Responsible environmental impact claims

13 December 2022

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This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 894345.

Agenda

- Icebreaker for workshop participants.
- Importance of environmental impact claims for retail investor decision making.
- 2DII regulatory analysis of governance of environmental impact claims in the finance sector.
- 2DII guide on how to mitigate risks related to environmental impact claims.

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Icebreaker

- Name and organisation and a few words on your own/your organisation's areas of focus (in relation to greenwashing, sustainable finance, consumer protection, EU policy development, standards development etc.)

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Overview of 2DII's work on greenwashing

Research papers:

- 2019, Impact Washing Gets a Free Ride
- 2021, Sustainable Finance and Market Integrity: Promise Only What You Can Deliver
- 2022, Fighting greenwashing… what do we really need

Working groups:

- Finance ClimAct French working group – Guide on marketing claims
- EU multistakeholder working group – Principles on responsible marketing claims and identifying regulatory changes for effective governance

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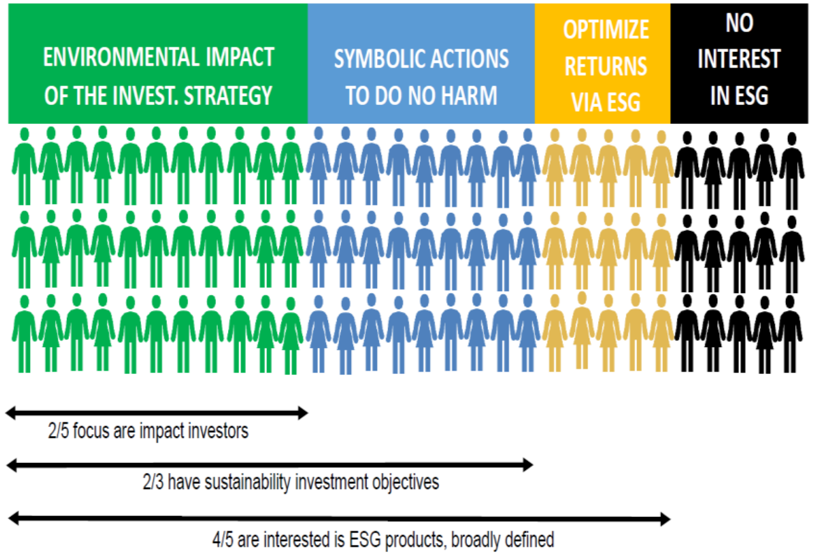
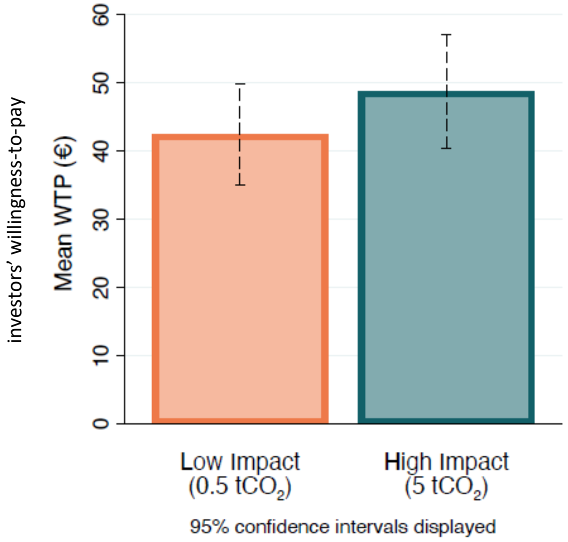
Importance for investor decision making

Over 40% of retail investors want to have environmental impact with their investment[1]



Most impact-oriented investors are also willing to pay for real world impact[2]



[1] 2DII (2020): A Large Majority of Retail Clients want to Invest Sustainably and 2DII (2022): What do your clients actually want? Understanding and estimating household demand for sustainable financial products

[2] Heeb et al. (2022): Do Investors Care About Impact?

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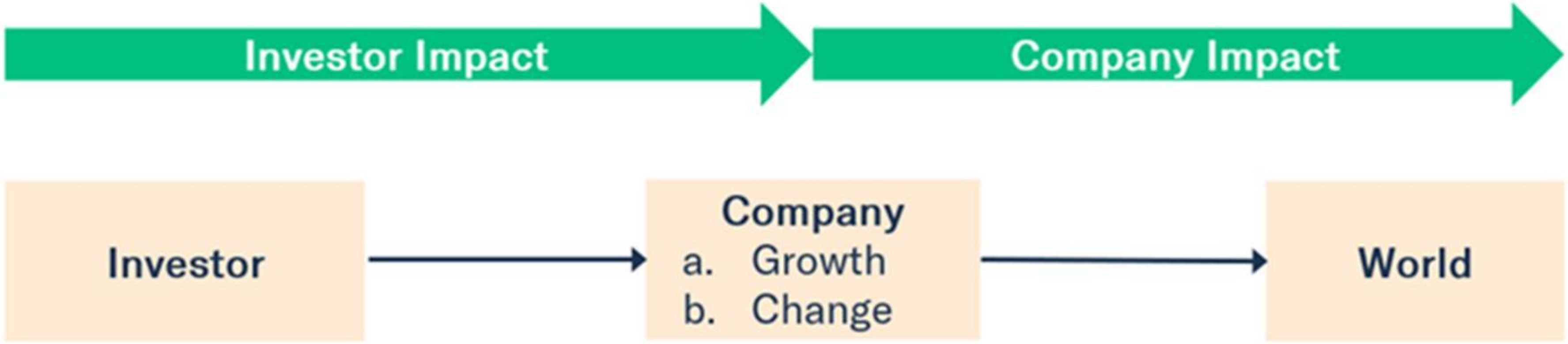
Investor/Investee company impact

