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Tackling greenwashing from a governance perspective

THE FUTURE OF GOVERNANCE

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Comments, questions and observations
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Executive summary

Governance professionals are rightly very concerned about greenwashing – and about the damage that an accusation of greenwashing could do to their organisation. Greenwashing is a highly problematic practice, in that it undermines genuine action on the defining issue of our time: climate change. Without immediate and concerted measures from governments, businesses and third sector organisations alike, the world will move beyond a safe temperature increase within many of our lifetimes.[1]

Greenwashing can emerge in several different types of communications, ranging from non-financial reporting, to product marketing, to brand image. As organisations face increasing pressure from regulators, investors and the public to tackle climate change, the temptation to distort information on sustainability efforts may grow. However, greenwashing is a risky practice. Not only is it damaging to genuine climate action, it also carries specific reputational, legal and financial risks for organisations which engage in it. Public and private investors, as well as funders within the not-for-profit sector, increasingly consider an organisation's sustainability metrics and activity when making their investment decisions. And as the regulatory environment undergoes further, rapid evolution – and becomes more litigious – the stakes become even higher.

Framing greenwashing as a governance issue enables a more comprehensive understanding of the entirety of the processes and players involved. It also empowers those working in governance to take steps to address it and to build 'greenwash-proof' organisations. Research has demonstrated that the governance individuals, procedures and structures within an organisation are more important than country-level factors for avoiding greenwashing.[2] Whilst avoiding greenwashing requires collective responsibility, the governance professional has a pivotal role to play in advising the board and ensuring that their organisation's environmental claims are in proportion to its actual efforts.

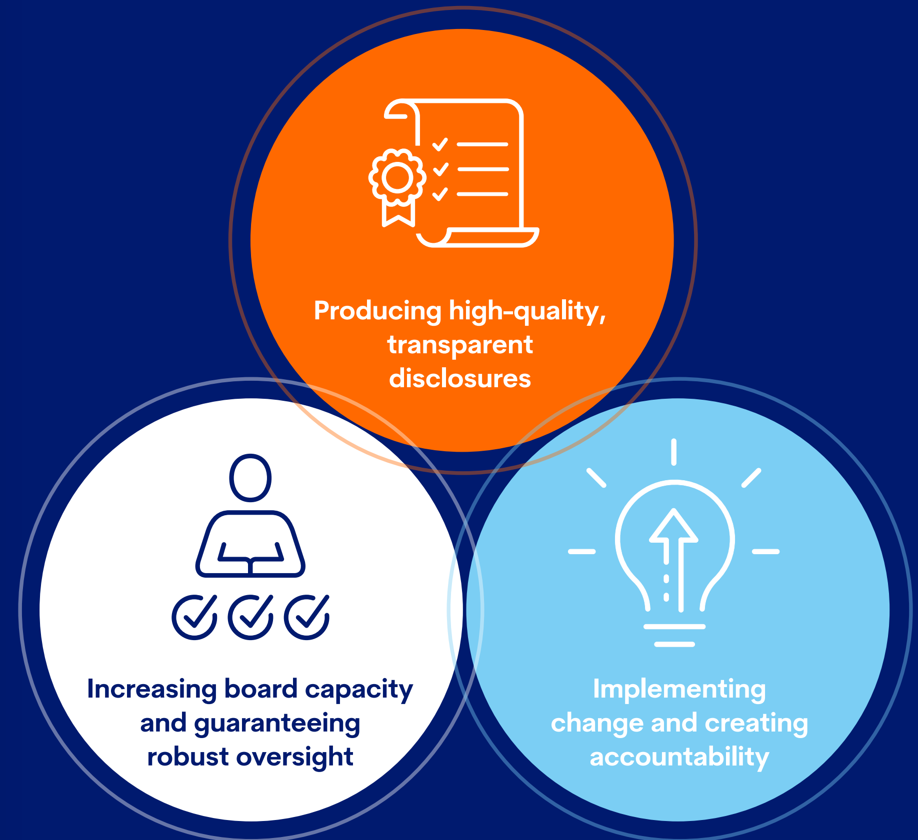
In order to avoid the risks inherent in greenwashing, there are three key principles that governance professionals should embed into their work:

1) **Producing high-quality, transparent disclosures.**

2) **Increasing board capacity and guaranteeing robust oversight.**

3) **Implementing change and creating accountability.**

Through applying these principles and their corresponding actions, those working in governance can steer their organisations towards greater accuracy and transparency in their environmental claims and, ultimately, build trust in their organisation's ability to tackle the climate challenge.



All footnotes are hyperlinked. Simply click on the footnote to be taken directly to the source.

1. AR6 Synthesis Report: Climate Change 2023 (ipcc.ch) (20 March 2023)
2. Greenwashing in environmental, social and governance disclosures - ScienceDirect (April 2020)

01

Greenwashing and governance

What is greenwashing?

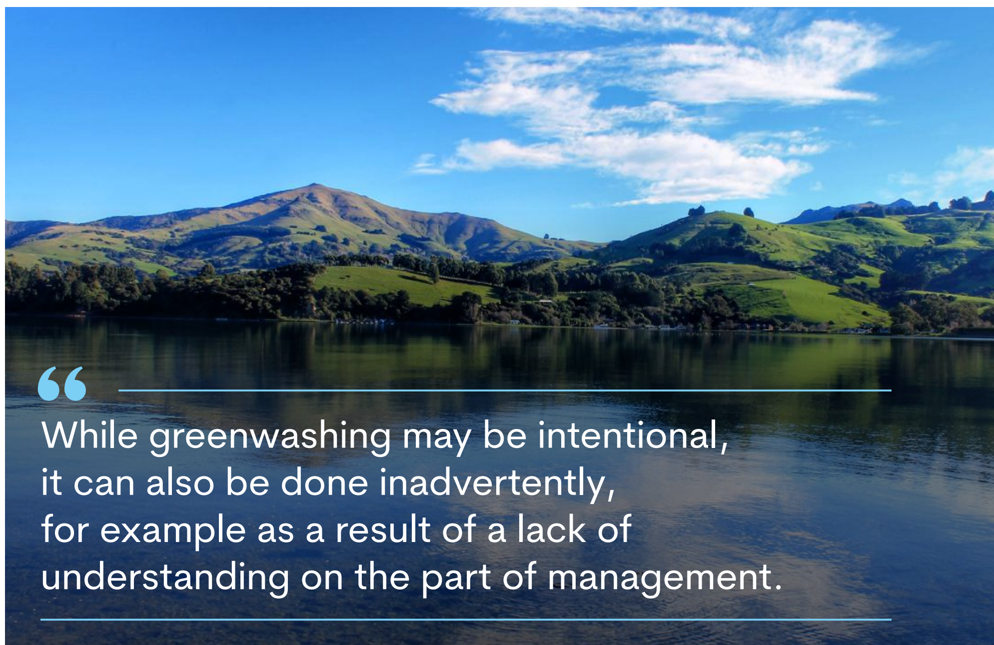
Greenwashing is the attempt to make something – a product, practice, service or an entire organisation – appear more sustainable or environmentally friendly than it truly is. In recent years, the prevalence of greenwashing has increased, and so too has awareness of it amongst regulators, investors and the public.

One review of corporate websites led by the European Commission concluded that 42% of environment-related claims were exaggerated, false or deceptive.[3] Companies in the UK are facing increasing pressure to take action on environmental, social and governance (ESG) issues and to report on these in a variety of ways, for example: producing a net zero transition plan; disclosing climate risk and opportunity according to the requirements of the Task Force on Climate-related Financial Disclosures (TCFD); reporting on their gender pay gap; and many more. In our current world, marked by the climate crisis, geopolitical uncertainty and societal reckonings, there is a clamour for companies and organisations across all sectors to make positive contributions to social and environmental issues.

Within this context, organisations are understandably keen to showcase areas where they have taken action – and to meet the demands of regulators, investors and the wider public for increased responsibility and activity in these areas. Regulators are increasingly moving towards mandatory reporting of non-financial data focussing on ESG issues, and are simultaneously widening the net as to which issues should be reported on. An example of this can be seen in the UK where the focus on climate-related disclosure has broadened to include nature-related disclosure, looking at a company's impact on biodiversity. At the same time as regulators turn up the heat, investors are also demanding more from companies, with ESG rating agencies, exclusionary screening and ESG-dedicated funds meaning that companies without the requisite ESG credentials are becoming less attractive investment prospects. Indeed, it has been predicted that global ESG assets could exceed $53 trillion by 2025, representing more than one third of projected total global assets under management.[4] Amongst the general public, debates around climate change, racism, sexism, ways of working, inequality and other ESG topics are commonplace and often politicised, with strong opinions and protest movements on both sides of the political spectrum. Organisations may have to work harder to maintain their social licence to operate; 76% of consumers polled in a survey by PwC stated that they would cease to buy from or work with a company which treated the environment, its employees or its local communities poorly.[5]

Far from being confined to listed companies, this scrutiny from regulators, investors and the public is extending into the private and not-for-profit sectors as well. Certain regulations on ESG disclosure (such as the European Union's Corporate Sustainability Reporting Directive) include large private companies within scope, whilst most private equity firms already factor ESG risk analysis into their investment decisions.[6] In the charitable sector, funders and grant-makers are increasingly asking for charities' sustainability data as part of the application process. With all these pressures, it is little wonder that greenwashing can become a temptation for organisations looking to highlight how they are meeting these growing expectations.

