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ClientEarth

October 2024

Greenwashing of BlackRock investment funds

Complaint submitted to the Autorité des marchés financiers

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1. Executive summary

1. BlackRock is the largest asset manager in the world with over US$10tn in assets under management (**AUM**).[1] The BlackRock entities which are the target of this complaint (collectively referred to as **BlackRock**) are listed at **Annex A**. The funds referred to in this complaint (the **Complaint**) are separate sub-funds of various BlackRock umbrella fund structures, details of which are set out in **Annex A**.

2. ClientEarth is an international non-profit environmental law organisation with offices around the world. Our Accountable Finance team focuses on the legal implications of climate change and other environmental issues for a wide spectrum of market participants, including banks, companies, investors, directors, professional advisers, stock exchanges and regulators.

3. The Autorité des Marchés Financiers (**AMF**) is responsible for protecting savings invested in financial instruments, ensuring that investors are properly informed, and that the markets for financial instruments function properly.

4. This Complaint concerns a range of 18 actively managed retail investment funds provided in France by BlackRock (the **Target Funds**), each of which includes the term 'sustainable' in the fund name and each of which is at risk of greenwashing. The Target Funds comprise two funds classified as 'Article 9' and 16 funds classified as 'Article 8' for the purposes of the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (**SFDR**).[2]

5. The Complaint primarily concerns the inconsistency between the name of each Target Fund and its holdings. Each of the Target Funds has material exposure to fossil fuel companies that (i) are developing new fossil fuel projects or capacity; and / or (ii) are not phasing out fossil fuel production consistently with the Paris Agreement temperature goals.[3] In this Complaint, investments in such companies by the Target Funds are referred to as **inconsistent holdings**. In our view, where funds invest in these holdings, the use of the term 'sustainable' in the fund name is inaccurate and misleading.[4]

6. The Target Funds' exposure to inconsistent holdings is summarised as follows:[5]

   - Together, the Target Funds hold approximately US$1.04bn of investment in inconsistent holdings;
   - Over 96% of this exposure is to companies which are developing and / or expanding fossil fuel production or capacity (**fossil fuel expanders**);
   - Each of the Target Funds has investment exposure to inconsistent holdings ranging between 1% - 27% AUM and to fossil fuel expanders ranging between 0.8% - 18% AUM;[6]
   - Twelve of the Target Funds hold investments (representing almost US$68M AUM) in one or more of TotalEnergies, Exxon Mobil, Shell, BP, Eni SpA, Chevron, Conoco Phillips and

[1] Investment Management & Financial Services | BlackRock.
[2] The two Article 9 funds are the *BGF Sustainable Global Infrastructure Fund* and the *BGF Sustainable Energy Fund*.
[3] Each of these fossil fuel companies is listed on Urgevald e.V's Global Coal Exit List and/ or their Global Oil and Gas Exit List. Holdings data analysed by Reclaim Finance based on extracts from Morningstar Data Services on 17 July 2024.
[4] The Complaint sets out the reasons for our view and others articulated in this Complaint, and our analysis in support of those views. We do not repeat throughout this Complaint that the breaches outlined are in our opinion, but take this as assumed.
[5] As at 17 July 2024. For details of how these figures were collected and calculated, see **Annex B**.
[6] Where we refer to 'AUM' in reference to any of the Target Funds, this means the total value of holdings identified on the Morningstar Data Services as at 17 July 2024. See Annex B for more detail on our methodology.

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Equinor. These companies are among the twenty biggest short-term fossil fuel expanders globally which are responsible for more than half of all oil and gas resources under development.[7] Their development activities make these companies some of the most climate-damaging in the world.

7. Information about the Target Funds and details of their inconsistent holdings is set out in **Section 3** of the Complaint.[8]

8. Investment in fossil fuel companies that are not phasing out fossil fuel production consistently with the Paris Agreement temperature goals, and in fossil fuel expanders in particular is not 'sustainable'. The connection between sustainability and climate is evident: climate change is a profound threat to future generations' ability to meet their basic needs. Further detail and authority on the meaning of 'sustainable' and its relationship to climate change and fossil fuels is provided at **Annex C** of this Complaint.

9. BlackRock is legally obliged to comply with clear, fair and not misleading rules in its customer communications and SFDR disclosures. By investing in holdings which are fundamentally inconsistent with the use of the term 'sustainable' in the fund name, the Target Funds breach clear, fair and not misleading requirements under the UCITS Directive, the Distribution Regulations, MiFID II, SFDR, PRIIPs, FMFC and the AMF General Regulation (each as defined in paragraph 18). A detailed discussion of the relevant laws, rules and requirements is set out in **Section 2** of the Complaint.

10. In further breach of fair, clear and not misleading requirements, none of the Target Funds explain – in the marketing communications, PRIIPs KID, the SFDR disclosures or otherwise – that, notwithstanding the name, investment objectives and their SFDR status, they will invest a material proportion of AUM in inconsistent holdings. These communications are partial, unclear and misleading by omission of critical detail and– in some cases – through the inclusion of misleading information in the investment objective. A detailed analysis of the Target Funds' breaches is set out in **Section 3** of the Complaint.

11. In our view, the two Article 9 funds (the *BGF Sustainable Global Infrastructure Fund* and the *BGF Sustainable Energy Fund*) covered in this Complaint also appear to breach SFDR requirements:

   - The requirement that '*all of the Fund's investments will be Sustainable Investments*'[9] as a binding element of their investment strategies is not met by either fund because the inconsistent holdings do not meet 'do no significant harm' requirements so as to qualify as 'Sustainable Investments':
     - The *BGF Sustainable Infrastructure Fund* appears to be in breach of its sustainable investment threshold because at least 26.7% of the *BGF Sustainable Global Infrastructure Fund's* AUM is invested in inconsistent holdings (the majority of which (17.6% AUM) are fossil fuel expanders); and

[7] The top 20 upstream oil and gas expanders responsible for more than half of all oil and gas resources under development worldwide can be accessed here; these finding are based on GOGEL data.
[8] The figures and holdings referred to in this Complaint are, unless stated otherwise, drawn from and based upon data analysis undertaken by Reclaim Finance, using information extracted from the Morningstar Data Services Platform on 17 July 2024.[8] Further details of our methodology and an explanation of how the inconsistent holdings are identified and verified, by reference to the Global Coal Exit List (**GCEL**) and the Global Oil and Gas Exit List (**GOGEL**) maintained by Urgewald e.V, is provided at Annex B of this Complaint.
[9] Save for instruments used for the purposes of liquidity management and/or hedging.

  - The *BGF Sustainable Energy Fund* appears to be in breach of its sustainable investment threshold because at least 13.2% of the *BGF Sustainable Energy Fund's* AUM is invested in inconsistent holdings (the majority of which (12.3% AUM) are fossil fuel expanders);

- Alternatively, the funds fail to explain how investments in the inconsistent holdings meet 'do no significant harm' requirements, and therefore their SFDR disclosures breach related SFDR disclosure requirements.

12. In addition to the breaches and failings listed above:

    - The *BGF Sustainable Infrastructure Fund* appears to be in breach of its own exclusions to limit investment into companies active in thermal coal; and

    - At least 5 Article 8 funds appear to be in breach of fund exclusions which prohibit investment into companies which derive more than 5% revenue from thermal coal or oil sands.

13. The Target Funds' inconsistent holdings cannot be explained by an engagement strategy – i.e. by a commitment to engage with these companies to persuade them to transition their businesses in line with the Paris Agreement temperature goal coupled with the threat of escalation or divestment if they fail to do so – because the disclosures for each of the Target Funds state that engagement is not used as a means of achieving the fund's sustainable investment objectives.

14. Through BlackRock's misleading practices, customers are being misled and financial products are being mis-sold. Greenwashing and the mis-naming of funds is perpetrating a deepening market integrity issue which cannot be effectively corrected without decisive enforcement action. ClientEarth requests that the AMF takes urgent corrective enforcement action in respect of the clear breaches of existing financial rules detailed in this Complaint.

15. The AMF has authority to impose sanctions over foreign entities which commit a breach of European regulations likely to undermine investor protection on French territory or aboard, including under Article L621-15 Code monétaire et financier. The Complaint's requests of the AMF and further details on the applicability of French legislation and regulation protecting investors is set out in **Section 4** below.[10]

2. Law, rules and guidance engaged

16. This Complaint engages a range of EU and French laws, regulations and guidance applicable to investment fund marketing, communications and disclosures. These are set out below, together with a discussion of their application to investment fund names.

2.1 'Fair, clear and not misleading' rules

EU rules and regulation

[10] As a general rule, under the Code monétaire et financier the AMF sanction board may '*impose a sanction on the following persons: […] (c) Any person who, on French territory or abroad: […] has committed any other breach mentioned in the first paragraph of II of Article L. 621-14'* (that is '*breaches of the obligations arising from European regulations, legislative or regulatory provisions or professional rules designed to protect investors against insider dealing, market manipulation and unlawful disclosure of inside information as referred to in c and d of II of article L. 621-15, or any other breach likely to undermine investor protection*') (Article L621-15, II(c)4°).

17. Long-standing rules require financial communications and marketing to be clear, fair and not misleading. These rules underpin protections designed to ensure positive customer outcomes and have a critical role to play in ensuring that consumers are not misled as to the nature, the characteristics and the suitability of retail products. This protection extends to the marketing of 'sustainable' investment funds.

18. The Complaint is submitted with reference to the following 'fair, clear and not misleading' requirements (as transposed / implemented in France):[11]

- Article 14(1)(a) of Directive 2009/65/EC (**UCITS Directive**): Member States must ensure that a management company '*acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market*'.[12]
- Article 77 of the UCITS Directive: '*All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading*'.[13]
- Article 4(1) of Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (**Distribution Regulations**): AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and that all information included in marketing communications is '*fair, clear and not misleading*'.[14]
- Article 24(3) of Directive 2014/65/EU (**MiFID II**): '*All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading*'.[15]
- Article 6(1) of Regulation 1286/2014 (**PRIIPs**): **'***The key information document shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PRIIP*'.[16]
- Article 10(1) of the Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (**SFDR**): specified information published on the websites for Article 8 and Article 9 funds (according to regulatory technical standards produced by the European Supervisory Authorities (**ESAs**)) shall be '*clear, succinct and understandable to investors. It shall be published in a way that is accurate, fair, clear, not misleading, simple and concise and in a prominent easily accessible area of the website*'.[17]

French rules and regulation

19. The fair, clear and not misleading requirements are implemented in French law as follows:

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[11] See further the 'Investment Managers' section of the table at Annex 2, p.65 of ESMA Final Report on Greenwashing (europa.eu) for an explanation of relevant requirements and the corresponding supervisory and sanctioning powers of the NCAs.
[12] EUR-Lex - 02009L0065-20210802 - EN - EUR-Lex (europa.eu).
[13] Ibid.
[14] Regulation - 2019/1156 - EN - EUR-Lex (europa.eu).
[15] Article 24(1) of MiFID II is also relevant: Member States shall require that investment firms '*act honestly, fairly and professionally in accordance with the best interests of its clients'.*
[16] Regulation - 1286/2014 - EN - PRIIPs Regulation - EUR-Lex (europa.eu)
[17] Article 13 of SFDR also requires financial market participants to ensure that their marketing communications do not contradict their SFDR disclosures.

- Article L. 533-22-2-1 of the French Monetary and Financial Code (**FMFC**): '*Management companies shall act honestly, fairly and professionally, in the best interests of investors. All information, including promotional communications, sent by an asset management company to investors shall be accurate, clear and not misleading. Promotional communications shall be clearly identifiable as such*'.[18]

- Article L. 533-20 FMFC: '*Investment services providers other than management companies (…) shall act honestly, fairly and professionally and communicate accurately, clearly and in a manner that is not misleading, taking into account the nature of the eligible counterparty and its business*'.[19]

- Article L. 541-8-1 FMFC: '*Financial investment advisers must: (...) 8° Ensure that all information, including promotional communications, addressed to their clients, including potential clients, is accurate, clear and not misleading. Promotional communications must be clearly identifiable as such*'.[20]

- Article 411-126 of AMF General Regulation: '*All promotional communications on the UCITS aimed at investors shall be clearly identified as such. They shall be accurate, clear and not misleading. More specifically, if an advertisement containing an invitation to buy units or shares in a UCITS includes specific information about the UCITS, it cannot contain information that contradicts the information provided in the prospectus and the key investor information document, or that understates the importance of such information'*.[21]

Regulatory commentary on misleading communications and their consequences

20. In its Final Report on Greenwashing, ESMA explains how '*sustainability-related statements, declarations or communications may be misleading*' under such regulations and requirements, stating that:

    - '*On the one hand, communications can be **misleading due to the omission of information** relevant to consumers' […] decisions (including, but not limited to, partial, selective, unclear, unintelligible, vague, oversimplistic, ambiguous […] statements*'; and

    - '*On the other hand, communications can be **misleading due to the actual provision of information,** that is false, deceives or is likely to deceive consumers […] (including, but not limited to, mislabelling, misclassification, mis-targeted marketing, and inconsistent information*';

    (bold text in original document).[22]

21. Misleadingness by both omission and provision of information is identified in this Complaint.

[18] Sub-section 2: Special provisions for asset management companies (Articles L533-21 to L533-22-2-4) - Légifrance (legifrance.gouv.fr).
[19] Sub-section 1: Provisions common to investment services providers other than asset management companies (Articles L533-11 to L533-20) - Légifrance (legifrance.gouv.fr)
[20] Section 3: Rules of good conduct (Articles L541-8-1 to L541-9-1) - Légifrance (legifrance.gouv.fr)
[21] Article 411-126 | AMF (amf-france.org).
[22] ESMA Final Report on Greenwashing, para. 232, p. 78.

22. ESMA defines greenwashing risk as '*the risk that misleading sustainability claims occur and mislead investors in their decisions*'.[23] Where investors are 'misled', this can lead to financial products being mis-sold.[24]

23. The consequences of making misleading sustainability-related statements (such as a fund name) in financial products may result in what ESMA refers to '***immediate damage to individual consumers or investors** (in particular through mis-selling) or the gain of an **unfair competitive advantage***' (bold text in original document). As this Complaint explains, the Target Funds make '*misleading sustainability claims*' in their fund names and, as such, give rise to the risk that consumers are misled in their investment decision-making and the Target Funds mis-sold.

24. In addition to the 'immediate damage' to investors and anti-competitive outcomes, ESMA states that, '*if not kept in check, greenwashing may **undermine trust in sustainable finance markets and policies***' (bold text in original document),[25] emphasising the significant wider implications of misleading sustainability-related statements and greenwashing for the integrity of financial markets.

References to 'fair, clear and not misleading'

25. References in this Complaint to 'fair, clear and not misleading' (or variations of this phrase) are intended to incorporate and refer to the use of 'fair, clear and not misleading' as well as 'fair, clear, accurate and not misleading' rules as applied across the laws and regulations set out above.

2.2 Regulatory commentary on fund names

26. As this Complaint explains, the Target Funds are in breach of fair, clear and not misleading requirements through the inclusion of the term 'sustainable' in their name while investing in inconsistent holdings. This practice is unclear, unfair, inaccurate and misleading.

27. The name of a fund is a key piece of information for retail investors when deciding where to invest their savings.[26] It is, as ESMA recognises, '*the most visible item for retail investors*', a '*key piece of information used by retail investors in making their decisions*' and a '*specific high-risk area*' for greenwashing.[27]

28. The fund name makes a representation about its characteristics and its approach toward asset allocation. It is the '*first attribute that investors see*' and has '*a significant impact on their investment decisions*'.[28] The AMF recognises the significance of a name as a '*key aspect of communication*'.[29]

[23] ESMA30-1668416927-2498 Progress Report on Greenwashing (europa.eu), p. 5.
[24] ESMA notes that '*EU regulations do not provide a definition of mis-selling and the concept is generally understood as encompassing different practices such as unauthorised entities providing financial services, authorised entities providing unauthorised products or services and/or authorised financial intermediaries unsuitably selling financial products or services to clients (i.e. not accounting for their actual characteristics and needs). In the case of the EC's greenwashing request for input, we are considering this latter case of market not responding properly to consumers' or investors' preferences*' (ESMA30-1668416927-2498 Progress Report on Greenwashing (europa.eu), f/n 13, p. 12); in its later report, ESMA notes that NCAs are participating in market-research practices to '*help identify at an early-stage new risks and issues (including possible areas where mis-selling can occur)*' (ESMA Final Report on Greenwashing, f/n 86, p. 48).
[25] ESMA Final Report on Greenwashing, para. 232, p. 79.
[26] ESMA30-1668416927-2498 Progress Report on Greenwashing (europa.eu), para.186, p. 67.
[27] ESMA30-1668416927-2498 Progress Report on Greenwashing (europa.eu), see paras. 49, 186, 95.
[28] ESMA34-472-440 Final Report on the Guidelines on funds names (europa.eu), para. 2, p.4.
[29] AMF Position - Recommendation DOC-2020-03 (amf-france.org), p.4.

