

GREENWASHING IN GLOBAL FINANCE: AN ANALYSIS OF THE ROLE OF INTERNATIONAL TREATIES IN PREVENTING FALSE SUSTAINABILITY CLAIMS

by

Harithra T Sezhi

ABSTRACT

Greenwashing occurs when financial products, companies, or institutions make misleading claims about their environmental sustainability. As more capital flows into assets labelled “sustainable,” misleading claims have been sending that money to the wrong places, which reduces investor trust and weakens the climate goals that sustainable finance is meant to support. This article examines whether international treaties can effectively prevent false sustainability claims. It argues that the existing treaties, led by the United Nations Framework Convention on Climate Change and the Paris Agreement, set general duties for the states on the matter relating to climate action and transparency. However, these treaties do not establish direct rules for private financial entities. Therefore, the treaties work indirectly through national laws, regional regulations, and soft-law standards such as the IFRS sustainability disclosure standards and the guidance of the International Organization of Securities Commissions. By analysing legal aspects and comparing enforcement in the European Union, the United States, the United Kingdom, and Australia, the article highlights three key issues: There is no universally accepted definition of sustainable finance, enforcement varies across countries and remains inconsistent, and cooperation between regulators across borders is limited. It concludes that a new global treaty on this issue is unlikely in the near term. A more realistic approach is to build on existing treaty principles by recognizing each other's disclosure standards, strengthening regulator cooperation, and applying the international legal duties of due diligence and good faith.

Keywords: greenwashing; sustainable finance; international treaties; Paris Agreement; ESG disclosure; soft law.

1. INTRODUCTION

Sustainable finance has grown from a niche corner of the market into a major part of global finance. Green bonds, loans linked to sustainability goals, and funds sold under environmental, social, and governance (ESG) labels now attract large amounts of investment. Governments also rely more on private money to meet their climate commitments. This growth creates strong incentives to appear sustainable. Where verification is weak, these incentives produce greenwashing: selective disclosure, vague or unsubstantiated claims, misleading labels, and exaggerated alignment with climate goals.¹

Greenwashing is not merely a matter of protecting consumers. In finance, it distorts prices, diverts capital from genuinely transition-oriented projects, and exposes investors to legal and reputational losses. The United Nations High-Level Expert Group on Net-zero commitments has cautioned that unverified promises harm the overall credibility of the climate transition initiatives.² Because capital flows across different countries, a response that focuses only on a single nation is insufficient.

A financial fund may be marketed in one country, managed in another, and invest its money in a third. For this reason, this article explores how international agreements can help to prevent misleading sustainability claims in the global financial system. It uses a doctrinal approach to examine treaty texts, court rulings, soft-law tools, and enforcement practices in the European Union, the United States, the United Kingdom, Australia, and the Netherlands. The argument is that treaties provide the basic rules for anti-greenwashing regulations, but they do not directly control financial claims. Therefore, enforcement and regulation come from implementing measures and soft-law standards.

2. CONCEPT AND IMPACT OF GREENWASHING

Greenwashing occurs when an organisation performs poorly in protecting the environment but presents a positive image of its environmental performance.³ In financial markets, greenwashing typically appears in three common forms. Product-level greenwashing occurs when a fund or bond is presented as environmentally friendly or sustainable, even though its actual investments do not justify that claim. Entity-level greenwashing occurs when an organization promotes goals such as net-zero emissions or climate alignment, yet continues to invest in high-emitting activities without a clear and open plan for transitioning to more

¹ Magali A. Delmas & Vanessa Cuerel Burbano, *The Drivers of Greenwashing*, 54 Cal. Mgmt. Rev. 64 (2011).

² U.N. High-Level Expert Grp. on the Net Zero Emissions Commitments of Non-State Ent., *Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, and Local and Regional Governments* (2022).