- Investor impact is not the same as investee company impact, but investor impact is difficult to prove.[1,2]



[1] Heeb et al. (2020): Can Sustainable Investing Save the World? Reviewing the Mechanisms of Investor Impact

[2] 2DII (2021): I've Got the Power! Really? Assessing the impact potential of financial products supporting the energy transition

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Level the playing field for Energy Efficiency Investment products

Question: What regulations could apply to marketing claims about financial products?

Better Bank has designed a new financial product for retail investors which seeks to have a positive impact on the environment through investing in companies (mainly start-ups lacking financing) advancing new technologies to reduce GHG emissions.

Better Bank are currently designing marketing materials to advertise this new financial product.

Which broad areas of regulation govern what can and cannot be said in this new marketing claims?

- ❑ Rules specific to the financial sector (MIFID II…)
- ❑ Rules specific to sustainable finance
- ❑ Rules related to consumer protection
- ❑ Rules related to environmental law
- ❑ Rules related to advertising
- ❑ National rules
- ❑ European rules
- ❑ Hard law (Regulations, Laws)
- ❑ Soft law (Guidelines …)

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2DII critical analysis of the regulatory framework

- Regulatory provisions analysed for relevance to regulation of environmental impact claims in the finance sector

	Finance sector specific regulation		Consumer protection regulation
	General finance	Sustainable finance	
Hard law	MIFID II CBDF Regulation Prospectus Regulation	SFDR Taxonomy Regulation	UCPD Proposal of amendment to UCPD
Soft law	ESMA Guidelines on marketing communications		UCPD Guidance MDEC Principles

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Finance sector specific regulation does not provide effective governance of environmental impact claims

- General finance rules (MIFID II, CBDF regulation etc.) are too high level to provide effective governance of environmental impact claims
- Sustainable finance rules are not adapted to environmental impact claims:
  - SFDR and Taxonomy Regulation does not integrate the concept of investor impact
  - While the SFDR and the Taxonomy Regulation require that certain investments demonstrate a positive impact of the investee company, there is no requirement to demonstrate the positive environmental impact of the investor
- An emerging trend of using SFDR categories as marketing labels creates greater risk of greenwashing especially when combined with environmental impact claims

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Consumer protection regulation is not adapted to the finance sector context

- Consumer protection regulation stemming from the unfair commercial practices directive (UCPD) is applicable to environmental impact claims in the finance sector
- UCPD is to be interpreted with MDEC Principles and UCPD Guidance Note
- Two key obstacles prevent an effective and efficient application of UCPD rules and MDEC Principles to environmental impact claims in the finance sector:
  - the lack of definition of investor impact in the legislation and
  - the difficulties associated with substantiating investor impact

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Lack of comprehensive regulatory framework prevents efficient regulatory oversight and enforcement

- The main problem for effective regulatory oversight and enforcement does not stem from inadequate supervisory powers or ability to impose sanctions.
- Rather the regulatory framework is not sufficiently comprehensive to demonstrate an environmental impact claim is in breach of a clear set of regulatory provisions.
- Lack of harmonization at national level and divergence in relation to the extent to which sustainable finance, climate risk etc. is integrated into each national financial regulators' general oversight mandate and supervisory activities.

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2DII Recommendations

1 Set specific rules for environmental claims in the finance sector	• **Create an EU framework for environmental claims in the finance sector with a focus on environmental impact claims** The Commission should provide specific rules at EU level to regulate environmental claims in the finance sector with a focus on environmental impact claims.
2 Create a category for impact-oriented financial products, methodologies and tools	• **Create a category for impact-oriented financial products and provide methodologies and tools to evaluate the potential of impact** The Commission should integrate the notion of environmental impact in the broader EU finance framework through (1) creating a category for impact-oriented financial products; and (2) developing methodologies and tools to evaluate the impact potential.
3 Establish guidance for responsible environmental impact claims in the finance sector	• **Establish guidance for responsible environmental impact claims in the finance sector** To assist financial institutions with regulatory compliance, clear guidance for responsible environmental impact claims must be developed. This guidance can build upon the methodologies and tools to evaluate potential of investor impact and foster a harmonized approach across all Member States.