29. ESMA states that '*Investors may reasonably expect funds with [sustainability-related terms in their] names to invest in companies with policies, practices, or characteristics that are consistent with sustainability*'.[30] Where the associated '*policies, practices, or characteristics*' of investee companies are not '*consistent with sustainability*', the implication is that consumers are likely to be misled. ESMA acknowledges that '*Competitive market pressures create incentives for asset managers to include terminology in their funds' names designed to attract investor assets, leading in certain instances to greenwashing, for example by making false claims about sustainability practices'*.[31]

30. EIOPA also identifies the risk that '*consumers could be misled into thinking that a certain product positively impacts sustainability factors because of its name, whereas the product does not*'.[32]

31. This is particularly the case in this Complaint since the Target Funds are marketed to retail investors, who will understand 'sustainable' according to the natural meaning of the word. As explained further in **Annex C**, the term 'sustainable' self-evidently incorporates climate change and '*policies, practices, or characteristics that are consistent with sustainability'* must be interpreted to require investment practices consistent with the temperature goals of the Paris Agreement. Because (as we evidence below) the Target Funds invest in companies which are operating inconsistently with those goals, they cannot be considered 'sustainable' and should not be named as such.[33]

2.3 ESMA Guidelines

32. ESMA's finalised 'Guidelines on funds' names using ESG or sustainability-related terms' (the **Guidelines**) were published on 14 May 2024 pursuant to new mandates under the recently reviewed AIFMD and UCITS Directives. The Guidelines address the risk that '*Misleading sustainability disclosures may give rise to risk of "greenwashing"*' with particular focus on funds using *'sustainability-related terms in their names*'.[34] Their purpose is to '*specify the circumstances where the fund names using ESG or sustainability related terms are unfair, unclear or misleading*'.[35] As explained below, the implication of these Guidelines is that it may be unfair, unclear and misleading (in breach of existing rules) for funds which invest in 'inconsistent holdings' (however defined) to call themselves 'sustainable'.

33. The Guidelines will apply to existing funds from 21 May 2025; any new funds created on or after 21 November 2023 must apply the Guidelines immediately.[36]

34. The Guidelines explicitly acknowledge the connection between the term 'sustainable' in financial products and fossil fuel investments, providing that products using the term 'sustainable' in their name must not invest in companies to which the Paris-Aligned Benchmark (**PAB**) exclusions apply. The PAB includes exclusions of climate-damaging industries, including coal, oil and gas in order to

[30] ESMA Final Report on the Guidelines on funds names (europa.eu); para. 3, p.4.
[31] *Ibid.*
[32] *Advice to the European Commission on Greenwashing – (europa.eu), p.29.
[33] Whilst 'sustainable' also includes elements such as environmental degradation, human rights ('social') issues, and bribery and corruption ('governance'), our findings in respect of the Target Funds have led us to focus on climate in this Complaint.
[34] ESMA Final Report on the Guidelines on funds names (EN) (europa.eu); p. 2.
[35] *Ibid.* para. 7, p.54.
[36] https://www.esma.europa.eu/press-news/esma-news/esma-publishes-translations-its-guidelines-funds-names. NCAs are required to notify ESMA whether they (i) comply; (ii) do not comply, but intend to comply; or (iii) do not comply and do not intend to comply by 21 October 2024.

protect investors against '*unsubstantiated or exaggerated sustainability claims in fund names*'. In doing so, the Guidelines:

- recognise the implications of climate science for financial markets, underscoring the interaction between climate change and the term sustainable; and
- confirm the principle that it is inconsistent for a fund with 'sustainable' in its name to invest in fossil fuel companies.

35. For a fund to use environmental-,[37] impact- or sustainability[38]-related terms in its name, the Guidelines provide that:

- a minimum threshold of 80% of the fund's investments should be used to meet the environmental, social characteristics or sustainable investment objectives of the fund;
- the fund should apply the exclusions applicable to the PAB; [39] and
- Funds using sustainability-related terms must additionally commit to invest meaningfully in sustainable investments referred to in Article 2(17) of the SFDR.[40]

36. For these purposes, the PAB exclusions apply to:

- companies that derive 1% or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite;
- companies that derive 10% or more of their revenues from the exploration, extraction, distribution or refining of oil fuels;
- companies that derive 50% or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels; and
- companies that derive 50% or more of their revenues from electricity generation with a GHG intensity of more than 100g CO2 e/kWh.

37. ESMA, therefore, recognises that being 'sustainable' means excluding investment in companies that derive significant revenues from fossil fuel exploration, extraction or distribution or from greenhouse gas intensive electricity generation. ESMA does not refer to GCEL and GOGEL (as we do for the purposes of this Complaint (see **Annex C**)), however its test relies upon revenue-based criteria similar to those included in GCEL and GOGEL. Although fossil fuel expanders are not explicitly addressed by ESMA's exclusions, the PAB exclusions will necessarily encompass many fossil fuel expanders. The underlying principle is the same: investing in fossil fuel companies that

[37] ESMA Guidelines on funds names using ESG or sustainability related terms FR.pdf (europa.eu), clause 6.5.3 (ESMA Final Report on the Guidelines on funds names (EN) (europa.eu)). Note that environmental-related terms may include 'ESG' and 'SRI' abbreviations. Although we focus this Complaint on the misuse of the term 'sustainable', it is important to note that the same principles regarding investment in fossil fuel companies apply to terms with ESG in their name, when used in relation to the environment. This has wider ramifications for marketing and communications regarding 'ESG' funds.
[38] Meaning any terms only derived from the base word 'sustainable', e.g. 'sustainably', 'sustainability', etc; ESMA Final Report on the Guidelines on funds names (EN) (europa.eu), para. 15, p. 55.
[39] The exclusions applicable to PABs are set out in Article 12(1) of the Commission Delegated Regulation (EU) 2020/1818 (the **CTB/PAB Delegated Regulation**). Note that funds using transition-, social-, and governance- related terms are required to apply the less restrictive exclusions applicable to Climate Transition Benchmarks, which are also set out in the CTB/PAB Delegated Regulation.
[40] It is not clear how 'invest meaningfully' will be interpreted by national authorities. ESMA's original draft guidelines included a threshold of 50% of sustainable investments, but this was dropped following feedback from stakeholders.

are developing new projects or capacity, or otherwise operating inconsistently with the Paris Agreement temperature goal, is not 'sustainable'.

38. We have not been able to assess the Target Funds' holdings precisely by reference to the revenue thresholds set out in the Guidelines.[41] However, Morningstar Sustainalytics recently analysed stock holding data for 2,500 EU funds with ESG or sustainability-related terms in their names and found that 1,600 funds (64%) were exposed to at least one stock potentially in breach of the PAB and Climate Transition Benchmark exclusion rules.[42] If these funds were to keep their names and divest from these stocks, Morningstar estimate it could lead to divestments of up to US$40 billion.[43]

39. The Guidelines set out guiding principles which are relevant to the AMF's interpretation of existing fair, clear and not misleading legal requirements. The Guidelines emphasise that these legal requirements are already in force, explaining that '*the obligation "not to mislead" with the name stems from broader obligations about behaving honestly and fairly*' in Article 14(1)(a) of the UCITS Directive and Article 4(1) of the Distribution Regulations (as referred to in paragraph 18 above).

40. The principles set out in the Guidelines should be understood by the AMF as reinforcing its ability to take action under the rules and powers at its disposal today. ESMA confirms that National Competent Authorities (**NCAs**) '*can rely on […] existing provisions in the EU regulatory framework that (1) generally tackle misleading information and (2) introduce specific sustainability-related requirements*'. AMF enforcement action should not wait until the ESMA Guidelines are fully in force: ESMA has exhorted NCAs to take action now, emphasising that '*As a type of misleading information, greenwashing can be captured by existing rules prohibiting misleading information, embedded in the EU consumer and investor protection framework*'.[44]

41. In this respect, we make the following observations. Firstly, should the AMF disagree that **any** fossil fuel expander, and **any** company listed on GOGEL and GCEL is an 'inconsistent holding', it would be open to the AMF to interpret existing EU and French legal requirements by reference to the ESMA Guidelines and the PAB exclusions. Although not every company listed on GOGEL and GCEL and held by the BlackRock funds breach the PAB exclusions, based on the revenue data included in GOGEL and GCEL, a majority of appear to.[45] The AMF could therefore take appropriate enforcement action now based on ESMA's methodology as an alternative to the methodology set out in this Complaint. The AMF would not be alone in taking regulatory action by reference to the ESMA Guidelines before they are technically in force.[46]

[41] This is for number of reasons including limitations on easily accessible public availability of detailed revenue breakdowns. The GCEL / GOGEL revenue data amalgamates revenue figures for oil and gas, and doesn't differentiate between them for these purposes. We have therefore been unable to carry out analysis based on the PAB oil and gas revenue thresholds. Other data providers frequently don't include all components of the coal / oil & gas value chain in their calculations and relying on companies' public disclosure doesn't always allow comparability. Urgewald, for example, states that '*Detailed financial information regarding a company's coal-related business activities is not always available*' (Methodology GCEL_2023_download.pdf (coalexit.org)).

[42] ESMA's Guidelines on ESG Fund Names | Morningstar.

[43] See: ESMA's Guidelines on ESG Fund Names | Morningstar.

[44] ESMA's Final Report on Greenwashing, para. 25, p. 10.

[45] Of about 3,400 companies listed on GCEL, 48 are shown as having coal revenues of 1% or under; of the 1,623 companies listed on GOGEL, approximately 131 companies are shown as having revenues from oil and/ or gas of under 50% (there are 575 companies for which the revenue data point isn't available). We are unable to identify from GOGEL which companies have revenues derived solely from oil or solely from gas, so this is a conservative estimate (because the higher PAB threshold of 50% for gas revenue is applied to some companies that also have over 10% revenue from oil.

[46] Note that the German financial regulator, BaFin, has confirmed publicly that it is already taking ESMA's Guidelines into account in relation to the authorisation of new funds. See: German regulator already taking ESMA naming rules into account for new funds (responsible-investor.com).

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42. Secondly, should the AMF reject the arguments put forward in this Complaint outright and decline to take appropriate enforcement action under existing rules and powers, it would be incumbent upon the AMF to take enforcement action against BlackRock as soon as the rules enter into force in France, on the same basis as described in the bullet above. The views and principles set out in the Guidelines are expected to have a dramatic effect on the EU investment funds market. In addition to the Morningstar Sustainalytics analysis referred to in paragraph 38 above, Clarity AI predict that 44% of funds using environmental and impact terms may need to change their name or divest assets to comply with the guidelines (because they hold assets which breach PAB exclusion criteria).[47]

2.4 AMF Position / Recommendation Doc-2020-03

43. The AMF's own guidance on information provided by investment funds incorporating 'non-financial approaches', including some criteria relating to the naming of funds, is provided in AMF Position / Recommendation Doc-2020-03 (**AMF 2020-03**). AMF 2020-03 explains that:

> *To ensure a good understanding of the diversity of the product offering and prevent* ***risks of greenwashing in particular for retail clients****, a key issue is the information provided to the investor to evaluate the proposed approach, and whether it is accurate, clear and not misleading.*[48] (bold text in original document)

44. AMF 2020-03 then specifies that:

> *In response to these risks, the information sent to investors regarding consideration of non-financial characteristics should be* ***proportionate*** *to the actual consideration of these factors. Accordingly, only the approaches that are significantly engaging will be able to present non-financial criteria as a* ***key aspect of product communication****, e.g. in their name. Approaches based on a non-significant commitment may also adopt a "limited communication" proven that they comply with specific minimum standards.*[49] (bold text in original document)

45. The rest of AMF 2020-03 sets out a series of principles and minimum criteria for the presentation of non-financial criteria as a key or limited part of product communication. For the purposes of this Complaint we note that '*non-financial characteristics are considered a key aspect of communication when they are presented […] in the name of the collective investment product*'.[50] Because they have 'sustainable' in their names, all of the funds targeted by this Complaint include non-financial characteristics as a key aspect of their communications to investors.

46. According to the AMF, funds with non-financial characteristics presented in their name must have a 'significantly engaging' approach which justifies the name. The minimum criteria applicable to such funds are set out in Position 2 of AMF 2020-03.[51] The approach must provide measurable objectives for the consideration of non-financial criteria, and the criteria must have a significant impact on the objectives identified, according to specific requirements set by the AMF in relation to 'ratings upgrade', 'selectivity', 'extra-financial indicator upgrade' and 'other' approaches. The AMF also specify that the non-financial analysis coverage rate must be higher than 90%.

[47] Clarity AI analysed 3,256 funds domiciled in the EU with environmental and impact terms in their names in English. See: Nearly half of the funds with environmental terms in their names may breach new EU regulations – Clarity AI.
[48] AMF Position - Recommendation DOC-2020-03 (amf-france.org), p.1.
[49] *Ibid.*
[50] *Ibid.* p.4.
[51] *Ibid.* p.6.

47. For the purposes of this Complaint, we note that these requirements constitute minimum criteria specified by the AMF for an investment fund to include references to 'sustainability' or 'non-financial aspects' in its name. However, these criteria do not (and cannot) constitute a guarantee that, if they are met, the fund's name and communications are fair, clear and not misleading within the overarching legal requirements detailed above. In other words, our understanding is that:

- meeting the minimum criteria may, in the view of the AMF, be necessary for a fund to use the term 'sustainable' in its name; but
- meeting the minimum criteria is not sufficient on its own for a fund to comply with the legal requirements for its communications to be fair, clear and not misleading.

48. It is therefore possible for a fund to both comply with the minimum requirements specified by the AMF and mislead its investors with unfair and unclear communications regarding its approach to non-financial characteristics (including in its name). In our view, this is the case for many of the Target Funds.

49. In addition, AMF 2020-03 Position 1 requires, on an overriding basis, that '*The information provided regarding the consideration of non-financial criteria must be **proportionate** to the objective and effective impact of the consideration of non-financial criteria in the management of collective investment products'.*[52] In practice, the proportionality requirement may still be failed by a fund that complies with the minimum criteria specified in AMF 2020-03.

50. In respect of the Target Funds, the fund name (as a key marketing tool) is subject to overriding legal requirements to be fair, clear and not misleading in accordance with EU and French law. As we explain in **Annex C**, 'sustainable' is a distinctive term and a distinct approach is required for funds which use the term in their names. The generalised approach toward ESG articulated in the Target Funds' marketing documents and prospectuses – including through ESG rating upgrades, ESG selectivity approaches, or ESG rating coverage – is insufficient to explain the inclusion of 'sustainable' in the name of these funds. It is also our view that, in the terms set out in AMF 2020-03, the use of 'sustainable' in the names of the Target Funds is disproportionate to their actual approaches to sustainability – both because of their inconsistent holdings and because of the broader point that their strategies do not justify the use of the term in their names.

51. We note further that the use of the disclaimer recommended by the AMF in Position 7 of AMF 2020-03 instead of meeting the AMF's minimum criteria (which is relevant to ten of the 16 Article 8 funds among the Target Funds) similarly does not remove the obligation to ensure communications and names are fair, clear and not misleading overall. In any event, as we explain below, its use by the Target Funds is inconsistent and confusing.

52. As noted at the conclusion of this Complaint, we urge the AMF to review the extent to which its current guidance permits funds named and marketed as 'sustainable' to maintain exposures to inconsistent holdings, which brings with it a high risk of misleading investors.

2.5 SFDR: 'do no significant harm' test

53. The SFDR requires investment funds which either: (i) promote environmental, social or governance characteristics (i.e. those classified as 'Article 8' under SFDR); or (ii) have a 'sustainable investment' objective (i.e. those classified as 'Article 9' under SFDR), to make specific additional

[52] *Ibid.* p.4.

sustainability disclosures on their websites, and in their pre-contractual and periodic reporting. Very broadly, these disclosures concern the manner in which the fund intends to meet its sustainability objectives,[53] and whether and how the 'principal adverse impacts of investment decisions on sustainability factors'[54] are taken into account by the fund.

54. All of the BlackRock funds covered by this Complaint are classified as either Article 8 or Article 9 for the purposes of SFDR. As such, they all include SFDR disclosures on their website landing pages and in other pre-contractual documents. Article 10(1) of SFDR requires SFDR website disclosures to be '*fair, clear and not misleading*'.

55. The 'do no significant harm' (**DNSH**) test within the definition of 'Sustainable Investment' provided in Article 2(17) of SFDR is relevant to this Complaint insofar as it is, in our view, breached by the two Article 9 funds covered in the Complaint. The basis for this is explained below.

56. In pre-contractual and website disclosures, Article 9 funds[55] are required to include an explanation of how their investments do not cause significant harm to any environmental or social sustainable investment objective, including how the principal adverse impact (**PAI**) indicators for sustainability factors have been taken into account.[56]

57. DNSH is explicitly a '*precautionary principle*'.[57] For reasons explained in **Annex C**, it is difficult to see how an investment in a fossil fuel expander could ever meet the DNSH test to be considered a 'Sustainable Investment' for the purposes of SFDR – continued fossil fuel expansion is incompatible with a sustainable and safe climate and jeopardises any number of interconnected sustainable investment objectives.

