has been prepared with utmost care and ESMA tries to ensure that it is accurate, please note that this Annex produces no legal effects and ESMA accepts no responsibility or liability whatsoever with regard to the information contained within it. In particular, ESMA is not liable for any damage arising from use or inability to use this Annex, or any information contained in it, or from any action or decision taken as a result of using this Annex or any such information. The information in the Annex is of a general nature only and is not intended to address the specific circumstances of any particular individual or entity. It can under no circumstances be regarded as professional or legal advice. If the reader needs specific advice, he/she should consult a suitably qualified professional.

¹⁰⁹ Other important pieces of legislation worth mentioning have not yet been published in the Official Journal and are not covered in this mapping: the ESG Rating Provider Regulation (new requirements to improve the transparency and integrity of the operations of ESG ratings providers and prevent potential conflicts of interests), the Corporate Sustainability Due Diligence Directive (CSDDD) (new conduct duties, regarding due diligence and transition planning processes and the EU Listing Act (new ESG disclosures in prospectuses, including specific disclosure requirements for non-equity securities that are advertised based on ESG factors).

| Cross-sectoral | | | | |
|---|--|--|--|--|
| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| | | and for products that do not promote such characteristics). | NCA's have the supervisory and investigatory powers defined under sectoral legislation (e.g. AIFMD, UCITS Directive). NCA's and the ESAs should exercise the product intervention powers laid down in MiFIR and PRIIPS Regulation also with respect to mis-selling practices or misleading disclosures of sustainability-related claims, including the information required under the Taxonomy (Recital 55). | relevant for the purposes of carrying out their duties (Art 21). |
| Unfair Commercial Practices Directive (UCPD), as amended by the Empowering Consumers Directive | All business-to-consumer commercial practices in relation to a product (Art 3). Therefore, the Directive applies to all market participants that sell products to consumers. | <p>Misleading actions and misleading omissions are considered unfair commercial practices and shall be prohibited (Art 5). A commercial practice shall be unfair if it materially distorts or is likely to materially distort the economic behaviour of the average consumer (see Art 5(2)(b) and Art 2(e)). This includes omitting material information that the average consumer needs (Art 7(1)).</p> <p>The Empowering Consumers Directive added environmental and social characteristics to the list of features of a product for which the trader's practices may be considered misleading, following a case-by-case assessment (Art 6(1)(b)). Moreover, claims relating to future environmental performance that are not adequately substantiated shall be regarded as misleading (Art 6(2)(d)).</p> <p>The Directive also extended the list of banned unfair practices in Annex I UCPD: i) Displaying a sustainability label that is not based on a certification scheme or not established by public authorities, ii) Making a generic environmental</p> | <p>Member States shall ensure that adequate and effective means exist to combat unfair commercial practices (Art 11). Consumers harmed by unfair commercial practices shall have access to proportionate and effective remedies, determined by Member States, which may take into account the gravity and nature of the unfair practice, the damage suffered by the consumer and other relevant circumstances (Art 11a). Where an unfair practice has not been carried out but is imminent, competent authorities can order the prohibition of the practice, even without proof of actual loss or damage or of intention or negligence on the part of the trader (Art 11(2)). Member States shall confer powers to order the cessation or the prohibition of an unfair commercial practice (Art 13(2)). Art. 3(9): In relation to 'financial services', as defined in Directive 2002/65/EC, Member States may impose requirements which are more restrictive or prescriptive than the Directive in the field which it approximates.</p> | Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to the Directive. The penalties provided for shall be effective, proportionate, and dissuasive (Art 13(1)). Intention is not a necessary condition for the imposition of penalties. However, the intentional nature of the infringement could be considered as an aggravating factor for the imposition of penalties (following Art 13(2) points (a) and (f)). |