3. Screening of websites (europa.eu) (28 January 2021)
4. ESG assets may hit $53 trillion by 2025, a third of global AUM | Bloomberg Professional Services (23 February 2021)
5. 2021 ESG Consumer Intelligence Series: PwC (2021)
6. Why does ESG matter for private companies? | EY Ireland (11 January 2022)



Greenwashing comes in many forms

Greenwashing involves creating the impression (whether to internal or external audiences) that an organisation is doing more to look after the environment than it actually is. It often occurs in one of two key domains: disclosures and marketing. The former relates to sustainability reporting, investor communications and other types of reports, and applies to climate-related disclosures (such as those produced by listed companies or by organisations in the financial services and asset management sectors). The latter relates to product advertising, public relations and brand image, such as how fashion, transport or consumer goods are advertised and, more generally, how organisations are portrayed. Because it can emerge in all forms of communications and across disparate areas, greenwashing is of concern not only to listed companies, but also to private companies and not-for-profit organisations.

While greenwashing may be intentional, it can also be done inadvertently, for example as a result of a lack of understanding on the part of management with regard to the rigour required to produce high-quality non-financial disclosure on sustainability issues. This misrepresentation, whether deliberate or not, is misleading for investors, regulators and consumers.

The distinction between what constitutes genuine reporting of an organisation's legitimate attempts to address ESG issues (or its aspirations to do so), and what constitutes greenwashing, is somewhat muddy. ESG issues themselves sit within a rapidly evolving landscape with several different players, each with varying degrees of expertise and areas of focus. This further blurs the line, especially when accusations of greenwashing are raised by groups dedicated to one particular sustainability issue and which therefore may be suffering from a degree of 'tunnel vision'. Laying out some of the different forms of greenwashing (though the list opposite is not exhaustive), will help to illustrate where the line is drawn..

Form of greenwashing	Meaning
Selective disclosure	Failing to provide a holistic view of an organisation's environmental impact. This includes a bias towards reporting on successes and omitting negatives. It also includes a failure to disclose all material climate risks to which an organisation is exposed.
Meaningless targets	Committing to environmental targets (such as reducing carbon emissions) without putting in place the business practices or governance structures which are required to achieve these targets.
Virtue signalling or symbolic actions	Drawing attention to 'hot-topic' issues without any meaningful action to address the underlying issue. For example, a major fashion brand could partner with UNICEF on a marketing campaign, whilst failing to address child labour across its supply chain.
Lobbying efforts	Lobbying governments and policy-makers to avoid increased environmental regulation (often whilst publicly being seen to commit to reducing environmental impact).
Baseless claims	Using vague, unsubstantiated terms such as 'eco', 'climate positive', 'ethically sourced', 'environmentally friendly', 'conscious' and 'sustainable', without providing any specific information or supporting evidence.
Hidden trade-offs	Emphasising one positive credential, for example that a product has been packaged using recycled materials, whilst ignoring any negatives, such as that the same product was sourced from a supplier using coercive labour practices.
The 'green halo' effect	Using imagery (such as pictures of trees or solar panels) which is associated with 'being green' in reports and statements in order to 'colour' the reader's perception of the surrounding information.
Misrepresenting motivations	Taking action which is required under legal obligations, or in order to cut costs, but portraying this as if the organisation is acting under its own initiative in favour of the environment.
Exaggerated progress	Stating that an organisation has taken more action or made more progress than it truly has. This can include the use of data, figures and statistics which have undergone misleading manipulation or which exclude certain datapoints to produce more optimistic results.

As an awareness of greenwashing has gone mainstream, a variety of 'spin-off' terms have emerged. Greenwashing is traditionally understood as relating to the environmental claims that an organisation makes. Other forms of 'washing' (which tend to relate to product marketing and brand communications rather than to disclosures) include:

Spin-off term	Meaning
Blue-washing	Misrepresenting an organisation's efforts to develop ethical social practices, or hiding the social damage caused by an organisation, particularly around economic, supply chain and community issues. 'Blue' relates to the colour of the UN flag and logo; the phrase originated when companies were accused of 'piggy-backing' on the UN's Global Compact and its focus on human rights to improve their reputations without making meaningful change to their practices.
Social-washing	Implementing social responsibility initiatives which are not truly effective, or taking action under the guise of social responsibility but with the ultimate goal of economic return. Topics which fall under this umbrella include labour, human rights, gender equality, modern slavery and supply chain ethics.
Pink-washing	Superficially promoting LGBTQ+ rights or publicising messages which are sympathetic to LGBTQ+ causes, whilst not taking concrete action to support the inclusion of individuals identifying as LGBTQ+. For example, the commodification of Pride events through companies producing Pride merchandise which carries their own brand, despite these companies having little or nothing to do with LGBTQ+ rights.
Woke-washing	Appropriating and outwardly supporting socially progressive values, whilst not truly adhering to them, for the purposes of marketing and appealing to a socially-conscious consumer base. This overlaps with social- and pink-washing.
Purpose-washing	Presenting an organisation or brand as being driven by a social or ethical purpose, when in reality this purpose does not impact the organisation's strategy and is only used for marketing. For example, an organisation may have a purpose statement claiming to 'put people and planet first' but then fail to consider its environmental and social impact in pursuit of greater profit.
Green-hushing	Avoiding publicising communications about ESG and environmental activity in order to avoid scrutiny, to defend against the risk of greenwashing accusations or to hide insufficient progress. In particular, organisations may not publicise information about their emissions reductions goals. There may be legitimate reasons for green-hushing, but it can also have negative consequences for transparency.

How is greenwashing a governance issue?

Greenwashing is a cause for concern for many individuals working in governance. The complexities of sustainability-related reporting and marketing activities mean that boards require accurate and timely guidance and input.

As is illustrated later on in this paper, the consequences of getting it wrong can be severe, particularly as the regulatory environment tightens.

Significantly, those working in governance have a key role to play in deterring greenwashing. Organisation-level governance factors have been demonstrated to be more important for the avoidance of greenwashing than country factors (such as public scrutiny).[7] Having robust governance structures in place means that organisations are less likely to fall foul of accusations of greenwashing.

Whilst greenwashing is often understood as a marketing or public relations issue, there are several ways in which it goes far beyond this. In many ways, greenwashing can most accurately be understood as a governance issue, in that it relates to:

- **Board expertise:** creating an ESG-competent board and educating board members about the risks of greenwashing
- **Reporting:** meeting disclosure requirements about environmental issues
- **Transparency:** ensuring accuracy and completeness in reporting and in marketing
- **Strategy:** aligning climate or ESG-related goals with financial goals and organisational practices
- **Verification:** providing assurance on information reported about ESG issues
- **Reputation:** ensuring that stakeholders feel that they can trust an organisation's ESG statements
- **Risk:** understanding and managing climate-related risk
- **Ethics:** demonstrating integrity and building trust.

The financial reporting environment is, of course, far more established than the non-financial reporting environment (under which ESG disclosures fall), meaning that financial disclosures are bound by far more stringent regulations around materiality, mandatory disclosure, comparability and assurance. ESG reporting remains – for now – a more haphazard endeavour, with a high degree of fragmentation across different reporting frameworks. There are widespread calls for accelerated consolidation of ESG reporting, both from those who prepare ESG disclosures and those who use them. As bodies such as the International Financial Reporting Standards (IFRS) Foundation and the Global Reporting Initiative (GRI) work to produce global reporting standards and frameworks, the quality and comparability of ESG disclosure is likely to increase. It is hoped that this will improve transparency and ultimately reduce the amount of flexibility available to those reporting – thus reducing the risk of greenwashing. Governance professionals in the corporate sector will be required to stay abreast of such developments and to translate the impacts into specific guidance for their own board.

7. Greenwashing in environmental, social and governance disclosures - ScienceDirect (April 2020)

Why is greenwashing problematic?

Greenwashing is problematic for the fundamental reason that it undermines efforts to tackle climate change. It also has negative consequences for capital markets and for the organisations which engage in it.

The current rate of global warming is far above natural rates seen during previous times of global temperature change. There was more carbon dioxide in the atmosphere in 2019 than at any other time in the last 2 million years.[8] The scientific consensus is that humanity must limit levels of global warming to 1.5^{0}C or 2^{0}C above pre-industrial temperatures in order to avoid the worst consequences for both the planet and for people. As emissions continue to rise, this goal seems to be moving further out of reach. Indeed, according to the latest report from the UN's Intergovernmental Panel on Climate Change (IPCC), we are on track for 3.2^{0}C of warming, even assuming that the pledges which have already been made by international governments are kept.[9] In a hypothetical situation where we had completely stopped all emissions in June 2022 (when, in fact, they continued to increase), there would still have been a 42% chance of breaching 1.5^{0}C. In order to keep warming below 2^{0}C, emissions would need to peak before 2025 at the latest and reduce by a quarter by 2030.[10] This is an urgent issue which can no longer be pushed further down the road.