58. The ESAs have confirmed that '*the use of PAI indicators is mandatory to demonstrate that an investment qualifies as a sustainable investment. The PAI indicators to be used are the ones in Table 1 of Annex 1 and any relevant indicators in Tables 2 and 3 of Annex I [of Commission Delegated Regulation (EU) 2022/1288 (**CDR**)]*'.[58]

59. Table 1 of CDR sets out a list of PAI indicators that must be considered on a mandatory basis. These indicators include:

- Scope 1-3 greenhouse gas emissions;
- GHG intensity of investee companies;
- Exposure to companies active in the fossil fuel sector;

and various other indicators relevant to fossil fuel investment.[59]

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[53] See Articles 8 and 9 of SFDR.
[54] See Article 4(1)(a) and Article 7 of SFDR.
[55] And those Article 8 funds that commit to make a certain number of 'Sustainable Investments'.
[56] See Article 39, CDR.
[57] See Recital 17 of SFDR.
[58] See question 22 and the table on p.25 of JC 2023 18 - Consolidated JC SFDR Q&As (europa.eu). See also para. 15 of ESMA30-379-2281 'Do No Significant Harm' definitions and criteria across the EU Sustainable Finance framework (europa.eu). Note that this process and disclosure is distinct from the requirement under SFDR for entities to disclose how they consider PAIs at entity and product level on a comply or explain basis. See paras. 17 & 18 of ESMA30-379-2281 'Do No Significant Harm' definitions and criteria across the EU Sustainable Finance framework (europa.eu).
[59] Scope 1-3 GHG emissions; Carbon footprint; GHG intensity of investee companies; share of investments active in the fossil fuel sector; share of non-renewable energy consumption and non-renewable energy production of investee companies from non-renewable energy sources compared to renewable energy sources, expressed as a percentage of total energy sources; energy consumption in GWh per million EUR of revenue of investee companies, per high impact climate sector.

60. In this respect, the ESAs associate risk of failure to qualify as a ‘sustainable investment’ with greenhouse gas emissions and fossil fuel sector exposure. It is mandatory that greenhouse gas emissions and exposure to fossil fuels are taken into account when demonstrating the DNSH test is met for the purposes of the definition of ‘sustainable investments’. Knowing that fossil fuel expansion is incompatible with a safe climate and undermines sustainability, the implication must, in our view, be that companies engaged in fossil fuel expansion, or otherwise operating inconsistently with the Paris Agreement goals, cannot pass the DNSH test to be considered ‘Sustainable Investments’.

61. Whilst noting that ‘*the SFDR imposes no limitation or formal exclusion on investments [in fossil fuel energies]*’, the AMF has also stated that market participants must disclose and analyse ‘*the Principle Adverse Impacts that the firm could generate, such as the proportion of exposure to fossil energies*’.[60]

62. As we explain in our detailed analysis at Sections 3.1.5 and 3.2.4, the disclosures for the two Article 9 funds do not provide any explanation for the funds’ holdings in the fossil fuel sector. In this respect, therefore, both Article 9 funds (i) are in breach of their ‘sustainable investment’ objective under SFDR because the inconsistent holdings do not meet DNSH requirements and cannot be ‘Sustainable Investments’; and / or (ii) fail to explain or demonstrate how investments in the inconsistent holdings meet DNSH requirements and therefore do not meet SFDR disclosure requirements.

63. SFDR requirements appear to be poorly understood in the market, and it is the case that Article 9 funds often contain investments in fossil fuel expanders. This creates a well-recognised risk of greenwashing. For example, in their 2023 consultation on reform of the regulatory technical standards contained in the CDR, the ESAs recognised that market participant discretion on the application of the DNSH test ‘*may undermine the comparability of financial products and could lead to greenwashing of “sustainable investments” in SFDR*’.[61] They also noted that ‘*Additional transparency alone is not expected to prevent the risk that the DNSH test is applied by FMPs in a way that is not considered to prevent harmful investments being considered sustainable*’.[62]

64. The AMF appears to share these views. According to its Position Paper dated February 2023:

> *SFDR and the current “Article 9” and “Article 8” classification does not help appreciating the extent to which financial products and their investments are sustainable. In that respect, the notion of “sustainable investment” set out in Article 2(17) of SFDR is worded in vague terms, and its implementation by financial actors has resulted in very different understandings of what sustainability is. Thus, it appears that SFDR has (i) created a gap between the reasonable expectations expressed by investors and the reality of the practices and (ii) fuelled the greenwashing.*[63]

65. The AMF urged the European Commission to introduce minimum criteria that financial products should meet to be categorised Article 9 or Article 8 under SFDR including that, ‘*Art.9 products should exclude investments in fossil fuel sector activities that are not aligned with the EU*

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[60] Etude SFDR_Publication_EN_1.pdf (amf-france.org); Original version of the document in French available here.
[61] Para. 43, p. 19 of JC 2023 09 Joint Consultation Paper on the Review of SFDR Delegated Regulation regarding PAI and financial product disclosures (europa.eu).
[62] See p. 154 of JC 2023 09 Joint Consultation Paper on the Review of SFDR Delegated Regulation regarding PAI and financial product disclosures (europa.eu).
[63] Position paper ‘Proposal for minimum environmental standards for financial products belonging to the Art. 9 and 8 categories of SFDR’, Original version of the document in French available here.

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Taxonomy. As regards Art.8 products, investments in such activities are possible provided strict conditions are met that guarantee that such activities are committed to an orderly transition'.

66. While sharing AMF's concerns with Article 8 and Article 9 classifications, ClientEarth submits that a stricter interpretation of SFDR rules is already possible, with no need of regulatory change.

3. Breaches

67. As we outline in paragraph 10, each of the Target Funds' inconsistent holdings is incompatible with its 'sustainable' name giving rise to multiple breaches of clear, fair and not misleading requirements under the UCITS Directive, the Distribution Regulations, MiFID, SFDR, PRIIPs, FMFC and the AMF General Regulation. In addition to these breaches, six of the funds appear to be in breach of their own exclusions; the two Article 9 funds also appear to be in breach of their 'Sustainable Investment' thresholds as well breaching additional SFDR obligations and / or disclosure requirements.

68. This Section firstly summarises the infringements relating to each of the Article 9 Target Funds. It then addresses the infringements relating to the Article 8 Target Funds as a class, many of which are common to all of the Article 8 Target Funds covered in the Complaint. **Annex C** sets out the key features and data for each of the Article 8 Target Funds.

3.1 BGF Sustainable Global Infrastructure Fund (LU2346227817)

69. The BGF Sustainable Global Infrastructure Fund (the **Sustainable Infrastructure Fund** or **BSIF**) is a thematic, actively managed Article 9 fund with approximately US$12,065,160 AUM.[64] It is a sub-fund of BlackRock Global Funds, an open-ended investment company established and domiciled in Luxembourg. The fund invests at least 80% of its AUM into equities in companies globally '*with the majority of their economic activities in the infrastructure sector and consistent with the United Nations Sustainable Development Goals*'.[65]

70. In this section, we make the following arguments:

    a. **BSFI Breach 1: inconsistent holdings**. A material proportion of the Sustainable Infrastructure Fund's investments are inconsistent with its name. At least 26.7% of the fund comprises inconsistent holdings. The majority of these companies (17.6% AUM) are fossil fuel expanders. Analysis of the fund's inconsistent holdings is set out at paragraphs 81 to 86 below. Our methodology for identifying fund inconsistent holdings is set out at **Annex B**.

    a. **BSIF Breach 2: breach of exclusions**. The Sustainable Infrastructure Fund appears to be in breach of its exclusion of issuers involved in thermal coal by investing at least 10.7% of AUM across four different companies which extract, or generate power using, thermal coal (see paragraphs 87 to 97 below).

    b. **BSIF Breach 3: misleading communications**. The fund does not explain in the marketing communications, KID, prospectus, SFDR disclosures or elsewhere that, notwithstanding its name, investment objectives and Article 9 classification, it will invest a material proportion of

[64] Where we refer to 'AUM' in reference to any of the Target Funds, this means the total value of holdings identified on the Morningstar Data Services as at 17 July 2024. See Annex B for more detail on our methodology.
[65] BGF Sustainable Global Infrastructure Fund|

AUM in fossil fuel companies. These communications are partial, unclear, inaccurate and misleading as explained at paragraphs 99 to 106 below. The fund's investment objectives, including reference to the UN Sustainable Development Goals (**UN SDG**) in the Sustainable Infrastructure Fund's investment objectives and SFDR disclosures, are insufficient to substantiate the use of the term 'sustainable' in the fund name; the reference to UN SDGs is unclear, and exacerbates the misleading effect of the fund's name, as explained in paragraphs 107 to 111 below.

c. **BSIF Breach 4: breach of DNSH and SFDR disclosure requirements**. The fund: (i) appears to be in breach of its own 'sustainable investment' objective under SFDR because the inconsistent holdings do not meet DNSH requirements; and / or (ii) fails to explain or demonstrate how investments in the inconsistent holdings meet DNSH requirements and therefore does not meet SFDR disclosure requirements. These failings are discussed at paragraphs 118 to 125 below.

71. We summarise below the key features of the fund's documentation; we then move on to provide more detail on each of the above issues.

3.1.1 Key features

Investment objectives

72. The Sustainable Infrastructure Fund's investment objectives (specifically elements highlighted in bold below) explain that the fund's portfolio of investments shall be determined by reference to the (i) objectives of the UN SDGs; and (ii) principles of ESG focused investing. There is no explicit reference made in the investment objective to 'sustainability', other than through references to the UN SDGs.

73. The investment objectives, as set out in the fund's Technical Sheet, are as follows (emphasis added):[66]

> *The Fund aims to achieve a return on your investment, combining capital growth and income from the Fund's assets* ***in a manner consistent with the principles of environmental, social and governance (ESG) investing****.*
>
> *The Fund invests at least 80% of its total assets in the equity securities of companies globally whose predominant economic activity is in the infrastructure sector and* ***are aligned with the objectives of the UN Sustainable Development Goals (UNSDG)****. Companies located in developed markets around the world will be given preference and the Fund will also be able to invest in emerging markets.*
>
> *Under normal market conditions, the Fund will invest in a relatively concentrated portfolio of equity securities of companies across a broad range of infrastructure sub-sectors. Companies are rated by the Sub-Investment Manager based on their ability to manage the* ***risks and opportunities associated with the infrastructure theme and their environmental, social and governance (ESG) risks and opportunities****, such as their governance framework, which is considered essential to sustainable growth, their ability to* ***strategically manage long-term ESG issues*** *and the possible impact on a company's finances. The assessment of the level of involvement in each activity may be based on a percentage of income, a defined threshold of*

[66] bgf-sustainable-global-infrastructure-fund-factsheet.

total income or any connection with a restricted activity, regardless of the amount of income received.

74. In addition to the objectives listed on the Technical Sheet, the KID specifies that (emphasis added):[67]

The Fund will ***take into account environmental, social and governance criteria when selecting investments****, as set out in the prospectus.*

75. The prospectus additionally explains that '*The Fund will apply a custom ESG screen which incorporates multiple components*'. The description that follows includes several features which are also disclosed in the Fund's SFDR disclosures (see below), including the Exclusionary Screens (as defined below). In addition, the prospectus explains that BlackRock applies a proprietary ESG scoring methodology to the Fund's investments, and states: '*As part of the climate objective of the Fund, the Investment Adviser seeks to invest in companies that enhance the energy transition in line with objectives SDG 7 (Affordable and Clean Energy) and SDG 13 (Climate Action)*'.[68]

SFDR disclosures

76. In summary, the Sustainable Energy Fund's Article 10 SFDR disclosures state that the fund will: (i) invest in 'sustainable investments' that promote the UN SDGs (including those relevant to climate change mitigation); and (ii) specifically limit or exclude investments in companies involved in the particularly damaging activity of power generation from coal or tar sands.[69]

77. The disclosures set out the binding elements of the fund's investment strategy, as follows (emphasis added):

1. Maintain that ***all of the Fund's investments will be Sustainable Investments (save for instruments used for the purposes of liquidity management and / or hedging, which will not exceed 20% of the Fund's total assets)****. In relation to such Sustainable Investments, at least 15% of the Fund's total assets will be invested in Sustainable Investments with environmental objectives that are not aligned with the EU Taxonomy, and at least 1% of the Fund's total assets will be invested in Sustainable Investments with a social objective.*

2. Apply the ***exclusionary screens****.*

3. Maintain that the investment strategy reduces the investment universe of the Fund by at least 20%.

4. Ensure that ***more than 90% of the issuers of securities in which the Fund invests (excluding money market funds) shall be ESG rated or have been analysed for ESG purposes****.* (Section D)

78. The 'exclusionary screens' applied by the fund (the **Exclusionary Screens**) are explained in the SFDR disclosures as follows:

The Fund ***will apply*** *a custom ESG screen which incorporates multiple components. First, a screen is used to* ***limit or exclude direct investment (as applicable) in corporate issuers which, in the opinion of the Investment Adviser:*** *[…]* ***are deemed to have failed to comply***

[67] BGF Sustainable Global Infrastructure Fund.

[68] BlackRock Global Funds Prospectus 23 February March 2024, p. 124; French document: BlackRock Global Funds Prospectus 23 February March 2024, p.148.

[69] BGF Sustainable Global Infrastructure Fund

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with one or more of the ten United Nation Global Compact Principles ("UNGC"), which cover *human rights, labour standards,* ***the environment*** *and anti-corruption.* ***The Investment Adviser also intends to limit direct investment in securities of issuers involved in the extraction of, or the generation of power using, thermal coal or tar sands (also known as oil sands).*** *The Investment Adviser may invest in the securities of issuers with higher levels of revenue from these activities if the issuer has committed to a net zero transition plan* (Section C).

79. The SFDR disclosures also specify that '*the Fund focuses on infrastructure investments serving the needs of societies and economies*' and state that the fund will focus on infrastructure investments that '*contribute to the advancement of*' at least one of six UN SDGs including SDG 7 (Affordable & Clean Energy) and SDG 13 (Climate Action) (see Section D).

80. Finally, the 'Engagement Policies' section of the SFDR disclosures state that, although BlackRock does engage with companies at '*multiple levels*' within BlackRock, '*The Fund does not use engagement as a means of meeting its binding commitments to environmental or social characteristics or sustainable investment objectives*' (Section K).

3.1.2 BSFI Breach 1: the fund's inconsistent holdings

81. As shown in the table below, at least 26.7% of the Sustainable Infrastructure Fund's AUM is invested in inconsistent holdings in coal, oil and gas companies operating incompatibly with the Paris Agreement goals and a safe climate.[70] Most of this investment (17.6% AUM) is in fossil fuel expanders. For all of the reasons explained in **Annex C** and explored below, these investments are fundamentally inconsistent with use of the term 'sustainable' and are significantly out of step with the impression of sustainability given by the fund name.

BGF Sustainable Global Infrastructure Fund				
	*Investment in coal companies (GCEL companies) (US$)**	*Investment in oil & gas companies (GOGEL companies)**	*Total investment in fossil fuel companies (GOGEL and GCEL companies)*	*Investment in fossil fuel expanders*
Investment exposure	US$2m	US$2.1m	US$3.2m	US$2.1M
Percentage of AUM	16.6%	17.6%	26.7%	17.6%

* *Note: there is overlap between GCEL and GOGEL companies because some companies are involved in coal* ***and*** *oil & gas.*

82. The fund's inconsistent holdings are set out in more detail below:

BGF Sustainable Global Infrastructure Fund		
Name of company	*Investment (US$)*	*Percentage AUM*
[redacted].	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
CSX Corp.	[redacted]	[redacted]
Enel SpA	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[70] All holdings data is as at 17 July 2024. For details of how these figures were collected and calculated, see Annex B.

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Portland General Electric Co.	■■■	■■
SSE plc.	■■■	■■
XCEL Energy Inc.	■■■	■■
Total	**3,220,138**	**26.7%**

83. Each of these inconsistent holdings is included on the Financial Exclusions Tracker, an independent list maintained by a coalition of NGOs of companies which have been publicly excluded by financial institutions together with the reasons for their exclusion (ranging from human rights violations to climate impact).[71] ■■

84. The fund has material holdings (at least 10.7% AUM) in companies ■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■■ generate significant proportions of revenue from the extraction of, or the generation of power from, thermal coal. Not only are these holdings in breach of the fund's own exclusions (see below), but they represent 10.7% of the fund's AUM which is invested in the most polluting industry in the world. Coal is the most polluting means of producing energy, releasing more GHG emissions than oil or gas. It also produces toxic elements, including mercury and arsenic, and particles of soot which contribute to air pollution.

85. The inconsistent holdings cannot be explained by an engagement strategy because the fund's disclosures state explicitly that engagement is not used as a means of achieving the fund's sustainable investment objectives.

86. The inconsistency of these holdings with the fund's 'sustainable' name mean that the name is misleading to investors, and in breach of the clear, fair and not misleading requirements under the UCITS Directive, the Distribution Regulations, MiFID, FMFC and the AMF General Regulation.

3.1.3 BSIF Breach 2: breach of own exclusions

87. As set out in the SFDR disclosures and the prospectus, the Investment Adviser to the fund 'intends', through the application of the Exclusionary Screens, to '*limit direct investment in securities of issuers **involved in** the extraction of, or the generation of power using, thermal coal […]*' (see paragraph 78 above).

