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ESMA
European Securities and Markets Authority

Securities and Markets Stakeholder Group

Advice to ESMA

SMSG advice to ESMA on the ESAs' Call for Evidence on Greenwashing

1. Executive Summary

Avoiding greenwashing is important for all market participants. The SMSG advises the ESAs to formulate a clear definition of greenwashing – or rather "ESG-washing", since greenwashing risks may make providers of financial services and products overly cautious, while undermining the confidence of consumers and investors in ESG products.

The SMSG repeats that, apart from greenwashing, also "green-bleaching" is problematic, where financial market participants choose not to claim ESG features of their products in order to avoid extra regulation and potential legal risks. Adequate guidance on legally permissible representations may help in reducing this problem.

In order to reduce greenwashing, the SMSG first deems it very important to clarify related concepts and closely related terminology, such as "green", "ESG" and "sustainable", "impact investing" and "sustainable investment". Also the scope of article 8 and article 9 products should be further clarified. The SMSG is of the opinion that the ESAs have an important role to play in this regard.

Second, many areas of regulation and supervision of financial institutions already address certain aspects of greenwashing. The SMSG is of the opinion that potential gaps in the current regulatory framework should be identified before introducing new legislative requirements. The SMSG advises the ESAs to provide an indicative list of practices and activities which would violate existing regulations and amount to greenwashing.

Third, the key to avoid greenwashing is, in the opinion of the SMSG, that claims regarding ESG characteristics & objectives and/or ESG metrics (including SFDR ESG classification, disclosures and metrics) in legal documents or commercial information should align with the true product characteristics. Misrepresentations can amount to greenwashing. In the opinion of the SMSG, however, unintentional mistakes or changes in data reported due to additional availability of data or the enhancement of calculation methodologies, should be treated differently than misrepresentation resulting from intent or gross negligence. Especially the current lack of raw data and incomplete regulatory frameworks may result in unintentional misrepresentation, which should, however, not be considered greenwashing. The SMSG moreover advises ESMA to consider how to incorporate materiality into the definition of greenwashing.

Fourth, to promote the development of ESG finance and to provide clear guardrails with respect to greenwashing risks, the SMSG deems it important that the ESAs acknowledge the need to encompass primary as well as secondary and derivatives markets, as well as the full spectrum of ESG strategies. Regulators should avoid adopting an excessively rigid framework which would curb the development of the ESG market. At the same time, there is a need for more clarity regarding the responsibility for greenwashing along the greenwashing "value chain".

Finally, there is currently sometimes a mismatch between what a product aims at and investor expectations. Clear explanations of what products do and do not, with possibly common industry wordings and regulators implication in investor education (including information of the state of the market/economy) may contribute to a better expectation management, ensuring that products match investor expectations, and ultimately reduce the potential for greenwashing.

2. What is "greenwashing"?

2. Terms like "greenwashing" and "ecolabel" are widely used in a wide variety of industries. The financial ecosystem is thus not the only industry to use these and related terms. Each industry however has its specificities and needs special clarification efforts to avoid misrepresentations and misunderstanding.
3. The sustainable finance framework is still under development and consolidation. The SMSG reflects in this advice on the wide array of ongoing discussions.
4. The European Commission's Sustainable Finance Action Plan is important and closely linked to other important plans such as the EU's plan for a green transition. Substantial investments are required to finance the green transition and regulations must support it in all economic sectors incl. the financial sector, as well aso improving human rights, and other social and governance aspects. The SMSG considers ESMA's Call for Evidence on Greenwashing (the "CfE") as an opportunity to make the link between "greenwashing" and the Commission's renewed sustainable finance strategy.
5. The SMSG agrees with ESMA that the risks associated with greenwashing allegations are equally substantial both for the industry (issuers, intermediaries etc.) and end-investors, since it may make providers of financial services and products overly cautious, while undermining the confidence of consumers and investors in financial markets. Avoiding greenwashing is therefore important for all market participants.
6. Recital 11 to Taxonomy Regulation EU/2020/852 defines greenwashing as "the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly, when in fact basic environmental standards have not been met", while recital 2 to Directive (EU) 2022/2464 (CSRD) perceives this more broadly as relating