Overstating an organisation's actions or ambitions to do something about this, through greenwashing, undermines genuine action towards reducing global warming and ultimately preserving a liveable world. Producing a misleading impression about an organisation's emissions or the environmental impact of its products derails progress.

Greenwashing also has negative implications at the level of the markets. It is a form of inaccurate or distorted information, which can lead to poor investment decisions and to the misallocation of capital which has been intended for sustainable investments. Businesses can become overvalued based upon flawed information. In the long-term, this can contribute to economic and financial instability, through distorting capital market assumptions and undermining trust in the market.[11]

At the level of individual organisations, greenwashing also has potentially severe negative consequences: reputational, legal and financial. These are discussed in greater detail in the *'What are the risks of greenwashing?'* section.

We are on track for

3.2^{0}C

warming

8. AR6 Synthesis Report: Climate Change 2023 (ipcc.ch) (20 March 2023)
9. AR6 Synthesis Report: Climate Change 2023 (ipcc.ch) (20 March 2023)
10. UN climate report: It's 'now or never' to limit global warming to 1.5 degrees | UN News (4 April 2022)
11. Climate greenwashing liability: Key risks for boards in the transition to net zero | Norton Rose Fulbright (November 2022)

> The current rate of global warming is far above natural rates seen during previous times of global temperature change.

02 The legal and regulatory landscape

What does the legal and regulatory environment look like?

Tackling greenwashing is a priority for regulators globally and, as they tighten their guidance on sustainability claims, the amount of regulation and legislation relating to greenwashing is increasing.[12] This section of the paper will outline key developments in the UK, as well as brief summaries of the EU and US environments.

UK regulators

Competition and Market Authority

The UK's Competition and Market Authority (CMA) published the Green Claims Code in September 2021.[13] The Code and its accompanying guidance aim to help businesses ensure that their environmental claims comply with existing consumer protection law. The Code was born out of a review undertaken by the CMA, which covered environmental claims made across hundreds of websites. The results of this review indicated that 40% of green claims made on companies' websites could be misleading for consumers.[14]

The Code contains the following six principles, which apply to both business-to-consumer and business-to-business communications.[15]

- Claims must be truthful and accurate.
- Claims must be clear and unambiguous.
- Claims must not omit or hide important relevant information.
- Comparisons must be fair and meaningful.
- Claims must consider the full life cycle of the product or service.
- Claims must be substantiated.

These principles are intended to be practical and to protect both consumers and other businesses from unfair competition. They are not law, but rather flow from the Consumer Protection from Unfair Trading Regulations (CPRs) and the Business Protection from Misleading Marketing Regulations (BPRs), both of which took effect in 2008.

The CMA has indicated that it will use the Code to monitor, investigate and prosecute greenwashing. By not following the principles contained within the Code, a company may open itself up to the risk of investigation and legal or other action from the CMA, as well as from National Trading Standards, sector regulators or the Advertising Standards Agency. At the time of writing, the CMA is also due to be granted new powers under the Digital Markets, Competition and Consumer Bill, which include the ability to impose direct civil penalties. Such penalties could reach amounts of up to 10% of global turnover for companies, or up to £300,000 for individuals found to be engaging in greenwashing which breaches consumer protection law.[16]

Additionally, the CMA continues to perform international and UK-based reviews of environmental claims made in stores and on commercial websites. For example, its review of the fast-moving consumer goods (FMCG) sector is examining claims made about household

12. The greenwashing risk to corporate sustainability | Deloitte (29 January 2023)
13. Green claims code: making environmental claims - GOV.UK (www.gov.uk) (20 September 2021)
14. Global sweep finds 40% of firms' green claims could be misleading - GOV.UK (www.gov.uk) (28 January 2021)
15. Making environmental claims on goods and services - GOV.UK (www.gov.uk) (20 September 2021)
16. Companies to be hit with new fines for greenwashing claims | IR Magazine (24 February 2023)

essentials including food and beverages, toiletries and cleaning products, with a particular focus on misleading statements about whether products are made from recycled or recyclable materials.[17]

Advertising Standards Agency

In December 2021, the UK's Advertising Standards Agency (ASA) published guidance on the use of misleading environmental and social claims in advertising.[18]

Generally, green claims should:[19]

- consider the entire life cycle of a product
- avoid stating that products have a net positive impact on the environment (without specific evidence to back this up)
- ensure that they do not omit significant information
- not focus solely on one positive action by an organisation when this is not in keeping with the rest of the organisation's actions
- avoid using absolute terms ('greenest'), or comparative terms ('greener') without making the basis for this comparison clear.

This guidance was updated in February 2023, with a particular focus on the use of the terms 'net zero' and 'carbon neutral'.[20]

The updated guidance states that companies should:

- avoid using unqualified claims about carbon neutrality and net zero

17. CMA to scrutinise 'green' claims in sales of household essentials – GOV.UK (www.gov.uk) (26 January 2023)
18. Advertising Guidance – misleading environmental claims and social responsibility – ASA | CAP (6 June 2022)
19. Environmental claims: General "Green" claims – ASA | CAP (22 December 2022)
20. Updated environment guidance: carbon neutral and net zero claims in advertising – ASA | CAP (10 February 2023)

- ensure that qualifying information is displayed prominently
- include accurate information about whether they are actively reducing their emissions, or whether they are using carbon offsets to achieve their emission reduction targets
- provide information about which offsetting schemes are being used, if any
- include verifiable strategies for achieving any future goals which are referenced.

The ASA is taking a sectoral approach to its continuing enquiries, with priority areas including aviation, fashion, heating and energy, automotives, waste and animal-based food.[21] It is in the process of undertaking research into advertising claims made in these areas and intends to publish sector-specific guidance where necessary.

The ASA has limited enforcement powers, which include publicising the offending companies' details on its website and removing content in cooperation with social media platforms and search engines. It can also refer companies to National Trading Standards and other consumer protection agencies.

Financial Conduct Authority

The UK's Financial Conduct Authority (FCA) aims to publish principles designed to tackle greenwashing in the financial services industry during the first half of 2023, after a consultation period on Sustainability Disclosure Requirements (SDR) and investment labels which was announced in October 2022.[22] These principles will build on the existing requirement for claims to be 'clear, fair and not misleading', and will mean that firms need to justify the use of terms describing funds as 'sustainable', 'green' and 'ESG'.[23] According to the FCA and the Investment Association (the latter having criticised the proposals), up to 60 or 70% of funds which are currently labelled as sustainable may not meet the new criteria.[24]

Additionally, the FCA has made several statements on the topic of greenwashing in the financial services industry. In its 2021 Climate Change Adaptation Report, the FCA identified greenwashing as a 'material risk' and stated that it expects all those reporting under climate disclosure regulations to ensure 'clear and accurate ongoing disclosures'.[25] In one of its 'Dear CEO' letters, dated 3 February 2023, the regulator stated that some claims made about sustainable investing are 'misleading or inaccurate', and that it expects firms to adopt anti-greenwashing strategies, including putting the necessary governance structures in place to ensure high-quality oversight of ESG claims.[26]

UK Green Taxonomy

The UK Green Taxonomy, which has seen considerable delays to its development, is intended to help tackle greenwashing in both the financial and non-financial sectors, and to ensure that investors have access to consistent and comparable information when making investment decisions.[27] Under current proposals, it will set out criteria which classify whether a particular economic activity is considered sustainable, or 'Taxonomy-aligned'. Reporting against the Taxonomy is expected to be a requirement under the SDRs, and the Taxonomy will also provide guidance for companies developing net zero transition plans. However, due to increasing economic pressures and changes in government since the plan for the Taxonomy was first set out, it is possible that this approach could change and, at the time of writing, the timescale for further updates remains unclear.[28] It is likely that the UK Green Taxonomy will borrow from the EU Green Taxonomy (published in June 2020), although there are some who are calling for more flexibility in the UK classification.

EU regulation

Despite debates around the Retained EU Law (Revocation and Reform) Bill, EU legislation is likely to continue to shape the direction of travel of UK legislation for years to come. As regulation on ESG reporting evolves, companies and governments are seeking increased cohesion and interoperability across jurisdictions to reduce the degree of fragmentation in current regulation. As such, EU regulation which relates to greenwashing will have implications for how the topic is viewed by regulators in the UK.

21. New advertising guidance on misleading environmental claims and social responsibility – ASA | CAP (9 December 2021)
22. FCA proposes new rules to tackle greenwashing | FCA (25 October 2022)
23. FCA proposes new rules on UK SDR labelling and greenwashing (pwc.co.uk) (October 2022)
24. UK lawmakers clash with fund industry over plan to tackle greenwashing | Reuters.com (22 February 2023)
25. FCA Climate Change Adaptation Report | FCA (28 October 2021)
26. Portfolio letter: Our Asset Management Supervision Strategy (fca.org.uk) (3 February 2023)
27. Green Finance Institute Report – GTAG: Advice on the development of a UK Green Taxonomy (October 2022)
28. The UK Green Taxonomy – KPMG Global (January 2023)

In March 2022, the European Commission proposed a set of measures to tackle greenwashing, through possible amendments to two pieces of consumer protection legislation: the Unfair Commercial Practices Directive and the Consumer Rights Directive.[29] The proposed changes aim to protect consumers better against misleading environmental claims, and to inform them better about the durability of products on offer. To do so, the Commission has suggested adding ten further items to the list of practices which are currently considered to be unfair under the Unfair Commercial Practices Directive (Annex I). This would include a ban on vague terms such as 'environmentally friendly', 'biodegradable', 'green' and 'carbon neutral' unless a product has been recognised under a certification scheme. In particular, the suggested changes consider the durability and repairability of consumer products. They also include a requirement for any net zero claims or targets set out by businesses to be supported by clear and verifiable commitments. At the time of writing, these proposals are undergoing discussion at both the European Council and the European Parliament.

