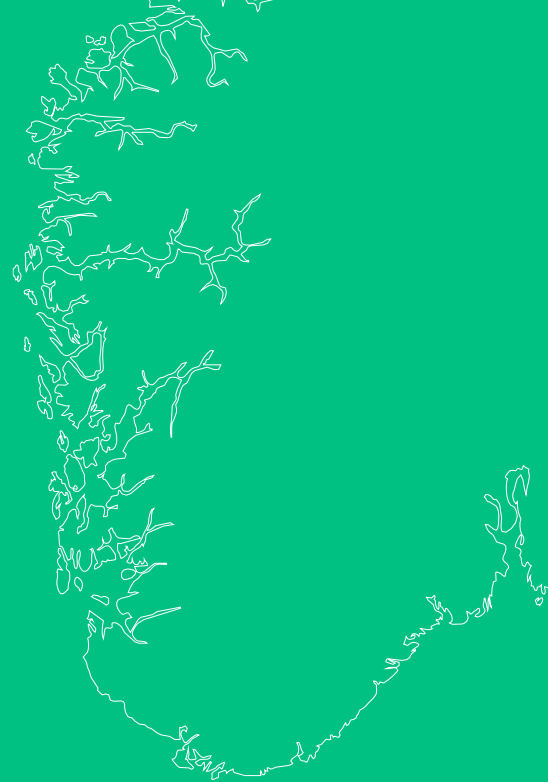




Sustainable finance and market integrity: promise only what you can deliver

A regulatory perspective on environmental impact claims associated with sustainable retail funds in France



About

The 2° Investing Initiative (2DII) is an international, non-profit think tank working to align financial markets and regulations with the Paris Agreement goals.

Working globally with offices in Paris, New York, Berlin, London, and Brussels, 2DII coordinates some of the world's largest research projects on climate metrics in financial markets. In order to ensure our independence and the intellectual integrity of our work, we have a multi-stakeholder governance and funding structure, with representatives from a diverse array of financial institutions, regulators, policymakers, universities and NGOs.

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Executive Summary

Numerous sources have evidenced the growing awareness of retail investors to the sustainability impact of the money they entrust to financial institutions. Prior research from 2DII involving a series of surveys conducted in France and Germany identified that 65% to 85% of retail investors say they want to invest more sustainably when they are asked.¹ Retail investor preferences for impact-related financial products are also regularly confirmed, especially in France. At the same time, the damage that greenwashing can cause on markets is well identified. Promoting consumer confidence through reliable environmental impact claims is a crucial issue to be tackled by regulatory authorities.

In this paper we analyse the regulatory framework applicable to environmental impact claims in the finance sector. This regulatory framework comprises general consumer protection rules (applicable to all sectors including the finance sector) as well as finance sector specific rules. We identify worrying inconsistencies between the general consumer protection rules as compared to the application of the finance sector specific rules and the stance of financial regulators.

Furthermore, the new disclosure requirements being developed in relation to the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation do not, in our opinion, assist with the problems associated with environmental impact claims in the finance sector. We consider that the evolving market practice in response to these disclosure requirements is inconsistent with the general consumer protection principles which themselves apply to the finance sector.

In addition to our analysis of the legal framework applicable to environmental impact claims in the finance sector, we also reviewed a sample of French funds marketed as having sustainability features and available to retail investors to identify high level trends in current market practice.

Our review shows that some financial institutions avoid the pitfall of greenwashing through adopting a cautious and realistic position, which focuses on investor expectations for aligning investments with their values or optimising risks and opportunities regardless of any expectation of actual impact. Nevertheless, the behaviour of other financial institutions and the extent of their environmental impact claims is unquestionably akin to greenwashing. Such behaviours are concerning from a market integrity perspective and in relation to broader objectives linked to aligning financial markets with climate (and other environmental) goals.

Despite the current confusion in the marketplace, we see encouraging signs that indicate enhanced standards for environmental impact claims are inevitable. We identified two EU initiatives aimed at increasing the level of consumer protection regarding environmental communications of companies. And specifically in relation to the finance sector, the EU Commission seems aware of the need to clarify the notion of impact as revealed in its 2020 consultation preceding the publication of the Renewed Sustainable Finance Strategy due later this year. These developments indicate a general trend whereby sooner or later financial regulation will require financial actors to ensure their environmental impact claims are aligned with their ability to generate societal change through the various actions they implement.

In view of this direction of travel, we articulate recommendations to ensure the necessary improvement of market practice in relation to environmental impact claims. These include strengthening regulatory oversight of environmental impact claims, improving research and data to develop evidence-based frameworks to assess investor impact, and financial institutions adopting a more sophisticated and cautious approach to environmental impact claims.

¹ 2DII, 2020, [A large majority of clients want to invest sustainably](#)

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Introduction

Recent years have seen a significant increase in financial institutions communicating their activities and initiatives in the areas of *sustainable finance*, *responsible investment* and other equivalent concepts.

These communications go beyond simple messages related to the financial institution's internal operations (e.g. energy saving activities to reduce the corporate environmental footprint). A growing number of financial institutions are communicating what they consider to be the real-world impacts of their decisions as providers of capital.

And it is true that financing and investment decisions do result in real-world impacts. However, understanding this real-world impact necessitates figuring out to what extent real-world changes can be attributed to - not just correlated with - a given action (whether at financial institution, financial product or service level).

Indeed, recent research concludes that we do not have a consensus that any particular sustainable finance approach always has an impact under different conditions (Kölbel et al., 2020). For some popular approaches (like exclusions or positive screening) evidence in support of a positive impact appears to be extremely weak.

Yet this lack of evidence has not prevented the rapid growth in financial institution communications linking traditional sustainable finance approaches with real-world impacts. Meanwhile, this has coincided with a growing awareness of market integrity problems stemming from greenwashing and consumer distrust of financial institution marketing communications.

It is therefore concerning that the proliferation of environmental impact claims in the finance sector has largely remained a blind spot of reflection until recently.

This paper focusses on these issues in the French context and seeks to shed light on these complex dynamics. It discusses first the methodological challenges associated with environmental impact claims in the finance sector and the relevant regulatory framework applicable to these environmental impact claims. It then articulates our high-level observations about the current state of market practice and whether environmental impact claims comply with the applicable regulatory rules.

- Section 1 articulates the conceptual challenge associated with environmental impact claims in the finance sector.
- Section 2 discusses the interlinked problems of greenwashing and consumer distrust in the finance sector.
- Section 3 identifies the regulatory framework and rules (EU level and French national law) which apply to environmental impact claims in the finance sector.
- Section 4 reveals the results from our review of the communication practices of French investment funds accessible to retail investors.
- Section 5 sets out concluding remarks covering various indications of rising standards in relation to environmental impact claims. It also lays out our recommendations for different constituencies to ensure market practice in relation to environmental impact claims makes the necessary improvement.

Environmental impact claims: a challenging concept for finance

1.1 The importance of environmental claims in the consumer decision making process

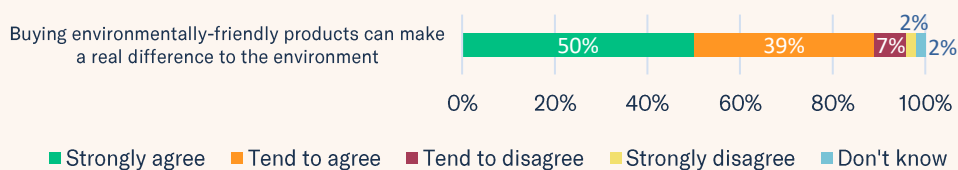
While there are many unofficial definitions of an environmental claim for an organisation or product,² the following definition is taken from an EC market study on the topic a few years ago:

“Environmental claims refer to the practice of suggesting or otherwise creating the impression (in the context of a commercial communication, marketing or advertising) that a product or a service is environmentally friendly (i.e. it has a positive impact on the environment) or is less damaging to the environment than competing goods or services ... When such claims are not true or cannot be verified this practice can be described as 'greenwashing.'”³

For the remainder of this paper, we will use the shorthand “environmental claim” in place of “environmental impact claim.”

From the perspective of the average consumer, it is likely that buying environmentally friendly products is viewed as contributing towards an environmental benefit. Figure 1 below reveals that 89% of polled consumers in one study strongly agree or tend to agree that buying environmentally friendly products translates into an environmental benefit.

Figure 1
Perceptions associated with buying environmentally friendly products



EC (2013), Attitudes of Europeans towards building the single market for green products, Flash Eurobarometer 367

This appears in line with our study on the motivation of retail investors when purchasing financial products taking into account environmental criteria.

² Note that this paper is not concerned with the notion of environmental impact at the macroeconomic level (e.g. the overall impact of a particular policy measure).

³ European Commission (DG JUST), 2014, Consumer market study on environmental claims for non-foods products, p.11.

Figure 2

Motivations for purchasing financial products taking into account environmental criteria

Having an impact in the real economy (42%)

■ I want to have a positive environmental impact in the real economy by investing in the financial product: I want the investment strategy behind the financial product to be designed and managed in such a way that **the more money invested the more positive environmental impacts are generated.**

Avoid guilt by association (19%)

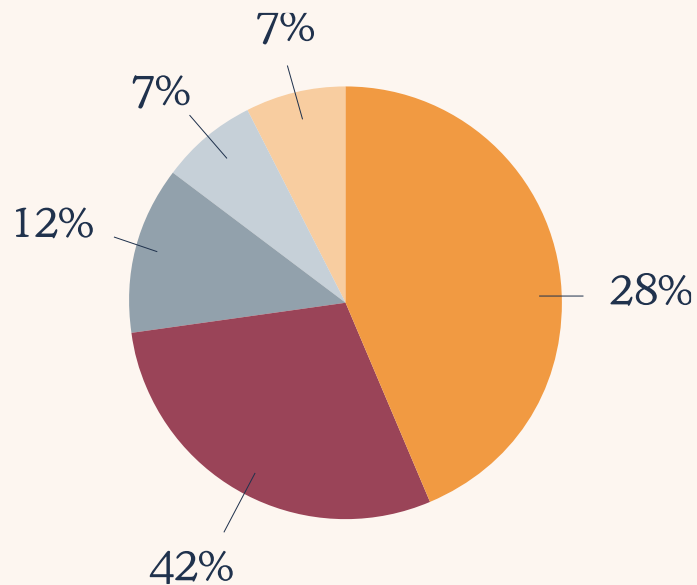
■ I want to invest in companies that have positive environmental impact (e.g. operators of windfarms) even if my investment does not change anything to their activity, because it is a way to **symbolically show my support to the environmental cause.**