³ Thomas P. Lyon & A. Wren Montgomery, *The Means and End of Greenwash*, 28 Org. & Env't 223 (2015).

sustainable practices. Data-level greenwashing comes from unreliable ESG ratings. Research shows that the ratings from major providers differ significantly, which makes claims hard to verify and allows companies to pick the most favourable rating.⁴

The legal characteristics of these practices vary. Some are plain misrepresentations that securities and consumer laws can reach. Others exploit definitional ambiguity: because no universally accepted legal definition of a sustainable investment exists, a claim may be technically defensible but misleading. Courts have begun to treat such claims as grounds for legal action. In 2024, the Amsterdam District Court ruled that some of KLM's "Fly Responsibly" advertisements misled consumers by suggesting that flying could be made sustainable through the use of offsetting and biofuels.⁵ Although a consumer law decision, it illustrates the principle that environmental claims must be specific and substantiated.

The impact of this is cumulative. Investors suffer direct losses when sustainability claims prove unfounded, honest issuers face a competitive disadvantage against rivals who overstate their credentials, and states face delayed decarbonization because capital is misallocated. Since these effects touch on the shared goal of limiting global warming, they have an international dimension, which makes treaty law a plausible instrument for addressing them.

3. ROLE OF INTERNATIONAL TREATIES

3.1 United Nations Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) requires its member countries to protect the climate system and adopt national policies to reduce climate change. Article 3(3) discusses the precautionary principle, Article 4(1) requires countries to develop climate-related programmes, and Article 12 deals with reporting relevant information. These provisions make transparency an important responsibility of states. However, the Convention does not directly control sustainability claims made by private financial institutions, as its rules mainly apply to countries. Its main role is to establish an international framework for climate cooperation and accurate reporting, which helps shape future agreements and national disclosure laws.

⁴ Florian Berg, Julian F. Kölbel & Roberto Rigobon, Aggregate Confusion: The Divergence of ESG Ratings, 26 Rev. Fin. 1315 (2022).

⁵ Fossielvrij NL v. KLM, Rechtbank Amsterdam [Dist. Ct. Amsterdam] Mar. 20, 2024 (Neth.).

3.2 Paris Agreement

The Paris Agreement is the most direct international treaty connected to sustainable finance. Article 2(1)(c) outlines the goal of aligning financial flows with a path that leads to lower greenhouse gas emissions and climate-resilient development. Article 9 focuses on providing financial support, while Article 13 establishes a stronger framework for transparency, requiring countries to report on their emissions and progress.⁶ However, the agreement has clear limitations. It applies only to countries, not private organizations. It sets a general goal rather than a binding, specific rule and does not clarify what consistency means or how misleading claims should be addressed. Experts point out that the agreement combines mandatory procedures, such as submitting and reporting national climate plans, with voluntary goals related to outcomes.⁷ Consequently, its role in combating greenwashing is indirect: it offers countries a rationale and a basis for regulating the authenticity of climate-related financial activities.

The law of treaties reinforces this perspective. According to the principle of *pacta sunt servanda*, which means agreements must be fulfilled in good faith, treaty obligations must be carried out honestly.⁸ If a state acknowledges that financial resources should follow low-emission path, good faith would likely require it to not permit, and preferably prevent, actions that wrongly present financial support as aligned with those goals. This argument is compelling but not definitive, as good faith applies only to obligations a state has specifically committed to. Nevertheless, it strengthens the interpretation that Article 2(1)(c) implies a duty to implement suitable regulatory measures.

3.3 International Environmental Principles

International environmental principles support the obligations established by treaties. The Rio Declaration states that countries must ensure that activities within their territory do not damage the environment of other countries and supports the precautionary approach.⁹ The responsibility to prevent cross-border harm originates from the Trail Smelter arbitration,¹⁰ and the International Court of Justice has affirmed that this responsibility involves taking due

⁶ Paris Agreement to the United Nations Framework Convention on Climate Change arts. 2(1)(c), 9, 13, Dec. 12, 2015, T.I.A.S. No. 16-1104.

⁷ Daniel Bodansky, The Legal Character of the Paris Agreement, 25 Rev. Eur. Comp. & Int'l Env't L. 142 (2016).

⁸ Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.

⁹ Rio Declaration on Environment and Development, principles. 2, 15, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (Aug. 12, 1992).