to "financial products that unduly claim to be sustainable".[1] The SMSG considers that the taxonomy definition of "greenwashing" is insufficient, amongst other things since it only refers to environmental standards, and not to social and governance standards. The term "greenwashing" has historically indeed often been understood as relating to environmental issues (the "E" in "ESG"),[2] while the SMSG is of the opinion that it should also encompass the social ("S") and governance ("G") parts of the ESG spectrum today. A more fitted term could reflect this, e.g. "ESG washing" or "sustainability washing".[3] The SMSG advises the ESAs to formulate a clear definition of greenwashing – or "ESG-washing".

7. To further clarify the understanding of "greenwashing", the EU regulatory framework should be completed and clarified, especially often used terminology such as "green", "ESG", "sustainable". The regulatory framework on sustainable finance is, however, work in progress. As the interest in and offering of "green" products is increasing, the work on "greenwashing" urgently needs to be accompanied by a clarification of the regulatory framework, incl. the meaning of often used definitions such as "green", "ESG" and "sustainable".

8. An example of this is the ongoing discussion about the meaning of "impact investing" where the lack of a regulatory and European-wide definition, may create a risk of a mismatch of expectations. The SMSG notes that in some jurisdictions a definition is being developed by the industry[4]. It is obviously crucial that information provided to investors is correct. This also means that market participants should clearly explain the limits of the products and services offered and thus manage investor expectations. A firm should, for instance, not indicate a clear link between an investment and a specific impact unless there is such a link. Impact allegations in all industries should be carefully drafted to avoid situations where end clients/investors would imagine that their investments directly save lives, or attenuate climate change. Providers of "impact" products should clearly explain their strategy and efforts to reinforce the ESG dynamic that is sought, to distinguish them from strategies that are "only" based on meeting some ESG criteria (see also Section 7 below).

9. The absence of a clear understanding of "greenwashing" and related concepts also makes the work of supervisors difficult. The SMSG is of the opinion that, while the regulatory framework is still under development, supervisors could and should take action to increase legal certainty. While media may use the term "greenwashing" in a wider sense, it is indeed

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[1] See also the definition in recital 7 of Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms.

[2] The Oxford English Dictionary defines greenwashing as "the creation or propagation of an unfounded or misleading environmentalist image" while another definition found in an Internet search (there are many similar) define greenwashing as "a marketing technique used by an organisation with the aim of giving itself a misleading ecological image".

[3] Such terms can be compared with the words "whitewashing" and "money laundering" and indicate actions that are intentional, misleading or in other ways improper.

[4] As an example, Finance for Tomorrow define "impact finance" as "an investment or funding strategy that aims to accelerate the just and sustainable transformation of the real economy by providing proof of its positive effects".

important to have legal certainty in the relations between regulators, market participants and end-users.

10. Legal certainty comes with the Commission, ESMA and NCAs having the same understanding of regulatory concepts. The SMSG therefore welcomes Commissioner's Mairead McGuinness' speech on the need for the sustainable finance framework to be "consistent across these different initiatives, and that these initiatives are usable for the financial system and businesses generally."[5] ESMA and national competent authorities ("NCAs") in dialogue with the industry, investors and other relevant actors have an important role to play to that end.

11. A specific challenge in this regard is that not all rules are intelligible to the parties to whom they are addressed. As a consequence, manufacturers and distributors of financial products may choose to "green-bleach" some of their products.[6] "Guardrails" for issuers and other market players, notably guidance on what constitute legally permissible representations about investments or products and the impact they make, may help in reducing this problem.[7]

12. More legal certainty will also facilitate the work of regulators, supervisors and other concerned parties when acting against violations of relevant rules, such as misleading statements on the ESG benefits of an investment service or product.[8] The German consumer association publishes a list of court proceedings relating to greenwashing (both finished and ongoing) on its website (in German).[9] The SMSG advises ESMA and NCAs to keep lists of greenwashing cases that have come to final judgment in their Member State.