| Cross-sectoral | | | | |
|--------------------------------------|---|--|---|--|
| Legislation | Entities and products in scope | Main relevant requirements | NCAs' mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| | | <p>claim while not demonstrating a recognised excellent environmental performance relevant to the claim, iii) Making an environmental claim about the entire product or the traders entire business when it concerns only a certain aspect, iv) Claiming, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions.</p> | <p>From a partial mapping, 4 NCAs confirmed being competent authorities under the UCPD for certain cases of infringements (see para 26 of the Report).</p> | |
| Market Abuse Regulation (MAR) | <p>Pursuant to Article 1, anyone liable for insider dealing, unlawful disclosure of inside information and market manipulation. In addition, MAR foresees specific disclosure obligations for issuers and emission allowance market participants (Art.18). Other specific obligations are set forth for other subjects (e.g. persons discharging managerial responsibilities)</p> | <p>According to Article 7, Inside information is information which is (i) not public; (ii) relating directly to the issuer or financial instruments; (iii) precise; (iv) if made public, would be likely to have a significant effect on the relevant prices of those financial instruments or related financial instruments (i.e. information a reasonable investor would be likely to use as part of the basis of his/her investment decision). Issuers and emission allowances market participants are required to inform the public as soon as possible of inside information that concerns them (Art 17).</p> <p>Moreover, the following activities are considered as market manipulation and are therefore prohibited following Article 15:</p> <ul style="list-style-type: none"> - disseminating information through the media which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, or secures, or is likely to secure, the price of one or several financial instruments, at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or | <p>NCAs shall verify compliance with the requirements of the Regulation and with national provisions. Competent authorities have, in accordance with national law, supervisory and investigatory powers. They can for example:</p> <ul style="list-style-type: none"> - access any document and data; - require or demand information; - carry out on-site inspections and investigations; - refer matters for criminal investigation; - suspend trading of the financial instrument concerned; - require the temporary cessation of any practice contrary to the Regulation; - impose a temporary prohibition on the exercise of professional activity; - take measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring the person who has published or disseminated false or misleading information to publish a corrective statement. <p>The full list of supervisory powers can be found in Article 23(2).</p> | <p>Member States shall, in accordance with national law, provide for competent authorities to have the power to take appropriate administrative sanctions and other administrative measures (e.g. order to cease the conduct, withdrawal of authorisations, pecuniary sanctions, see Art 30).</p> <p>The degree of responsibility of the person responsible for the infringement is considered when determining the type and level of administrative sanctions and measures (Art 31(1)(b))</p> <p><u>Cooperation</u>: Competent authorities shall cooperate with each other and with ESMA where necessary, by exchanging information and cooperating in investigation, supervision and enforcement activities (Art 25(1)).</p> |

| Cross-sectoral | | | | |
|----------------|--------------------------------|--|--------------------------------------|---|
| Legislation | Entities and products in scope | Main relevant requirements | NCAs' mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| | | <p>ought to have known, that the information was false or misleading; (Art 12(1)(c)</p> <p>- transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark (Art 12(1)(d). The following behaviour shall, inter alia, be considered as market manipulation: the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way (Art 12(2)(d).</p> | | |

| Issuers | | | | |
|--|---|---|---|---|
| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| <p>Corporate Sustainability Reporting Directive (CSRD) (amending the Transparency Directive (TD), the Accounting Directive, the Audit Directive and Audit Regulation)</p> | <p>All large entities as per the dimensional criteria in Art 3 of the Accounting Directive and all listed entities in regulated markets (excluding microentities) (Art 19a and 29a CSRD). Some disclosure requirements apply to third country groups with a significant interest in the EU (Art 40a(1) CSRD). While the scope of the CSRD addresses both listed and non-listed undertakings, unless it is differently provided by the national transposition measures of this directive, the scope of supervision of securities and markets authorities at national level is expected to remain limited only to undertakings with</p> | <p>Through amendments to the Accounting Directive, the CSRD sets out specific sustainability-related disclosure requirements which identify specific provisions on the reporting areas and the sustainability matters as well as value-chain reporting requirements. The CSRD also envisaged delegation to the Commission to develop European Sustainability Reporting Standards (ESRS) to provide detailed disclosure requirements. Issuers are required to comply with these requirements in their sustainability statements.</p> <p>Through amendments to the Transparency Directive (TD), the CSRD has coordinated the content-requirements for the sustainability statements set out in the Accounting Directive with the obligations for the annual financial reporting of issuers in the TD. Amongst those amendments the CSRD has now better clarified in the TD that the persons responsible for the annual report shall declare that, to the best of their knowledge, financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer; that the management report includes a fair review of the development and performance of the business and the position of the issuer, together with a description of the principal risks and uncertainties and, where appropriate, that it is prepared in accordance with the ESRS and the Taxonomy Disclosure Delegated Act (Art 4(2)(c) Transparency Directive, as amended by the CSRD). Undertakings in scope need to provide a description of the due diligence process implemented by the undertaking with regard to sustainability matters (Art 19a(2)(f), Art 29a(2)(f) of the Accounting Directive, as amended by the CSRD). There is no explicit reference to due diligence obligations of third-party information.</p> | <p>NCAs are expected to supervise compliance of the annual financial report, including the sustainability statement that is part of the management report, with the provisions adopted pursuant to the Directive. (Member States may designate another authority for examining that the required information is drawn up in accordance with the relevant reporting framework).</p> <p>The Transparency Directive, which the CSRD has amended to introduce sustainability reporting obligations for issuers, envisages that competent authorities shall have all the powers necessary for the performance of their functions. They can, for example:</p> <ul style="list-style-type: none"> - require to provide information and documents; - suspend trading in securities for a maximum of ten days in case of infringement; - prohibit trading on a regulated market; - monitor that the issuer discloses timely information with the objective of ensuring effective and equal access to the public - make public the fact that an issuer is failing to comply with its obligations; - examine that information referred to in the Directive is drawn up in accordance with the relevant reporting framework and take appropriate measures in case of discovered infringements; - carry out on-site inspections. <p>The full list of supervisory powers can be found in Art 24(4) of the Transparency Directive.</p> | <p>Without prejudice to the right of Member States to impose criminal penalties, Member States shall ensure, in conformity with their national law, that at least the appropriate administrative measures may be taken or civil and/or administrative penalties imposed in case of non-compliance (Art 28 TD).</p> <p>Competent authorities shall cooperate with each other, whenever necessary, for the purpose of carrying out their duties and making use of their powers (Art 25(2) TD).</p> <p>With respect to statutory auditors and audit firms, the sanctioning regime sits in Article 30 of the Audit Directive.</p> |