88. The presentation of the Exclusionary Screens in the fund's disclosures creates a strong expectation that the fund will exclude thermal coal companies through the use of imperatives (emphasis added):

- The SFDR disclosures and prospectus state that '*The Fund **will apply** a custom ESG screen*';

[71] Financial Exclusions tracker

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- It is a **binding element** of the investment strategy, included within the SFDR disclosures, for the fund to '***Apply** the exclusionary screens*'; and
- The statement that the Investment Adviser '***intends** to limit direct investment in securities of issuers involved in the extraction of, or the generation of power using, thermal coal*' is presented as part of the binding exclusionary screens.

89. Overall, this presentation suggests a binding exclusionary policy in relation to issuers involved in the extraction of, or the generation of power using, thermal coal.

90. The fund invests in at least four different issuers which, to varying but material extents, generate revenue by the extraction of, or the generation of power using, thermal coal (the **thermal coal issuers**). Investments in the thermal coal issuers amount to a significant portion of the fund's AUM: 10.7% (over US$1.3M).

91. These issuers, the value of their holdings, and the revenue derived by each from thermal coal are as follows:

BGF Sustainable Global Infrastructure Fund			
Thermal coal issuer	*Value of investment (US$)*	*Percentage of overall AUM*	*Issuer's thermal coal share of revenue*
[redacted]	[redacted]	[redacted]	18%
[redacted]	[redacted]	[redacted]	19%
Portland General Electric Co.	[redacted]	[redacted]	8%
XCEL Energy Inc.	[redacted]	[redacted]	18%
Total	**1,300,637**	**10.7%**	N/A

92. The exclusions of investment into issuers involved in the extraction of, or generation of power using, thermal coal appear, therefore, to be breached by these investments. This reading of the Exclusionary Screens is consistent with comments in the recitals to the CDR, which suggest that only genuine (rather than caveated or compromised) exclusions should be presented in the SFDR disclosures:

> *To prevent mis-selling and greenwashing, and to provide end investors with a better understanding of the effects of the exclusion strategies applied by certain financial products, financial market participants should confirm any commitment in terms of excluded investments, in particular as binding elements of the investments strategy, in information on asset allocation and in the information on sustainability indicators.*[72]

[72] Commission Delegated Regulation (EU) 2022/1288, at recital 16.

93. Even if the AMF's view is that the Exclusionary Screens comprise a less stringent obligation, it should be apparent that the expectation that such investments are limited is breached in any event. Investments in the thermal coal issuers amount to 10.7% of the fund's AUM, which are made across four different issuers. This is a material proportion of the AUM and represents a failure to limit (in any meaningful sense) the fund's investment in thermal coal.

94. The breach by the fund of its own exclusions constitutes a breach of clear, fair, accurate and not misleading requirements and, by virtue of the exclusions being included in the fund's SFDR disclosures as part of the its binding investment strategy, renders the SFDR disclosures misleading in breach of Article 10 of SFDR.

95. We note that the description of the Exclusionary Screens in the SFDR disclosures and the prospectus states that '*The Investment Adviser may invest in the securities of issuers with higher levels of revenue from these activities if the issuer has committed to a net zero transition plan*'. However any attempt to introduce a caveat to the Exclusionary Screens fails to mitigate the harm caused by these apparent breaches. This caveat is not set out in either the Technical Sheet or the KID, the documents on which investors are most likely to base their investment decisions. By reference to these documents, therefore, consumers are likely to expect the Exclusionary Screens to apply without qualification.

96. In any event, the qualification is flawed and unclear; amongst other issues:

- the basis on which this commitment will be assessed (including what BlackRock considers to be a credible net zero transition plan) is not explained, nor why each of the thermal coal issuers has been included in the fund in apparent breach of the headline exclusion.
- it is not obvious that each of the thermal coal issuers has a comprehensive transition plan in place, or how BlackRock might have assessed these companies. For example, while all of the thermal coal issuers listed above appear to have set a coal exit date, Alliant Energy Corporation is not planning to exit coal until 2040, a full 10 years later than the exit date for developed countries deemed by the IEA to be compatible with limiting warming to 1.5°C.[73] Moreover, Alliant's coal exit plans appear to rely to an extent on the conversion of coal power stations to natural gas[74], which does not represent a credible approach to phasing out coal in line with the 1.5°C goal.[75]

97. At best, therefore, this caveat provides only a partial explanation to the misleading presentation of the Exclusionary Screens and does not justify the inclusion the thermal coal companies in the fund. Absent further disclosures, the inclusion of these inconsistent holdings – including exposure to the most polluting industry in the world by a 'sustainable' fund is unfair, inaccurate, unclear and misleading to customers, as well as putting the fund in breach of its own exclusions.

3.1.4 BSIF Breach 3: misleading communications

98. In this section, we make the following points in relation to the Sustainable Infrastructure Fund's investment objectives, strategy and communications:

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[73] See p.12 of Alliant Energy - Annual Report and Alliant Energy - Alliant Energy Responsibility Report | Clean Energy Vision and Goals.
[74] Alliant Energy - Alliant Energy takes next step in the company's energy transition.
[75] See point 5 of Transition plans | Global Coal Exit List. According to the IEA, gas-fired power needs to be effectively phased out (to below 5% of electricity generation) by 2040. See the table on p.92 of Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach - 2023 Update (iea.blob.core.windows.net).

- The fund's communications are misleading by omission: they do not provide any explanation for its investment into inconsistent holdings, obscuring the true sustainability profile of the fund;
- The fund's approach of considering ESG risks and opportunities and by reference to the UN SDGs are insufficient to substantiate the use of the term 'sustainable' in the fund's name; and
- The overall impression created by the fund's communications is misleading.

These points are considered in turn below.

No explanation for the inconsistent holdings

99. No explanation for the Sustainable Infrastructure Fund's inconsistent holdings – comprising over 26% of the fund's AUM, including 17.6% of AUM in fossil fuel expanders and 10.7% of AUM in thermal coal – is provided in the funds' regulatory or marketing documentation or elsewhere. In this respect, the fund's communications are inaccurate, unclear and misleading by omission. The fund therefore erodes customers' '*good understanding*'[76] of the product because the 'sustainable' name obscures the real nature of the fund, which includes investing in fossil fuel companies and, by doing so, supporting the development and increase of fossil fuel production and capacity worldwide.

100. The fund's only allusion to 'sustainable' criteria in its investment objectives is by reference to the UN SDGs (which we refer to in more detail below). Otherwise, the majority of the references in the investment objectives and strategy to any kind of 'sustainability' criteria relate to the Fund's approach to ESG risks and opportunities. These references include:

    - investing *'in a manner consistent with the principles of ESG investing*' (Technical Sheet) and taking ESG criteria into account when selecting investments (KID); and
    - rating investments based on their ability to take ESG risks and opportunities into account (Technical Sheet), including the commitment in the binding elements of the investment strategy that 90% of issuers are ESG rated or analysed (SFDR disclosures, Section D).

101. These elements of the investment objectives and strategy appear to describe a 'tilt' in portfolio allocations towards issuers deemed to be well prepared to manage ESG risks and opportunities, rather than considering an undertaking's positive or negative impact on people or the environment.[77] BlackRock explicitly links this approach to the possible impact of ESG factors on the company's finances. The example given is the investee company's governance framework, which Blackrock considers to be '*essential to sustainable growth*'.[78] According to the SFDR disclosures (Section D), this process reduces the Fund's investable universe by 20%.

102. There is widespread recognition that this type of 'ESG integration' and exclusionary screening based on ESG assessment (motivated by protecting the financial position of investee companies)

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[76] AMF Position - Recommendation DOC-2020-03 (amf-france.org), p. 1.

[77] The widespread confusion, in ESG ratings and investments, between: (A) risks *posed to* a company by ESG factors; and (B) the positive or negative of the company *on* ESG factors, is very well documented. See, for example: What is ESG Investing? MSCI Ratings Focus on Corporate Bottom Line (bloomberg.com). In the context of the CSRD, the European Commission has attempted to remedy this confusion by adopting a 'double materiality' approach to corporate sustainability disclosures. This involves carefully distinguishing 'impact materiality' (an undertaking's positive or negative impact on people or the environment) from 'financial materiality' (sustainability matters that could reasonably be expected to trigger material financial effects on the undertaking). See paras. 3.3 to 3.5 of ESRD 1, available at: ESRS Set 1 (efrag.org).

[78] Technical Sheet, third bullet, p. 1.

is different from 'sustainable investing' with specific sustainability outcomes in mind.[79] As such, this aspect of the investment approach is fundamentally inadequate to justify the use of the term 'sustainable' in the Fund's name, particularly insofar as it does not result in the exclusion of companies demonstrably operating incompatibly with sustainability in relation to climate change.

103. In addition, the Sustainable Infrastructure Fund's inconsistent holdings make it difficult to see how these approaches can have been properly or consistently applied:

- Exposure to these holdings – including material holdings in the most polluting industry in the world – may suggest, for example, that non-financial analysis coverage has not been consistently applied to 90% or more of the fund's holdings; and
- The fund's inconsistent holdings are incompatible with its claim to invest in a manner '*consistent with the principles of ESG investing*'.

The fund's claims to apply these approaches may therefore be unclear and misleading in addition to the misleading effect of its name. These criteria are either not met in practice by the Sustainable Infrastructure Fund or are applied so loosely as to be meaningless.

AMF 2020-03

104. To the extent that the Sustainable Infrastructure Fund may incorporate elements of the minimum criteria specified by AMF 2020-03 for presenting extra-financial details as a key element of product communications, we refer our analysis at paragraphs 43 to 50 above.

105. The inclusion of certain minimum criteria as suggested by AMF 2020-03 and their potentially flawed application by BlackRock does not negate the overriding legal obligation that the Sustainable Infrastructure Fund's name and marketing is fair, clear and not misleading to retail investors.

106. In the terms set out in AMF 2020-03, the use of 'sustainable' in the name of the Sustainable Infrastructure Fund is disproportionate to its actual approach toward being 'sustainable' – both because of its inconsistent holdings and because of the broader point that its strategies do not justify the use of the term in its name. Through the misleading inclusion of 'sustainable' in its name, the fund fails to meet legal standards.

References to the UN SDGs are insufficient and unclear

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[79] See, for example, the distinctions drawn in the UK Investment Association's Responsible Investment Framework: 20191118-iaresponsibleinvestmentframeworkglossary.pdf (theia.org). The IA defines sustainability investing as '*Investment approaches that select and include investments on the basis of their fulfilling certain sustainability criteria and/or delivering on specific and measurable sustainability outcome(s)*' and identify three types: sustainability themed investing, best in class and positive tilt. The UK Sustainable Investment and Finance Association defines 'ESG Integration/Responsible Investment' as '*The inclusion of environmental, social and governance factors into financial analysis as a means to assess and reduce financial risk'* and 'Sustainability Themed Investing' as '*Investment in themes or assets intentionally supportive of sustainability goals such as the Sustainable Development Goals (for example clean energy, water, gender balance or sustainable agriculture)'.* See Sustainable Investing Strategies – UKSIF. In summarising different investment approaches, JP Morgan state '*ESG integration is not a sustainable investment approach in itself, but instead a component of many traditional investment strategies. The term refers to the systematic assessment of financially material ESG factors that can affect a company's bottom line in the investment analysis and decision-making process'.* See What are the different approaches to sustainable investing? | J.P. Morgan Asset Management (jpmorgan.com). Eurosif acknowledges the problems arising from the equation of ESG considerations with addressing 'sustainability': '*We are seeing regularly confusion in the market whereby ESG considerations or ratings are automatically equated with a clear and evident contribution toward addressing sustainability issues. For instance, quite a few investment products use ESG ratings focussing on risks as a core element of the integration of ESG factors into their investment process, while claiming to be aimed at contributing towards achieving certain sustainability objectives. However, in most case this causality between ESG risks considerations and real-world impacts is hard to substantiate*', 'Eurosif response to the EU Commission's consultation on the functioning of the ESG ratings market in the EU', p. 3.

107. The only substantive reference to 'sustainable' in the fund's investment objectives and strategy is through the use of the full title of the UN SDGs, suggesting that being 'sustainable' is not at the heart of the fund's investment approach. The use of 'sustainable' in the fund's name is not substantiated by references to the UN SDGs.

108. The reference to alignment with the objectives of the UN SDGs (see paragraph 73 above) is high-level and vague, and does not explain what this commitment means in practice for the fund's investments. Slightly more detail is provided in the SFDR Disclosures (Section D), which state that the fund will focus on infrastructure investments that '*contribute to the advancement of*' at least one of six UN SDGs including SDG 7 (Affordable & Clean Energy) and SDG 13 (Climate Action), but it remains unclear how this contribution is assessed and how it affects the Fund's portfolio allocations. As a result, these commitments cannot represent a fair and clear explanation of the basis on which the Fund is sustainable.

109. ESMA criticises investment strategies which rely on vague references to the UN SDGs, stating that '*selective disclosure of the positive alignment of an entity or of a product to the SDGs*' is one of the most frequent situations in which selective disclosure or 'cherry-picking' leads to greenwashing.[80] This is because '*claims [of contributions to the UN SDGs] appear difficult to assess when no clear logical framework is disclosed to help understand how a company or a project's specific outputs translate into an outcome and contributes to progress towards any specific SDG globally, or even whether the actions of the company are genuinely relevant regarding the selected SDG'*.[81] ESMA gives specific examples of poor disclosures within a discussion of high-risk greenwashing areas for investment managers which are very similar to those made by the Fund: '"*The fund aims at contributing to [one / more sustainable objectives]", "The fund can contribute to the following SDG's: [a number of SDGs listed]*"'. ESMA states that this wording represents a lack of commitment and specificity regarding the sustainability objectives of the fund.[82] ESMA's analysis confirms that references to the UN SDGs such as those made by the fund are too generalised and insufficiently clear to explain an investment approach.

110. In addition, the fund's inconsistent holdings in fossil fuel expanders directly contradicts its claim to '*contribute to the advancement*' of SDG 13 (Climate Action) and the related statement in the prospectus that '*as part of the climate objective of the Fund, the Investment Adviser seeks to invest in companies that enhance the energy transition in line with objectives SDG 7 (Affordable and Clean Energy) and SDG 13 (Climate Action)'*.[83]

111. These elements of the investment objectives and investment strategy are unclear and misleading. They give the impression of setting an objective standard for sustainable investment decision-making by the fund without explaining the means by which contribution to the SDGs is defined, assessed and taken into account – a pattern which has been identified by ESMA as high-risk greenwashing.

The overall impression of the fund is misleading

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[80] ESMA30-1668416927-2498 Progress Report on Greenwashing (europa.eu), para. 50 on p.24. Note that in a subsequent study, ESMA found that SDG funds do not significantly differ from their non-SDG peers in terms of their portfolios' alignment with the UN SDGs, and highlighted the risk that investors are misled as a result: ESMA50-524821-3098 TRV article - Impact investing – Do SDG funds fulfil their promises? (europa.eu).
[81] *Ibid.*, para.76 on p.34.
[82] *Ibid.* para.103 on p.43.
[83] BlackRock Global Funds Prospectus March 2024, p.124; French document; BlackRock Global Funds Prospectus March 2024, p. 148.

112. The incongruity between the Sustainable Infrastructure's Fund's name and its inconsistent holdings is not adequately explained in the Technical Sheet, KID, SFDR disclosures or elsewhere. In that sense, the references to ESG and alignment with the UN SDGs (though insufficient to substantiate the use of 'sustainable' in the fund's name for the reasons given above) contribute to an overall impression that the fund is in some way 'sustainable'. In other words, taken together with the fund's name, the various investment objectives and disclosures operate as half-truths which create an '*insufficiency of information that permits an ordinary or reasonable member of the class of persons to whom the conduct is directed to draw a reasonably open but erroneous conclusion*'[84] – i.e. that the fund will not invest in companies that are demonstrably unsustainable. Doing this without explaining that nothing about the Sustainable Infrastructure Fund's strategy or approach precludes investment in fossil fuel expanders (which account for 17.6% of the fund's AUM), in thermal coal (accounting for 10.7% of AUM) and other fossil fuel companies operating incompatibly with a safe climate (which bring the total to 26.7% of AUM), is inaccurate and misleading.

113. As such, the fund's name and the description of the investment objectives and investment strategy given in the Technical Sheet, KID, SFDR disclosures and on the Fund's website are unclear, inaccurate, unfair and misleading.

3.1.5 BSIF Breach 4: breach of DNSH and SFDR disclosure requirements

114. In this section we explain, taking each point in turn, how the Sustainable Infrastructure Fund breaches multiple SFDR requirements, insofar as it:

- appears to be in breach of its 'sustainable investment' objective under SFDR because the inconsistent holdings do not meet DNSH requirements; and / or
- fails to explain or demonstrate how investments in the inconsistent holdings meet DNSH requirements and therefore do not meet SFDR disclosure requirements; and / or
- breaches its own Exclusionary Screens as set out in its SFDR disclosures.

Sustainable Investment threshold

115. The binding elements of the fund's investment strategy included in the SFDR disclosures (which are set out above) include the requirement to '*Maintain that **all** of the Fund's investments will be Sustainable Investments (save for instruments used for the purposes of liquidity management and / or hedging, which will not exceed 20% of the Fund's total assets)'* (Section D).