A further key development at the EU level is a new Green Claims Directive, which was formally presented by the European Commission in March 2023, and is subject to approval from the European Parliament and Council.[30] The directive sets out a standardised framework assessing the environmental impact of all products and services in the EU, excluding those in financial services.

The proposed rules include the following:

- To make green claims, businesses must substantiate them through an authorised methodology.
- If a product has both a positive and negative environmental impact (e.g. it comes in recycled packaging but it contains microplastics), there can be no positive green claim made about it without a corresponding negative one.
- Businesses have to provide information to customers about the basis of any green claim (via a link or QR code).
- Comparative claims must use the same methodology across all the products which are compared and must consider the whole life cycle of the products.
- Claims based on future environmental performance must set out specific timeframes and be based on commitments made by management, which are then reported on annually.
- Green claims, and the data underpinning them, must be reviewed every five years.
- National authorities must regularly monitor and investigate any green claims which are in breach of the Directive.

The EU Green Taxonomy, from which the UK Taxonomy draws its foundations, was published in June 2020. It functions as a classification system defining which investments can be classed as green, in order to inform investors and subsequently direct investment to projects which are necessary to achieve net zero.[31] It forms a key part of the sustainable finance pillar of the EU Green Deal. Through its classification system, it also aims to combat greenwashing. However, there has been considerable controversy about the 'green' labelling of certain gas (a fossil fuel) and nuclear activities in the final Taxonomy, according to which they are permissible as 'transition fuels'. Some commentators have suggested that the inclusion of these fuels itself constitutes greenwashing.[32]

On 5 January 2023, the EU's Corporate Sustainability Reporting Directive (CSRD) entered into force. CSRD applies to all large companies (whether listed or not), as well as listed small and medium-sized enterprises (SMEs).[33] This directive relates to matters of reporting and is not directly targeted at greenwashing, but it has important implications for the quality and methodology of the disclosure of non-financial data. The directive introduced 'double materiality', meaning that companies must report both on the impact of the environment and climate change on their own operations, and on how their operations impact the environment. It will require companies to align their disclosures with detailed reporting standards, which are to be adopted in June 2024, and will eventually include a requirement to verify sustainability information, firstly with 'limited assurance', and then with a more onerous 'reasonable assurance' by 2028.

29. Proposal for a Directive on empowering consumers for the green transition and annex (europa.eu) (30 March 2022)
30. Proposal for a Directive on green claims (europa.eu) (22 March 2023)
31. EU taxonomy for sustainable activities (europa.eu) (No date, a live page)
32. Nuclear and gas in EU taxonomy slammed as 'greenwashing' (euobserver.com) (13 April 2022)
33. Corporate sustainability reporting (europa.eu) (January 2023)

US regulation

In a globalised world, the regulatory and legislative environment in the USA will impact on many businesses acting internationally. Additionally, calls for a decreased degree of fragmentation of global ESG regulation means that regulatory approaches in the US (and not just the EU) will likely influence the UK's own approach.

The US Federal Trade Commission has published Guides for the Use of Environmental Marketing Claims.[34] Echoing UK and EU guidance, these aim to ensure claims made about consumer products are verifiable and substantiated rather than vague or misleading. They focus on three types of claims corresponding to a product's lifecycle:

- How a product is made e.g. the proportion of recycled content or the use of renewable energy in its production
- How a product is disposed of e.g. whether it is recyclable, refillable or biodegradable
- Whether a product contains harmful substances e.g. if it is claimed to be 'free of', 'ozone-friendly' or 'non-toxic', or to be certified or endorsed by a third party.

In the financial sector, the US Securities and Exchange Commission proposed and launched consultations on a new ESG Disclosure Rule[35] and certain amendments to the Investment Company Names Rule[36] in May 2022. If adopted, these rules will expand the regulation of so-called ESG funds meaning that any fund with a name relating to ESG must place 80% of its assets in ESG-aligned investments. The proposals also aim to standardise and improve the level of non-financial disclosures considered by investors, by mandating specific ESG disclosures in fund prospectuses and annual reports.

It is clear that greenwashing regulation is advancing apace across the globe and these regulatory changes are having – and will have – significant impacts on organisations' disclosures and marketing practices. These changes also have certain spill-over effects: by regulating greenwashing, governments encourage more genuinely environmentally conscious behaviour, ultimately advancing the overall sustainability agenda. It is essential for governance professionals to educate themselves and their boards about the latest regulatory developments to avoid falling foul of changing requirements.

34. Federal Trade Commission Guide for the Use of Environmental Marketing Claims (11 October 2012)
35. Proposing Release: Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices (sec.gov) (May 2022)
36. Proposed rule: Investment Company Names (sec.gov) (May 2022)

03 The risks of greenwashing

What are the risks of greenwashing: reputational, legal and financial?

This section of the paper looks at the key risks of greenwashing for individual organisations. These are broken down into reputational, legal and regulatory, and financial. Organisations which are accused of greenwashing can certainly suffer reputational damage, but increasingly the consequences go further than this. With tightening legislation and regulation (as discussed in the previous section), organisations which greenwash are increasingly at risk of legal action or challenges from non-judicial oversight bodies.

Greenwashing has also risen up the investor agenda, and companies are experiencing increased investor scrutiny and even shareholder activism around their ESG claims. The possible consequences of greenwashing are serious, making it essential for governance professionals to equip themselves and their boards to tackle it.

> Negative media coverage about greenwashing has implications for a company's image and can impact brand loyalty over the short and long term.

Reputational risks

Perhaps the most straightforward consequence of a greenwashing accusation being levelled at an organisation is the impact on reputation. Accusations of greenwashing can relate to both mandated disclosure (such as emissions reductions targets), and marketing materials or brand communications (such as product labels). Negative media coverage about greenwashing has implications for a company's image and can impact brand loyalty over the short and long term. It can lead to intensified stakeholder scrutiny, from the public, regulators, investors, suppliers and employees, or even to activity from social pressure groups and NGOs. As employees become more socially conscious, those organisations with a history of greenwashing may find it more difficult to recruit. Greenwashing has also been found to have an effect on consumer satisfaction, which could be particularly damaging for companies operating in competitive spaces where the fight for consumer attention is fierce.[37]

37. How Greenwashing Affects the Bottom Line (hbr.org) (21 July 2022)

Legal and regulatory risks

Regulatory enforcement action, litigation and civil suits about greenwashing accusations are on the rise globally.[38] Greenwashing cases are often driven by activist groups and climate-focused NGOs – but these are not the only actors, as regulators increasingly make headway in enforcement. Overall, lawsuits based upon an accusation of greenwashing remain relatively rare outside the USA, but their numbers are steadily increasing.[39] Across the US, France, Australia and the Netherlands, there have been at least 20 greenwashing cases filed before courts between 2016 and 2021, and a further 27 cases before non-judicial oversight bodies.[40] These cases have variously accused organisations of misleading communications about: the environmental impacts of their products; their environmental commitments and targets; their climate investments and the financial risks posed by climate change; and the amount of environmental damage they cause.

Unsurprisingly, the sector which has so far faced the largest share of such cases is the energy sector. Nevertheless, other sectors (including transport, finance, fast-moving consumer goods (FMCG), fashion, agriculture and mining) are certainly not exempt from such action. The legal and regulatory mechanisms for arguing such cases are varied and include securities regulation, advertising standards and consumer protection legislation.[41] One trend of particular note for those working in governance is a potential increase in cases seeking to hold individual directors personally liable.[42] Generally, directors are rarely held to account in court for decisions which have poor outcomes, as the exercise of business judgement is usually considered outside the purview of judicial review.[43] However, there are currently cases where this boundary is being contested. This is a risk which must be very carefully managed, including through the provision of sufficient directors' and officers' liability insurance.

The tables on pages 24–29 present presents a collection of recent and ongoing regulatory and legal cases relating to greenwashing. The cases included are by no means exhaustive, nor fully representative of the different bases for such cases. They have been selected simply to show a range of the types of greenwashing cases which organisations across all sectors may need to be equipped to face, or preferably, to avoid.

20+

greenwashing cases filed before courts between 2016 and 2021

27

more cases filed before non-judicial oversight bodies

38. The rise of "greenwashing" litigation - the group proceedings trend to watch in 2023 - Lexology (30 January 2023) and Explore the Linklaters ESG Legal Outlook 2023 (2023)
39. Global trends in climate change litigation: 2022 snapshot - Grantham Research Institute on climate change and the environment (lse.ac.uk) (30 June 2022)
40. CSSN Research Report 2022:1: Climate-Washing Litigation: Legal Liability for Misleading Climate Communications.docx (January 2022)
41. Climate greenwashing liability: Key risks for boards in the transition to net zero | Norton Rose Fulbright (November 2022)
42. More climate litigation coming for directors (energyvoice.com) (2 February 2023)
43. The 12 elements of independent judgement for a UK board: A guide for directors (cgi.org.uk) (July 2021)

> Greenwashing cases are often driven by activist groups and climate-focused NGOs – but these are not the only actors, as regulators increasingly make headway in enforcement.