■ I want to avoid investing in any company that has a negative environmental impact, even if my choice does not affect their activities, because it is **a way to show my support to the environmental cause.**

Optimize returns on investments (35%)

■ I want to invest in companies that have positive environmental impacts (e.g. operators of windfarms) even if my investment does not change anything in their activities, because I believe these companies will have a better **financial performance.**

■ I want to avoid investing in any company that has a negative environmental impact, even if my choice does not change anything in their activities, because I believe these companies will have a bad **financial performance in the future.**



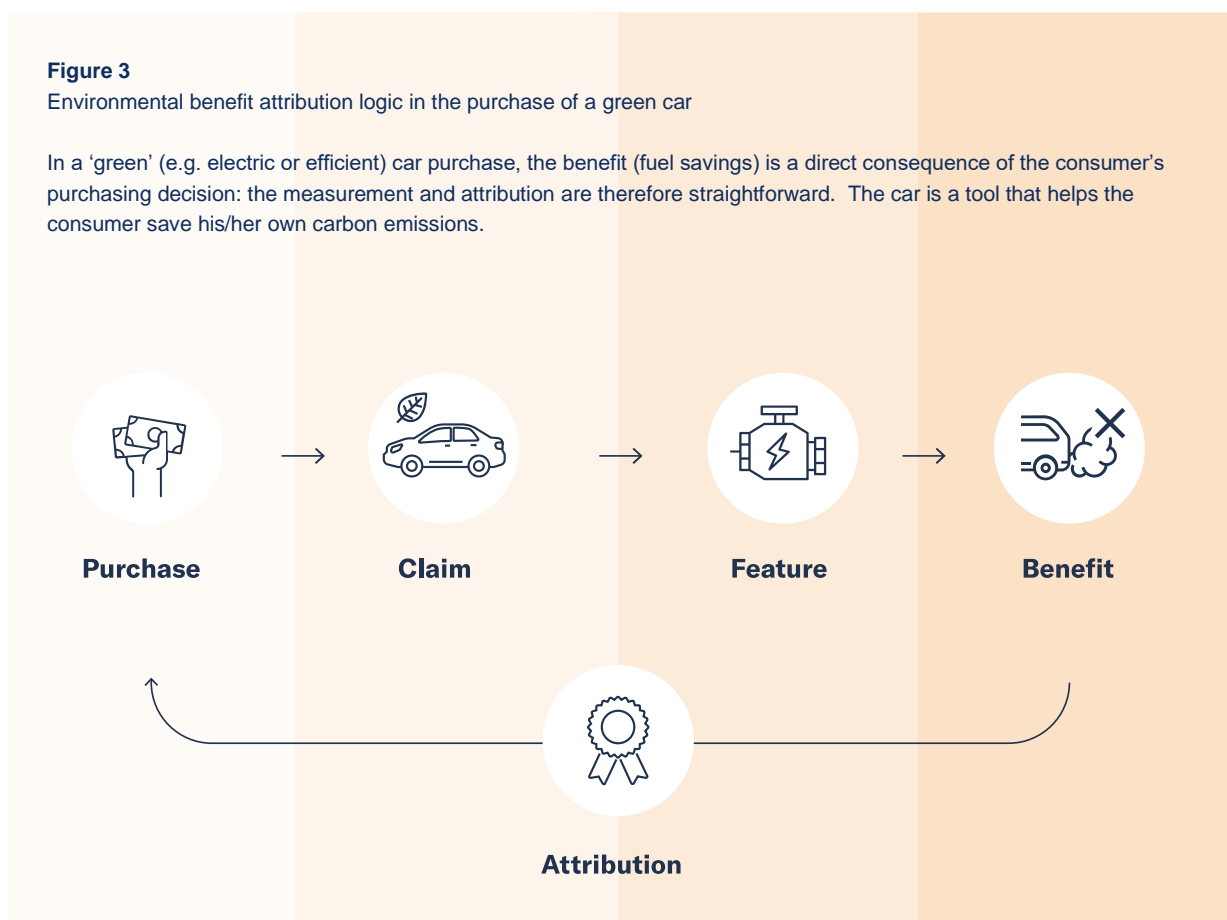
2DII (2020) A Large Majority of Retail Clients want to Invest Sustainably

We can then assume that when purchasing products with an environmental claim, most consumers expect real-world environmental benefits (although there may be other non-environmental considerations which contribute to the purchasing decision). We denote the perceived causal linear relationship between the purchasing decision and the environmental benefit as the *environmental benefit attribution logic* - the consumer can take credit for the environmental benefit because his/her purchasing decision is a necessary condition for the environmental benefit to materialize. This environmental benefit attribution logic is illustrated in Figure 3 below.

Figure 3

Environmental benefit attribution logic in the purchase of a green car

In a 'green' (e.g. electric or efficient) car purchase, the benefit (fuel savings) is a direct consequence of the consumer's purchasing decision: the measurement and attribution are therefore straightforward. The car is a tool that helps the consumer save his/her own carbon emissions.



We consider that preserving this attribution logic in relation to environmental impact is crucial to maintaining consumer confidence – and therefore similarly critical to broader aspects of market integrity. It is however a challenge for the finance sector.

1.2 Allocating environmental impact in the finance sector is a challenge

Applying the above attribution logic to the finance sector poses many challenges.⁴ Generally speaking, adapting this attribution logic to financial mechanisms requires the following five steps to substantiate any impact claim in the finance sector.

⁴ These are developed in detail in our publication [A Climate Impact Management System for Financial Institutions](#) (currently subject to consultation).

Figure 4

The five steps towards substantiation of impact claims in finance: a climate-focus illustration

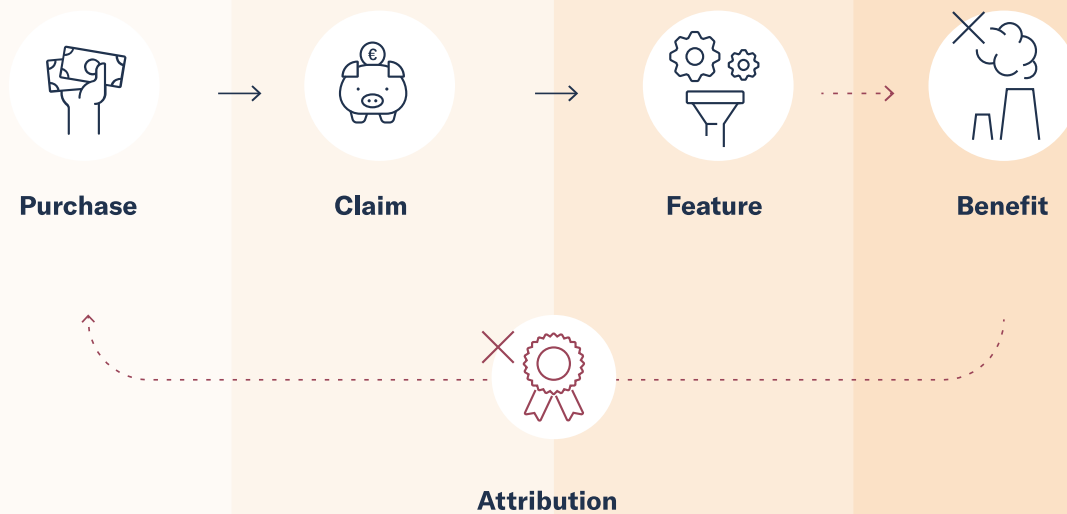


However, a comprehensive review of recent academic research on the topic (Kölbel et al., 2020) reveals that **most research focusses on theoretical hypotheses and model** (corresponding to **Step 1: Theory** in Figure 4). **Hardly any research provides empirical evidence** which could support the **remaining Steps 2 to 5 required for a proper substantiation of an impact claim** for a financial mechanism, especially for popular sustainable finance approaches (like exclusions or positive screening).

Figure 5

Environmental benefit attribution logic for investing in a sustainable fund

Compared to the attribution logic for the purchase of a green car (see above), the situation is more complex for investing in a sustainable fund: there is no direct relationship between the product feature (e.g. SRI process, fund composition) and the expected environmental benefit in the real economy. The environmental benefit is uncertain. For instance, purchasing stocks of a windfarm operator or selling stocks of a coal-fired power plant operator does not add or withdraw power production capacity. The potential environmental effect is more complex and non-linear. Estimating the aggregate environmental benefit for multiple transactions such as this would require observation and economic modelling. Attributing an estimated environmental benefit to a subset of these transactions (e.g. related to the fund) is an additional calculation step.



Indeed Kölbel et al. (2020) concluded that we do not have a consensus that any particular sustainable finance approach always has an impact under different conditions. Therefore, much of the financial mechanisms adopted by the “sustainable finance” or “responsible investment” sector to achieve environmental impact are based on a theory of change only. That is not to say the theory of change is incorrect, but that the level of empirical evidence available as to whether these financial mechanisms are effective is lacking.

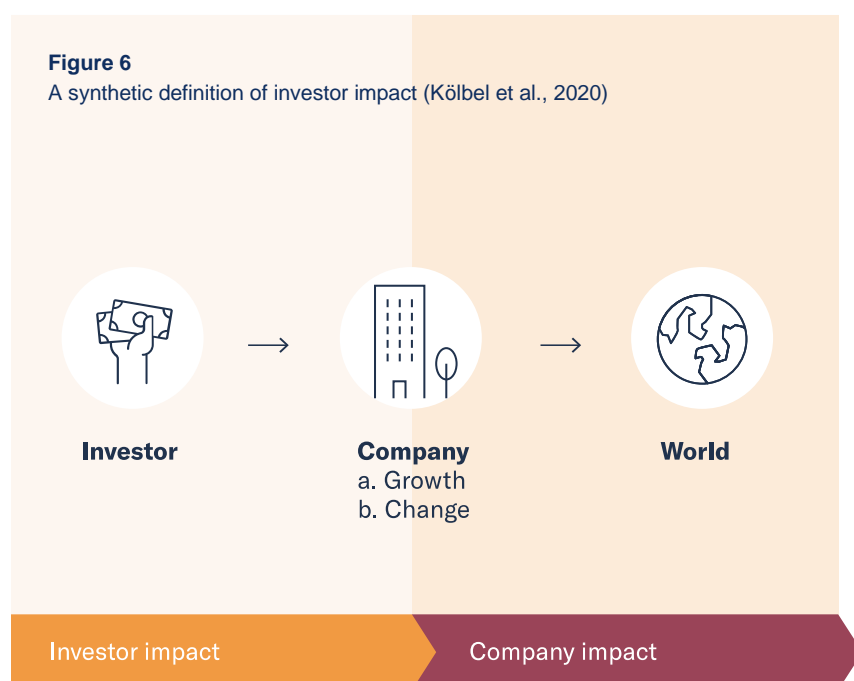
This is perhaps not surprising given the evolution of sustainable finance approaches over recent years.⁵ Traditional sustainable finance approaches (such as exclusions, screening, thematic approaches etc.) addressed aligning investments with personal values (e.g. social, ecological or religious beliefs). Incorporating financial materiality of environmental issues is then an extension of traditional financial approaches. Investing to achieve real-world impact was not an objective, nor a methodological constraint of these sustainable finance approaches.