| Issuers | | | | |
|-----------------------------------|---|--|---|---|
| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| | securities listed on regulated markets. | It is possible for the undertaking to estimate the information to be reported if it cannot collect the required upstream and downstream value chain information after making reasonable efforts to do so. These estimates can include internal and external information, such as data from indirect sources, sector average data, sample analyses, market and peer groups data, other proxies or spend-based data. (ESRS 1, AR 17) | | |
| Prospectus Regulation (PR) | Entities: Issuers, offerors and persons seeking admission to trading on a regulated market (Article 1). Products: Securities falling within the scope of PR. | A prospectus shall contain the necessary information which is material to an investor (Art 6(1), and Art 14(2) and 14a(2) for simplified prospectus and EU Recovery prospectus). The minimum information requirements are set out in Article 13 and further specified in Commission Delegated Regulation 2019/980. Material sustainability-related disclosure should be included in prospectuses in accordance with Article 6(1) (as clarified in ESMA statement on sustainability disclosures in prospectus). Environmental, social and governance circumstances can also constitute specific and material risks factors for the issuer and its securities and, in that case, should be disclosed (Recital 54). The persons responsible for the prospectus shall provide declarations that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import (Art 11(1)). These parties are therefore made liable for any shortcomings in the disclosure included in the prospectus. Moreover, the information contained in advertisements shall not be inaccurate or misleading and shall be consistent with the information contained in the prospectus (Art 22(3)). | Scrutiny and approval of the Prospectus (and the supplement): Competent authorities are expected to assess the completeness, consistency and comprehensibility of the information given in the prospectus (Art 20). Advertising activity compliance control: Competent authorities have the power to exercise control over the compliance of advertising activities with the requirements of the PR (Art 22(6)). Competent authorities have, in accordance with national law, the supervisory and investigatory powers necessary to carry out their duties. They can for example: - require the inclusion of supplementary information in the prospectus; - require the provision of relevant information and documents; - suspend for 10 consecutive days, or prohibit, an offer of securities to the public or admission to trading; - prohibit or suspend advertisements; - make public the fact that an issuer, an offeror or a person asking for admission to trading is failing to comply with its obligations; - refuse approval of any prospectus drawn up by a certain issuer for a maximum of 5 years, - carry out on-site inspections or investigations. | Competent authorities have the powers, in accordance with national law, to impose administrative sanctions and take appropriate other administrative measures (Art 38). The degree of responsibility of the person responsible for an infringement is considered when determining the type and level of administrative sanctions and measures (Art 39(1)(b)). <u>Cooperation:</u> Competent authorities shall cooperate with each other and with ESMA. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities (Art 33 and 34). |