3. Already existing regulations must be considered

13. Significant areas of regulation and supervision of financial institutions already address some aspects of greenwashing. Unfair or misleading ESG information in a prospectus is for example a violation of the existing regulations. An investment advisor giving misleading ESG advice may similarly be in breach of contractual and regulatory obligations in place

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[5] Opening remarks by Commissioner McGuinness at the ECON-ENVI joint committee meeting on 5th December 2022: ECON-ENVI meeting (europa.eu)

[6] Green-bleaching is a term used for example when a provider of investment services or products that is in practice "green" chooses not to claim that it is (such as having an art 9 fund but market it "merely" as an art 8 fund) to avoid extra regulatory requirements and a potential regulatory or legal risk.

[7] An example covering a specific area and without the SMSG taking a position on the content is the report by the United Nations' High-Level Expert Group on the Net Zero Emissions Commitments of Non-State Entities entitled "*Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions"* including recommendations relating to greenwashing in relation to net-zero emission commitments, see High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities | United Nations.

[8] The SEC Division of Examinations recently announced that it would in 2022 be specifically focusing *inter alia* on "ESG-related advisory services and investment products (e.g., mutual funds, exchange-traded funds (ETFs), and private fund offerings), 2022 Examination Priorities Report (sec.gov).

[9] Greenwashing bei der Geldanlage: Werbung mit Nachhaltigkeit | Verbraucherzentrale Baden-Württemberg (verbraucherzentrale-bawue.de).

already today.[10] MiFID II moreover provides that investor information should be "presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received" and therefore also definitions and classifications of funds should be understandable by the average investor to whom they are addressed[11].

14. It is indeed important to look "at the complete the value chain", where a complete set of regulations is already in place or upcoming: CSRD, Taxonomy Regulation, Benchmark Regulation, SFDR, MIFID, IDD, upcoming data providers regulation, etc. In order not to create new rules that conflict with existing regulations, complexify the existing regulatory framework or add to the administrative burden, potential gaps in the current regulatory framework should be identified before introducing new legislative requirements.

15. The SMSG is of the opinion that the ESAs could play an important role in the fight against greenwashing by providing guidance to market participants and end-users with an indicative list of practices and activities which would violate existing regulations and could put market participants and end-users at risk.

4. Intentional vs Unintentional Greenwashing

16. The key to prevent greenwashing is for the SMSG that a provider of a service or product should explain what it does and do what it says. Claims that are made regarding ESG characteristics & objectives and/or ESG metrics (including SFDR ESG classification, disclosures and metrics) in legal documents or commercial information, should align with the true product characteristics.[12] A good and natural starting point has been set by the French supervisor AMF to the effect that "what you say should be what you do" and "what you do should be reflected in the documents (name, KIID, prospectus, marketing material)".[13] A product should for instance not be marketed as a product investing in already "green" companies, when its investment objective is not in line with such statement. Nor should advantage be taken of expectations regarding what a product, issuer, rating etc. does. In that respect, greenwashing is no different than misrepresenting risks.

17. ESMA provides in the CfE that greenwashing could be "intentional" or "unintentional". The SMSG finds that a distinction should be made between on the one hand intentional misrepresentation or gross negligence resulting in misrepresentation, and on the other hand occurrences that are not characterised by intentionality or gross negligence.

[10] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, article 24, p 3 provides: All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

[11] Commission Delegated REGULATION 2017(565) Article 44, Fair, clear and not misleading information requirements (Article 24(3) of Directive 2014/65/EU), 2. (d)

[12] In line herewith false claims such as "save 100 lives by investing in this product" should not be made.