⁵ See Schoenmaker, D., 2017, [Investing for the common good: a sustainable finance framework](#) and 2DII, 2020, [A large majority of clients want to invest sustainably](#).

1.3 The level of evidence of investor impact available for retail products is low

Following their review of academic research, Kölbel et al. (2020) produce the following synthetic definition of *investor impact*:

“The **impact of an investor is the change that the investor has caused in the activities of the company benefiting from his investment**. In the context of climate change mitigation, this change can either take the form of a **growth** in a “green” company’ activities (e.g. a growth of its green power production) or of a change in the **quality** of a company’s activities (e.g. an increase in the energy efficiency of a plant).”



Kölbel et al. (2020) articulate that while there may be no robust or measurable link between financial strategies and environmental impact in all cases, there is an emerging understanding of the conditions under which different asset classes and investment strategies would be more or less likely to influence investee company behaviour and generate environmental impact. This work, in conjunction with research insights generated by the Impact Management Project⁶, has led to the development of a framework for assessing the level of evidence of impact that can be attributed to different investment strategies depending on the asset class concerned.⁷

⁶ Impact Management Project, 2018, [A guide to classifying the impact of an investment](#)

⁷ Kölbel, J., Heeb, F., 2020, [The investor's guide to impact](#).

Figure 7

The mechanisms of investor impact and their associated levels of evidence (Heeb & Kölbel, 2020)

Evidence Level	Description
A: Scientific consensus	Systematic reviews of the empirical evidence document a scientific consensus on effectiveness of the mechanism.
B: Empirical evidence	Empirical studies show that the mechanism has been effective in specific settings. Yet, it remains unclear how far these findings can be generalized.
C: Model-based prediction	Economic models predict that the mechanism should be effective under certain assumptions.
D: Narrative	There are narratives that rationalize why the mechanism could be effective.

Investor Impact Mechanism	Type of change	Evidence Level	Requirements	Limitations	Typical asset classes
Grow new/undersupplied capital markets	Enabling growth	B	<ul style="list-style-type: none"> Investment in companies with net positive impact Companies growth is limited by external financing conditions 	<ul style="list-style-type: none"> Not suited for investments in large, established companies, which have sufficient access to external financing 	Private markets
Provide flexible capital		B		<ul style="list-style-type: none"> Not suited for companies that have sufficient access to philanthropic or commercial capital 	
Engage actively	Provide non-financial support	B	<ul style="list-style-type: none"> Investment in companies with net positive impact Investors with know-how, reputation or network that helps companies grow faster 	<ul style="list-style-type: none"> Only suited for early-stage investments, where investors can directly influence the company 	Public markets
	Shareholder engagement	B		<ul style="list-style-type: none"> Limited to incremental improvements; unlikely to transform industries 	
Signal that impact matter	Market signals	C	<ul style="list-style-type: none"> Transparent ESG criteria that companies can meet at reasonable cost Substantial portion of the market screening out or underweighting firms that don't meet the criteria 	<ul style="list-style-type: none"> Effect unlikely for industry exclusion Disagreement on how to measure ESG criteria 	
	Non-market signals	D		<ul style="list-style-type: none"> Impact is difficult to evaluate as it is indirect and depends on political action or cultural change 	

The scale of evidence developed in this framework confirms that:

- **In general**, with the current state of knowledge, we do not have a consensus that mechanism X always has an impact under conditions Y and Z (e.g. it is not valid to say that every capital allocation to a young company in a development economy has an impact. But that does not mean that it is not possible to demonstrate an impact in specific cases. A fund may be able to demonstrate that a company would not have grown without a specific equity injection – if it provides credible evidence).
- Regarding **secondary markets and liquid financial assets** (which are the focus of this paper as an essential part of the offer available to retail investors) the **level of evidence identified is extremely low**. Capital allocation approaches in secondary markets (green bonds, exclusions, positive screening, etc.) are model based at most while under certain conditions engagement activities have a higher (albeit non-decisive) level of evidence.

Greenwashing and retail investor distrust

2.1 The harmful effects of greenwashing

The damage that greenwashing can cause on markets is well identified. Academic and policy research converges on an understanding that greenwashing can:

- Increase consumer distrust and scepticism and act as a barrier to responsible consumption⁸;
- Create the conditions for unfair competition and free-riding behaviours, where greenwashing prevents any differentiation of responsible behaviour and inhibits innovation;
- Prevent the mobilization of ethical consumers towards contributing to environmental policy objectives (and thus hinders the achievement of these policy objectives).⁹

As articulated by the European Social and Economic Committee in a 2015 opinion¹⁰:

“The impact of marketing communications based on questionable, inaccurate or hard-to-verify claims that lead to errors and confusion is diverse and of varying severity, but is always of significant detriment to consumers, to businesses that observe the rules and by extension, to the workings of an ethical and transparent market in goods and services.”

The main purpose of environmental claims regulation is therefore to prevent these market failures by establishing a framework that promotes confidence among economic actors.

The question for the finance sector however is not so much whether greenwashing generates a risk of increasing distrust, but how to reverse the already significant distrust expressed by retail investors towards environmental claims coming from financial institutions.

2.2 Retail investor distrust of financial institutions' environmental claims is high

For several years now, numerous sources have evidenced the growing awareness of retail investors to the sustainability impact of the money they entrust to financial institutions.

2DII research involving a series of quantitative and qualitative surveys conducted in France and Germany has identified that 65% to 85% of retail investors say they want to invest more sustainably when they are

⁸ Lyon, T., et al., 2015, The means and end of Greenwash, Organization & Environment: “The popular press has begun to recognize that greenwash may undermine trust in corporate environmental impacts (Hsu, 2011), as have various government agencies. Several of the papers reviewed here make early yet promising attempts to capture these impacts, suggesting that exposure to greenwash may lead to “increasing consumer cynicism and mistrust” (Jahdi & Acikdilli, 2009, p. 103), as appears to happen in other areas where deceptive advertising occurs (Darke - Ritchie, 2007). Exposure to greenwash also leaves consumers feeling both overwhelmed and confused by CSR claims and corporate motives in making such claims (Parguel et al., 2011).”

⁹ In the financial field, for example, the EU Technical Expert Group identifies greenwashing practices as leading to a “loss of confidence of retail investors who could be discouraged to invest in green assets [and to] potentially reduced investment in sustainable development” see EC Technical Expert Group, 2019, TEG, Taxonomy technical report, p. 96.

¹⁰ European Social and Economic Committee, 2015, Opinion on ‘Environmental, social and health claims in the single market’

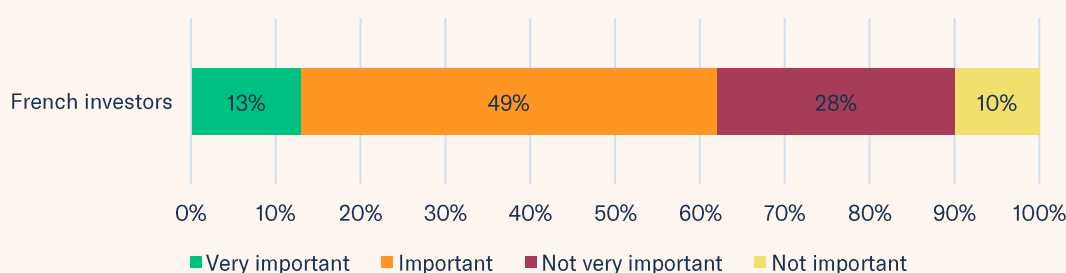
asked.¹¹ In this study, we also performed a review of third-party research on the same topic. These results are broadly aligned with our own findings, as stated interest in sustainable investment generally ranges from 50% to 80% of respondents with an average of 70%.

Retail investor preferences for impact-related financial products are also regularly confirmed, especially in France:

Figure 8

Interest of individual investors for impact-related investments (France)

What importance do you give to environmental and social impacts in your investment decisions?



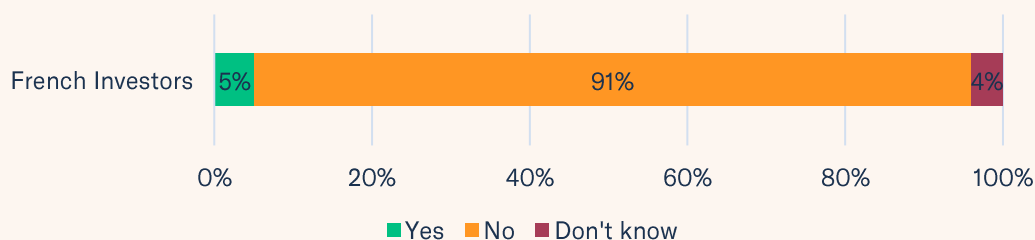
Source: FIR/Vigeo Eiris, French and Responsible Finance, Wave 3, September 2020

However, this finding is offset by the relatively low number of these same retail investors who say they have already subscribed to financial products with sustainability-related characteristics.

Figure 9

Perception by individual investors of their level of exposure to responsible investment (France)

Do you have already invested in a socially responsible fund?



Source: FIR/Vigeo Eiris, French and Responsible Finance, Wave 3, September 2020

There are several factors which explain this discrepancy. Nevertheless, data consistently shows that retail investor doubts about the veracity of sustainability claims operate as a significant deterrent.¹²

For consumers generally, the most recent data concerning France and Germany shows a level of consumer distrust significantly higher than the European average: only 47% of polled French consumers and 45% of

¹¹ 2DII, 2020, A large majority of clients want to invest sustainably

¹² See UK Department for international development (DFID), Investing in a better world: survey results. AMF/Audirep, 2019, Sustainable Finance, Responsible Investment: Perception of French People

German ones think that most environmental claims about goods or services are reliable.¹³

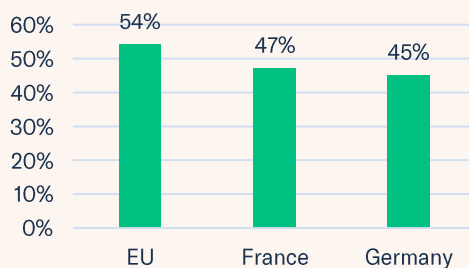
Figure 10

Level of consumers trust for environmental claims made by traders in general (Europe, France, Germany)

How strongly do you agree or disagree with each of the following statements?