116. The natural consequence of this binding commitment is that every investment made by the fund must be **either**: (a) a Sustainable Investment (as defined by BlackRock and the SFDR); **or** (b) an investment made for the purposes of liquidity management or hedging. Elsewhere in the SFDR disclosures, BlackRock states that '*the Fund may invest up to 20% of its total assets in other investments*' (Section E). To the extent this implies a more permissive rule about what the fund may invest in, it is inconsistent with the binding elements of the investment strategy and, as such, misleading.

117. There is no suggestion that the fund's investments in fossil fuel expanders (17.6% AUM) or other inconsistent holdings (26.7% total) are held for the purposes of liquidity or hedging. In

[84] This language is taken from the recent Australian Federal Court judgment in *ASIC v Vanguard Investments Australia* [2024] FXA 308, in which the Court found that Vanguard had engaged in misleading conduct by making inaccurate statements about the screening of portfolio companies against ESG criteria. See 24-061MR ASIC v Vanguard, para. 23.

consequence, unless they can be considered ‘Sustainable Investments’ as defined in the SFDR (and to a lesser extent by BlackRock), this binding element of the investment strategy is breached and/ or is inaccurate and misleading. As explained below, fossil fuel expanders (at the very least) cannot be considered ‘Sustainable Investments’.

Breach of SFDR requirements

118. BlackRock defines ‘Sustainable Investments’ as:

> *Investments in issuers or securities that contribute to an environmental or social objective, do not significantly harm any of those objectives and where investee companies follow good governance practices. BlackRock refers to relevant sustainability frameworks to identify the alignment of the investment to environmental or social objectives. Sustainable Investments should also meet the do no significant harm (DNSH) requirements, as defined by applicable law and regulation. BlackRock has developed a set of criteria to assess whether an issuer or investment does significant harm.* (SFDR Disclosures, Section A)

119. In comparison, SFDR defines ‘Sustainable Investments’ as follows:

> *An investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy […] provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance*[85]

120. In Section G of the SFDR disclosures, BlackRock further specifies how it will identify Sustainable Investments, including how it tests whether an investment contributes to an environmental or social objective, and how it tests the DNSH requirements. This Complaint does not contest BlackRock’s methodology for determining when an investment contributes to an environmental or social objective, although we do note that the threshold requirement for ‘*more than 20% of [a company’s] revenue attributable to products and / or services [to be] systematically mapped as contributing to Environmental and / or Social Objectives using third-party vendor data*’ sets a very low bar, meaning that safeguards and the DNSH test take on an extremely important role.

121. Instead, we focus on BlackRock’s application of the DNSH test. As noted above in paragraphs 53 to 66, while there is no definition of DNSH within SFDR, it is clear from regulatory guidance that it is mandatory for the PAIs (including climate-related indicators) to be taken into account to demonstrate that an investment is a Sustainable Investment, and that the test should pick up impact on environmental objectives such as climate mitigation, rather than merely environment-related financial risk to investments (see paragraphs 58 to 60).[86]

122. BlackRock’s own approach to the DNSH test (over which the regulatory requirements must take precedence) involves applying a ‘*proprietary Heightened Scrutiny Framework which identifies investments which present significant climate-related risk by assessing: (i) carbon emissions; (ii) readiness for the net zero transition; and (iii) climate-related disclosures*’ (SFDR Disclosures, Section G). As a general point, although BlackRock claims that it ‘*assesses the indicators for adverse impacts on sustainability factors for each type of investment as defined by the regulation*’,

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[85] Article 2(17) of Regulation - 2019/2088 - EN - sfdr - EUR-Lex (europa.eu).
[86] See, too, the table on p.25 of JC 2023 18 - Consolidated JC SFDR QAs (europa.eu).

it is not immediately clear from the disclosures how its approach meets the requirements of the regulatory DNSH test. For instance, the Heightened Scrutiny Framework relied upon in relation to climate change is described as assessing climate-related risk, rather than impact. It appears from the disclosures that other environmental impacts are assessed using controversy data, which is not necessarily the same as assessing relevant PAI indicators.

123. All of this makes it unclear how the test is applied. In any event, it is not clear how (on either BlackRock's test or the regulatory test) investments in fossil fuel expanders (and to a lesser extent the other inconsistent holdings) can be considered to meet the DNSH test – given that fossil fuel expansion by definition impedes the sustainability objective of climate mitigation (which is something the Fund claims to contribute to by reference to the climate SDGs). As a result, at least 17.6% of the Fund's AUM is invested in holdings that are neither Sustainable Investments nor liquidity or hedging investments. This binding element of the investment strategy (which requires **all** investments to be one or the other) is breached and misleading.

124. SFDR Article 10(1) requires website disclosures to be: '*accurate, fair, clear, not misleading, simple and concise…*'. The CDR provides that: '*Sustainability-related disclosures […] should be sufficiently clear, concise, and prominent to enable end investors to take informed decisions*'.[87] The CDR also states that the Article 10(1) obligation to '*disclose [environmental and social] characteristics without misleading investors* […] *implies that financial market participants should not disclose on sustainability, including through product categorisation, in a way that does not reflect the way in which the financial product effectively promotes those environmental or social characteristics. Financial market participants should therefore only disclose those criteria for the selection of underlying assets that are binding on the investment decision-making process, and not criteria that they may ignore or override at their discretion*'.[88] These requirements are breached.

Breach of Exclusionary Screens

125. The funds Exclusionary Screens are listed as a binding element of the investment strategy. It follows that, to the extent the Exclusionary Screens are breached by Fund's investments in thermal coal issuers on the basis described in paragraphs 87 to 97, that element of the investment strategy is also breached and therefore the SFDR disclosures are inaccurate, unclear and misleading.

3.1.6 Summary of Breaches

126. In conclusion:

- The fund appears to be in breach of its own exclusion of investee companies involved in the extraction of, or generation of power using, thermal coal through investment of 10.7% AUM into companies deriving significant revenues from the extraction of, or generation of power using, thermal coal. At the very least, the inclusion of these companies is not adequately explained.
- The name of the Sustainable Infrastructure Fund includes the term 'sustainable' which is incompatible with the fund's exposure of 26.7% AUM to inconsistent holdings in breach of fair, clear, accurate and not misleading law and regulation;
- The fund documentation does not address or explain this inconsistency, in breach of fair, clear, accurate and not misleading law and regulation, and its reference to the UN SDGs and / or

[87] Recital 1 of Delegated regulation - 2022/1288 - EN - EUR-Lex (europa.eu).
[88] Recital 11 of Delegated regulation - 2022/1288 - EN - EUR-Lex (europa.eu).

reference to AMF 2020-03 minimum criteria is unclear and insufficient to substantiate the use of the term ‘sustainable’ in the fund name.

- The fund is in breach of its ‘sustainable objective’ that all of the fund’s investments will be ‘Sustainable Investments’ under SFDR because its inconsistent holdings do not meet DNSH requirements. Alternatively, SFDR disclosures fail to explain or demonstrate how investments into the inconsistent holdings meet DNSH requirements and therefore the fund does not meet SFDR disclosure obligations.

3.2 BGF Sustainable Energy Fund (LU0124384867)

127. The BGF Sustainable Energy Fund (the **Sustainable Energy Fund** or **BSEF**) is a thematic, actively managed Article 9 fund with approximately US$5,887,485,320 AUM.[89] It is a sub-fund of BlackRock Global Funds, an open-ended investment company established and domiciled in Luxembourg. The fund invests at least 70% of its AUM into equities in ‘*sustainable energy companies*’.[90]

128. In this section, we make the following arguments:

    b. **BSEF Breach 1: the fund’s inconsistent holdings**. A material proportion of the fund’s investments are inconsistent with the fund’s name. At least 13.2% of the fund’s AUM is invested in inconsistent holdings. The majority of these companies (12.3% AUM) are fossil fuel expanders. An analysis of the fund’s inconsistent holdings is set out at paragraphs 138 to 143 below. Our methodology for identifying fund inconsistent holdings is set out at **Annex B**. For all of the reasons explained in **Annex C**, the inconsistent holdings are fundamentally incompatible with use of the word ‘sustainable’ in the fund’s name.

    c. **BSEF Breach 2: misleading communications.** The fund does not explain in the marketing communications, KID, prospectus, SFDR disclosures or elsewhere that, notwithstanding its name, investment objectives and Article 9 classification, it will invest a material proportion of AUM in fossil fuel companies. These communications are therefore partial, unclear and misleading by omission of critical detail, as explained at paragraphs 145 to 153 below. In addition, the fund is misleading through the inclusion of information in the investment objectives that is likely to mislead customers:

        - The fund’s stated focus on ‘sustainable energy companies’ obscures its exposure to inconsistent holdings which contradict this central feature of its objective (see paragraphs 154 to 157.

        - The fund’s exclusions are unclear and misleading and exacerbate the overall misleading impression given by the fund name(see paragraphs 158 to 162); and

    d. **BSEF Breach 3: breach of DNSH and SFDR disclosure requirements.** The fund: (i) is in breach of its ‘sustainable investment’ objective under SFDR because the inconsistent holdings do not meet DNSH requirements; and / or (ii) fails to explain or demonstrate how investments in the inconsistent holdings meet DNSH requirements and therefore do not meet SFDR disclosure requirements. These failings are discussed at paragraphs 165 to 175 below.

[89] Where we refer to ‘AUM’ in reference to any of the Target Funds, this means the total value of holdings identified on the Morningstar Data Services as at 17 July 2024. See Annex B for more detail on our methodology.
[90] BGF Sustainable Energy Fund | PART A2

129. We summarise below the key features of the fund's documentation; we then move on to provide more detail on each of the above issues.

3.2.1 Key features

Investment objectives

130. The Sustainable Energy Fund's investment objectives (specifically elements highlighted in bold below) explain that the fund will (i) invest at least 70% of its assets in '*sustainable energy companies*'; (ii) exclude companies in the coal and consumables, oil and gas exploration and production, and integrated oil and gas sectors; and (iii) apply a 'best in class' approach to sustainable investing.

131. The Sustainable Energy Fund's investment objectives, as set out in the fund's Technical Sheet, are as follows (emphasis added):[91]

> *The Fund aims to maximise the return on your investment, by combining capital growth and income from the Fund's assets.*
>
> *The Fund invests globally at least* ***70% of its total assets in equity securities (eg shares) of sustainable energy companies****. Sustainable energy companies are active in alternative energy and energy technologies, as described* ***in the prospectus****. Companies are rated by the Investment Manager (IM) based on their ability to manage the risks and opportunities associated with the sustainable energy theme and their environmental, social and governance (ESG) risks and opportunities.*
>
> *The Fund* ***will not invest in companies classified in the following sectors (as defined by the Global Sector Classification Standard): coal and consumables; oil and gas exploration and production; and integrated oil and gas****.*

132. The prospectus explains what is meant by '*sustainable energy companies*', as follows: '*Sustainable energy companies are those which are engaged in alternative energy and energy technologies including: renewable energy technology; renewable energy developers; alternative fuels; energy efficiency; enabling energy and infrastructure*'. It also refers to the SFDR disclosures for '*further details of the ESG commitments made by the Fund*'. The prospectus repeats features of the investment objective as set out in the Technical Sheet and the KID, including the fund exclusions and its 'best in class' approach to sustainable investing (see below).[92]

133. In addition to the objectives listed on the Technical Sheet, the KID specifies that (emphasis added):[93]

> *The Fund adopts a* ***"best in class" approach to sustainable investing****. This means that the fund selects the best issuers (from an ESG perspective) for each relevant industry sector (without excluding any industry sector). More than 90% of the issuers of securities in which the Fund invests are ESG rated or have been analysed for ESG purposes. The Fund may acquire limited exposer to issuers that do not meet sustainable energy and / or ESG criteria […] The Fund's*

[91] bgf-sustainable-energy-fund-class-a2-usd-factsheet.
[92] BlackRock Global Funds Prospectus (FR) 23 February incl. First Addendum March 2024; p.144; BlackRock Global Funds Prospectus 23 February incl. First Addendum March 2024, p.120.
[93] BGF Sustainable Energy Fund KID.

weighted average ESG rating will be higher than the MSCI ACWI ESG rating after removing at least 20% of the lowest-rated MSCI ACWI securities.

SFDR disclosures

134. In summary, the Article 10 SFDR disclosures for the fund state that: (i) the fund will invest in 'Sustainable Investments' that '*contribute to an environmental or social objective*' and meet DNSH requirements; (ii) that at least 70% of the Fund's investments will be in 'Sustainable Energy Companies' (as defined by BlackRock); and (iii) the Fund will not invest in companies classified in several coal, oil and gas sectors according to GICS.[94]

135. The disclosures set out these binding elements of the fund's investment strategy (emphasis added):

    1. *Maintain that* ***all of the Fund's investments will be Sustainable Investments*** *(save for instruments used for the purposes of liquidity management and / or hedging, which will not exceed 20% of the Fund's total assets). In relation to such Sustainable Investments, at least 15% of the Fund's total assets will be invested in Sustainable Investments with environmental objectives that are not aligned with the EU Taxonomy, and at least 1% of the Fund's total assets will be invested in Sustainable Investments with a social objective;*
    2. *Apply the* ***exclusionary screens****;*
    3. *Maintain that the weighted average ESG rating of the Fund will be higher than the ESG rating of the index after eliminating at least 20% of the lowest rated securities from the index; and*
    4. *Ensure that more than* ***90% of the issuers of securities in which the Fund invests (excluding money market funds) shall be ESG rated or have been analysed for ESG purposes. This Fund takes into account the PAIs through BlackRock's DNSH standard for Sustainable Investments****.*

136. The disclosures explain that further details of the '*exclusionary screens*' (referred to in the binding elements of the investment strategy) are set out in 'Section C'. This Section includes a detailed methodology which doesn't explicitly reference the screens, although it does refer to the exclusion of investments in companies classified by the Global Sector Classification Standard (**GICS**) taxonomy as '*coal and consumables; oil and gas exploration and production; and integrated oil and gas*' referred to in the investment objectives. It also repeats that the fund invests a '*minimum of its total assets in Sustainable Investments, across environmental and social objectives*'.

137. Similarly to the Sustainable Infrastructure Fund, the 'Engagement Policies' section of the SFDR disclosures states that '*compliance with [the Fund's] obligations in terms of environmental or social characteristics or sustainable investment objectives is not achieved through engagement*' (Section K).

3.2.2 BSEF Breach 1: the fund's inconsistent holdings

138. As shown in the table below, at least 13.2% of the Sustainable Energy Fund's AUM is invested in inconsistent holdings in coal, oil and gas companies operating incompatibly with the Paris Agreement temperature goals, the vast majority of which (12.3% AUM) are fossil fuel expanders. For all of the reasons explained in **Annex C** and explored below, these investments are

[94] BGF Sustainable Energy Fund.

fundamentally incompatible with use of the term 'sustainable' and are significantly out of step with the impression of sustainability given by the fund's name.

BGF Sustainable Energy Fund				
	*Investment in coal companies (GCEL companies)**	*Investment in oil & gas companies (GOGEL companies)**	*Total investment in fossil fuel companies (GOGEL and GCEL companies)*	*Investment in fossil fuel expanders*
Investment exposure	US$433.9M	US$728.8M	US$778.6M	US$728.8M
Percentage of AUM	7.4%	12.4%	13.2%	12.3%[95]

* *Note: there is overlap between GCEL and GOGEL companies because some companies are involved in coal* ***and*** *oil & gas.*

139. The fund's inconsistent holdings are as follows:

BGF Sustainable Energy Fund		
Name of company	***Investment (US$)***	***Percentage AUM***
China Longyuan Power Group Co Ltd.		
Enel SpA		
.		
Total	**778,619,501**	**13.2%**

140. Each one of the fund's inconsistent holdings are included on the Financial Exclusions Tracker[96] (in the case of China Longyuan Power Group Co Ltd, its parent China Energy) (see paragraph 83 above. For example, (2.5% of the fund's AUM), and (4% of AUM) are each excluded by at least 19 financial institutions, predominantly on climate grounds.

141. Two of the investee companies derive significant income from thermal coal, the most polluting industry in the world (see paragraph 84 above). By reference to GCEL, derives 20% revenue from thermal coal (see 'Case Study' box below), whilst China Longyuan Power Group Co. Ltd derives 50% revenue from thermal coal.