[13] AMF (2020) 'Information to be provided by collective investment schemes incorporating non-financial approaches', available at: https://www.amf-france.org/sites/default/files/doctrine/Position/Information%20to%20be%20provided%20by%20collective%20investment%20schemes%20incorporating%20non-financial%20approaches.pdf

18. The SMSG agrees with ESMA that the omission of information can lead to information being factually incorrect. Omission can be subtle, for example, if a claim or text focuses more on positive impacts while paying less attention to negative impacts. The SMSG does however consider that also the intent / gross negligence to use this incorrect information or omission, is an important factor to consider when determining whether an action/omission qualifies as greenwashing. The SMSG notes that providing proof of "intent / gross negligence" for investors is difficult and could restrict "greenwashing" cases to the very obvious ones only.

19. Unintentional mistakes or changes in data reported due to additional availability of data or the enhancement of calculation methodologies, should, in the opinion of the SMSG be treated differently.

20. A difference also exists between "misleading" and "misunderstanding", especially at a time when it is not clear for instance what exactly "green" or "sustainable" means, making it in turn difficult to know what "greenwashing" is. Most market participants, even though there is no entirely clear definition of what "green" is (due also to the lack of a complete framework on KPI methodologies and reporting, verification and corrective measures), may have an own idea of what this term means. The same goes for other definitions such as "sustainable" and "ESG". A legitimate disagreement could be said to exist on this point.

21. The SMSG is of the opinion that the definition of "sustainable investment" is, for instance, insufficiently clear, which leads to the risk of "unintentional" greenwashing. The present situation makes it difficult for the industry as well as end-users. At a time of growing demand for ESG products, definitions and important new concepts are not yet legally defined.

22. Finally, the SMSG also deems it important that ESMA considers how to incorporate materiality into the definition of greenwashing.[14]

5. Sustainable finance relies on an "ecosystem" of ESG solutions

23. To promote the development of ESG finance and to provide clear guardrails with respect to greenwashing risks, the SMSG deems it important to acknowledge the full spectrum of ESG solutions and avoid adopting an excessively rigid framework which would curb its development. The future ESG finance ecosystem will need to encompass primary (green bonds, "green" IPOs, etc.) as well as secondary markets and derivatives markets. While acknowledging that the primary funding need is crucial, it is equally important not to lose sight of the complete lifecycle of ESG investments.

[14] It could be argued that a clear distinction between "intentional" and "unintentional" actions may be difficult to make when applied to a wide concept such as "greenwashing" leading again to the conclusion that it is important to get more guidance and clarity from regulators on this. It is also important to discuss how regulators and supervisors should react proportionately to "unintentional" actions while the regulatory framework is under construction and raw standardised issuer data is not yet available.

24. Without adequate consideration of secondary and derivatives markets, it is difficult to envision the development of a robust ESG market. This framework will need to incorporate the holistic ecosystem of participants, products, and services: from the project sourcing to the intermediation and price-making and the longer-term secondary-market investment, each of them brings a vital contribution to the market and is interdependent on the others. A robust secondary market will in turn require liquidity-provision, buttressed by securities-lending and market-making in both cash and derivatives markets.

25. As highlighted above, the ESG finance ecosystem should support the evolving nature of the ESG transition. In this respect, ESMA should provide clear guidance with respect to different ESG strategies. As not all ESG actors and projects are already "dark green", for instance, the ESG finance ecosystem should also encourage companies to adopt a greener (transition) agenda.

26. This ESG transition could be supported through active share ownership and an engagement approach which supports and encourages companies to change business models towards a lower carbon pathway. Research indicates that an engagement investing approach would be more effective and thus less prone to greenwashing than an exclusion (disengagement) approach.[15]

27. The development of ESG indices, especially the transformation of current basic non ESG indices to a minimal ESG version, is an essential component of the scaling-up strategy for ESG finance, as they will be a key tool in portfolio diversification solutions in market-risk mitigation strategies. However, the proliferation of different ESG indices could prove challenging for individual investors, who are already faced with a complex universe of general capital market indices, among which for instance those used in structured products, which may be particularly complex. This further underlines the importance of ESG advice, duly taking into account investors' sustainability preferences, especially when dealing with complex investment solutions (e.g. ESG index structured products encompassing a capital protection). Certain NCAs[16] and industry associations promote work for an enhanced transparency of the hedges that back these derivatives positions (either through a delta-hedge, balance-sheet, or sustainable asset-pool monitoring), and the SMSG advises ESMA to encourage such transparency initiatives. In an evolving economy, the question arises what is the appropriate benchmark for assessing the performance of long-term and pension savings.