| Issuers | | | | |
|--|---|---|---|---|
| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| | | | The full list of supervisory powers can be found in Art 32 PR. | |
| Regulation for a European Green Bond Standard | <ul style="list-style-type: none"> - Issuers of bonds that are made available to investors and comply with Title II, who wish to use the designation "European Green Bond" or "EuGB" in the Union. - Issuers of other environmentally sustainable or sustainability-linked bonds that use the optional disclosure templates in the Union (Art 1). | <p>Issuers are required to publish pre-issuance documents (CaPex Plan, Factsheet and Prospectus - following Articles 7, 10 and 14) and post-issuance documents (Allocation report and Impact report - following Articles 11 and 12).</p> <p>Third party external reviewers are in charge of providing a review and certifying the accuracy of such documents (except for the prospectus).</p> | <p>Competent authorities are expected to assess whether issuers of EU Green Bonds comply with the disclosure requirements set out in the Regulation (and in Prospectus Regulation for the publication of a Prospectus pursuant to it). They are not required to verify the truthfulness or accuracy of the information nor whether issuers have complied with the obligations regarding the allocation of proceeds (Recital 53).</p> <p>Competent authorities have, in accordance with national law, supervisory and investigatory powers regarding issuers of EU Green Bonds. They can for example:</p> <ul style="list-style-type: none"> - require to provide relevant information and documents; - suspend for 10 days, or prohibit an offer or admission to trading of European Green Bonds where the issuer fails to comply with its obligations; - suspend advertisements for 10 days, or prohibit advertisements; - make public the fact that an issuer fails to comply with the Regulation require that issuer to publish that information on its website; - prohibit an issuer from issuing European Green Bonds for a period of one year in the case of severe and repeated infringements; - carry out on-site inspections or investigations. <p>The full list of supervisory powers can be found in Art 45.</p> | <p>Member States shall, in accordance with national law, provide for competent authorities to have the power to impose administrative penalties and take other appropriate administrative measures for infringements by issuers (Art 49).</p> <p>The degree of responsibility of the person responsible for the infringement can affect the type and level of administrative sanctions or measures imposed by competent authorities (Art 50(1)(b)).</p> <p><u>Cooperation:</u> Competent authorities shall cooperate with each other and exchange information without undue delay and cooperate in investigation, supervision and enforcement (Art 46). Competent authorities of host Member States can also take precautionary measures. They can inform the competent authorities of home Member States and ESMA of any irregularities committed by an issuer and take all appropriate measures when an issuer persists in infringing the Regulation after measures taken by the competent authority of the home Member State (Art 48).</p> |

| Investment managers | | | | |
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| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| Directive on undertakings for collective investment in transferable securities (UCITS) | All funds authorised by NCAs under the UCITS Directive and their management company | <p>Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned (Art 78). Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading and shall be consistent with the relevant parts of the prospectus. However, civil liability should not incur only on the basis of the key investor information, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus (Art 79).</p> <p>Article 23 of the UCITS Delegated Directive (Commission Delegated Directive 2010/43/EU) require fund managers to establish "written policies and procedures on due diligence", which has to "take into account sustainability risks".</p> <p>Art 18 of the UCITS Delegated Directive (Commission Delegated Directive 2010/43/EU) requires fund managers to establish a conflicts of interest policy which should identify the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients.</p> <p>Article 4(1) on the cross-border distribution of funds that applies also to UCITS management companies does include a "fair, clear and not misleading information" provision with respect to marketing communications of UCITS management companies (see row below).</p> | <p>NCAs are in charge of authorising UCITS management companies and supervising compliance with the requirements of the Directive and national legislation. They have, in accordance with national law, supervisory and investigatory powers necessary for the exercise of their functions. They can for example:</p> <ul style="list-style-type: none"> - access any document and receive a copy; - require to provide information; - carry out on-site inspections; - require data traffic records or recordings of telephone conversations or electronic communications - require the cessation of any practice that is contrary to the provisions - request the freezing or the sequestration of assets; - request the temporary prohibition of professional activity; - withdraw the authorisation granted to a UCITS, a management company or a depositary; - refer matters for criminal prosecution; and <p>The full list of supervisory powers can be found in Art 98.</p> | <p>Member States shall lay down rules on administrative sanctions and other administrative measures to be imposed on companies and persons in respect of infringements of national provisions transposing the Directive (Art 99). The degree of responsibility of a person responsible for an infringement can affect the type and level of administrative sanctions or measures imposed by competent authorities (Art 99(c)).</p> <p><u>Cooperation:</u> The competent authorities of the Member States shall cooperate with each other whenever necessary and provide each other with the information required for the purposes of carrying out their duties under the UCITS Directive (Art 101).</p> |