[95] This figure is conservative: we do not include China Longyuan Power Group Co. Ltd as a fossil fuel expander, although it is a subsidiary of an expander (China Energy Investment Corp).
[96] Financial Exclusions tracker.
[97]
[98]

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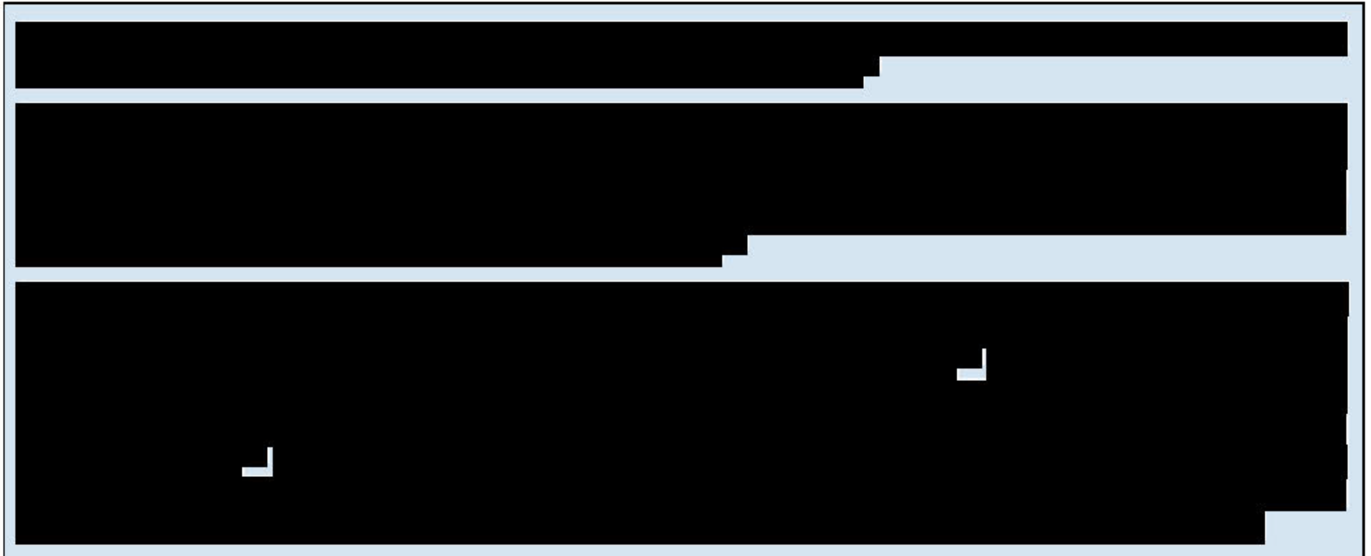


142. These inconsistent holdings cannot be explained by an engagement strategy because, like the Sustainable Infrastructure Fund, the Sustainable Energy Fund's disclosures state explicitly that engagement is not used as a means of achieving the fund's sustainability objectives.

143. The inconsistency of the Sustainable Energy Fund's holdings with the fund's name mean that the name is misleading to investors, in breach of clear, fair and not misleading requirements under the UCITS Directive, the Distribution Regulations, MiFID, PRIIPs, FMFC and the AMF General Regulation.

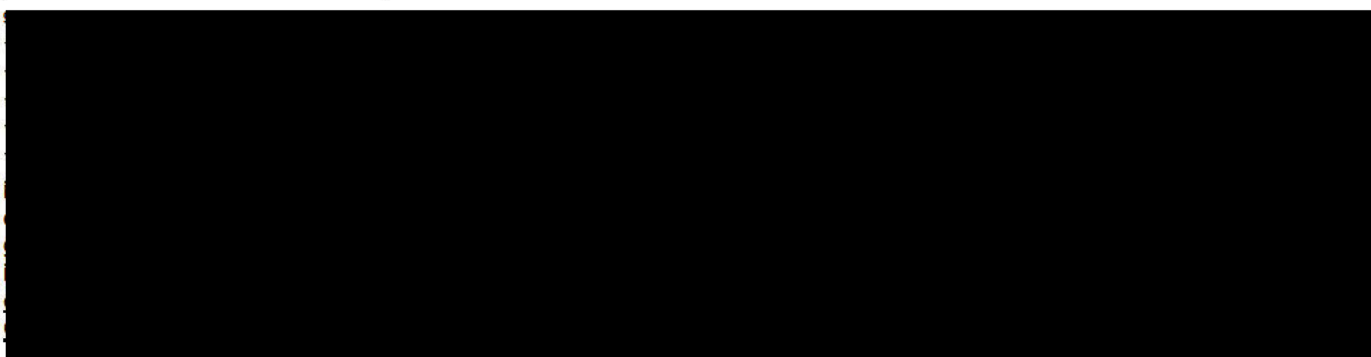
3.2.3 BSEF Breach 2: misleading communications

144. In this section, we make the following points in turn in relation to the investment objectives:

- The fund is misleading by omission: it does not provide any explanation for its investment into the inconsistent holdings, obscuring the nature of the fund;
- The fund's inconsistent holdings undermine and are incompatible with an investment focus on 'sustainable energy companies'; and
- The overall impression created by the fund is misleading.

These points are considered in turn below.

No explanation for inconsistent holdings and misleading ESG criteria



145. No explanation for the Sustainable Energy Fund's inconsistent holdings or how these holdings are reconciled with the fund's name and its central investment objective is provided in the its regulatory or marketing documentation or elsewhere; in this respect, the fund's communications are inaccurate, unclear and misleading by omission. Failing to explain that the Fund's strategy does not preclude investment in fossil fuel expanders (which account for 12.3% of the fund's AUM) and other fossil fuel companies operating incompatibly with a safe climate (which brings the total to 13.2% AUM) fundamentally undermines the 'sustainable energy' objective of the fund and is a misleading omission. The fund erodes customers' '*good understanding*'[105] of the product because the 'sustainable' name obscures the real nature of the fund, which includes investing in fossil fuel companies and supporting the development and increase of fossil fuel production and capacity worldwide.

146. The Sustainable Energy Fund alludes to 'sustainable' criteria in its investment objectives (as presented in the Technical Sheet) by reference to the fund's approach of rating investments based on their '*ability to manage the risks and opportunities associated with the sustainable energy theme and […] ESG risks and opportunities*'.

147. Otherwise, the investment objectives listed in the KID provide that '*the Fund adopts a "best in class" approach to sustainable investing. This means that the fund selects the best issuers (from an ESG perspective) for each relevant industry sector*'. In addition, the investment objectives and the binding elements of the investment strategy as set out in the SFDR disclosures provide that:

- '*more than 90% of the issuers of securities in which the Fund invests are ESG rated or have been analysed for ESG purposes*'; and
- '*the Fund's weighted average ESG rating will be higher than the MSCI/ACWI ESG rating after removing at least 20% of the lowest-rated MSCI ACWI securities*'.

148. The ESG strategies held by the funds are similar to the approach to ESG criteria in the Sustainable Infrastructure Fund. For the reasons given in paragraphs 101 to 102, these features are not sufficient to substantiate the term 'sustainable in the name of the Sustainable Energy Fund, particularly insofar as the strategy does not prohibit the presence of inconsistent holdings (by definition unsustainable) in the fund's portfolio.

149. In addition, the fund's inconsistent holdings make it difficult to see how any of the criteria listed at paragraph 147 can possibly have been properly or consistently applied. Exposure to these holdings – including material holdings in the most polluting industry in the world – suggest that non-financial analysis coverage may not have been consistently applied to 90% or more of the fund's holdings. It is also unclear how a 'best in class' approach to 'sustainable investing' can be consistently applied when the fund includes investment in the inconsistent holdings. [redacted]. Nor can it reasonably be considered consistent with a 'best in class' investment strategy.

150. These criteria are either not met in practice by the Sustainable Infrastructure Fund – and may therefore be unclear and misleading, in addition to the misleading effect of its name – or are applied so loosely as to be meaningless.

[105] AMF Position - Recommendation DOC-2020-03 (amf-france.org), p.1.

AMF 2020-03

151. In addition, to the extent that the Sustainable Energy Fund may incorporate elements of the minimum criteria specified by AMF 2020-03 for presenting extra-financial details as a key element of product communications, we repeat our arguments and analysis set out at paragraphs 43 to 50 above and (as if applied to this fund) at paragraphs 105 to 106.

152. The inclusion of certain minimum criteria as suggested by AMF 2020-03 and their potentially flawed application by BlackRock does not negate the overriding legal obligation that the Sustainable Infrastructure Fund's name and marketing is fair, clear and not misleading to retail investors.

153. In the terms set out in AMF 2020-03, the use of 'sustainable' in the name of the Sustainable Energy Fund is disproportionate to its actual approach toward being 'sustainable' – both because of its inconsistent holdings and because of the broader point that its strategies do not justify the use of the term in its name, and may themselves be misleading insofar as they are inconsistently applied.

Inconsistent holdings are incompatible with an investment focus on 'sustainable energy companies'

154. The Sustainable Energy Fund's investment objectives state that the fund invests at least 70% of its AUM in '*equity securities […] of sustainable energy companies*' (see paragraph 131) As noted in paragraph 132, BlackRock explains that 'sustainable energy companies' mean those active in alternative energy including, renewables, alternative fuels, energy efficiency and related infrastructure.

155. The fund's incompatible holdings appear to contradict this central feature of its investment objective. Continued fossil fuel development (and / or a failure to transition away from fossil fuels) is not only inconsistent with global climate goals and the maintenance of a safe climate – it also undermines the fund's prominent sustainability objective of pursuing sustainability goals through investment in alternative energy. Investments in fossil fuel companies and other inconsistent holdings are inherently contradictory with expectations generated by marketing a fund explicitly focused on pursuing sustainability goals through investment in alternative fuels, particularly given the lost opportunity cost such investment represents (in that capital could have been applied to a corresponding investment in alternative fuels and technologies to support transition). It is a reasonable inference from both the fund's name and its central objectives that it will **not** invest in fossil energy companies whose operations directly undermine those objectives.

156. Similarly, absent clear and adequate explanation, the 30% of AUM which need not fall within the definition of in '*sustainable energy companies*' should not include investments that both contradict the fund's name and undermine the motivating strategy for 70% of the its investments.[106] Including the inconsistent holdings in this 30% would therefore be misleading.

157. The only alternative is that the inconsistent holdings are considered by BlackRock to fall within the 70% of investments in 'sustainable energy companies'. On the face of it, that would be doubly misleading. While the investment objectives do not specify exactly how 'active' a company must be in alternative energy in order to qualify as a 'sustainable energy company', treating companies which are both fossil fuel expanders *and* developing (to some extent) alternative energy capacity as 'sustainable energy companies' is an unnatural stretch. Operating incompatibly with a safe

[106] These thresholds are complicated by the requirement disclosed in the SFDR disclosures that all of the Fund's investments will be Sustainable Investments, or investments made for hedging or liquidity – we discuss this below.

climate undermines claims a company might make to be 'sustainable' overall.[107] Without a clear and adequate explanation that the Sustainable Energy Fund will invest in energy companies (including the inconsistent holdings) which may have some degree of 'alternative energy' capacity, but which are, nonetheless, continuing fossil fuel development, is misleading.

Unclear and misleading exclusions

158. The misleading impression given by the fund name, and the lack of clarity regarding its inconsistent holdings, are exacerbated by its investment exclusions which are presented in a manner that is likely to deceive or confuse customers.

159. The fund excludes investments in '*coal and consumables; oil and gas exploration and production; and integrated oil and gas*' by reference to GICS classifications. These are introduced as sectoral exclusions on the website page for the fund, the Technical Sheet and the Prospectus ('*the Fund will not invest in companies classified in the following sectors…*'). Taken at face value without further explanation, these exclusions appear to suggest that the fund would not invest in companies deriving significant revenue from fossil fuels, especially those increasing fossil fuel capacity.

160. However, under the GICS classification methodology, these categories are 'Sub-Industries' within the Energy Sector rather than 'Sectors'. The GICS system has four levels of classification that includes 11 Sectors, 25 Industry Groups, 74 Industries, and 163 Sub-Industries. In addition to the three Sub-Industries listed above (which are all within the 'Oil, Gas & Consumable Fuels' Industry), the Energy Sector classification includes: oil & gas drilling; oil & gas equipment & services; oil & gas refining and mining; and oil & gas storage & transportation.[108] In consequence, far from excluding investment in the coal, oil and gas sectors (which is a natural interpretation of the exclusions wording in the fund's disclosures), the fund's exclusion policy permits investment in four significant Sub-industries within those sectors. This is not clearly explained.

161. Moreover, the fund's inconsistent holdings appear generally to be classified as 'Electric Utilities' under the GICS Industry codes, within the 'Utilities' Sector.[109] As such, they might technically fall outside the fund's exclusion policy. However, this does not change the fact that these companies **are** investing in increased fossil fuel capacity - investment in fossil fuel expanders accounts for 12.3% of the fund's AUM – in contrast to the impression given by the fund's exclusions, the fund's name and its objective of investing in 'sustainable energy companies'.

162. These exclusions are not contextualised and their limitations are not explained. In carving out exclusions by reference to these specialised financial classification systems, the fund creates a strong and false impression that coal, oil and gas companies will not be included in its holdings. Absent a clear explanation that despite the impression given by the exclusions, the fund is permitted to, and will in fact, invest in fossil fuel expanders falling within other GICS Sectors, Industries and Sub-Industries. This is misleading.

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[107] There are many examples of energy, mining, and other high carbon companies being challenged for 'greenwashing' on the basis that their operations are inconsistent with public commitments they have made to the Paris Agreement temperature goals or to achieving 'net zero' emissions by a certain date. See, for example: PCWP and others v. Glencore - Climate Change Litigation (climatecasechart.com); and Environmental groups sue TotalEnergies over climate marketing claims | Reuters.

[108] See pp. 4-12 of the GICS Methodology (August 2024 edition), available here: https://www.msci.com/index/methodology/latest/GICS; or via this webpage: GICS® - Global Industry Classification Standard - MSCI.

[109] This was the case for Enel SpA, NextEra Energy Inc and SSE plc. RWE AG appears to be classified as an 'Independent Power and Renewable Electricity Producer', also within the 'Utilities' sector.

The overall impression created by the fund is misleading

163. A clear and adequate explanation of how the inconsistent holdings are reconciled with the Sustainable Energy Fund's name is not provided anywhere in the Technical Sheet, KID, SFDR disclosures or in any other documentation. As is the case with the Sustainable Infrastructure Fund, the fund's failure to explain that its strategy does not preclude investment in fossil fuel expanders and other fossil fuel companies operating incompatibly with a safe climate fundamentally undermines the 'sustainable energy' objective of the fund and is a misleading omission. Taken together with the fund's name, the various investment objectives and disclosures operate as half-truths which create a false impression which may deceive, or is likely to deceive, customers.

164. Much like the Sustainable Infrastructure Fund (see paragraph 112 above), the cumulative effect of the Sustainable Energy Fund's name and the descriptions of its investment objectives provided in the Technical Sheet, KID and SFDR disclosures is to give the strong impression that the fund would not invest in companies that are demonstrably unsustainable. This cumulative impression is misleading, inaccurate and unfair: the fund's inconsistent holdings are fundamentally misaligned with the impression created that it will invest 'sustainably'.

3.2.4 BSEF Breach 3: breach of DNSH and SFDR disclosure requirements

165. In this section we explain how the Sustainable Infrastructure Fund:

- is in breach of its 'sustainable investment' objective under SFDR because the inconsistent holdings do not meet DNSH requirements; and / or
- fails to explain or demonstrate how investments in the inconsistent holdings meet DNSH requirements and therefore do not meet SFDR disclosure requirements.

These breaches are materially similar to those which are analysed in relation to the Sustainable Infrastructure Fund at paragraphs 118 to 124 above.

Sustainable Investment threshold

166. The requirement that '*all of the [Sustainable Energy] Fund's investments will be Sustainable Investments*' as a binding element of the investment strategy is breached by the fund's inconsistent holdings which do not meet DNSH requirements. Alternatively, the fund's SFDR disclosures fail to explain or demonstrate how investments into the inconsistent holdings meet DNSH requirements and therefore the fund does not meet SFDR obligations.

167. As set out in the SFDR disclosures, a binding element of the fund's investment strategy is to: '*Maintain that all of the Fund's investments will be Sustainable Investments (save for instruments used for the purposes of liquidity management and / or hedging, which will not exceed 20% of the Fund's total assets)'* (see paragraph 135).

168. As we explain above (paragraph 116), the implication of this provision is that every investment of the fund must be **either**: (a) a Sustainable Investment (as defined by BlackRock and the SFDR); **or** (b) an investment made for the purposes of liquidity management or hedging.

169. The fund's investments in inconsistent holdings amount to 13.2% of its AUM, and there is no suggestion that these assets are held for the purposes of liquidity management or hedging. Therefore, unless they can be considered 'Sustainable Investments' as defined in the SFDR (and

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to a lesser extent by BlackRock), this binding element of the investment strategy is breached and/ or is inaccurate and misleading.

Breach of SFDR disclosure requirements

170. BlackRock defines '*Sustainable Investments*' as '*investments in issuers or securities that contribute to an environmental or social objective, do not significantly harm any of those objectives and where investee companies follow good governance practices. BlackRock refers to relevant sustainability frameworks to identify the alignment of the investment to environmental or social objectives. Sustainable Investments should also meet the DNSH requirements, as defined by applicable law and regulation*' (see SFDR Disclosures Section A). In Section G of the SFDR disclosures, BlackRock further specifies how it will identify Sustainable Investments, including how it tests whether an investment contributes to an environmental or social objective, and how it tests the DNSH requirement.

171. The regulatory definition of 'Sustainable Investments' provided in SFDR is repeated as set out in paragraph 119 above.