"In (YOUR COUNTRY) most environmental claims about goods or services are reliable."

Average proportion of agreement ("Strongly Agree" and "Agree").



Source: DG JUST, Consumers attitudes towards cross-border trade and consumer protection, 2019, p. 6

Some surveys go further and highlight retail investor scepticism in France about the very ability of the finance sector to go beyond mere narrative and enable consumers to contribute (through the financial products on offer) to real world environmental impact.

¹³ See other EU level data in Attitudes of Europeans towards building the single market for green products, Flash Eurobarometer 367, 2013

Figure 11

Individual investors perception regarding ESG-related arguments made by banks

Do you agree or disagree with each of the following statements regarding the activities financed by banks with the savings and deposits of their clients?



Source: Helios/Opinion Way, Les français et l'usage de leur épargne par les banques, Juin 2020

Promoting consumer confidence in the impact promises made by economic actors - or re-establishing consumer confidence in the case of the finance sector – is therefore a crucial issue to be tackled by regulatory authorities. In this context, the emerging market for sustainable financial products is problematic as, despite increasing consumer expectation on these issues, consumer distrust is still a dominant factor.

The regulatory framework applicable to environmental claims

The regulatory framework applicable to environmental claims in the finance sector comprises general consumer protection rules as well as finance sector specific rules. The consumer protection rules stem from the EU Unfair Commercial Practices Directive that was transposed into French law in the *Code de la Consommation*. In addition, the EU defined a set of compliance criteria to support consumer protection against misleading green marketing claims which were developed through the Multi-Stakeholder Dialogue on Environmental Claims. The finance sector specific rules are comprised of provisions and guidance adopted at EU and national levels.

3.1 Consumer protection rules

The EU Unfair Commercial Practices Directive

The Unfair Commercial Practices Directive (UCPD)¹⁴ adopted in 2005 aims to prohibit any practice *"that materially distorts or is likely to materially distort the economic behaviour with regard to the product"* (UCPD, Art. 5(2)(b)).

A misleading practice is one that *"contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct ... and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise ..."* (UCPD, Art. 6(1)).

These general principles apply to all sectors. This includes the finance sector, for which the UCPD provides that more stringent provisions can be decided within each Member State.¹⁵ Regarding financial services therefore, these principles must be seen as a minimum standard.

When applying these principles to green marketing claims, the EU's 2012 European Consumer Agenda acknowledged that *"consumers should be supported in easily identifying the truly sustainable choice"* and that *"effective tools are needed to protect them against misleading and unfounded environmental and health claims."*¹⁶

To that effect, in 2016 the EU gathered a Multi-Stakeholder Dialogue on Environmental Claims (the **MDEC**) which defined a set of compliance criteria¹⁷ (the **Compliance Criteria**).

It must be noted that these Compliance Criteria and other interpretative principles published by the EC¹⁸ are soft law and operate without prejudice to the *"national courts and authorities (...) case-by-case assessment of whether a claim is misleading either in its content or in the way it is presented to consumers."*¹⁹ Nevertheless they are the most relevant means to determine what national courts and authorities would likely consider as compliant or not.

¹⁴ Directive 2005/29/EC

¹⁵ See UCPD, Art. 3(9).

¹⁶ European Commission, 2012, European Consumer Agenda, 2012, p. 5

¹⁷ Multi-Stakeholder Dialogue on Environmental Claims, 2016, Compliance Criteria

¹⁸ For example: European Commission, 2016, Guidance on the implementation/application of Directive 2005/29/EC on Unfair commercial practices

¹⁹ Multi-Stakeholder Dialogue on Environmental Claims, 2016, Compliance Criteria

The EU MDEC Compliance Criteria

Topic	MDEC Principle	MDEC Criteria
Content of the claim	<i>"In order not to be misleading, environmental claims should reflect a verifiable environmental benefit or improvement and this should be communicated in a precise manner to consumers." (MDEC, Section 2.1).</i>	<ul style="list-style-type: none"> • Focus on the main environmental impacts • Clarity on which aspects of the product the claim relates to • Benefit beyond what is already considered as a common practice in the relevant market or required by law
Presentation of the claim	<i>"Once the content of the claim has been established (section 2.1), it should be presented in a way that is accurate, clear, specific and unambiguous to ensure consumers are not misled about the intended meaning, and are thus able to make informed purchasing choices." (MDEC, Section 2.2).</i>	<ul style="list-style-type: none"> • Truthful wording as to the benefit achieved • Clear scope and boundaries of the claim • Avoidance of vague, ambiguous and broad claims
Substantiation of the claim	<i>"In accordance with the UCPD, any claim or information in advertising and marketing (whether it is environmental or not) must be correct and not misleading. As such, claims should be based on robust, independent, verifiable and generally recognized evidence which takes into account the latest scientific findings and methods." (MDEC, Section 2.3)</i>	<ul style="list-style-type: none"> • Clear and robust evidence measured using the most appropriate scientific methods • Avoidance of claims on future aspirations • Availability to the public of information relevant to support the claim

Claims to be especially avoided:

Vague, ambiguous and broad "general environmental benefit" claims (MDEC, Section 2.2):

- "Examples (not exhaustive) of general environmental benefit claims could include: "environmentally friendly", (...) "good for the environment", "sustainable", "green", "carbon friendly", "carbon neutral", (...) "an ethically correct choice."
- "In case traders choose to use general broad claims, they should be accompanied by clear and prominent qualifying language that limits the claim to a specific benefit or benefits."
- "The use of a general benefit claim (presented without further qualifications) may be justified (...) if the life cycle assessment studies of the product have proven its excellent environmental performance. These studies should be made according to recognized or generally accepted methods applicable to the relevant product type and should be third-party verified. If such methods have not yet been developed in the relevant field, traders should refrain from using general benefit claims."

Claims on scientifically uncertain environmental impacts (MDEC, Section 2.3):

- “If expert studies give rise to significant disagreement or doubt over environmental impacts, the trader should refrain from marketing the message altogether.”

Claims on future aspirations (MDEC, Section 2.3):

- “Traders should rather communicate about environmental achievements instead of aspirations of future environmental performance, which by definition are not eligible for substantiation by evidence. This does not prevent companies from communicating on future environmental efforts (via Corporate Social Responsibility reporting or also advertising) if they deem this necessary or useful. Nevertheless, in order to avoid the risk of being accused of greenwashing practices, companies **should only do this when they have established a realistic plan with clear targets and timescales, involved relevant stakeholders and ensured third party monitoring of commitments.**”

French consumer protection rules

Under French Law, the UCPD has been transposed in articles L. 121-1 and seq. of the *Code de la Consommation*.

And several sectoral soft law initiatives have been developed over the years by consumer or environment protection agencies and institutions. Appendix 1 contains extracts from the most representative publications identified in this regard.

These national approaches to the topic are largely aligned with the principles defined at EU level, especially as they similarly emphasize that:

- The essence of environmental impact is to establish a causal link between an organization, product or service and an actual real-world effect;
- This linkage needs to be supported by robust evidence based on sound scientific arguments and methodologies;
- When available methodological frameworks do not permit a sufficient level of evidence, environmental claims should be avoided or limited to what can be substantiated.

INFO BOX: France is currently strengthening sanctions of greenwashing

An amendment to article L132-2 of the *Code de la Consommation* was adopted on 25th March 2021. This amendment strengthens the penalties for misleading commercial practices, as provided for in Article L. 132-2 of the *Code de la Consommation*, in the case of greenwashing. The amount of the fine may thus be increased up to 80% of the expenses incurred for the realization of the advertising or the practice qualified as greenwashing, against 50% today. In addition, the display of the penalty for greenwashing is made systematic.

Relevant case law is scarce

Despite the wide recognition that consumers are sceptical regarding environmental claims, actions taken based on the UCPD or national transposition against misleading environmental claims are rare.²⁰

Several explanations for this are possible, including lack of resources by supervisory authorities²¹ or procedural difficulties with bringing an action (despite all the guarantees provided for in the UCPD)

²⁰ European Commission (DG JUST), 2014, Consumer market study on environmental claims for non-foods products, p. 132 and seq.

²¹ European Commission (DG JUST), 2014, Consumer market study on environmental claims for non-foods products

regarding for example *locus standi* or the technical debate related to the evidence of the claims.

INFO BOX: Assessment against UCPD

Despite a lack of judicial precedent related to financial organizations, products or services, the Commission has provided specific guidance through a worked example relating to an environmental claim associated with an investment fund: *“If you believe in the future, invest in it. With the [fund]”*²²

The guidance concludes as to whether the claim follows the UCPD guidance as follows:

“Given the absence of information and substantiation of the claim, it would be conceivably considered as not in line with the UCPD guidance. The claim should be perceived as vague and inaccurate, ambiguous in relation to the environmental benefit of the financial product and thus subjectively misleading.”

3.2 Regulation specific to the finance sector at EU and national level

In addition to the UCPD-based principles, certain finance sector communications are also subject to sectoral EU²³ and/or Member-State regulation.²⁴ In general terms, these provisions require communications to be *fair, clear and not misleading*. However, they are less precise than the UCPD-based principles regarding the criteria to qualify non-compliant claims.²⁵

As illustrated above, though environmental claims are not explicitly addressed under the UCPD, European authorities have developed a substantial set of interpretative principles for how these provisions would deal with environmental claims (such as the MDEC Compliance Criteria). However, this exercise has not been replicated in relation to the finance sector rules.²⁶

In 2020, the French regulatory authorities published a series of positions relating to the requirements for financial actors wishing to incorporate extra-financial arguments into their commercial communications.²⁷ This is unquestionably a necessary and highly welcome initiative.

However, while the approach taken addresses certain difficulties (e.g. minimum requirements for statements relating to responsible investment strategies) it continues to lack a real consideration of the specificity of environmental claims. Furthermore, it continues to lack a real consideration of UCPD-based principles - which, as mentioned above, should be regarded as a minimum regulatory standard.

An example is the introductory statement to the new Doctrine 2020-03 on information to be provided by financial institutions in their communication on extra-financial approaches. This is at the core of the principles-based framework developed by the AMF, where the supervisor explicitly states that *“compliance*

²² European Commission (DG JUST), 2014, Consumer market study on environmental claims for non-food products, Appendix 5, p. 80.

²³ See Directive 2014/65/EU on markets in financial instruments, Art. 24(3); Directive (EU) 2016/97 on insurance distribution, Art. 17.

²⁴ See art. L. 533-12, L. 533-22-1, L. 533-22-2-1 of the *Code monétaire et financier*; art. 411-126, art. 421-25 of the *Règlement général de l'AMF*.