Company involved	Sector	Claimant / regulator /complainant	Legal / regulatory basis for case	Jurisdiction of case	Summary of case
UK-based					
Shell	Oil and gas	ClientEarth	Companies Act, directors' duties	UK	– ClientEarth, an environmental organisation turned activist Shell investor, is taking action against Shell's Board of Directors and in February 2023 filed a lawsuit at the UK High Court. [44] – It claims Shell's board has set a net zero by 2050 target, but has failed to implement the necessary changes to the company's operations or budgets to achieve this. [45] – ClientEarth argues that directors are in breach of their duties under section 172 and 174 of the Companies Act 2006. – This case is novel in that it seeks to hold Shell's 11 directors personally liable for failing to manage climate risks or to adopt a transition strategy aligned with the Paris Agreement. – The action has received support from certain institutional investors, holding 12 million Shell shares between them (out of Shell's approx. total 7 billion shares).[46] – Shell has rejected the accusations, saying its climate targets are ambitious and its directors are acting in the company's best interest.
Drax	Renewable energy	International NGOs	OECD guidelines	UK	– A group of six NGOs from the UK, Canada, Estonia and USA filed a complaint with the UK National Contact Point (NCP), alleging that Drax, a biomass and hydroelectric company, has made misleading statements about its carbon emissions.[47] – The complaint alleged that Drax breached the OECD Guidelines for Multinational Enterprises, specifically chapters about the environment and consumer interests. – In July 2022, the NCP accepted that this complaint merited further examination and will offer mediation to the two sides to investigate further. If this offer of mediation is turned down by either side, the NCP will itself investigate whether Drax has breached OECD guidelines.[48] – Drax has stated that its business practices are in line with industry best practice and meet or exceed applicable standards.
Hyundai	Automotive	ASA	Advertising standards	UK	– Hyundai launched a hydrogen-powered car (the Nexo) in the UK in 2019 and the adverts stated it was 'so beautifully clean' that 'it purifies the air as it goes'. – In June 2021, the ASA ruled that this claim was misleading, as Nexo cars still produce pollution e.g. through brake and tyre wear.[49] – Hyundai stated that 'our own internal tests' and the 'air purification system' in the Nexo's hydrogen fuel system 'corroborated relevant claims'.[50]

44. ClientEarth v Shell plc | DWF Group (4 April 2023)
45. ClientEarth v Board of Directors of Shell - United Kingdom - Climate Change Laws of the World (climate-laws.org) (9 February 2023)
46. Shell lawsuit: Institutional investors back legal challenge over climate risk (cityam.com) (11 February 2023)
47. The Lifescape Project, et al. v. Drax Group PLC - United Kingdom - Climate Change Laws of the World (climate-laws.org) (27 July 2022)
48. Initial Assessment: Group of NGOs complaint to the UK NCP about Drax Group PLC - GOV.UK (www.gov.uk) (27 July 2022)
49. Hyundai Motor UK Ltd - ASA | CAP (9 June 2021)
50. 'Greenwashing' firms face steep new UK fines for misleading claims | Environment | The Guardian (19 February 2023)

Company involved	Sector	Claimant / regulator /complainant	Legal / regulatory basis for case	Jurisdiction of case	Summary of case
UK-based					
HSBC	Banking	ASA	Advertising standards	UK	– The ASA banned two sustainability-related adverts because they did not reference HSBC's funding of fossil fuels.[51] – One stated HSBC would invest 'up to $1 trillion in financing' for the global transition to net zero, and the other stated that the bank was 'helping to plant 2 million trees' in the UK. – HSBC stated that their climate strategy is consistent with: the Science Based Targets Initiative (SBTi) which suggests that financial organisations should have a net zero by 2050 transition plan and interim targets for 2030; the UN Principles for Responsible Investment (PRI); the International Energy Agency (IEA); and the Glasgow Financial Alliance for Net Zero (GFANZ). The bank also stated that the continued financing of carbon-intensive industries was necessary during the transition to net zero.[52] – ASA ruled in October 2022 that the adverts breached the CAP Code rules about misleading advertising and environmental claims.
Ithaca	Oil and gas	ClientEarth	Listing rules, prospectus regulation	UK	– ClientEarth has issued a judicial review claim against the FCA in the High Court.[53] – This claims that the FCA acted unlawfully in approving Ithaca's listing documents, because the documents do not give sufficient detail about the climate risks that Ithaca faces to meet requirements under prospectus regulation.[54] – The case argues that this could mislead investors, because it fails to account for how partial or full achievement of the Paris Agreement goals would impact Ithaca's finances and business model.[55] – The FCA is opposing ClientEarth's petition. The High Court will decide whether or not to grant permission to bring the claim.
Tier	Transport	ASA	Advertising standards, consumer protection law	UK	– Tier used the slogan 'Be environmentally ... friendly. Take a TIER' to advertise their electric scooters for hire. – Tier argued the scooters were environmentally friendly due to the: environmental certification of their production facilities; recycled materials used in production; electric vans used for servicing; renewable energy used for charging; and the recycling of decommissioned scooters. – In April 2022, the ASA found that this was an 'absolute' claim, which misleadingly implied the scooters caused no damage to the environment over their entire lifespan, which it felt Tier could not substantiate.[56]
Innocent	FMCG (beverages)	ASA	Advertising standards, consumer protection law	UK	– ASA found Innocent to be making claims in its adverts which made it seem as if its products had a net positive environmental impact.[57] – Innocent defended the adverts, suggesting that they reflected an aspirational customer journey and a 'purpose-led message' which aimed to encourage recycling. – The adverts were ruled to be misleading in February 2023, as they did not consider the whole lifecycle of the product and could not be substantiated.

51. HSBC UK Bank plc - ASA | CAP (19 October 2022)
52. HSBC UK Bank plc - ASA | CAP (19 October 2022)
53. ClientEarth bring ESG claim against the Financial Conduct Authority, Elizabeth Butler (stevens-bolton.com) (20 February 2023)
54. ClientEarth files legal case against UK financial watchdog over oil and gas firm listing - edie (17 February 2023)
55. Explore our ESG Disputes Bulletin – March 2023 (linklaters.com) (31 March 2023)
56. TIER Operations Ltd - ASA | CAP (6 April 2022)
57. Innocent Ltd - ASA | CAP (23 February 2022)

Company involved	Sector	Claimant / regulator /complainant	Legal / regulatory basis for case	Jurisdiction of case	Summary of case
Outside the UK					
Glencore	Mining	Lock the Gate Alliance and The Plains Clan of the Wonnarua People	Corporation Act, consumer law	Australia	– Lock the Gate Alliance (an NGO) and The Plains Clan of the Wonnarua People (an indigenous government) have brought a legal complaint to the Australian Competition and Consumer Commission (ACCC) and Australian Securities and Investments Commission (ASIC) against mining company Glencore.[58] – The claim accuses Glencore of misleading stakeholders about its decarbonisation plans and about its engagement with Traditional Owners (indigenous groups).[59] – It suggests this could amount to greenwashing under the Corporations Act and / or Australian consumer law. – Commenting elsewhere, a Glencore spokesperson said the company has been 'very transparent about our climate change commitments and the responsible managed decline of our global coal business.'[60]
KLM	Aviation	Fossielvrij NL	Consumer protection law	Netherlands	– Fossielvrij NL, supported by ClientEarth and Reclame Fossielvrij, has brought a lawsuit against Dutch airline KLM under the EU's Unfair Commercial Practices Directive, alleging that its 'Fly Responsibly' advertising campaign is misleading.[61] – The campaign highlights the use of carbon offsets to balance out the emissions produced by flying.[62] – The carbon offsetting schemes used by KLM do meet certification standards, but a previous decision from the Dutch Advertisement Code Commission stated that these were not enough to claim that personal flight footprints could be brought 'down to zero' as the adverts claimed.[63] – A court decision on the case brought by Fossielvrij has not yet been reached.
FIFA	Sport	International NGOs	Advertising standards	Switzerland	– Five separate complaints have been brought by NGOs in the Netherlands, France, the UK, Switzerland and Belgium against FIFA's promotion of the 2022 World Cup as carbon neutral.[64] – These cases rest upon advertising standards in their respective jurisdictions. They argue that the carbon neutral claim has not been independently verified, that FIFA's methodology for measuring its carbon neutrality was flawed and that FIFA was over-reliant on offsets, which were themselves of poor quality. – All five complaints are to be examined jointly by the Swiss authorities.[65]
Shell	Oil and gas	Global Witness	Securities regulations	USA	– Global Witness has filed a complaint with the US Securities and Exchange Commission (SEC), alleging that Shell is misleading investors.[66] – Shell reports spending 12% of annual expenditure on renewable energy. Global Witness claims it is actually only 1.5% which is spent on solar and wind power, and that much of the 12% is spent on gas-related activities (billed as a 'transition fuel').[67] – Global Witness has asked the SEC to determine if Shell has 'violated relevant US securities laws' and if so, to issue fines.[68] – Shell has stated that it is 'confident that its financial disclosures are fully compliant with all SEC and other reporting requirements.'[69]