172. Paragraph 120 is repeated and we reiterate that the threshold requirements for a company to meet the test for whether an investment contributes to an environmental or social objective appear extremely low. Similarly, the 'business practices' criteria requiring a company to have '*set a decarbonisation target in line with the Science Based Targets initiatives, validated by third-party data or by a fundamental assessment*' lacks rigour to the extent BlackRock considers it capable of being met by a fossil fuel expanders. On this point, we note that the SBTi itself has ceased accepting or verifying commitments from fossil fuel companies, in recognition of the difficulties associated with transition in the sector.[110]

173. In any event, the fund's incompatible holdings (at least those fossil fuel expanders that represent 12.3% of the fund's AUM) cannot fall within the definition of 'Sustainable Investments' because they cannot be considered to meet the DNSH requirements set out in regulation and (to the extent they diverge) as applied by the fund. In support of this contention, we repeat the arguments presented in relation to the Sustainable Infrastructure Fund in paragraphs 121 to 123 above. It is not clear how (on either BlackRock's test or the regulatory test) investments in fossil fuel expanders (and to a lesser extent the other inconsistent holdings) can be considered to meet the DNSH test – given that fossil fuel expansion by definition presents a '*significant climate-related risk*' which the fund claims to take into account through climate PAIs (see section D of the fund's SFDR disclosures).

174. As a result, at least 12.3% of the fund's AUM appears to be invested in holdings that are neither Sustainable Investments nor liquidity or hedging investments. This binding element of the investment strategy (which requires all investments to be one or the other) is breached and misleading.

175. Alternatively, the fund is in breach of its SFDR disclosure obligations and we repeat paragraph 124 above.

[110] See '*What is the SBTi's policy on fossil fuel companies?*' at Oil and Gas - Science Based Targets Initiative. See also Clean INDUSTRY BRIEF_SBTi_FF_Project- RfP-Q4 2023.docx (sciencebasedtargets.org), p.2.

3.2.5 Summary of Breaches

176. In conclusion:

- The name of the fund includes the term 'sustainable' which is incompatible with the fund's exposure of 13.2% AUM to inconsistent holdings in breach of fair, clear, accurate and not misleading law and regulation;
- The fund documentation does not address or explain this inconsistency, in breach of fair, clear, accurate and not misleading law and regulation. The fund's lack of clarity is exacerbated by its inclusion of unclear exclusionary provisions and the fund's failure to explain that its central objective of investing in 'sustainable energy companies' does not preclude investing in fossil fuel expanders.
- The fund is in breach of its 'sustainable objective' that all of the fund's investments will be 'Sustainable Investments' under SFDR because its inconsistent holdings do not meet DNSH requirements. Alternatively, SFDR disclosures fail to explain or demonstrate how investments into the inconsistent holdings meet DNSH requirements and therefore the fund does not meet SFDR disclosure obligations.

3.3. Article 8 Target Funds

177. The 16 Article 8 Target Funds (**ATF**)are actively managed retail funds with equity, fixed income or multi-asset strategies. Their AUM range from approximately US$38m to US$2.42bn.[111] Together they have AUM of approximately US$8.45bn.

178. In this section, we make the following arguments:

a. **ATF Breach 1: inconsistent holdings.** A material proportion of the fund's investments are inconsistent with the fund's name. At least US$261.4m of the funds' overall AUM comprises inconsistent holdings. The majority (86.8%) of these holdings are fossil fuel expanders, including some of the most prolific expanders with the highest GHG emissions in the world (see paragraphs 187 to 193 below). Our methodology for identifying fund inconsistent holdings is set out at **Annex B**.

b. **Comparison with Control Funds.** There is little to no material difference between the Article 8 Target Funds' fossil fuel exposures when compared to a set of eight BlackRock actively managed retail funds with similar asset classes which are not named 'sustainable'. This reinforces the conclusion that the presence of the term 'sustainable' in the names of the Article 8 Target Funds is unjustified.

c. **ATF Breach 2: misleading communications.** None of the Article 8 Target Funds explain, in the marketing communications, KID, SFDR disclosures or otherwise that, notwithstanding their name, investment objectives and Article 8 SFDR classification, that they will invest a material proportion of AUM in fossil fuel companies, including some of the most prolific fossil fuel expanders with the highest GHG emissions in the world. They do not provide any explanation for making investments into the inconsistent holdings and their features are insufficient to substantiate the 'sustainable' name. In these and other respects, the funds'

[111] Where we refer to 'AUM' in reference to any of the Target Funds, this means the total value of holdings identified on the Morningstar Data Services as at 17 July 2024. See Annex B for more detail on our methodology.

communications are partial, unclear, inaccurate and misleading as explained in paragraphs 200 to 219 below.

d. **ATF Breach 3: breach of exclusions.** At least 5 of the Article 8 Target Funds appear to be in breach of their own investment exclusions which prohibit investment into companies which derive more than 5% revenue from thermal coal or oil sands.

179. We summarise below the key features of the fund's documentation; we then move on to provide more detail on each of the above issues.

3.3.1 Key features

180. Full details of the key features for each of the Article 8 funds' are set out on a fund-by-fund basis at **Annex D**.

Investment Objectives

181. The Article 8 Target Funds' investment objectives, as set out in the Technical Sheet and / or KID, include the following references:

- One fund refers to investing in accordance with 'sustainable investment principles' (the *BSF Systematic Sustainable Global Equity Fund*');[112]
- Otherwise, the majority of the funds refer to taking ESG criteria 'into account' (or similar) when selecting investments;
- One fund (the *BGF Sustainable Emerging Markets Corporate Bond Fund*) makes no reference to ESG or any other 'sustainable' criteria in its investment objectives.[113]

182. Four of the Article 8 funds (the *BSF Sustainable Fixed Income Credit Strategies Fund*, the *BSF Sustainable Euro Corporate Bond Fund*, the *BlackRock Sustainable Fixed Income Strategies Fund* and the *BSF Sustainable Euro Bond Fund*) include in their prospectuses an additional investment objective to seek to reduce carbon emissions by allocating to green bonds, lower carbon issuers and issuers committed to decarbonisation.

Baseline Screens

183. Each of the Article 8 Target Funds applies the BlackRock EMEA Baseline Screens Policy & Fundamental Insights Methodology (the **Baseline Screens**) which are incorporated by reference in the funds' Technical Sheet, KID or prospectus.[114] As explained in more detail at paragraph 220 below, the Baseline Screens, among other things, limit and/ or exclude direct investment in 'i*ssuers deriving more than 5% of their revenue from thermal coal extraction and / or thermal coal-based power generation*' or '*from the production and generation of tar sands (also known as oil sands)*'.

ESG Policy and SFDR disclosures

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[112] It is no longer possible to access the *BSF Systematic Sustainable Global Equity Fund* via the BlackRock website, and the fund appears to be unavailable as at the date of this Complaint. In the event that this fund is closed and no longer available to investors, we note that notwithstanding its closure or removal from sale, this fund remains historically at fault and, in our view, in breach of the laws and regulations set out in this Complaint for period up until, at the earliest, 17 July 2024. The Technical Sheet and KID for this fund have been enclosed with the Complaint.
[113] This fund refers to the application of an ESG Policy in the investment objectives set out in the prospectus.
[114] Microsoft Word - BlackRock EMEA Baseline Screens Policy website final draft.docx. NB. This document does not appear to be available in French.

184. The ESG Policy for each fund is set out in the prospectus. The terms of the ESG Policy generally (but not always) reflect the binding elements of the SFDR disclosures for each fund. The ESG Policy and / or the SFDR disclosures for each fund include some or all of the following criteria. These criteria do not appear to be applied consistently across the Article 8 Target Funds:

   - Issuers are assessed for their ability to manage ESG risks and opportunities;
   - 'Enhanced' exposure to companies with '*associated positive externalities (i.e. lower carbon emitting issuers […]) while limiting investments that are deemed to have associated negative externalities (i.e. higher carbon emitters […])*';
   - A 'weighted average' approach such that the ESG rating of the fund will be higher than the fund's reference index after eliminating 20% of the least well-rated securities from the index;
   - Constraints on the investment universe by reference to an ESG index; and
   - Ensuring that 90% or more investee companies have an ESG rating or are assessed for ESG.

   Two funds claim to include a '*best in class*' approach to '*sustainable investing*' (the *BSF Sustainable Euro Corporate Bond Fund* and the *BSF Sustainable Euro Bond Fund*).

185. Nine of the 16 funds aim to maintain a lower carbon emission intensity compared to a designated reference index or benchmark; two of these funds provide that the carbon emissions intensity of the fund will be 30-50% lower than the benchmark (the *BlackRock Sustainable Advantage World Equity Fund* and the *BlackRock Sustainable Advantage US Equity Fund*) and one fund that it will be 30% lower than that of its benchmark (the *BlackRock Global High Yield Sustainable Credit Screened Fund*).

186. Each of the funds makes a 20% minimum commitment to hold Sustainable Investments. Given the low threshold for this investment, we do not consider this commitment as a central feature of this Complaint.

3.3.2 ATF Breach 1: the Article 8 Target Funds' inconsistent holdings

187. Each of the Article 8 Target Funds invests in coal, oil and gas companies operating incompatibly with the Paris Agreement temperature goals, the vast majority of which (86.8%) are fossil fuel expanders, and all of which are considered holdings inconsistent with the fund name for the purposes of this Complaint. A full breakdown of the fossil fuel exposures of the Article 8 Target Funds on a fund-by-fund basis is included at **Annex D**. For all of the reasons explained in **Annex C** and explored below, these investments are fundamentally inconsistent with use of the term 'sustainable' and are incompatible with the impression of sustainability given by the fund's name.

188. The aggregated fossil fuel holdings across the 16 Article 8 Target Funds are as follows:

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Article 8 Funds				
	*Investment in coal companies **	*Investment in oil & gas companies **	*Total investment in inconsistent holdings*	*Investment in fossil fuel expanders*
Investment exposure	US$33.6m	US$231.4m	US$261.5m	US$226.8m
Percentage of total AUM	0.4%	2.7%	3.1%	2.7%
Average (mean) percentage exposure of Funds	0.4%	3.5%	3.8%	3.4%

* *Note: there is overlap in certain of these figures because some of the fossil fuel companies are involved in both coal* ***and*** *oil & gas.*

- The total exposure to inconsistent holdings across the Article 8 Target Funds is **US$261.5m**.
- Investments in inconsistent holdings account for **3.1% of the 16 funds' total AUM**.
- The **average (mean) investment exposure of funds to inconsistent holdings is 3.8% of AUM**. Exposures range from 1.1% (in the BSF Sustainable Euro Bond Fund) to 7.1% (in the BSF Systematic Sustainable Global Equity Fund) of fund AUM.
- **Investments in fossil fuel expanders account for 86.8% (US$226.8M)** of the total investment in inconsistent holdings across the 16 funds. These investments account for **2.7% of the total AUM** of the funds.
- The **average (mean) investment exposure to fossil fuel expanders is 3.4% of AUM**. Exposures range from 0.8% to 7.1% (in the *BSF Sustainable Euro Bond Fund* and the *BSF Systematic Sustainable Global Equity Fund*) of fund AUM.

189. The Article 8 Target Funds systematically invest in eight of the 20 oil and gas companies with the biggest short-term expansion plans globally; these 20 companies are responsible for more than half of all oil and gas resources under development worldwide.[115] Their concentrated development activities make them some of the most climate-damaging companies in the world. Investment into any fossil fuel expanders, and these companies in particular, props up and propagates the continued development of fossil fuel resources and is, therefore, unsustainable (see **Annex C** for more details).

Case study: Shell Plc

Shell is the parent company of a group of energy and petrochemical companies with operations in at least 70 countries. Shell ranks eighth in the list of international carbon majors based on production. Of investor-owned companies, only ExxonMobil has produced more CO_2 emissions during period 2016-2022, making Shell the second highest emitter during this period.[116] Shell is also one of the world's largest historical polluters, responsible for more than 2% of global emissions.[117] Shell continues to invest heavily in new fossil fuel exploration[118] and, despite a commitment to end new 'frontier' exploration after 2025, continues to explore and develop oil and gas in 24

[115] As identified by Rainforest Action Network (and a coalition of NGOs) (based on GOGEL data). See the '*Financiers for the Top 20 Upstream Oil and Gas Expanders*' section of Banking on Climate Chaos 2024 - Banking on Climate Chaos.
[116] The Carbon Majors DataBase, April 2024, p. 16.
[117] The Carbon Majors DataBase, April 2024, p. 16.
[118] See Shell, 'Exploration', accessible here.

countries.[119] In 2023 Shell invested US$2.3 billion in the 'Renewables and Energy Solutions' branch of its operations, representing just 9.4% of its total capex of US$24.4 billion.[120]

Shell's 2024 Energy Transition Strategy (**ETS**) fails to align the company with the 1.5°C temperature goal of the Paris Agreement.[121] Most significantly, the ETS continues to rely on intensity targets, and does not include any business-wide short or medium-term absolute scope 3 targets.[122] Shell itself states that it expects its absolute emissions to increase in the coming years even while the net carbon intensity of the products it sells will fall.

Shell has an absolute emissions target to reduce its operational (scope 1 and 2) emissions by 50% by 2030, but these represent just 5% of Shell's total GHG emissions.[123] Climate Action 100+'s company assessment indicates that Shell's short and medium term targets '*do not meet any criteria*' in respect of being '*aligned with the goal of limiting global warming to 1.5°C*'.[124]

Shell is refusing to comply with a Dutch court order that it reduce worldwide aggregate carbon emissions across Scope 1, 2 and 3 by net 45% by 2030, compared with 2019 levels, in line with the Paris Agreement. Shell seeks to overturn the judgment, and a decision on the company's appeal is due in November 2024.

190. The funds' investments into these companies are as follows:

- TotalEnergies (US$13,905,747 split across [redacted] funds);
- Equinor (US$3,390,870 split across [redacted] funds);
- Shell plc (US$9,466,588 split across [redacted] funds);
- Eni (US$14,678,701 split across [redacted] funds);
- Chevron (US$7,978,267 split across [redacted] funds);
- ConocoPhillips (US$11,899,222 split across [redacted] funds);
- BP plc (US$2,857,792 split across [redacted] funds); and
- ExxonMobil (US$3,597,163 [redacted] [redacted]).

191. As well as being among the most expansive fossil fuel expanders in the world, these companies are also among the highest emitters of CO_2. ExxonMobil, Shell, BP, Chevron and TotalEnergies are the top five CO_2 emitters among investor-owned companies (including coal companies) in the world during the period 2016-22; Eni is the nineth highest emitter.[126]

[119] Shell continues to explore for oil and gas in 24 countries including Uruguay, São Tomé and Príncipe, and South Africa (*see* Shell Annual Report 2023, p.53, accessible here). Rystad data shows that Shell has an interest in 813 undeveloped oil and gas projects (*see* Oil Change International, 'Shell vs. the Climate: Expanding Oil and Gas, Fueling the Climate Crisis', p.4, accessible here).

[120] This figure was lower than in 2022, when investment rose due to an acquisition. In 2023, just 6.6% of the total capex of Shell's 'Renewables and Energy Solutions' investment was in solar and wind energy, compared to 8% in 2022. *See* Shell Annual Report 2023, pp.76, 341, accessible here.

[121] Shell, 'Energy Transition Strategy 2021', accessible here.

[122] Carbon intensity targets do not reflect real-world emissions reductions; this is because carbon intensity reductions can be achieved by adding renewable energy to a company's portfolio and using carbon credits, without actually reducing sales of fossil fuel products. Shell itself states that it expects its absolute emissions to increase in the coming years while the net carbon intensity of the products they sell will fall; *See* Shell, 'Energy Transition Strategy 2024', p.46, accessible here.

[123] Oil Change International, 'Shell vs. the Climate: Expanding Oil and Gas, Fuelling the Climate Crisis', p.11, accessible here.

[124] Climate Action 100+, 'Company Assessment: Shell Plc', accessible here.

[125] [redacted]

[126] During period 2016-2022: Carbon_Majors_Launch_Report.pdf (influencemap.org), April 2024, see p.16.