| Investment managers | | | | |
|---|---|--|--|--|
| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| Alternative Investment Fund Managers Directive (AIFMD) | AIFMs authorised or registered in the Union and the AIF they manage (Article 1) | <p>Disclosures to investors are specified in Art 23. Article 4(1) on the cross-border distribution of funds that applies also to AIFMs does include a "fair, clear and not misleading information" provision with respect to marketing communications of AIFs (see row below)</p> <p>Article 18 of Commission Delegated Regulation (EU) No 231/2013 requires AIFMs to establish, implement and apply written policies and procedures on due diligence, where they have to take into account sustainability risks when complying with that requirement.</p> <p>Art 33 of Commission Delegated Regulation (EU) No 231/2013 requires AIFMs to take into account the materiality of the risk of damage to the interests of the AIF or its investors.</p> | <p>NCAs are in charge of authorising AIFMs and supervising compliance with the requirements of the Directive and national legislation (article 44 et seq.).</p> <p>They have, in accordance with national law, supervisory and investigatory powers necessary for the exercise of their functions. They can for example:</p> <ul style="list-style-type: none"> - have access to any document and receive a copy of it; - require additional information; - carry out on-site inspections; - require existing telephone and existing data traffic records; - require the cessation of any practice that is contrary to the provisions of the Directive; - request the freezing or the sequestration of assets; - request the temporary prohibition of professional activity; - withdraw the authorisation granted to an AIFM or a depositary; - refer matters for criminal prosecution. <p>The full list of supervisory powers can be found in Art 46.</p> | <p>Member States shall ensure, in accordance with their national law, that the appropriate administrative measures can be taken, or administrative penalties be imposed against the persons responsible where the provisions adopted in the implementation of the Directive have not been complied with. Member States shall ensure that those measures are effective, proportionate and dissuasive (Article 48(1)).</p> <p>The competent authorities may disclose to the public any measure or penalty that will be imposed for infringement of the provisions adopted in the implementation of the Directive, unless such disclosure would seriously jeopardise the financial markets, be detrimental to the interests of the investors or cause disproportionate damage to the parties involved. (Article 48(2)).</p> <p><u>Cooperation:</u> Competent authorities shall cooperate with each other and with ESMA and the ESRB whenever necessary (Art 50(1)).</p> |
| Sustainable Finance Disclosures Regulation (SFDR) | Financial Market Participants (FMPs) (defined in Article 2(1) SFDR), Financial Advisers (defined in Article 2(11) SFDR), Financial Products (defined in Article 2(12) SFDR) | <p>The SFDR includes entity-level and product level disclosure requirements (Art 3 to 11). Marketing communications shall not contradict the information disclosed pursuant to the Regulation (Art 13).</p> <p>Financial market participants and financial advisers shall provide the information required by the Regulation in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading (under Art 8(3),(4) and 9(5),(6) of the SFDR, as amended by the Taxonomy).</p> | <p>Competent authorities designated in accordance with sectoral legislation (e.g. AIFMD, UCITS Directive) shall monitor the compliance of financial market participants and financial advisers with the requirements of the SFDR and shall have all the supervisory and investigatory powers necessary for the exercise of their functions under the SFDR (Art 14).</p> | <p>The sanctioning regime is defined under sectoral legislation (e.g. AIFMD, UCITS Directive, as indicated above).</p> <p><u>Cooperation:</u> Competent Authorities shall cooperate with each other and provide each other, without undue delay, with such information as is relevant for the purposes of carrying out their duties under the Regulation (Art 14).</p> |

| Investment managers | | | | |
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| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| | | Under Article 4, FMPs that consider PAIs must publish statements on due diligence policies with respect to those [principal adverse] impacts' Recital 18 of SFDR clarifies that Principal Adverse Indicators (PAI) disclosure includes a description of the adverse impacts and the procedures put in place to mitigate those impacts. This is clarified in joint SFDR Q&A IV.3. | | |
| Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) | All market participants that manufacture a PRIIP (called "PRIIPs manufacturers") and persons advising on, or selling, PRIIPs (Art 2(1)). | <p>The information in the PRIIPs Key Investor Document (KID) shall be accurate, fair, clear and not misleading (Art 6(1)).</p> <p>The PRIIP manufacturer shall not incur civil liability solely on the basis of the key information document, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in Article 8 (Art 11).</p> <p>Marketing communications shall not contradict the information contained in the KID or diminish their significance. They shall indicate that a KID is available and indicate how obtain it (Art 9).</p> | <p>NCAs shall monitor the market for insurance-based investment products which are marketed, distributed or sold in or from their Member State (Art 15(2)) and they shall verify compliance of Key Investor Documents with the Regulation and with national provisions. These powers mirror those given under MiFIR for investment firms and asset managers (Recital 25 PRIIPs).</p> <p>Competent authorities designated in accordance with sectoral legislation (e.g. AIFMD, UCITS Directive) shall monitor the compliance of financial market participants with the requirements.</p> <p>They shall, in accordance with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions (Art 20).</p> | <p>Member States shall lay down rules establishing appropriate administrative sanctions and measures applicable and shall take all necessary measures to ensure that they are implemented (Art 22(1)). The list of administrative sanctions and measures can be found in Art 24.</p> <p>NCAs can take into account the degree of responsibility of the person responsible for the infringement when imposing sanctions and administrative measures (Art 25).</p> <p><u>Cooperation:</u> Competent authorities shall cooperate with each other and, without undue delay, provide each other with such information as is relevant for the purposes of carrying out their duties (Art 20).</p> <p>Competent authorities shall also exercise their powers to impose sanctions in accordance with this Regulation and national law either (a) directly; (b) in collaboration with other authorities; (c) under their responsibility by delegation to such authorities; or (d) by application to the competent judicial authorities (Art 23).</p> |