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5 minutes break or open discussion

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Work under progress for the French guide on impact environmental claims

Summary on applicable rules, scattered but strict

Overview of provisions applicable to environmental impact claims for financial products distributed in Europe*		
Text	**Legal force**	**Sector**
MIFID II	Hard law	Finance sector
CBDF Regulation	Hard law	Finance sector
ESMA guidelines on the CBDF Regulation	Soft law	Finance sector
UCPD	Hard law	All sectors
UCPD guidance note	Soft law	All sectors
MDEC compliance criteria	Soft law	All sectors
Any relevant national provision in the country of distribution (ex environmental law, advertising law…)	Hard/Soft law	All sectors

*Indicative and non exhaustive

Claims must:

- Be correct, clear and not misleading
- Be consistent with regulatory documents
- Be proportionate to the investment strategy

- Not contain false information
- Not mislead the average consumer
- Do not omit material information
- Avoid vague claims if they cannot be substantiated
- Avoid claims about future results and prefer communications about future efforts

- The name of the product is subject to the rules

- Substantiated - Be based on sound, independent, verifiable and generally accepted evidence that takes into account the most recent scientific results and methods (the burden of proof is on the professional).

Legal risks

Reputational risks

Financial risks

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Challenges of environmental impact claims (1/2)

a) Defining the notion on environmental impact claims in the finance sector:

- Reminder of the difference between investor impact and investee company impact
- The 3 pillars of impact investing according to Finance For Tomorrow:
  - ✓ Intentionality: investor's desire to contribute to generating an environmental benefit.
  - ✓ Additionality: responsibility of the investor's action in improving the impact of the company.
  - ✓ Measure of impact: evaluation of environmental effects in the real economy on the basis of the impact objectives pursued.

In conclusion, an impact investment must (i) explicitly and clearly aim at an impact in the real economy, (ii) seek additional effects in the real economy through additional actions, and (iii) measure the additional effects in the real economy.

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Challenges of environmental impact claims (2/2)

b) Identifying elements to substantiate an environmental impact claim in the finance sector:

- Financial institutions must be able to substantiate environmental impact claims.
- While the three pillars presented above were originally intended to qualify an impact investment, they are also relevant to determining the elements to support an environmental impact claim.
- Based on the definition of impact investing, an environmental impact claim would then need to be substantiated by demonstrating:

  (i) a clear and detailed intention to have an impact in the real economy,

  (ii) the additional actions taken, and the additional effects achieved,

  (iii) based on the most scientific measurement (or evaluation).

Question: What are your recommendations when drafting environmental impact claims in the finance sector?

Better Bank has designed a new financial product for retail investors which seeks to have a positive impact on the environment through investing in companies (mainly start-ups lacking financing) advancing new technologies to reduce GHG emissions.

Better Bank are currently designing marketing materials to advertise this new financial product.

What are your recommendations/advice for the marketing team?

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Our 5 recommendations

- **Evidence** - Define the scope of your environmental impact claim in relation to what can be proven
- **Additionality** - Be transparent about the additionality of investor action
- **Proportionality** - Ensure communication is proportionate to the investor impact potential of the investment strategy
- **Clarity** - Use precise, clear, and simple language when talking about impact
- **Consistency** - Ensure that environmental impact claims are consistent with mandatory regulatory disclosures and documentation

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Level the playing field for Energy Efficiency Investment products

Question: What are your comments on the claims below ? Can they be substantiated and how ?

Claim	Comment (ex: bad practice - vague, explicitly false or good practice, any other comment …)	Can the claim be substantiated and how ?
1. "Based on a €5,000 investment in the fund: the emissions of the companies held are 40% lower than the market benchmark, which is equivalent to reducing emissions by 10,000 km by car.“		
2. "The fund is based on an exclusion strategy aiming at achieving positive environmental outcomes.“		
3. "If you believe in the future, invest for the future, with the xxx fund."		
4. “Our range of article 9 funds go further since it includes products with a positive impact.”		

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Question: What would constitute a good practice in your opinion ?

Better Bank has designed a new financial product for retail investors which seeks to have a positive impact on the environment through investing in companies (mainly start-ups lacking financing) advancing new technologies to reduce GHG emissions.

Please give example of marketing claims that Better Bank could do and what elements could be used for substantiation ?

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2DII – Example of good practice in communicating on impact

The ambition of the environmental impact claim should depend on the level and quality of evidence to support it, i.e., the ability to: • Prove a clear and detailed intent to make an impact in the real economy, • the additional actions taken and, • the additional impact obtained, based on the most scientific measurement (or evaluation).			
Level of proof available	**Principle**	**Example of claim**	**Disclaimers to be used with an accurate, clear and not misleading claim**
1) clear and detailed intent to improve the investor's environmental impact through the investment 2) implementation of additional actions that improve the investor's impact potential 3) measurement of the additional effects achieved in the real economy through the investment (investor impact)	Communication on the potential positive environnemental impact	• "the fund contributes to and aims for a positive impact in the real economy	• "The methodologies and evidence currently available do not allow for accurate and certain assessment of environmental impacts at the fund level. • In addition, any reference to past environmental performance should be accompanied by the following statement: "Past environmental performance is not indicative of future environmental performance".

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