²⁵ Moloney, N., 2014, EU Securities and Financial Markets Regulation, Oxford University Press, p. 817.

²⁶ This is especially true in France when it comes to the idea of the contribution of financial institutions to environmental objectives developed as a result of what is commonly referred to as “article 173”. See art. L. 533-22-1 and D. 533-16-1 of the *Code monétaire et financier*.

²⁷ See AMF, 2020, Informations à fournir par les placements collectifs intégrant des approches extra-financières, AMF, 2020, Les approches extra-financières dans la gestion collective, troisième rapport, ACPR/AMF, 2020, Rapport Commun ACPR-AMF : Les engagements climatiques des institutions financières françaises, ACPR/AMF, 2020, Les politiques « charbon » des acteurs de la place financière de Paris, AMF, 2019, Guide sur la compensation de l'empreinte carbone par les organismes de placement collectif.

*with the criteria mentioned in this doctrine does not prejudice the real effect of the approaches implemented by managers.*²⁸

This approach is likely to raise important questions regarding the UCPD-based principles which require an environmental claim to have a robust demonstration of the link between an organization, a product or a service and the effects in actual environmental terms. This precisely requires analysing the arguments developed by financial institutions considering the *"real effect of the approaches implemented by managers."*

This is one example of the difficulty in trying to discern this French supervisor's position on environmental claims. One could argue that further inconsistencies are apparent between a substantial analysis pointing out the limitations of using portfolio carbon footprint as an indicator²⁹ while at the same time allowing the possibility for financial institutions to associate their funds with "low-carbon" claims with very limited conditions.³⁰

In addition to that, the analysis run on monetary funds, which resulted in the AMF calling on managers 'to be cautious in their communications regarding the potential "collective" dimension of impact and reallocation of socially responsible investment flows'³¹ could be extended to other sectors and the request could be extended to all types of funds.

These examples demonstrate a real need for supervisory authorities to clarify their positioning as to their exact perception of environmental claims, to ensure consistency of the finance sector specific rules with general consumer protection principles.

²⁸ AMF, 2020, [Informations à fournir par les placements collectifs intégrant des approches extra-financières](#)

²⁹ AMF, 2020, [Les approches extra-financières dans la gestion collective, troisième rapport](#), p. 71

³⁰ AMF, 2020, [Les approches extra-financières dans la gestion collective, troisième rapport](#), p. 97. Basically, that they take into account Scope 3 emissions in their calculations, which does not change the fact that the decorrelation between the measurement of a portfolio's carbon footprint and the evolution of GHG emissions in the real economy should not so easily allow the reference to a notion of "low-carbon" and the potentially strong misleading effect of such claims to retail investors.

³¹ AMF, 2020, [Les approches extra-financières dans la gestion collective, troisième rapport](#), p. 58.

INFO BOX: Confusion created by the emerging body of EU disclosure requirements

A common response to the argumentation developed in this paper is to refer to the body of disclosure requirements being developed in relation to the Sustainable Finance Disclosure Regulation³² (SFDR) and the Taxonomy Regulation.³³

While these disclosure requirements look set to significantly re-shape market practice, notably in relation to what ESG information is available and where, the extent to which these disclosure requirements will assist with problems linked to environmental impact claims in the finance sector is not clear. Indeed, we consider that adherence to the SFDR could even create confusion if market participants believe they can rely on it to market their product as having a real-world impact. This is because of the fact we do not consider that the SFDR accommodates the notion of investor impact articulated in this paper.

The SFDR sets out ‘harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.’³⁴ It establishes two categories of sustainable financial products:

- financial products which promote, among other characteristics, environmental or social characteristics³⁵ (so called Article 8 products); and
- financial products which have sustainable investment as an objective³⁶ (so called Article 9 products).

We have various concerns stemming from confusion as to the definitions of these two categories of financial product. The ESAs have recognised that there is confusion in the meaning of “promotion” in the context of Article 8 products and the application of Article 9, in their letter to the Commission about priority issues relating to SFDR application.³⁷

In the case of Article 9, this refers to financial products which have “sustainable investment” as the objective. Article 2(17) then defines “sustainable investment” as “an investment in an economic activity that contributes to an environmental objective as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective ...”

Therefore, in our opinion, on the face of Articles 9 and 2(17), this refers to what might generally be understood at thematic investment.

However (in referring to financial products which are captured by Art 8 and Art 9) Recital 21 of SFDR refers to “... it is necessary to distinguish between the requirements for financial products which promote environmental or social characteristics and those for **financial products which have as an objective a positive impact on the environment and society.**” Therefore Recital 21 could be understood as equating Article 9 products with a concept of real-world investor impact.

³² 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

³³ Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

³⁴ Art 1, SFDR

³⁵ Art 8, SFDR

³⁶ Art 9, SFDR

³⁷ https://www.esma.europa.eu/sites/default/files/library/jc_2021_02_letter_to_eu_commission_on_priority_issues_relating_to_sfdr_application.pdf

We therefore have significant concerns about what appears to be an emerging market practice of equating Article 9 products with genuine impact products.

Whether this is due to the confusing nature of the SFDR drafting (in relation to the apparent inconsistency between the recitals and the actual provisions as identified above) or through a failure to properly grasp the issues at stake in relation to a true understanding of the notion of investor impact is not clear. In any case, while these categories of financial product are now established in the SFDR, the precise detail as to the disclosure requirements are still being developed.³⁸ And here too we are seeing that these disclosure requirements are interpreted to relate to thematic investment rather than to the conception of investor impact.

This is problematic if the market logic could be that complying with disclosure requirements applicable to Article 9 products is equivalent to evidencing an environmental impact claim. This assumption is wrong since an Article 9 product cannot be equated with a product allowing an investor to have a measurable impact. And furthermore, the precise disclosure requirements being developed do not relate to this. Therefore, complying with these disclosure requirements does not equate to meeting the requirements of the general consumer protection principles.

We consider that the market practice which is evolving in response to the body of disclosure requirements being developed under the SFDR is inconsistent with the general consumer protection principles which themselves apply to the finance sector.

³⁸ At the time of this paper, the Joint Committee of the ESAs has released its preliminary recommendations although further recommendations are still under consultation.

Review of communication practices of French investment funds accessible to retail investors

4.1 Methodology

In the second half of 2020, we reviewed a sample of French funds marketed as having sustainability features and available to retail investors. As set out below, we accessed information about funds through the data provider Lipper, and further refined it through our own methodologies and research to assess the quality of the marketing claims associated with each fund.

Initial selection of funds

Using the Lipper database, we compiled a list of all active French funds. We first excluded funds that were not accessible to French retail investors according to Lipper. We then used further filters to collect data regarding domicile and identification elements, asset type invested, investment objective and assets under management. We selected 6,672 funds.

Refining the database

We then conducted a keyword search to retain only funds that were taking into account environmental, social and/or governance criteria as indicated by including one or several of the following keywords in the information on each fund's investment objective, as stated in the Lipper database.

- | | | |
|----------------------|------------------|------------------|
| • Alternative energy | • ESG | • Solar |
| • Clean energy | • Global warming | • SRI |
| • Climat | • Green | • Sustainable |
| • Climate | • ISR | • Sustainability |
| • Durable | • Obligation | • Vert |
| • Durabilité | • Obligations | • vertes |
| • Ecolo | • Renewable | • verte |
| • Écolo | • Renouvelable | • Wind |
| • Environment | • Responsa | |
| • Environnement | • Responsible | |

This process allowed us to retain 686 funds.

Further refinement of the database allowed us to remove funds that were false positives (i.e. that were integrated in our universe and were not corresponding to our scope of study, despite the various filters we implemented).

We then conducted desk-based research of the investment objectives as stated in fund key information documents and verified the availability of the funds to French investors. This allowed us to remove any remaining funds from our database that were not available to French investors and were not featuring ESG elements.

At the end of this process our final database included 521 funds (USD 257 Billion AUM).

2DII research

We first classified the investment strategy of each fund based on information available in the key information documents.

- Thematic funds are ESG funds that focus on ESG topics such as climate change, social inclusion, water management etc.
- Green Bond funds are funds mainly investing in climate-related bonds.
- ESG funds are other types of funds having diversified strategies such as best-in-class or taking ESG criteria into consideration when investing.

We then searched for **online sustainability-related commercial communications that were either specific to the fund itself** (e.g. key information documents and other documents) **or direct or indirect references to the fund in other corporate communication of the financial institution** (e.g. asset manager's website, sustainability reports etc.). This allowed us to **interpret the marketing material in light of the investment strategy**.

We **focused our analysis on elements of any commercial communication** that attempted to establish a **chain of causation between the action of investing** (either in the specific fund or following a sustainable finance investment strategy) **and real-world impacts**.

We differentiated four categories of material:

- Key information documents (regulated);
- Marketing material which is specific to the financial product (or sufficiently related to it) and targeted at consumers;
- Sections of the website dedicated to sustainability;
- Online marketing material related to sustainability and specific products available behind a 'confirm your professional status' wall.³⁹

An important step was to classify impact claims as direct or indirect. We established a distinction between direct and indirect claims as the latter can be considered less prominent in shaping retail investors decisions. However we consider that they fall in the scope of the analysis as they may constitute misleading marketing information if not substantiated.

Impact claims were considered *direct* if:

- found in a key information document;
- directly associated to the fund's name; or
- when the investment strategy of the fund was clearly associated, in any documentation related to the asset manager, to an environmental claim.

Impact claims were considered *indirect* if associated with sustainability issues in commercial communications but did not satisfy one of the above three criteria (e.g. an environmental claim related to the financial institution rather than a specific financial product).⁴⁰

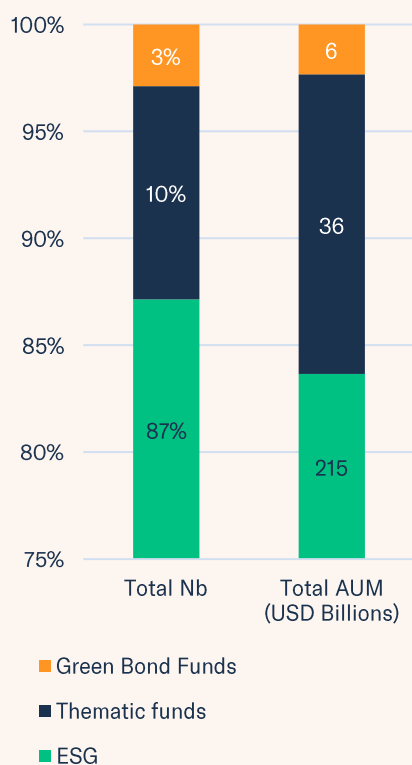
Each of the documents were thoroughly assessed and cross-referenced multiple times to ensure consistency and accuracy of our results.