¹⁰ Trail Smelter Case (U.S. v. Can.), 3 R.I.A.A. 1905 (Arb. Trib. 1941).

diligence, such as creating and enforcing appropriate rules and administrative measures that apply to private entities.¹¹

In its 2025 advisory opinion on climate change, the International Court of Justice confirmed that states have international legal obligations to protect the climate system, including by regulating of private actors within their jurisdiction. The International Tribunal for the Law of the Sea reached a comparable conclusion regarding greenhouse gas emissions in 2024.¹² National courts have also followed this approach. In *Milieudefensie v. Royal Dutch Shell*, the Hague District Court recognised a company's duty of care to reduce emissions, considering the Paris Agreement and human rights standards.¹³ None of these rulings directly address greenwashing. However, collectively, they establish a legal foundation for requiring states to oversee private behaviour that significantly impacts climate objectives, including the truthfulness of climate-related financial statements.

4. INTERNATIONAL SOFT LAW AND SUSTAINABILITY STANDARDS

Because binding law is limited, most of the practical details of anti-greenwashing regulation come from soft law. Soft law is not legally binding on its own, but it influences expectations, guides national laws, and may become legally binding when countries incorporate it into their domestic legislation. Its strengths are flexibility and lower negotiation costs. Its weaknesses are limited accountability and uneven use.¹⁴

A major development is the set of IFRS S1 and S2 standards introduced by the International sustainable standards boards. These standards create a global standard for sustainability and climate reporting, enabling investors to compare companies and use the information to make informed decisions.¹⁵ When countries adopt these standards, selective disclosure becomes more difficult, and regulators have a clear standard to evaluate claims. The International Organization of Securities Commissions has also contributed by suggesting that ESG ratings and data providers should be more transparent about their methods and address conflicts of interest.¹⁶

¹¹ *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. 14 (Apr. 20).

¹² Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, ITLOS Case No. 31 (May 21, 2024).

¹³ *Milieudefensie v. Royal Dutch Shell PLC*, Rechtbank Den Haag [Dist. Ct. The Hague] May 26, 2021, ECLI:NL:RBDHA:2021:5339 (Neth.).

¹⁴ Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 *Int'l Org.* 421 (2000).

¹⁵ Int'l Fin. Reporting Standards Found., *IFRS S1, General Requirements for Disclosure of Sustainability-related Financial Information* (2023); Int'l Fin. Reporting Standards Found., *IFRS S2, Climate-related Disclosures* (2023).

¹⁶ Int'l Org. of Sec. Comm'ns, *Environmental, Social and Governance (ESG) Ratings and Data Products Providers: Final Report* (2021).

These developments demonstrate a common approach: international treaties establish broad objectives, soft-law organisations provide detailed standards, and national regulators enforce them. However, this approach is effective only when countries adopt and apply standards consistently. When countries adopt different rules or apply common standards inconsistently, comparing sustainability practices becomes more difficult, making greenwashing harder to identify and prevent.

5. CHALLENGES IN PREVENTING GREENWASHING

5.1 Absence of a Comprehensive International Treaty

No treaty directly ensures the accuracy of sustainability claims made by financial institutions. A specific international agreement could address this issue; however, the likelihood of such an agreement is low. Countries differ in their pace of climate action and in their views on the role of finance in addressing environmental concerns. Additionally, financial regulations have generally been shaped through informal networks of regulators rather than through formal treaties, in part because soft law is more flexible and easier to modify. Investment and trade agreements also pose challenges. Their general provisions aimed at protecting investors may be used to block national laws that restrict how companies promote their environmental performance. Consequently, governments must ensure that their ability to regulate remains protected within these agreements so that they can continue to take action against misleading environmental claims.

5.2 Divergent Definitions and Standards

There is no binding international definition of green or sustainable finance, so rules against misrepresentation have no shared benchmark. The European Union has developed the most detailed framework in this area. Its Sustainable Finance Disclosure Regulation requires financial institutions to disclose certain information, its Taxonomy Regulation outlines what activities are considered environmentally sustainable,¹⁷ and the Corporate Sustainability Reporting Directive makes sustainability reporting mandatory. In contrast, outside the European Union, many major financial markets lack similar classification systems, and the adoption of IFRS standards is inconsistent. This inconsistency allows companies to take

¹⁷ Regulation 2019/2088, of the European Parliament and of the Council of 27 November 2019 on Sustainability-Related Disclosures in the Financial Services Sector, 2019 O.J. (L 317) 1.

advantage of regulatory differences by offering products from regions with less strict rules while still targeting a global audience.