| Investment managers | | | | |
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| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| Regulation on facilitating cross-border distribution of collective investment undertakings | UCITS management companies, AIFMs, EuVECA and EuSEF managers and ELTIF managers (Art 2). | <p>AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading (Art 4(1)).</p> <p>UCITS management companies must ensure that marketing communications that contain specific information about a UCITS do not contradict or diminish the significance of the information contained in the prospectus or the key investor information. UCITS management companies must ensure that all marketing communications indicate that a prospectus exists and that the key investor information is available. (Article 4(2)).</p> | <p>NCAs shall verify compliance of marketing requirements with the Regulation and with national provisions.</p> <p>Competent authorities may require prior notification of marketing communications which UCITS management companies intend to use directly or indirectly in their dealings with investors. (Article 7).</p> <p>Competent authorities designated in accordance with sectoral legislation (e.g. AIFMD, UCITS Directive) shall monitor the compliance of financial market participants with the requirements. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to the Regulation (Art 14(1)).</p> | <p>Competent authorities must exercise the powers related to penalties and other measures conferred on them under sectoral legislation (e.g. AIFMD, UCITS Directive) to enforce the Regulation (Art 14(2)).</p> |

| Investment service providers | | | | |
|--|---|---|---|---|
| Legislation | Entities and products in scope | Main relevant requirements | NCAs' mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| Markets in financial instruments Directive (MiFID II) / (MiFIR) | Investment firms/credit institutions and third-country firms that provide investment services or perform investment activities through the establishment of a branch (Art 1 MiFID). | All information, including marketing communications , addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading (Art 24(3) MiFID II). Article 44 of MiFID II Delegated Regulation (Commission Delegated Regulation 2017/565) specifies the requirements on quality/clarity of information. Investment firms shall comply with them to ensure that the information they disseminate is fair, clear and not misleading. | Competent authorities shall monitor the compliance of investment firms with the requirements of MiFID II/MiFIR. They shall have, in accordance with national law, the supervisory and investigatory powers necessary to carry out their duties. For example: <ul style="list-style-type: none"> - require the provision of relevant information; - carry out on-site inspections or investigations; - require recordings of telephone conversations or electronic communications; - require the temporary prohibition of professional activity; - require the temporary or permanent cessation of a practice; - require that a financial instrument is removed or suspended from trading; - issue public notices; - require the removal of a natural person from the management board of an investment firm or market operator. The full list of supervisory powers can be found in Art 69 MiFID. | Member States shall ensure that competent authorities may impose administrative sanctions and measures to all infringements, including a sanctioning regime for the violation of rules on information to clients (see Art 70(3)(a)(x) of MiFID II). The degree of responsibility of the person responsible for the infringement is considered when determining the type and level of administrative sanctions and measures (Art 72(2)(b) MiFID). <u>Cooperation:</u> Competent authorities of different Member States shall cooperate with each other where necessary and supply one another with the information required for the purposes of carrying out their supervisory and enforcement powers (Art 79, 80, 81 MiFID, Delegated Regulation 2017/586 with technical standards under Article 80 and 81 MiFID). |