58. PCWP and others v. Glencore - Australia - Climate Change Laws of the World (climate-laws.org) (September 2022)
59. Greenwashing Allegations Made Against Glencore – ESG Investor (14 September 2022)
60. Mining giant Glencore's Australian PR blitz forgets the coal driving the climate crisis | Graham Readfearn | The Guardian (20 July 2022)
61. FossielVrij NL v. KLM - Netherlands - Climate Change Laws of the World (climate-laws.org) (6 July 2022)
62. Dutch airline KLM sued over 'greenwashing' ads | Reuters (6 July 2022)
63. Environmentalists sue Dutch airline KLM for 'greenwashing' - BBC News (6 July 2022)
64. Climate Change Laws of the World - Fifa (climate-laws.org) (November 2022)
65. New Weather Institute v. FIFA - United Kingdom - Climate Change Laws of the World (climate-laws.org) (1 November 2022)
66. Shell Accused of Greenwashing by Climate Group in SEC Claim - Bloomberg (1 February 2023)
67. SEC Receives Complaint of Alleged Greenwashing by International Energy Company | Cadwalader Climate (10 February 2023)
68. Climate Group Accuses Shell of Greenwashing in Complaint to SEC - ESG Today (2 February 2023)
69. Oil giant Shell accused of 'greenwashing' and misleading investors - The Washington Post (1 February 2023)

Financial risks

Apart from the risk of regulatory action in cases of deficient ESG disclosure, boards also run the risk of shareholder scrutiny. Investor scrutiny of environmental claims is not new and it is clear that many investors are sceptical of companies' ESG statements and commitments. Indeed, 86% of institutional investors in the USA believe that companies frequently exaggerate their action on ESG issues, and 72% of investors globally do not believe that companies will meet their climate commitments.[70]

Companies which investors accuse of greenwashing – or of not taking enough action on climate change – open themselves up to the risk of hostile questions at AGMs and shareholder agitation or even activism. There has been a groundswell of interest in the quality and assurance of ESG metrics, with more shareholders voting against boards and directors who they believe may be misleading them.[71] Investors are demanding higher quality data on ESG issues, and more consistency between the metrics and the narrative presented. The investor drive for ESG data – and action – is underscored by the emergence (and high membership levels) of groups such as the Institutional Investors Group on Climate Change, Net Zero Asset Managers and the Paris Aligned Investment Initiative.

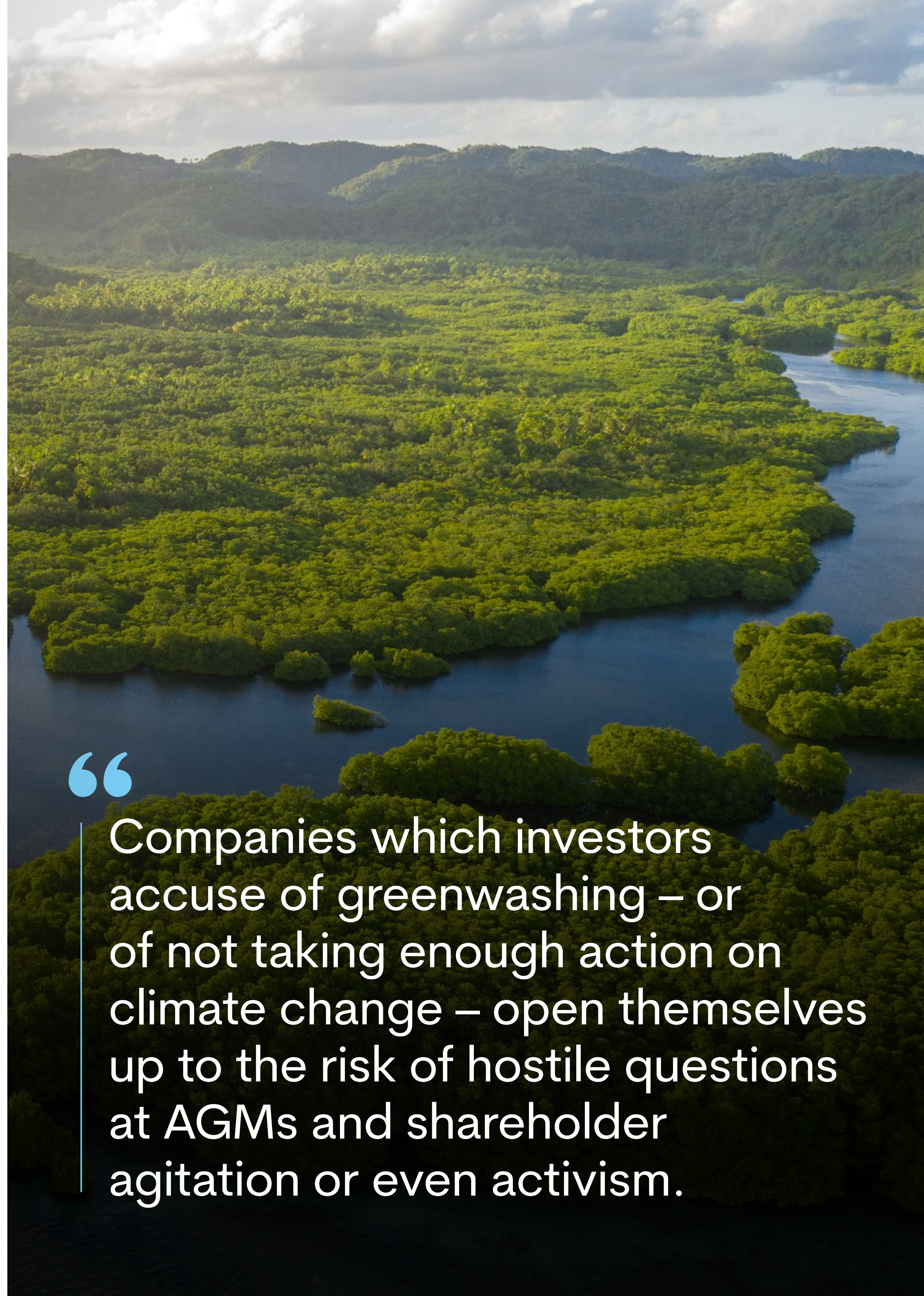
One area of particularly intense investor scrutiny has been greenwashing within net zero transition plans. At COP27, the UN laid out the need for clear, short-term emission reduction targets to be embedded within organisations' plans for decarbonisation by 2050.[72] Investors are looking for accountability and credibility in companies' transition plans and are probing where it may seem lacking. For example, Swiss mining giant Glencore has faced questions from a group of over 60 investors about whether its continued development of thermal coal is in alignment with its net zero strategy.[73] More generally, a statement was published in 2021 by a group of 53 major investors (representing over $14 trillion assets under management), which calls for consistency, for director accountability and for shareholder input to be sought in net zero transition plans.[74]

As the expansion of ESG ratings, exclusionary screening and ESG-focused funds continues apace, companies which greenwash or which do not meet certain ESG benchmarks may find themselves increasingly financially side-lined. Globally, ESG assets could reach more than one third of projected total assets under management by 2025.[75] The consequences of greenwashing activity – whether deliberate or not – can ultimately impact a company's bottom line.

86% of institutional investors in the USA believe that companies frequently exaggerate their action on ESG issues

72% of investors globally do not believe that companies will meet their climate commitments

70. Special Report: Institutional Investors | Edelman (17 November 2021)
71. Shareholder greenwashing backlash targets directors | ICAEW (12 April 2022)
72. Net Zero Scrutiny Intensifies at COP27 – ESG Investor (9 November 2022)
73. Glencore facing investor questioning over coal development and net-zero plans - edie (6 January 2023)
74. $14 trillion investors call for consistency on 'corporate net zero alignment plans' and director accountability on climate targets – IIGCC (30 July 2021)
75. ESG assets may hit $53 trillion by 2025, a third of global AUM | Bloomberg Professional Services (23 February 2021)



"Companies which investors accuse of greenwashing – or of not taking enough action on climate change – open themselves up to the risk of hostile questions at AGMs and shareholder agitation or even activism.

04

Three principles for action

How should governance professionals manage greenwashing?

Greenwashing is a problematic practice with wide-ranging consequences and governance professionals across all sectors are rightly concerned about its impacts. Tackling it requires collective effort, within which governance professionals have a hugely important role to play.

Organisation-level governance factors are more important for the deterrence of greenwashing than country-level factors.[76] In many ways, any mismatch between an organisation's sustainability messaging and the reality of its actions can be seen as representing a failure of governance. As such, having robust governance structures in place is a fundamental step in protecting organisations from the reputational, regulatory and financial risks of greenwashing.

This section of the paper lays out three guiding principles which those working in governance should consider when dealing with greenwashing. Whilst these are particularly relevant to those working in the corporate sector (and involved in sustainability reporting), they can be applied more widely to those working in any sector.