6. Importance of reliable data and ratings

28. Market participants and investors need reliable and comparable data. ESG data is, however, still in the process of becoming regulatory data. It is important that companies

[15] See Annex.

[16] Update of the AMF's policy on funds that use Total Return Swaps and communicate about their consideration of non-financial criteria (https://www.amf-france.org/en/news-publications/news/update-amfs-policy-funds-use-total-return-swaps-and-communicate-about-their-consideration-non)

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can deliver accurate and meaningful data on non-financial matters. A challenge when discussing greenwashing is that the full reporting framework for companies is not yet in place. CSRD will play a pivotal role and untrue, incomplete, or misleading statements in non-financial reports will in the future have the same consequences as if such statements were made in financial reports. While companies are thus in the process of working on gathering and presenting data in line with the recently adopted CSRD, they will not be required to deliver in full until 2025.

29. The resulting lack of raw data at company level spreads through the system and affects also financial services providers. It underlines the importance of working on standards and improve access to ESG data that can be verified. ESG data is more and more an unavoidable tool of future European economy financing. It is therefore important that the ways data, ratings and indices are presented, are not biased by non-EU interests, making this also an European sovereignty issue.

30. Insufficient or unreliable data may lead to misrepresentation and "greenwashing" allegations. For instance, there are no full data yet or even the infrastructure to report on Scope 3 emissions, nor a complete framework for biodiversity, the circular economy, and human rights. Non-EU countries are also outside of scope in many respects. As market participants work with what they have, is there a risk of greenwashing allegations?

31. The European Single Access Point (ESAP) could be of great value when it comes to ESG information, provided that data is provided in a standard machine-readable format from the outset.

32. For investors and portfolio managers who may be looking for signals easy to interpret, having access to standardised audited company raw data is an important part of the solution to disentangle data from ratings. In connection herewith there is a risk that we create an over-reliance on ESG ratings. This is especially true while ESG rating providers are not (yet) regulated entities and is as an industry still being developed. Studies also point to inconsistencies in ESG ratings, even when relating to the same securities.[17]

33. As methodological choices are presently not always sufficiently disclosed, investors may not be in a position where they can make truly informed decisions, making it necessary for them to compare several ESG ratings and conduct their own research in parallel, often using raw ESG data. More transparency to the market (incl. on methodologies) and the introduction of rules on ESG rating agencies' operations is needed. The SMSG here takes note of and welcomes the Commission's work to improve the availability, integrity, and transparency of ESG ratings.[18]

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[17] G. Anselmi & G. Petrella, ESG Ratings: Disagreement across Providers and Effects on Stock Returns, Yunus Conference in Sustainable and Socially Responsible Finance, October 2022: https://ssrn.com/abstract=4328468.
[18] European Commission Strategy of 6.7.2021 for Financing the Transition to a Sustainable Economy: resource.html (europa.eu)

7. SFDR art 8 and 9

34. ESG investing started from a management strategy point of view with simple exclusions for ethical funds. This has evolved to a much broader array of strategies that aim not only to invest in the most deserving companies on ESG criteria but also help for instance the carbonated part of the economy to transition towards a low carbon intensive economy on a global stance. With the entry into force of SFDR and the introduction of “art 8” and “art 9” funds, we have entered another dimension of ESG investing.

35. The SMSG notes that some asset managers are leaving “art 9” territory for “art 8” territory, as the interpretation of what can be classified an “art 9” investment seems to have toughened from being a “niche” category to almost a “no” or “null” category. The SMSG stresses the importance of establishing a framework with intelligible rules and guidelines from the start, in the absence of which it is difficult to come up with useable products. The offering of art 9 funds may decrease due to a lack of clarity of the regulatory framework.