| Benchmark administrators | | | | |
|--|--|--|--|--|
| Legislation | Entities and products in scope | Main relevant requirements | NCA's mandate and supervisory powers | Sanctioning regime and cooperation among NCAs |
| Regulation on indices used as benchmarks in financial instruments and financial contracts (BMR) | Benchmarks Administrators, supervised entities that contribute input data to an administrator and supervised entities using benchmarks in financial products (Art 2(1)). | Administrators shall publish benchmarks methodologies documents (Art 13) and publish benchmark statements (Art 27). For significant and non-significant benchmarks, certain exemptions of BMR requirements are possible. All benchmarks (except for interest rate and foreign exchange benchmarks) shall provide an explanation of how their methodology reflects ESG factors (Art 13(d)). The benchmark statement shall contain an explanation of how ESG factors are reflected in each benchmark (Art 27(2a)). For those benchmarks or families of benchmarks that do not pursue ESG objectives, it shall be sufficient for benchmark administrators to clearly state in the benchmark statement that they do not pursue such objectives. In the BMR there is no reference to "fair, clear and not misleading information". | NCAs and ESMA are expected to authorise, register or recognise administrators providing significant and non-significant benchmarks and supervise their compliance with the BMR. Competent authorities have, in accordance with national law, supervisory and investigatory powers regarding significant and non-significant benchmarks. They can for example: <ul style="list-style-type: none"> - access documents and data, require or demand additional information; - carry out on-site inspections or investigations and require recordings of communications; - request the freezing or sequestration of assets or both; - require temporary cessation of any practice contrary to the BMR, impose a temporary prohibition on the exercise of professional activity; - requiring administrators to publish corrective statements. The full list of supervisory powers can be found in Art 41 BMR. ESMA can require the persons involved in the provision of benchmarks (and persons related to them) to provide all necessary information to enable ESMA to carry out its duties under the BMR (Art 48b). ESMA has also investigatory powers (listed in Art 48c) and the power to carry out on-site inspections (Art 48d). | Member States shall, in conformity with national law, provide for NCAs to have the power to impose appropriate administrative sanctions and measures on administrators of significant and non-significant benchmarks (Art 42 and 43). NCAs can take into account the degree of responsibility of the person responsible for the infringement to determine the type and level of administrative sanctions or measures (Art 43(1)(c)). <u>Cooperation:</u> NCAs shall cooperate to ensure that the supervisory and investigative powers and sanctions produce the desired results of the Regulation and coordinate their action to avoid possible duplication and overlap (Art 43(2)). Moreover, NCAs shall liaise with judicial authorities within their jurisdiction (Art 44(1)) and shall exchange information and cooperate with other competent authorities and ESMA (Art 44(2) and Art 47). For administrators of critical benchmarks and third country recognised administrators, ESMA is in charge of imposing fines. ESMA shall take into account the nature and seriousness of the infringement, considering also whether the infringement has been committed intentionally or negligently (Art 48e). If ESMA finds that any person has, intentionally or negligently, committed one or more of the infringements listed in point (a) of Article 42(1), it shall adopt a decision imposing fines. An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement (Art 48f). |

9. Annex 3 – common ESAs high-level understanding of greenwashing

231. The ESAs understand greenwashing as a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.

232. In addition, the below core characteristics help understand the scope of greenwashing:

- Similarly to the communication of other misleading claims, there are several ways in which sustainability-related statements, declarations or communications may be misleading. On the one hand, communications can be **misleading due to the omission of information** relevant to consumers, investors or other markets participants' decisions (including, but not limited to, partial, selective, unclear, unintelligible, vague, oversimplistic, ambiguous or untimely information, and unsubstantiated statements). On the other hand, communications can be **misleading due to the actual provision of information**, that is false, deceives or is likely to deceive consumers, investors or other market participants (including, but not limited to, mislabelling, misclassification, mis-targeted marketing, and inconsistent information);
- Similarly to other misleading actions, greenwashing is a type of misconduct which may not only result in a direct claim but **in misleading actions**. Potential examples include identifying clients with sustainability preferences within the positive target market of a product that does not have any sustainability features (in the product design phase) or not taking duly into account clients' sustainability preferences in the advice phase.
- Sustainability-related misleading claims can occur and spread **intentionally or unintentionally**, whereby intentionality, negligence, or the lack of robustness and appropriateness of due diligence efforts could, where relevant, constitute aggravating factors in the context of supervisory and enforcement actions.
- Greenwashing can occur either **at entity level** (e.g., relating to an entity's sustainability strategy or performance), **at financial product level** (e.g., relating to a product's sustainability strategy or performance) **or at financial service level including**

advice¹¹⁰ (e.g., relating to the integration of sustainability-related preferences to the provision of financial advice).