This section is designed to help those working in governance to answer questions such as:

- How should I address the topic of greenwashing with my board? What are the key issues that I should highlight to them?
- Which structures and processes can my organisation put in place to minimise the risk of greenwashing?
- How can I help my board to spot greenwashing, and what are the tell-tale signs of greenwashing?
- How can my organisation make its sustainability or ESG reporting 'greenwash-proof'?
- Where are the areas for improvement within my organisation regarding greenwashing?

76. Greenwashing in environmental, social and governance disclosures - ScienceDirect (April 2020)

Three guiding principles

This diagram presents the three guiding principles for governance professionals to consider with regard to greenwashing. Each principle is broken down into categories and corresponding actions. The rest of this section discusses each principle in detail, with practical actions that governance professionals can implement to tackle greenwashing.

1. Producing high-quality, transparent disclosures

Reporting frameworks

Where relevant, non-financial ESG disclosures should be made in accordance with reputable ESG reporting frameworks, to ensure that information is transparent, standardised, comparable and complete – just as is the case for financial disclosures when using financial reporting frameworks like GAAP or IFRS. Several ESG reporting frameworks exist, and each performs a slightly different role. The choice of framework should be made according to the location, size, type and sector of the organisation. Frameworks for ESG reporting include, but are not limited to: the Global Reporting Initiative (GRI); the UN Principles for Responsible Investment (PRI); the Sustainability Accounting Standards Board (SASB); which will in turn inform the IFRS Sustainability Disclosure Standards (currently expected to be published at the end of Q2 2023); the UN Sustainable Development Goals (SDGs); and the TCFD-aligned (Task Force on Climate-related Financial Disclosures) disclosure requirements.

Whichever framework is used, there are certain universal elements which all good ESG reporting should include in order to avoid greenwashing.

- The use of environmental resources, as well as any negative externalities, need to be clearly expressed and, ideally, quantified.
- Significantly, reports should identify all the risks posed to a company by climate change, including to its finances, compliance, reputation, competitive advantage and operations. Reports should then lay out the means for mitigating and managing these risks where possible.
- Narrative should be substantiated and underpinned by data.
- Targets for climate action should be science-based. This is particularly important in the case of net zero transition plans.

Fundamentally, avoiding greenwashing in corporate climate disclosures requires being clear and transparent about both the good and bad environmental impacts of a business and its products or services. At the level of the board, achieving this will involve input from cross-functional teams covering finance, reporting, risk, sustainability and others.

Materiality and metrics

The issue of ESG materiality is a complex one, as is the sourcing of high-quality ESG data. Nevertheless, it is important for companies to be taking steps in the right direction. A materiality assessment is beneficial in order to understand fully an organisation's risk level, its resilience and the key impacts that it has on the environment, as well as the impacts that climate change will have on it. Through this, priority areas for action and risk mitigation can be determined, and appropriate metrics sourced. These metrics should be framed as KPIs, which need to be material, specific and verifiable.

The data sourced should underpin the report's narrative. To avoid greenwashing, organisations should steer clear of making vague and unsubstantiated claims. Ensure that any commentary – whether about actions taken, existing initiatives, or future ambitions – is underpinned by metrics. KPIs should be quantified against a baseline, to allow robust comparison and the assessment of progress.

Transparency

Committing to transparency in all disclosures, and environment-related marketing claims, is essential to avoid greenwashing. Disclosures should cover all material climate risks, and not focus solely on positive aspects. It is important not to hide the negative environmental impacts of a business practice or product and, similarly, not to exaggerate its environmental benefits.

There are several tests that environmental claims should pass in order to be considered 'greenwash-proof'. They must be:

- based on robust evidence and backed up by data
- specific, and avoid the use of vague or absolute terms without explanation
- verifiable
- supported by qualifying information which is easily accessible and displayed prominently
- in proportion to the efforts made by an organisation.

2. Increasing board capacity and guaranteeing robust oversight

Board education

Those working in governance should equip board members to deal adequately with the complexities of ESG requirements. This will enable boards to make informed decisions about ESG issues and to communicate accurately about the activity they have undertaken or are planning to undertake. In pursuit of a 'greenwash-proof' board, governance professionals should ensure that they provide members with timely updates about developments in anti-greenwashing regulation, at both a local and international level, as needed. Additionally, they should periodically highlight key ESG efforts, as well as ESG claims, made across all parts of the business, to allow the board to weigh these against the latest regulatory requirements and evolving expectations from investors and other stakeholders. The board should also regularly review its directors' and officers' liability insurance to ensure it provides sufficient cover for their level of exposure to ESG and greenwashing risks.

It is important to hold space in board and committee meetings to review any potential mismatch between an organisation's sustainability efforts and its claims about these efforts. In other words, greenwashing should (literally) be 'on the agenda'. Such conversations may require working cross-functionally with other teams within the organisation, including legal and marketing, in order to get the fullest possible picture of what types of sustainability claims an organisation is making.

Monitoring and verification

Individuals responsible for governance should have a clear understanding of the means and methods of oversight, monitoring, verification, reporting and audit that exist within their organisation with regard to sustainability-related claims. Where these are lacking, it is important for governance professionals to suggest and support the creation of specific and robust oversight mechanisms. Depending on the type and size of organisation, this may require internal or external monitoring and verification.

These mechanisms could include the embedding of verification processes and procedures for sustainability-related claims. They could also include the establishment of specific board-level committees looking at climate and sustainability, with anti-greenwashing activity falling within its remit. Similar committees can be established at management level. Additionally, employees working in internal risk, audit and compliance functions should be provided with adequate training and resources – particularly as more stringent assurance of ESG disclosure goes on to become the norm.

> In many ways, any mismatch between an organisation's sustainability messaging and the reality of its actions can be seen as representing a failure of governance.

3. Implementing change and creating accountability

Strategic and operational change

To avoid greenwashing long-term and to comply with regulatory, investor and stakeholder demands, the board must implement the strategic and operational change which is necessary for an organisation to make progress on climate action. After carefully considering which ESG issues are of the greatest importance and relevance for the organisation, the board should develop an overarching climate strategy. This must be supported by short, medium and long-term implementation plans with clear targets and priorities.

These strategic developments must be matched with the implementation of the requisite business practices needed to achieve them. This might include:

- Restructuring the most environmentally damaging parts of a business' activities e.g. in the case of fossil fuel companies needing to pivot towards renewable energy.
- Sourcing new funding options, such as sustainability bonds and other green financing.
- Ceasing lobbying efforts where these are fundamentally out of alignment with an organisation's outward-facing image of sustainability.
- Rethinking marketing strategies to ensure all sustainability claims are specific and substantiated.
- Assessing and reducing the environmental impact of products across their entire life cycle, rather than focusing on token, marketable gestures.
- Working with suppliers to verify that inputs are sourced without child labour or modern slavery.
- Adjusting research and development priorities to focus on the tools needed to facilitate the energy transition.

These are suggestions – each organisation will have its own priorities and challenges dependent on its sector and business practices. It is essential that all sustainability plans are clear, well-documented, implementable and verifiable. This will mean that stakeholders are not misled about the organisation's climate ambitions and the steps it will take to achieve them.

Accountability

A final key element in the avoidance of greenwashing is accountability: taking responsibility for what progress has or has not been made towards the ambitions an organisation has laid out. There are several means for increasing accountability.

- Regular reporting: Organisations should report on the parts of their climate action plan on which they have made progress, and where progress may still be lacking. Ideally, these reports should include aggregated data and metrics to demonstrate the breadth of action undertaken. The best sustainability reports also utilise examples and case studies to demonstrate the depth of particular activities and their impact.
- Proactive engagement between boards and shareholders and other stakeholders: This can include (voluntarily) putting net zero transition plans before shareholders at an AGM for a vote. By taking a collaborative, transparent approach, organisations may avoid potential shareholder agitation or activism.
- Linking ESG progress to executive remuneration: This is an increasingly common approach to incentivising action on climate and other ESG issues, and can also drive up the quality of ESG reporting. It is essential that relevant, measurable and specific KPIs are used.
- Benchmarking progress: The progress made each year towards an organisation's ESG goals should be reported upon and compared year-on-year to demonstrate long-term commitment. Additionally, progress can be benchmarked against peers to ensure an organisation is staying on track. This should instil a culture of continuous improvement.

Through following these three principles, individuals working in governance can have a significant impact on whether their organisations engage in greenwashing, or are equipped to avoid it.

05 Glossary

Note: Terms for which the definitions are given in the body of the text are not included here.

Assurance (limited versus reasonable)

Assurance is the verification of a company's reports according to particular standards. For financial reporting, this is in accordance with accounting standards. For ESG reporting, such standards are not yet so widely accepted or standardised, although there are significant efforts to establish globally recognised frameworks.

Limited assurance is when an assurance provider states that they are not aware of any misstatements; in other words, that a report is not misleading. Reasonable assurance is the highest level of assurance (and is implied by a financial statement audit); in other words, that a report is accurate.

Under the European Union's Corporate Sustainability Reporting Directive, companies will be required first to provide limited assurance on their sustainability reporting and then reasonable assurance by 2028.