³⁹ We included this material since it can be transferred to retail investors via financial advisors or used as a basis for the representations made by advisors.

⁴⁰ For example, "we have a positive environmental impact" or "we manage our assets to have an impact" often in general sustainability webpages of the fund.

Figure 12

Funds studied by main strategy
(Full sample: 521 funds)

**Figure 13**

Source of marketing material



4.2 Main findings show potential greenwashing practices linked to impact claims

The preliminary findings below are based on UCPD-related guidelines in the Compliance Criteria and interpretative principles and frameworks adopted by European and French authorities and stakeholders.⁴¹ These findings are subject to review as our research is ongoing. These findings cannot be considered a case-by-case legal study of the reviewed marketing material. Therefore, they should not be considered a legal opinion but rather a summary of trends in light of these interpretative principles and frameworks.

⁴¹ Our analysis refers to UCPD-based principles (rather than to the approaches recently developed by the financial supervisory authorities in France) since we consider that further clarifications are needed with respect to the full integration, within the positioning developed by the French supervisory authorities, of the specific nature and definition of environmental claims.

68% of the French, retail-available funds that have a sustainability-related focus (representing 353 funds and USD 204 Billion AUM) are associated with environmental claims.

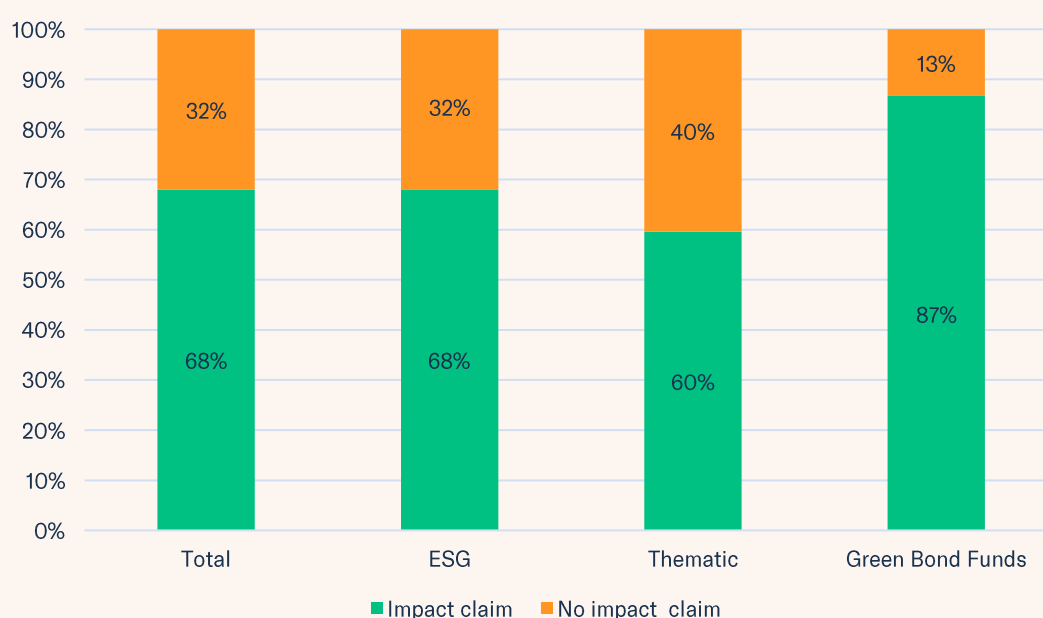
The remaining 32% (USD 53 Billion AUM) are not related to claims regarding the environmental impact of investment strategies, but rather to an objective description of the methods implemented by the manager.

No environmental claim appears indisputably compatible with consumer protection principles.

As for our previous research⁴² we were not able to find a single case where the impact claim could indisputably be deemed compatible with the interpretative principles applicable to environmental marketing claims under UCPD-based criteria for consumer protection.

Figure 14

Frequency of the use of environmental claims (full sample)



Environmental claims are problematic considering several Compliance Criteria. The following commentary provides more detail and representative examples of the kind of shortcomings identified (figures are based on the total of funds associated with environmental claims i.e. 353 funds of our total sample).⁴³

12% of environmental claims are deceptive as they inaccurately link an investment in a fund to a specific environmental outcome in explicit terms.

The inaccuracies generally stem from:

- Confusing the impact of the investee companies with the impact of the investment strategy itself; and/or

⁴² 2DII, 2020, [EU Retail Funds' Environmental Impact Claims Do Not Comply with Regulatory Guidance](#)

⁴³ The quoted examples of claims have been anonymized (name changed, figures altered) and slightly re-worded (no change in the meaning and key words though) in order to preserve the anonymity of the asset manager.

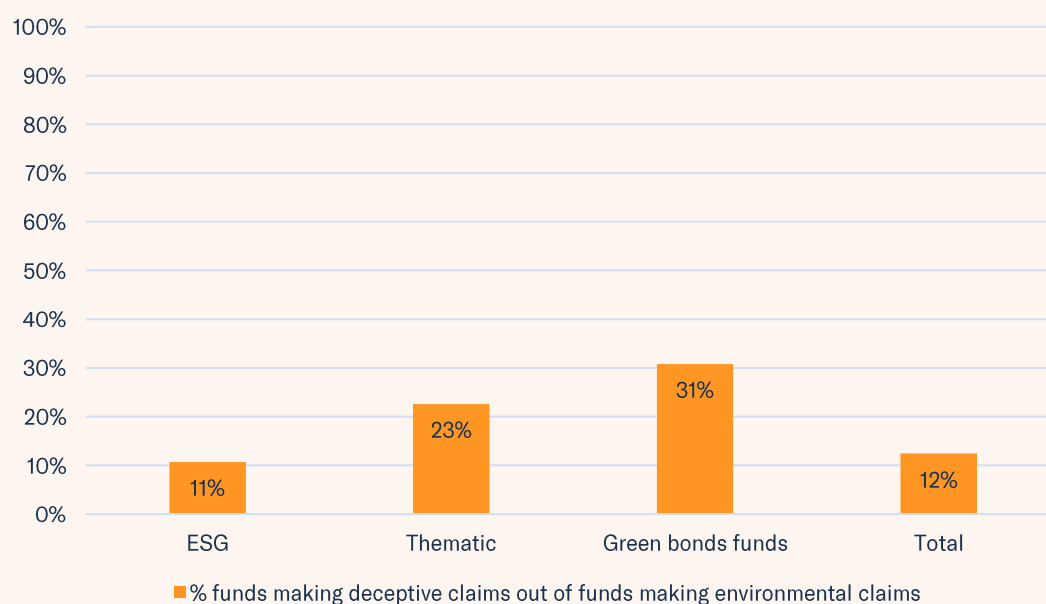
- Comparing an indicator associated with the investee companies (usually the carbon footprint) with the market average and presenting the difference as a reduction in the real economy.

In this context, funds which communicate the carbon intensity of investee companies (CO₂/M€ invested) are particularly vulnerable to criticism. This indicator is confusing, as it suggests an undue link between investor actions at portfolio level and a variable (carbon emissions) that is strongly associated to real-world physical phenomena.

Examples of such deceptive claims are:

- *Our sustainable funds, aligned with a 2° scenario, are adapted for people that want to orientate their money towards the achievement of environmental goals, through strategies that allow financial performance and real-world benefits.*
- *Our sustainable funds have allowed us to realize this year: 430,000 tons of saved carbon emissions, which equates to 4 million trips from Berlin to Paris.*
- *Based on an investment of 5,000 euros in the fund: the emissions of the companies held is 40% less than the benchmark, which is equal to a reduction of emissions of 10,000 km by driving a car.*

Figure 15
Frequency of deceptive impact claims



69% of environmental claims are unclear as to the aspect of the financial product that is supposed to generate the environmental impact.

The environmental benefit should logically be related to the investment strategy implemented. But most impact claims were ambiguous as to the impact attributable to the investment strategy and the impact of the investee companies.

In this category, claims associated to Green Bond funds and strategies are the most problematic. Research has so far reached inconclusive results about the real impact of green bond funds.⁴⁴ In

⁴⁴ See Flammer, 2021, Fatica and Panzica, 2020, Ehlers, Mojon and Packer, 2020 for example.

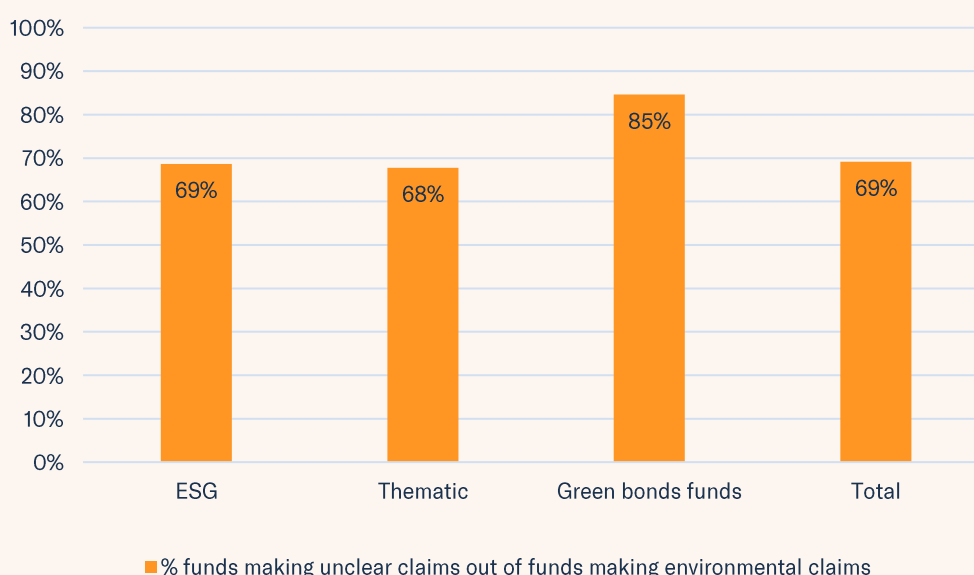
many cases, the wording suggests that the instrument leads to additional investment in the earmarked green activities.⁴⁵

Examples of such claims include:

- *The green bond market is booming, as a growing number of investors is interested in creating portfolios which generate positive environmental effects.*
- *The fund is based on a thematic strategy to achieve positive environmental outcomes.*
- *The responsible funds we propose are able to substantiate an actual and beneficial real-world effect, thanks to our focus on solutions providers.*
- *Green bonds give the investor certainty on the fact that its money will be beneficial on environmental terms.*

Figure 16

Frequency of unclear impact claims



73% of environmental impact claims are too vague to be substantiated.