- Greenwashing can occur at any point where sustainability-related statements, declarations, actions or communications are made, including **at different stages of the business cycle of financial products or services** (e.g., manufacturing, delivery, marketing, sales, monitoring) **or of the sustainable finance value chain**.
- Greenwashing may occur in relation to the application of specific disclosures required by the EU sustainable finance regulatory framework or in relation to general principles – as featured either in **the general EU financial legislation or, more specifically, in EU sustainable finance legislation**. In addition, greenwashing may occur in relation to entities that are **outside of the remit of the EU sustainable finance legislation** as it currently stands.
- Greenwashing can be **triggered by the entity to which the sustainability communications relate**, by the entity responsible for the product, by the entity providing advice or information on the product, or it can be **triggered by third parties** (e.g., ESG rating and data providers, or third-party verifiers);
- Greenwashing may or may not result in **immediate damage to individual consumers or investors** (in particular through mis-selling¹¹¹) or the gain of an **unfair competitive advantage**. Regardless of such outcomes, if not kept in check, greenwashing may **undermine trust in sustainable finance markets and policies**.

233. In the context of the summary statement outlined above, “entities” are understood to be financial or non-financial undertakings or financial intermediaries that manufacture, issue and/or distribute financial products; “financial product or financial service” is used to cover all financial instruments, securities and investment, banking, insurance and pension products, as well as all financial services relevant for each sector considered; “consumers” encompasses all retail and professional customers/clients of “entities”.

¹¹⁰ There may be interdependencies and/or blurred lines between the product’s level and the entity’s level. For example, one product could be correctly presented as sustainable, but in case the communication around the product would suggest that the whole entity should be regarded as sustainable, greenwashing concerns could arise.

¹¹¹ EU regulations do not provide a definition of mis-selling and the concept is generally understood as encompassing different practices such as unauthorised entities providing financial services, authorised entities providing unauthorised products or services and/or authorised financial intermediaries unsuitably selling financial products or services to clients (i.e. not accounting for their actual characteristics and needs). In the case of the EC’s greenwashing request for input, we are considering this latter case of market not responding properly to consumers’ or investors’ preferences.

10. Annex 4 – Acronyms and definitions

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| AI | Artificial Intelligence |
| AIFM / Alternative Investment Fund Managers Directive | Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 |
| ASIC | Australian Securities and Investments Commission |
| BMR / Benchmark Regulation | Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 |
| CSA | Common Supervisory Action |
| CSDDD | Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 |
| CSRD | Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting |
| CTB | Climate Transition Benchmark |
| EC | European Commission |
| ECEPs | European Common Enforcement Priorities |
| ESAs | European Supervisory Authorities |
| ESAP | European Single Access Point |
| ESEF | European Single Electronic Format |
| ESG | Environmental, Social and Governance |
| ESMA | European Securities and Markets Authority |
| ESRS | European Sustainability Reporting Standards |
| EU | European Union |
| EuGB | EU Green Bond |

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| FTE | Full-time equivalent |
| GHG | Greenhouse Gas |
| GLESI | Guidelines on Enforcement of Sustainability Information |
| JC | Joint Committee |
| KID | Key Information Document |
| Listing Act | Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises and repealing Directive 2001/34/EC |
| MAR | Market Abuse Regulation |
| MiFID II | Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU |
| ML | Machine Learning |
| MSE | Mystery Shopping Exercise |
| NCA | National Competent Authority |
| NGO | Non-Governmental Organisation |
| NLP | Natural Language Processing |
| NFRD / Non-Financial Reporting Directive | Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups |
| PAB | Paris-Aligned Benchmark |
| PAI | Principal Adverse Impact |
| Paris Agreement | Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015 |
| PR | Prospectus Regulation |
| RTS | Regulatory Technical Standards |
| SDG | Sustainable Development Goal |
| SF | Sustainable Finance |

| | |
|--|---|
| SFDR / Sustainable Finance Disclosure Regulation | Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector |
| SFDR Delegated Regulation | Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports |
| SF Hub | Sustainable Finance Knowledge Hub |
| SIVC | Sustainable Investment Value Chain |
| SRWG | Sustainability Reporting Working Group |
| SupTech | Supervisory Technology |
| TR | Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 |
| TRV | Trends, Risks and Vulnerabilities |
| TSI | Technical Support Instrument |
| UCITS | Undertakings for the Collective Investment in Transferable Securities |
| UCPD / Unfair Commercial Practices Directive | Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market |
| UN | United Nations |
| US SEC | The U.S. Securities and Exchange Commission |
| USSP | Union Strategic Supervisory Priority |