Carbon neutral

When the carbon dioxide emissions produced by a company, country or entity, are equal to or cancelled out by the emissions absorbed. This should largely be achieved through the reduction of emissions, as well as through carbon offsetting where emissions cannot be reduced.

Carbon offsets

The purchase of part of a scheme or project which aims to compensate for carbon dioxide (and other greenhouse gas) emissions. These schemes reduce or remove emissions elsewhere through activities such as reforestation, mangrove protection and carbon capture and storage.

Climate risk

Risk assessments based on analysis of the consequences of climate change for an organisation's finances and operations, as well as an organisation's vulnerability or resilience to these consequences. These risks can be physical (e.g. adverse weather events) or transitional (associated with the structural changes needed in the transition to a net zero economy).

Climate-related disclosure

Public information about an organisation's environmental impact, the climate risks it faces and its ability or activity to mitigate these. Climate-related disclosure requirements aim to ensure that companies are routinely assessing their preparedness for climate change and are transparent about their activity to tackle it.

COP27

COP (Conference of the Parties) is an international climate meeting held annually between the countries that signed up to the United Nations Framework Convention on Climate Change, and COP27 was the 27th such meeting. It took place in Sharm El Sheikh, Egypt, from 6–20 November 2022. One of the most significant developments at COP27 was a decision to establish a loss and damage fund, through which developing countries will be able to access financial assistance to rebuild infrastructure after extreme weather events.

Decarbonisation

Reducing the amount of carbon (and other greenhouse gas) emissions produced by an activity. This can be applied to a company, a product, an economy, a country or globally.

Double materiality

An extension of the accounting principle of materiality, which is that any information about a company which a reasonable person would consider important should be reported publicly. Double materiality applies to sustainability reporting, and states that both 1) climate-related impacts on a company and 2) a company's impacts on the climate are material and should be reported.

Emission reduction targets

Targets which a company (or country) sets to direct by how much its fossil fuel emissions should be reduced and by when. Such targets should be clearly defined, timebound, quantifiable and comparable.

ESG rating agencies

Ratings providers which evaluate companies based upon their ESG policies, systems, reports and performance. They gather data from multiple sources, including sustainability reports, other company publications, governmental data, survey questionnaires, the media and NGOs. These ratings are often used by investors to evaluate the ESG performance of an investment. Companies which provide these ratings include MSCI, Sustainalytics, Thomson Reuters and Bloomberg.

EU Green Deal

The European Green Deal, approved in 2020, is a package of policies which aims to support the EU in achieving climate neutrality by 2050. Key areas include the circular economy, building renovations, pollution, biodiversity and ecosystems, agriculture, transport, and research and development (R&D).

Exclusionary screening
A process used by investors to eliminate exposure to investments which do not align with their preferences or social values. For example, ESG funds will use exclusionary screening to avoid investing in stocks which do not perform highly enough according to particular ESG metrics.

Gender pay gap
The average difference in pay between men and women. This can be measured at an organisational or national level. In 2022, the average gender pay gap in the UK was 14.9% across all workers, and 8.3% amongst full-time workers, meaning that, on average, women earnt 14.9% less than men, or 8.3% less for those in full-time roles. At an organisational level, the gender pay gap will often reflect unequal progression opportunities between men and women (i.e. that more men hold senior positions than women).

Glasgow Financial Alliance for Net Zero (GFANZ)
A coalition of financial institutions working towards net zero. Launched in 2021, it aims to: coordinate efforts across the financial system in pursuit of net zero; encourage more financial institutions to make net zero pledges; and establish a forum for addressing sector-wide challenges in the transition.

Global Reporting Initiative (GRI)
An independent, international organisation which works to produce the GRI Standards, a set of standards for corporate sustainability reporting. These are currently used by over 10,000 organisations in over 100 countries.

International Energy Agency (IEA)
An intergovernmental organisation which provides data, analysis and policy recommendations on the energy sector across the globe. Established in 1971, it has 31 member countries and 11 association countries, which together represent 75% of global energy demand.

International Financial Reporting Standards (IFRS) Foundation
A non-profit accounting organisation which develops and promotes the IFRS Standards, a set of accounting standards which are used in 167 countries globally (outside of the USA which uses US Generally Accepted Accounting Principles (GAAP). The IFRS Foundation also oversees the International Sustainability Standards Board (ISSB) which was founded in November 2021 and is responsible for the development of standards for sustainability disclosures.

Interoperability
The ability of different products or systems to work together, or for different sources of information to be compared and intertwined. For example, different sustainability disclosure standards are 'interoperable' if they are based upon similar data and do not require significant duplication from the companies producing the disclosures.

LGBTQ+
An acronym standing for: lesbian, gay, bisexual, transgender, queer, plus. This refers to people who identify as being part of a gender, sexual or romantic minority and is considered to be a more inclusive term than LGBT.

Life cycle (of a product)
The entire process of sourcing, creating, using and disposing of a product from start to finish. When making environmental claims about a product, the environmental impact across its entire life cycle must be considered.

National Trading Standards
A UK organisation which delivers national and regional consumer protection enforcement. Its objectives are to protect consumers and safeguard legitimate businesses by gathering intelligence to combat rogue traders. Its current priorities include mass marketing and the prevention of internet scams.

Nature-related disclosure
Public information about both an organisation's impact on and dependencies on the natural environment. These often particularly focus on biodiversity, which is the range of animals, plants and other life which exists within an ecosystem. They can also cover topics such as land use, water use or water scarcity, ground or water pollution, and other forms of environmental degradation.

Net zero
Avoiding adding to the total amount of greenhouse gases in the atmosphere. This is to be achieved through reducing the amount of emissions produced, and by offsetting or balancing out any which remain by removing an equivalent amount.

Net Zero transition plan / strategy
A corporate (or national) strategy which lays out steps needed to achieve net zero. In the UK, the Transition Plan Taskforce, launched in April 2022, is developing a disclosure framework for private sector transition plans and their implementation.

NGOs
An acronym standing for: non-governmental organisations. These are typically non-profit organisations whose core purpose is to address a political, social or humanitarian issue.

Purpose (corporate / organisational)
A long-term guiding principle around which an organisation's operations should be organised and towards which its priorities should aim. Purpose usually goes beyond profit-making.

Qualifying information (qualified / unqualified)
Information provided which makes a statement or claim more specific and limited in its meaning. A 'qualified' claim has extra information included which clarifies its meaning and makes it less widely applicable than an 'unqualified' claim. The inclusion of qualifying information is often specified in regulation – including regulation relating to greenwashing.

Science Based Targets Initiative (SBTi)
A collaboration between several environmental organisations which aims to promote the use of science-based targets in environmental reporting. The initiative encourages companies to make a commitment to set targets in a way which is compatible with the latest science on climate change. To date, over 2,000 companies have done so.

Social license to operate
The acceptance of a company and its practices by the general public, the media and civil society. As a company builds trust with its stakeholders and the community in which it operates, it builds its social license. This license can be threatened in cases where a company is seen to be acting poorly or disingenuously – for example, through greenwashing.

Substantiated / unsubstantiated
A claim is substantiated if there is evidence or information provided to support the truthfulness of the claim. It is unsubstantiated if this evidence is lacking, inaccurate or insufficient. To avoid greenwashing, companies should ensure that environmental claims are substantiated.

Task Force on Climate-related Financial Disclosures (TCFD)
An industry-led group created in 2015 which seeks to help investors understand their exposure to climate risk and to help companies disclose their climate risk in a consistent and clear way. The group published a set of recommendations for climate disclosures in 2017, which were then adopted and enshrined into law by the UK government in October 2021. The TCFD framework focuses on four key pillars: governance, strategy, risk management and metrics and targets.

Task Force on Nature-related Financial Disclosures (TNFD)
A market-led group comprised of financial institutions, corporates and market service providers which is developing a risk management and disclosure framework for nature-related risks. Nature-related risks include species extinction, damage to biodiversity, decreasing numbers of pollinating species such as bees, water and soil pollution, and the destruction of ecosystems, all of which occur as a result of human activity. According to the World Economic Forum, over half of global economic output is dependent on nature. The TNFD ultimately hopes to steer flows of capital towards nature-positive rather than nature-negative outcomes.

UN Principles for Responsible Investment (PRI)
An international organisation supported by the United Nations (UN) which promotes the incorporation of ESG factors into decision-making by investors. It is made up of a network of financial institutions which aim to implement six principles of ESG investing. There are over 4,800 signatories.

UN's Global Compact
A voluntary initiative launched by the United Nations (UN) which is based on commitments from CEOs to implement sustainability principles and to support UN goals. Firms which choose to sign up to the Global Compact commit to undertaking organisational change and to reporting on this change. The Global Compact lays out 10 principles under the topics of human rights, labour, environment and anti-corruption.

ABOUT CGIUKI

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors.

Its purpose under Royal Charter is to lead 'effective governance and efficient administration of commerce, industry and public affairs', working with regulators and policy makers to champion high standards of governance and providing qualifications, training and guidance. As a lifelong learning partner, the Institute helps governance professionals to achieve their professional goals, providing recognition, community and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and in many other countries and regions including the Caribbean, parts of Africa and the Middle East.

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> ...having robust governance structures in place is a foundational step in protecting organisations from the reputational, regulatory and financial risks of greenwashing.

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