36. In regard of the “art 8” classification, the notion of ‘environmental and social characteristics’ is so broad that with some degree of measurability, virtually anything can fit into it. The definition of sustainability preferences as defined under MIFID II Delegated Regulation[19], however, focuses on the proportion of Sustainable Investment, of Taxonomy alignment or on Principle Adverse Impact Indicators, whereas article 8 products may or may not fit into these categories. The Commission seems to have intended the art 8 category only as a disclosure category of intentional or unintentional ESG strategies (and the efforts to introduce minimum ESG criteria have not been successful yet), whereas in the market “article 8 products” are often used as an ESG product category. This may easily lead to a mismatch with investor expectations.

37. Art 9 funds are today in practice required to be fully invested in sustainable investments, while the minimal ESG requirements are unclear for art 8 funds. Retail non-professional investors would against this background be better protected from greenwashing if art 9 funds were sole carriers of a green classification, like products with strategies similar to climate transition benchmarks and Paris aligned benchmarks, especially if accompanied by measurable engagement actions or impact-oriented objectives towards a green transition. Social and ethical funds as well as other ESG intensive funds should also be able to be part of art 9 classification. In short, the SMSG is of the opinion that art. 9 funds should focus on thematic funds, green or project bond funds, engagement funds and impact investing, while these terms should be clearly defined.

38. At the same time, an investment product following an engagement approach could (and should) be allowed to invest in “brown” companies such as oil companies in order to accelerate the energy or green transitions. The crucial condition is again that the product manufacturer clearly describes and documents how the engagement will take place. The

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[19] COMMISSION DELEGATED REGULATION (EU) 2021/1253 of 21 April 2021

SMSG asks ESMA to consider taking the most effective and virtuous existing investment approaches into account when clarifying the scope of art 9 products.

39. As regards the ratio of "sustainable" investments needed to qualify as "art 9" funds, and notwithstanding the SMSG's view on the effectiveness of the "negative selection" investment approach in particular for art. 9 funds, a comparison could be made with UCITS (a feeder fund for instance invests 85% or more in the master fund) and other existing rules, where the threshold is rarely (if ever) 100%, but rather 60-85 %. An equity fund in France, for instance, meant until recently a fund that invested at least 60% in equity at all times, whereas this is 85% in the EFC[20] classification). Similarly, the Greenfin label in France[21] requires 75% (not 100%) sustainable investments. These examples indicate that a threshold for "dark green" funds, if set for example at 80%, should still leave room for funds to hold some cash and invest for example in government bonds and MMFs, use efficient management portfolio techniques as repos or derivatives to adapt to different market situations, and to hedge different types of risks, to make it possible for funds to develop their strategy in the best interest of the unitholder

8. Responsibility in different parts of the value chain

40. The SMSG notes that there is a need for more clarity regarding the responsibility for greenwashing along the greenwashing "value chain". A financial market participant should, for instance, not be responsible for misleading claims made by investee companies in their financial statements or for inaccurate ESG data provided by ESG data and/or rating providers. The responsibility of each financial actor should be clear so that liability can be appropriately determined.

41. Similarly, product manufacturers may not always be in (practical) control of what is done and said by (notably third party) distributors. Even if the product information is in line with existing regulations, there is a risk that products are marketed based on incomplete information.

9. (Non-) Financial Literacy

42. As noted above there is currently a potential mismatch of expectations on different ESG strategies, including impact investing. Investors therefore need guidance for their investments. While it is important that providers of financial services and products as well as intermediaries make their best efforts to match expectations, it should be noted that some investors may have expectations that are difficult or not possible to meet. According to a recent study in Germany, investors are cautious of investment advice on ESG products due to a lack of clarity and a mismatch between financial advice and the expectations of

[20]The European Fund Classification EFC Categories: https://www.fundconnect.com/Solutions/Assets/EFC%20Categories%20Report.pdf

[21] In essence a public label for investments/products that are already green, not for transition investments/products.

retail investors.[22] Clear explanations of what the product does or does not, with possibly common industry wordings and regulators implication in investor education, may contribute to an improved correspondence of products with investor expectations and reduce the potential for greenwashing.