In such cases, the environmental claim is similar to those articulated as examples of bad practice (e.g. “good for the environment” or “an ethically correct choice”).

The main issue with these kinds of claims is that they are so broad in the benefit they refer to that no evidence could possibly support them on an objective basis.

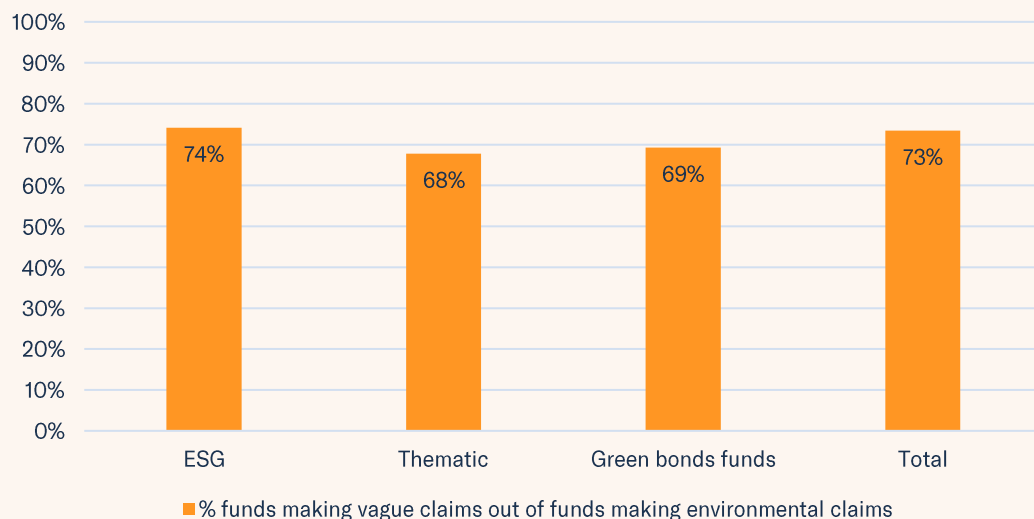
Examples of such claims include:

- *We aim at being responsible managers for our clients by ensuring that the way in which we invest assets creates societal positive impact and financial performance.*
- *Green bonds allow you to participate to the fight against climate change and the environmental crisis.*

⁴⁵ In this regard, it is interesting to note the recent integration of these concerns within the technical criteria for the Ecolabel for financial products. In the latest criteria, those related to green bonds include specific conditions regarding the profile (green or transitioning) of the company that issues the bond and a demonstration, in case of refinancing green bonds, that they are allowed to free up capital reinvested in green projects.

- *Investing for an improved future.*

Figure 17
Frequency of funds making vague claims



In addition to shortcomings outlined in our testing above, all environmental claims fail the UCPD ‘substantiation test.’

As discussed in Section 1, recent academic research confirms that there is a low level of evidence as to the ability of investment strategies to deliver real-world impacts. At best, analysis of empirical data has shown possible linkages between investment strategies and real-world impact. Therefore, it is logically impossible for the financial products in our sample to substantiate their contribution to a “verifiable environmental benefit or improvement” (as required by the MDEC Compliance Criteria).

For certain funds, it might be that such measurement tools exist but are not accessible to the public, in which case we were not able to identify them.

A number of funds claim to implement engagement strategies, through which they take credit for achieving determined real-world objectives. However, we have not identified any detailed disclosure on the topic and therefore cannot consider that such claims are supported by robust evidence.⁴⁶

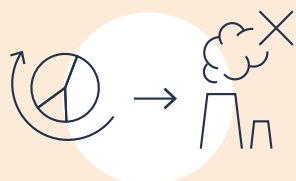
⁴⁶ In addition, based on our market knowledge and the standard engagement approaches, we consider it highly improbable that any ground-breaking material such as this would not be presented in detail in the corresponding marketing communications.

4.3 Top five marketing tricks



Environmental benefits of investees' activities = Investing in the fund leads to environmental benefits

The fund manager suggests that there is a causal link between a specific allocation of capital to an investee company in a portfolio and the environmental benefits generated by that investee company, where there is no solid evidence to support such a statement.



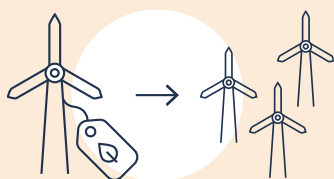
Changes in portfolio boundaries = GHG emission reductions in the real economy

The fund manager ambiguously presents changes in the exposure of a portfolio to environmental features (e.g. carbon footprint) as if they corresponded to an equivalent outcome – often quantified – in the real world, which is technically incorrect. This merely leads to a reallocation of carbon emissions across financial actors. For instance, a fund manager divesting from high-carbon sectors will sell its assets to other investors, leaving the real-economy untouched.



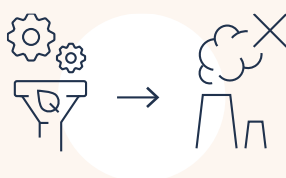
Investees are better than their peers = Investing in the fund reduces GHG emissions

The fund manager suggests that an ESG best-in-class approach can be specifically related to an actual environmental outcome, which is not supported by any evidence, and is most probably incorrect. The same reasoning as above applies here i.e. that investing in best-in-class companies will leave the financing of worst-in-class ones to other investors more prone to invest in such activities. The impact on the reduction of emissions is therefore, at best, very indirect and unmeasurable.



Earmarking green activities = Financing more green projects

The fund manager suggests that earmarking implies additionality and a measurable investor contribution when the current framework and practices do not provide the tools to substantiate such conclusions.



Any ESG process implemented = Environmental outcomes in the real economy

The fund manager suggests that an ESG integration approach can be specifically related to an actual environmental outcome, which is not supported by any evidence.

Concluding remarks and recommendations

5.1 Enhanced standards for environmental claims are inevitable

Improve general consumer protection rules

In the wake of the European Green Deal, the Commission has promoted two initiatives aimed at increasing the level of consumer protection regarding environmental communications of companies.

The first, entitled *Substantiating green claims*⁴⁷ is carried out by DG ENV and aims to introduce standardized methodologies for assessing the environmental footprint of products and organizations at European level, that should be used in a mandatory way to support environmental claims.

The second, entitled *Strengthening the role of consumers in the green transition*⁴⁸ is carried out by DG JUST and aims to strengthen consumer protection against misleading environmental claims in a more general way (by including claims that do not relate to environmental footprints and are not covered by the standardized methodologies mentioned above).

These two initiatives illustrate the importance of this topic for the Commission, particularly regarding the adequacy of methodologies and scientific evidence used by economic actors to justify environmental claims.

Develop the concept of investor impact in financial regulation in line with consumer protection rules

Since the existing consumer protection rules and EU initiatives mentioned above apply to the finance sector, any finance sector specific regulation must be aligned with these consumer protection rules. It would be incongruous and unjustifiable for finance sector organisations to be subject to a different standard that would allow for environmental claims without providing robust and relevant evidence.

The EU seems aware of the need to clarify the notion of impact. Indeed, the consultation on a Renewed Sustainable Finance Strategy included, among other things, an explicit focus on the actual impact of sustainable finance strategies in the real economy.

The consultation notes:

*“While sustainable finance is growing, **there are questions on how to measure and assess the positive impact of sustainable finance on the real economy.** Recently, tools have been developed that can be used to approximate an understanding of the climate and environmental impact of economic activities that are being financed. Examples of such tools include the EU Taxonomy, which identifies under which conditions economic activities can be considered environmentally sustainable, use-of-proceeds reporting as part of green bond issuances, or the Disclosure Regulation, which requires the reporting of specific adverse impact indicators. **Yet, an improved understanding of how different sustainable financial products impact the economy may further increase their positive impact on sustainability factors and accelerate the transition.**”*

⁴⁷ European Commission (DG ENV), 2020, [Initiative on substantiating green claims](#)

⁴⁸ European Commission (DG JUST), 2020, [Strengthening the role of consumers in the green transition](#)

As we articulate earlier in this paper, we consider that this issue has been a blind spot of the body of disclosure requirements being developed under the Action Plan on Financing Sustainable Growth. Indeed, the focus on implementing the taxonomic logic, has meant that existing policy has implicitly promoted an approach to sustainable finance and investment based on the exposure of portfolios to certain activities, without questioning its relevance in terms of impact in the real economy.⁴⁹ It is therefore welcome that the Commission appears to recognise for an investor to be allowed to take credit for a real-world impact requires a more sophisticated analysis than observing the portfolio allocation or alignment.

These developments indicate a general trend whereby sooner or later financial regulation will require financial actors to ensure their environmental claims are aligned with their ability to generate societal change through the various actions they can implement (whether at organisation or financial product level).

INFO BOX: Integrating investor impact research within financial regulatory processes

A clear example of this increasing attention is the development of the draft technical criteria for the EU Ecolabel on financial products.⁵⁰ The third technical report⁵¹ of the European Commission Joint-Research Centre:

- Integrates a concept of *investor impact* that is based on the academic literature as reviewed by Kölbel et al. (2020);
- Integrates a criterion specifically dedicated to maximising the probability of impact of actions (mainly based on the findings summarized above);
- Includes an acknowledgement that for UCITS accessible to retail investors, the scientific evidence is not sufficient to demonstrate their ability to deliver impact in the real economy through capital allocation-based investment strategies;
- Integrates a criterion related to engagement strategies with precise obligations in terms of objective-setting, monitoring and reporting; and
- Includes an explicit requirement to avoid the association of Ecolabelled equity and bond funds to measurable impacts on the real world.

5.2 Recommendations

Review the financial institution validation processes for environmental claims

This paper shows that a significant portion of environment-related communications associated with financial organisations, products or services are made without sufficient precautions as to what can be demonstrated on a robust scientific basis.

Compliance departments of financial institutions should take heed of the discernible direction of travel towards a rising of regulatory standards and take steps to improve their validation processes for marketing communications. In this regard, two aspects should be addressed.

⁴⁹ And this, despite the fact that previous studies commissioned by DG ENV had pointed to the uncertainties of such an approach in terms of actual environmental impacts, especially regarding "*non-targeted finance*" (European Commission (DG ENV), 2017, *Defining "green" in the Context of "green" Finance*).

⁵⁰ These developments are welcomed. However, important uncertainties remain about the whole scheme, as detailed in our response to the JRC's Technical Report 3.0 (available on request).

⁵¹ EC JRC, 2020, *Technical Report 3.0 on the EU Ecolabel criteria for retail financial products*

The **first** is to move away from claims based on a *direct attribution logic* towards claims based on maximising the *likelihood of environmental impact*.⁵² This would require methodological tools that incorporate, for each asset class, an assessment of the most current evidence-based impact maximization factors, constant monitoring of the methods implemented and detailed disclosures about the strengths and limitations of the approach.