5.3 Enforcement and Accountability

Enforcement of regulations occurs at the national level and varies depending on the country. In the United States, regulators rely on broad anti-fraud powers to take action against violations. In 2023, the Securities and Exchange Commission brought charges against an asset manager connected to Deutsche Bank for making false statements regarding its ESG investment practices, resulting in a major penalty. This method is effective when there are clear false statements, it may not be sufficient for addressing vague or general claims. The United Kingdom's Financial Conduct Authority has introduced a rule aimed at preventing greenwashing, which requires that any references to sustainability be truthful, clear, and not misleading. In Australia, the Federal Court imposed a substantial fine on a superannuation trustee for providing misleading information about the sustainability aspects of its investment products.¹⁸ These cases demonstrate that principle-based regulations can be effectively enforced when regulators are prepared to take legal action.

6. RECOMMENDATIONS

A specific treaty is unlikely soon; therefore, reforms should strengthen the existing system in three areas. First, Paris Agreement parties should use its transparency framework and global stocktake to promote reporting on national measures addressing misleading climate-related financial claims, giving practical meaning to Article 2(1)(c). Second, countries should consistently adopt IFRS sustainability standards and recognize equivalent frameworks to reduce regulatory arbitrage. Third, financial regulators should establish agreements on sustainability supervision to improve cross-border cooperation and enforcement. These measures rely on the principles of due diligence and good faith recognized by the International Court of Justice.

7. CONCLUSION

International treaties play an important but indirect role in preventing greenwashing in the global financial sector. The Paris Agreement's goal of aligning finance with sustainability and its transparency framework help justify the regulation of sustainability claims. The principles of good faith and due diligence also suggest that states have a duty to oversee the activities of

¹⁸ Austl. Sec. & Invs. Comm'n v Mercer Superannuation (Austl.) Ltd [2024] FCA 882 (Austl.).

private entities. However, treaty law does not define sustainable finance, directly apply to financial institutions, or ensure effective cross-border enforcement. National enforcement actions and soft-law standards help address these shortcomings, although they are not perfect solutions. As creating a new comprehensive treaty is unlikely, the most reliable approach is to use the existing treaty framework as a base and build upon it through consistent disclosure standards and improved cooperation between regulators.



REFERENCE

1. <https://www.ioes.ucla.edu/wp-content/uploads/2017/04/2011-Delmas-Cuerel-Burbano-California-Management-Review.pdf>
2. https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf
3. <https://static1.squarespace.com/static/6512ffcc12f9112780b89166/t/651b49e14814411a552f8f66/1696287201570/lyon-montgomery-2015-the-means-and-end-of-greenwash.pdf>
4. <https://academic.oup.com/rof/article/26/6/1315/6590670>
5. <https://www.clientearth.org/media/cx4po41h/klm-judgment-20-march-2024.pdf>
6. <https://unfccc.int/resource/docs/convkp/conveng.pdf>
7. https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf
8. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2735252
9. <https://www.un.org/esa/documents/ga/conf151/aconf15126-1.htm>
10. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
11. https://legal.un.org/riaa/cases/vol_iii/1905-1982.pdf
12. <https://www.icj-cij.org/case/135>
13. https://www.climatecasechart.com/document/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law_bb72
14. https://www.climatecasechart.com/document/milieudefensie-et-al-v-royal-dutch-shell-plc_c3e4
15. https://www.pure.ed.ac.uk/ws/portalfiles/portal/11957098/BOYLE_A_Some_reflections.pdf
16. https://www.sc.edu/study/colleges_schools/law/internal/current_students/registrar/first_readings/pdfs/spring2026_ai_law_sellavilla-hard-soft-law.pdf
17. <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf>
18. <https://download.asic.gov.au/media/bq0nxstc/24-173mr-asic-v-mercier-superannuation-australia-limited-judgment-2-aug-2024.pdf>
19. <https://eur-lex.europa.eu/eli/reg/2019/2088/oj/eng>