43. Investors may not take all information presented to them onboard. This is a general problem that does not apply only to ESG as shown in important work of the OECD and the Commission in this area.

44. MiFID and IDD introduced the requirement to ask retail investors about their sustainability preferences before being advised on financial products. This is an excellent initiative to give clients a say on what they want to invest in. However, in practice, they should be asked information on their preferences on three difficult to understand metrics and their proportions. Financial advisors have to apply these rules in a realistic way, as most retail investors are not investment or ESG specialists. The SMSG, moreover, deems it problematic that the client does not have prior access to information on the state of the wide market and economic development on ESG aspects, like for instance the current (deemed around 5%) taxonomy alignment of the economy.[23] In this context, matching clients and products seems somewhat hazardous.

45. The lack of clarity, notably in terms of definitions and concepts, seems to make ESG investing more and more prone to presumptions of greenwashing. There are for instance already "green" activities, but also companies that are "becoming greener". These are realities that have to be brought to the investors' attention to avoid possible misunderstanding. Investors need to be accompanied with regards to how ESG criteria and factors work in the real economy. Indeed, as many companies are multi-activity companies, the analysis of their ESG characteristics is more complex than looking at only one activity. As financial actors should accompany the ecological transition of the economy, it must be made clear that all existing companies and their economic sectors need to engage steadily on net zero paths. We do for example need both "green" and "greening" investments. It is thus important that companies are incentivised to take part in the green transition, and there is a need to clarify that the whole economy shall transition, rather than shutting down existing businesses and starting "green ones" from scratch. Some rules are very granular and may be difficult to navigate. In addition, substantial and costly changes may be required for example in the supply chains of companies. A major part of the transition means actual companies becoming greener while meeting the do no significant harm criteria of the other ("S" and "G") factors. A specific challenge is that substantial investments are required to finance the green transition, but companies may not be

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[22] DSW (2022) 'Investment advice on sustainable products survey', available at: Investment advice on sustainable products: Investors cautious – little clarity in the specifications- DSW-Info https://www.dsw-info.de/presse/pressemitteilungen-2022/anlageberatung-zu-nachhaltigen-produkten-investoren-zurueckhaltend-wenig-klarheit-in-den-vorgaben/

immediately rewarded for such investments by investors, proxy advisors and ESG rating institutions.

46. The SMSG therefore also sees a need for further improvement of the financial literacy of financial advisors in order to enable them to transmit the information needed to understand the sustainability preferences to investors. Also, the SMSG repeats its earlier advice that the supervisory authorities, as neutral parties, set up an information campaign toward the broad public on the outlines of the sustainable finance legislation.

47. A practical example is the taxonomy, which is difficult to understand for investors. It was not meant as a tool to design fund classification. Implementation of the taxonomy is still ongoing and technical screening criteria have been adopted only for the first two climate objectives, climate change mitigation and climate change adaptation. Even these criteria are far from clear in that they often refer to “national law” und use open-ended concepts such as “business as-usual practices”, “robustness”, “best practice”, and “available guidance”. Alignment of economic activities with the taxonomy will be reported for the first time in 2023 by non-financial companies and the Commission has (so far) published five FAQ documents including 289 questions on the regulation’s interpretation and implementation. This illustrates the complexity of the taxonomy, already today, while market participants are still awaiting the implementation of four additional environmental objectives. This is an example of the need to better educate both market participants and investors on what the taxonomy is and is not.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA’s website.

Adopted on 18 January 2023

[signed]	[signed]	[signed]
Veerle Colaert Chair Securities and Markets Stakeholder Group	Adina Gurau-Audibert Rapporteur	Urban Funered Rapporteur

Annex: 2i Investing Initiative, “Shifting the Trillions. Why will private investors play a key role?”