The **second** is to clearly associate any environmental claim (especially those related to the carbon footprint or any other environmental footprint) with a **disclaimer indicating that, based on the state of knowledge, the claims made cannot prejudice any real effect on the environment in relation to actions, products, services or strategies with which they are associated**.⁵³

Strengthen regulatory oversight of environmental claims

Regulatory scrutiny of environmental claims is currently lacking. Financial regulatory authorities have difficulty appreciating the specific nature of environmental claims and their specific relevance to finance and their oversight responsibilities.

It is therefore crucial that this issue is put at the heart of future supervisory initiatives or reviews.

In the French context, relevant texts, notably Doctrine 2020-03⁵⁴, could include a particular consideration for environmental claims through the development of a precise and overarching definition of the concept.⁵⁵ This should also set requirements in relation to being able to demonstrate the effects of financial strategies in the real economy and evidence-based criteria.

At European level, it seems more necessary than ever to implement a process comparable to that of the MDEC, focused on environmental impact claims in the finance sector. 2DII is currently leading a H2020 funded project on this topic - our first draft of the Principles for responsible environmental marketing for the finance sector is available in Appendix 2.

Improve research and data on investor impact mechanisms

Evidence regarding the impact of financial institution actions is currently extremely limited. More research is required to draw conclusions on the ability of any specific action to be impactful. Quantitative and qualitative methods could be used to further assess the likelihood of achieving impact. There is also a need for better disclosure by financial institutions to enable a thorough assessment of the environmental claim.

Better information is required on:

- how the environment-related actions and strategies will be implemented (e.g. listing the specific actions that will be taken and monitored);
- the asset classes targeted by the actions and strategies (as they can have different real-world consequences e.g. when implemented on public or private markets); and

⁵² Please refer to our publication [A Climate Impact Management System for Financial Institutions](#) (currently subject to consultation).

⁵³ It is worth noticing, in this regard, that disclaimers of this kind already exist in the context of label schemes like the Nordic Swan ("Nordic Ecolabelling is aware that there are no direct links between the investment undertaken by individual investors in a fund and the company, **and that the possible positive environmental impact can be questioned**. Nordic Ecolabelling nonetheless still has this point requirement because we believe that, in the long run, there is an environmental impact", Nordic Swan, 2017, [Investment funds - Background document v1.3](#), p. 26), and the draft EU Ecolabel for financial products ("The information shall be accompanied by a disclaimer. The disclaimer shall clearly state that the **EU Ecolabel does not evaluate the environmental and social impacts of the fund**", EC JRC, 2020, [Ecolabel for financial products. Technical Report 3.0.](#), p. 141).

⁵⁴ Doctrine 2020-03 would be one of the relevant texts, it should also be envisaged for texts applicable to insurance products

⁵⁵ Possibly based on UCPD-related previous work done by the EC (e.g. see definition in European Commission (DG JUST), 2014, [Consumer market study on environmental claims for non-foods products](#), p. 11)

- the ex-poste tracking of the actions implemented (in a granular way and on an ongoing basis).

Develop evidence-based frameworks to assess impact of investor actions

Additional research and data on investor impact mechanisms would provide a basis for developing impact-seeking frameworks for financial institutions to contribute to real-world effects.

Financial institutions mix, when they implement environment-related actions and strategies, overarching objectives (e.g. portfolio footprint reduction), implementation means (e.g. engagement, portfolio reallocation) and monitoring tools (e.g. internal carbon price, disclosure, risk-assessment tools). Financial institutions could benefit from guidance to navigate this area to develop evidence-based commitments upon which their commercial communications could be based. Such frameworks should allow financial actors to understand ex-ante evidence associated with potential actions, so that they can maximize the likelihood of achieving impact through their implementation.⁵⁶

⁵⁶ Please refer to our publication [A Climate Impact Management System for Financial Institutions](#) (currently subject to consultation).

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Appendix 1

French soft law sectoral approaches

A Practical guide to Environmental Claims, published in 2012 by the National Consumer Center

This publication presents different types of claims and provides for guidance on how they should be used, around the following principles:

“What rules apply to environmental claims?”

*Any environmental claim must be explicit and precise so as not to mislead or generate doubt in consumers’ mind. It must aim to inform consumers fairly **about the environmental characteristics of the product or service.***

An environmental claim must be based on scientific evidence or accepted methods.

*Whatever the claim, it must focus on an environmental aspect that is significant **in light of the impacts generated by the product.***

The benefit claimed by this claim should not also lead to pollution displacement, i.e. to create or aggravate other environmental impacts of the product, at any stage of its life cycle”⁵⁷.

An Anti-greenwashing guide published in 2012 by the Agency for Ecological Transition (ADEME)

This publication provides self-assessment principles to avoid greenwashing, which is identified through nine criteria which cover aspects such as disproportionate promises, vague words, absence of evidence etc.⁵⁸

A Sustainable development code updated in 2020 by the Self-regulatory organization that oversees advertising practices in France (ARPP)⁵⁹

This Code is specifically focused on advertising practices and provides guidelines for “ecological argumentation, whether or not it refers to the concept of sustainable development” among which:

“2. Truthfulness of actions

*2.1 Advertisements **must not mislead the public about the actual actions of the advertiser or the properties of its products in terms of sustainable development.***

2.2 The actions of advertisers and the properties of their products in this area should be significant before a claim can be made.

*2.3 The advertiser **must be able to support its sustainable development claims by means of evidence that is objective, reliable, truthful and verifiable at the time of advertising.***

For any message based on a scientific claim, the advertiser must be able to present the origin of the findings and methodology used for the calculation.

Advertisements may not resort to demonstrations or scientific conclusions that do not conform to generally approved scientific findings (...).”

⁵⁷ Centre National de la Consommation, 2012, Guide pratique des allégations environnementales p.41

⁵⁸ ADEME, 2012, Guide Anti-Greenwashing

⁵⁹ ARPP, 2020, Sustainability Code V3

“3. Proportionality of messages

3.1 The advertisement **must accurately express the action of the advertiser or the properties of its products, in accordance with the available and communicable evidence.**

The reality of these actions or properties may be assessed in the light of the different pillars of sustainable development, the different types of impacts and the various stages of a product's life cycle.

3.2 The advertising message must be commensurate with the scale of the advertiser's action(s) in terms of sustainable development **and the properties of the product(s) he is promoting.**

3.3 In particular

a. The advertisement should not be presented in such a way as to imply that it relates to more pillars of sustainable development, more stages of a product's life-cycle or more impacts than can be justified by the evidence (...)

“9. Complex systems

*Some recognized systems may be based on highly technical argumentations or complex schemes, **whose benefits in terms of sustainable development are indirect (e.g., systems known as “green electricity”, “carbon offset”, “socially responsible investments”, etc.).***

When an advertisement refers to these types of systems:

9.1 It should **take care not to mislead the public about the true scope of the mechanism.**

9.2 If it uses simplified language for educational purposes **it must provide the public with the necessary explanations**, as per the conditions defined in article 3-4 of this Code.

9.3 The advantage of using systems to indirectly compensate the negative impact of a product or an activity should not be referred to in the ad as being a direct quality of the product or activity”.

A periodic report on “Advertising & environment”, released in partnership by the ARPP and ADEME. The latest version has been published in 2020⁶⁰

This report assesses a sample of advertisements and their compliance with applicable rules (especially against the self-regulatory principles set out in the Sustainability Code mentioned above).

Importantly, this version notes that “*the poor results of this 10th review question the ability of actors to really promote, in accordance with ethical rules, products/services and mindsets compatible with the ecological transition and the fight against climate change. They push us more than ever to strengthen our vigilance with regard to brands and their agencies and to encourage all actions to raise awareness and support professionals, in education institutions, training centers and on a daily basis in companies and agencies. Compliance with ethical rules is a central element of advertising credibility, which must be consolidated*”.

⁶⁰ ARPP, ADEME, 2020, Bilan 2019 Publicité & Environnement p.5

Appendix 2

Draft Principles of Responsible Environmental Marketing for the Finance Sector

Reality-based

Financial institutions should ensure that all information reported and documented is built around fact-based assumptions in order to limit misleading communication, in particular they should:

- Avoid ambiguous statements equating the deployment of a sustainable investment strategy (the means) with environmental impacts in the real economy (the ends).
- Refrain from equating an evolution of the boundaries of their asset portfolio (e.g. divestment from an entity owning a coal-fired power plant) with environmental impacts in the real economy (e.g. closure of a coal-fired power plant replaced by renewables) as a direct consequence of their actions.
- Refrain from equating an increase in their allocation to certain financial assets (e.g. increase in green bond exposure, or assets under management in green funds) with an increase of investments in the real economy (e.g. increase in capital expenditure in green projects) as a consequence of their actions.

Evidence-building

Any institution that believes the deployment of an investment/lending approach (such as divestment from certain assets, the increase in allocation to other assets or the deployment of certain tools) will lead directly or indirectly to environmental impacts in the real economy should substantiate its claims by collecting evidence supporting the causal link between the financier's actions and the outcomes. For this purpose, the institution should:

- Lay out each assumption made for the specific cause and the evidence available (ex-ante) to support the investment thesis.
- Collect further evidence (ex-post) and report how it supports—or contradicts—its thesis; This evidence-based approach aims to avoid any ambiguity between assumptions (i.e. divestment from coal mining companies prevents new coal projects from being financed) and facts and build evidence on an on-going basis to improve the investment thesis continuously.

Additionality

An institution should refrain from suggesting that the environmental impacts of its investees and borrowers can automatically be credited to its investment/lending strategy and from reporting these impacts as if the financial institution itself was delivering them. A financier cannot automatically take credit for the investee's climate impact (i.e. low level and/or reductions of GHG emissions in the real economy) if there is no evidence that the financier's climate action was a key driver for the GHG emissions change. This involves refraining from suggesting that:

- The provision of financing to green activities brings a critical contribution to their development, if these activities do not face difficulties accessing finance in the first place;
- Its refusal to finance brown activities prevents the institution's access to finance, if the evidence suggests that the effect is fully offset by other finance sector players;
- Its strategy triggered the environmentally friendly practices of investees/borrowers if their decision were already made or have been primarily driven by other factors.

Leadership

The absence of scientific evidence on the effectiveness of various investment techniques in delivering real impact should not prevent leading financial institutions from implementing best practices and experimenting with new ones. Leading impact investors assess the effectiveness of their approach, acknowledge shortcomings, and learn from their mistakes to fine tune their investment thesis and approach.

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Disclaimer

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