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Case study: TotalEnergies

TotalEnergies owns some of the biggest new fossil fuel extraction projects (discovered or past 'final investment decision') globally, ahead of US majors like ExxonMobil and national oil companies like China National Offshore Oil Corporation.[127] Its fossil fuel expansion plans cover 53 countries, including around a third in so-called 'frontier' countries with little or no current oil and gas production.[128]

The company is pursuing significant expansion of gas production and gas power generation, with oil and gas appearing to make up at least 80% of its energy mix in 2030, with significant expansion of non-energy fossil fuel production in addition to this.[129]

Alongside this, TotalEnergies is putting a minority of its investment into renewable energy. In 2023, its Taxonomy-compliant capital expenditure was 25.7%, however, the majority of the investment into renewable energy over the last three years appears to consist of the acquisition of existing renewable generation capacity, rather than the development of new, additional capacity.[130] TotalEnergies' 2023 Taxonomy-aligned revenue in 2023 was only 1.4%, indicating that 98.6% of its revenue is derived from unsustainable activities. TotalEnergies' business strategy is reflected in its emissions targets, which do not provide for any reduction in Scope 3 emissions by 2030, signifying that its overall reported GHG emissions will not be significantly reduced (and may not be reduced at all) by 2030.[131]

Case study: Equinor ASA

Equinor is the largest oil and gas operator in Norway and one of the world's largest offshore operators. Equinor produces around two million barrels of oil equivalent (**boe**) every day, and operates in around 30 countries worldwide.[132] Equinor is one of Europe's biggest historical corporate climate polluters, ranking eighth amongst all European-based companies (and 41st overall) for climate pollution linked to its fossil fuel production since the 1970s, estimated at over 7.7 billion tonnes CO_2e.[133]

Equinor reports that in 2023 fossil fuels accounted for 99.6% of its energy production in 2023.[134] The company aims to increase oil and gas production by 5% by 2026;[135] it continues to explore and develop new fossil fuel projects and discovered approximately 780 million boe of oil and gas reserves in newly developed projects in 2022-23.[136]

Equinor's climate targets, set out in its 2022 energy transition plan[137] and subsequent annual reports, are inadequate, most strikingly through the failure to include any target to reduce absolute scope 3 emissions ahead

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[127] TotalEnergies is ranked second in terms of ownership of new fossil fuel projects, excluding Saudi Aramco: Analysis: New oil and gas projects since 2021 could emit 14bn tonnes of CO2 - Carbon Brief.
[128] 'Total Energies – Auf fossilem Expansionskurs', p.7.
[129] Total Energies – Auf fossilem Expansionskurs', p.8.
[130] TotalEnergies - 2023 Universal Registration Document, pp.313, 314; 092023-TotalEnergies-Is-TotalEnergies-really-diversifying-its-energy-production.pdf (reclaimfinance.org), p.7.
[131] TotalEnergies' Scope 3 target is to maintain emissions at <400MtCO2eq by 2030, providing scope for an increase from current levels. This target excludes around 60MtCOeq of further Scope 3 emissions. TotalEnergies' targeted Scope 1 and 2 reductions of 10-15MtCO2eq by 2030 compared to 2015 relies in part on 'offsetting' of 5-10MtCO2; Sustainability_Climate_2023_Progress_Report_EN.pdf (totalenergies.com), pp.47, 99-100.
[132] Equinor website, 'Equinor in a nutshell', accessible here.
[133] The Carbon Majors DataBase, April 2024, accessible here
[134] Equinor, '2023 Annual Report', p.21, accessible here.
[135] Oil Change International, 'Big Oil Reality Check', Table 2 at p.13, accessible here.
[136] Carbon Brief, 'Analysis: New oil and gas projects since 2021 could emit 14bn tonnes of CO2', accessible here.
[137] Equinor, 'Energy Transition Plan', accessible here.

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of 2050.[138] Scope 3 emissions represent over 90% of the company's overall emissions.[139] Climate Action 100+'s company assessment indicates that Equinor's short and medium term targets '*do not meet any criteria*' in respect of being '*aligned with the goal of limiting global warming to 1.5°C*'.[140]

192. The [redacted] is also invested in Glencore, the world's biggest publicly listed coal producer[141] and the world's seven highest CO_2 emitting investor-owned company globally during the period 2016-22.[142] Glencore has no plans to phase out its coal production and is still developing new coal mines and planning to extend the life of its existing mines.[143] The company's coal production is estimated to increase by about 3% from 2023 to 2030, contrary to the Paris Agreement goal and the climate scenarios provided by the IEA.[144] Glencore is also actively planning acquisitions such as Teck Resources' Elk Valley Resources coal mines, which are forecast to produce coal until the early 2060s.[145] Climate Action 100+'s company assessment indicates that Glencore's medium and long term targets '*do not meet any criteria*' in respect of being '*aligned with the goal of limiting global warming to 1.5°C*'.[146] Glencore has been subject of regulatory complaint regarding misleading climate disclosures[147] and a shareholder resolution challenging the company on its thermal coal production plans.[148]

193. Much like the Article 9 Target Funds, the Article 8 Target Funds' inconsistent holdings cannot be explained by engagement. All of the Article 8 Target Funds include in their SFDR disclosures the disclaimer that '*Compliance with the Sub-Fund's obligations in terms of environmental or social characteristics or sustainable investment objectives is not achieved through engagement*'.

3.3.3 Control Funds analysis

194. We have compared the Article 8 Target Funds to a control set of eight actively managed BlackRock funds provided in France which are not named 'sustainable' (the **Control Funds**). Our analysis found little to no material difference between fossil fuel exposures across the Control Funds when compared to the Article 8 Target Funds. Details of the Control Funds are provided at **Annex E**.

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[138] Equinor's climate targets in its latest annual report are as follows:

a) Emissions Reduction target seeks to reduce scope 1 and 2 CO_2 and CH4 emissions by way of 90% absolute reductions by net 50% by 2030 (based on a 2015 baseline), and to reach net-zero by 2050 (based on a 2019 baseline).
b) Net Carbon Intensity target seeks to reduce scope 1, 2 and 3 emissions by 20% by 2030, by 40% by 2035 and to net-zero by 2050 (all by reference to a 2019 baseline).
c) Upstream CO_2 intensity target seeks to reduce scope 1 emissions of CO_2 on an intensity basis in the upstream sector to less than 7 kg CO_2/boe by 2025 and to around 6 kg CO_2/boe by 2030.
d) Absolute Emissions in Norway target seeks to reduce scope 1 and 2 emissions on an absolute, operated-asset basis across the value chain in Norway by 70% by 2040 and to near zero by 2050 (by reference to a 2005 baseline).

See Equinor, '2023 Annual Report', p.284, accessible here; structure adopted here adapted from Carbon Tracker, 'Absolute Impact', accessible here.

[139] Equinor, 'Climate tables', based on figures in 'Greenhouse Gas (GHG) Emissions' table, accessible here.

[140] Climate Action 100+, 'Company Assessment: Equinor ASA', accessible here.

[141] 'Cash is king': Why Glencore kept faith with coal (ft.com).

[142] Carbon_Majors_Launch_Report.pdf (influencemap.org), p.16.

[143] Global Coal Exist List website, 'Controversial Companies', accessible here.

[144] Australasian Centre for Corporate Responsibility, 'Analysis: Glencore's 2024-2026 Climate Action Transition Plan', accessible here.

[145] Ibid.

[146] Climate Action 100+, 'Company Assessment, Glencore PLC', last accessed 20 August, accessible here.

[147] Environmental Defenders Office website, 'EDO assists clients to call out mining giant Glencore for potential greenwashing', accessible here.

[148] ShareAction website, 'The shareholder activists challenging Glencore', accessible here.

195. Our holdings analysis on the Control Funds uses the same methodology applied to the Article 8 Target Funds to identify fossil fuel holdings.[149] An explanation of this methodology is set out in **Annex B**. In summary: we selected funds for inclusion in the control set which proportionately reflect the fund asset classes found across the Article 8 Target Funds (i.e. equity, fixed-income or multi-asset).[150] Where possible, we sought Control Funds with names similar to fund names in our Article 8 Target Funds but which do not include the term 'sustainable'. Of the eight Control Funds, four have a similar name to one of the Article 8 Target Funds (save only for the inclusion / omission of the word 'sustainable'). These provide the most direct comparison possible. The remaining Control Funds have been selected based on their investment objectives in order to provide as close a comparison as possible. Four of the Control Funds reference ESG in their investment objectives, four of which are categorised by BlackRock as Article 8 funds; there is no correlation between the Control Funds and their similarly-named Article 8 Target Fund comparators as to their Article 8 status and / or the application of ESG criteria in the investment objectives.

196. The key findings from the comparison are as follows:

- The exposure of the Article 8 Target Funds to:
  - inconsistent holdings range from 1.1% to 7.1% of AUM; and
  - fossil fuel expanders range from 0.8% to 7.1%;
- The exposure of the Control Funds to:
  - inconsistent holdings range from 1.4% to 7.1% of AUM; and
  - fossil fuel expanders range from 1.2% to 6.8%.
- The Control Funds' average (mean) exposure to inconsistent holdings is 4.8% of AUM, compared to 3.8% for the Article 8 Target Funds.
- The Control Funds' average (mean) exposure to fossil fuel expanders is 4.6% of AUM, compared to 3.4% for the Article 8 Target Funds.

197. On an aggregate basis these findings suggest that there is at most a marginal difference in allocation to inconsistent holdings between BlackRock funds named 'sustainable' and those which are not 'sustainable'. The comparison exercise underscores the lack of substance behind the use of the term 'sustainable' in the names of the Article 8 Target Funds. The funds using 'sustainable' in their name contain similar fossil fuel exposure as funds which make no claim in their name of being sustainable.

198. In fact, there are instances where an Article 8 Target Fund holds greater exposure to inconsistent holdings than a comparable Control Fund (as well as instances where Control Funds have a greater exposure to fossil fuels than the corresponding Article 8 Target Fund). For instance:

[149] Save that the data and information for the Control Funds was extracted from the Morningstar Data Services platform on 1 August 2024.

[150] The Article 8 funds subject of this Complaint include 10 fixed-income, 5 equity and 1 multi-asset fund; the Control Funds include 4 fixed-income, 3 equity and 1 multi-asset fund.

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- there is no difference in exposure between the *BSF Systematic* ***Sustainable*** *Global Equity fund*[151] and the *BGF Systematic Global Equity High Income Fund,*[152] which both hold 7.1% of AUM in inconsistent holdings.

- As set out in the table below, the *BlackRock* ***Sustainable*** *Advantage World Equity Fund*, holds 6.7% AUM in inconsistent holdings, whereas the *BGF Global Equity Income Fund*, which has very similar investment objectives and sector exposure, holds 4% AUM in inconsistent holdings:

	BlackRock Sustainable Advantage World Equity Fund[153]	***BGF Global Equity Income Fund***[154]
Inconsistent holdings (as at 17 July 2024)	6.7% AUM	4% AUM
Investment objectives	The Fund aims to achieve long-term capital growth on your investment. The Fund seeks to expose at least 70% of its investment to equity securities (e.g., equities) and equity-linked securities in a concentrated portfolio of companies domiciled, listed or conducting the majority of their business in developed markets around the world.	The Fund aims to generate an above-average level of income on your investment, as well as to maintain long-term capital growth, in a manner consistent with environmental, social and governance (ESG) focused investment principles. The Fund invests at least 70% of its total assets globally in equity securities (e.g. shares) of companies domiciled in, or substantially engaged in, developed markets.
Top sector exposures[155]	Information technology (26.69%) Finance (16.44%) Health (13.18%) Industries (12.49%)	Information technology (22.66%) Industries (16.42%) Finance (14.63%) Health (13.89%)

199. These findings demonstrate that there's no clear correlation between BlackRock calling a fund 'sustainable', and that fund including ESG criteria or investing principles clearly and prominently in its investment objectives. The word 'sustainable' cannot be used to make reliable distinctions between BlackRock funds based on their fossil fuel exposure. This comparison highlights the lack of substance behind the use of 'sustainable' in the funds' names – it is not clear what it is intended to mean.

3.3.4 ATF Breach 2: misleading communications

200. In this section, we make the following points in turn:

- The features of the Article 8 Target Funds are insufficient to substantiate the 'sustainable' name, obscuring the nature of the funds;

- The Article 8 Target Funds are misleading by omission: they do not provide any explanation for making investments into the inconsistent holdings;

[151] BSF Blackrock Systematic Sustainable Global Equity Fund | PART D2.
[152] BGF Systematic Global Equity High Income Fund | PART A2 (blackrock.com).
[153] BlackRock Sustainable Advantage World Equity Fund | Class D Acc.
[154] BGF Global Equity Income Fund | PART A2 (blackrock.com).
[155] As set out on each fund's webpage as at 8 October 2024: BlackRock Sustainable Advantage World Equity Fund|; BGF Global Equity Income Fund.

- A number of the funds' investment objectives appear to be misleading;
- In some cases, additional statements in the ESG Policies set out in the prospectus are misleading and inaccurate; and
- The overall impression created by each of the funds is misleading.

The funds' features are insufficient to substantiate a 'sustainable' name

201. As shown in **Annex D**, just one of the target Article 8 funds (*BSF Systematic Sustainable Global Equity Fund*[156]) mentions sustainability in its investment objectives (as set out in the Technical Sheet for the fund). Most of the target Article 8 funds (including the *BSF Systematic Sustainable Global Equity Fund*) instead make some reference to '*ESG criteria'* or '*principles of ESG investing* in their investment objectives.

202. Six of the 16 Article 8 Target Funds (over a third of the funds) make no mention of either ESG or sustainability in the investment objectives set out in their Technical Sheets. Of these, five mention in the KID that the fund will take ESG criteria into account when selecting investments or that the fund's assets will be invested in accordance with its ESG policy.[157] The remaining fund (the *BGF Sustainable Emerging Markets Corporate Bond Fund*) simply refers to the application of its ESG Policy in its investment objectives as presented in the prospectus. (See paragraph 181.)

203. The broad features of these funds' investment objectives are insufficient to explain why the funds are 'sustainable' and, as we come on to explain, fail to clarify the nature of the fund or provide the information required for investors to make an informed decision. As a result, it is hard to be confident in any clear correlation between BlackRock calling a fund 'sustainable', and that fund including ESG criteria or investing principles clearly and prominently in its investment objectives. There is no easy reference point for investors to compare and understand how these funds are 'sustainable'. This conclusion is reinforced by reference to the Control Funds:

    - Five of the eight Control Funds refer to ESG criteria or investing principles in their investment objectives in similar terms to the 'sustainable' Article 8 Target Funds.
    - Four of the Control Funds are classified as Article 8 for the purposes of SFDR, confirming that the use of 'sustainable' is not a signifier of Article 8 status.

204. The binding elements of the funds' investment strategies as set out in the SFDR disclosures and / or 'ESG Policy' in the prospectus include various of the ESG-related criteria set out at paragraphs 184 to 185 above. In this respect, the approach taken is similar to that taken toward ESG strategies in the two Article 9 funds. As we explain in paragraphs 101 to 102 above, an investment strategy which simply 'tilts' investment toward issuers based on 'ESG' or relatively low carbon criteria but which allows investment in the inconsistent holdings, including some of the highest carbon emitters globally, is not sufficient to substantiate the term 'sustainable' in the fund names.

No explanation for inconsistent holdings

205. The funds' binding elements of the investment strategy as set out in the SFDR disclosures and / or 'ESG Policy' as set out in the prospectus include various of the ESG-related criteria set out at paragraphs 184 and 185 above. In this respect, the approach taken is similar to that taken toward ESG strategies in the two Article 9 funds. As we explain in paragraphs 101 to 102 above, an

[156] See the Technical Sheet for the fund.
[157] In such cases, this opens up an incongruity between the Technical Sheet and the KID.

investment strategy which 'tilts' toward issuers based on 'ESG' or relatively low carbon criteria but which allows investment in the inconsistent holdings, including some of the highest carbon emitters globally, is not sufficient to substantiate the term 'sustainable' in the fund names.

206. No explanation for the inconsistent fossil fuel holdings is provided in the Article 8 Target Funds' regulatory or marketing documentation or elsewhere; in this respect, the fund communications are inaccurate, unclear and misleading by omission. Each of the Article 8 Target Funds' 'sustainable' name – and, in some cases, the investment objective as we explain below – is false and likely to mislead customers. The mis-naming of these funds and the provision of partial or misleading information obscures the real nature of the funds, which includes investing in some of the most damaging fossil fuel companies in the world and supporting the development and increase of fossil fuel production and capacity worldwide.[158]

Misleading investment objectives in the prospectus

207. For four of these funds, the misleading impression given by the name of the 'sustainable' fund is exacerbated by an additional element of the investment objective set out in their prospectus which is not included in the Technical Sheet or KID; these funds are the *BSF Sustainable Fixed Income Credit Strategies Fund*, the *BSF Sustainable Euro Corporate Bond Fund*, the *BlackRock Sustainable Fixed Income Strategies Fund* and the *BSF Sustainable Euro Bond Fund*. These funds' investment objectives as set out in the KID and / or the Technical Sheet are therefore inconsistent with the prospectus. (Other examples of this type of inconsistency are included at **Annex D**.) In addition to the misleading nature of the investment objectives of these funds their inconsistent presentation is of itself misleading.

208. To take the ██████████ as an example: the fund's investment objective as set out in the prospectus provides additionally (i.e. detail that is not in the Technical Sheet or KID) that the '*Investment Adviser seeks to reduce its carbon emissions profile by allocating to […] lower carbon emitting issuers and issuers committed to decarbonisation*'.

209. In apparent contradiction of this investment objective, 3.6% of the fund's AUM is invested in ██████████ (with 2.7% of AUM invested in other inconsistent holdings). As explained in paragraph 189 above, these companies are prolific fossil fuel expanders. It is difficult to argue that they are '*committed to decarbonisation*' when all five of them are amongst those with the biggest short-term expansion plans globally. Nor can these companies be categorised as '*lower carbon emitting issuers'*; as we explain in paragraph 191 above, these entities are also among the highest CO_2 emitters globally.

210. The same argument is repeated for the following funds which also include a commitment to seek '*to reduce [their] carbon emissions profile by allocating […] lower carbon emitting issuers and issuers committed to decarbonisation*':

- ██████████: holdings in Equinor and TotalEnergies, as well as other inconsistent holdings;
- ██████████: holdings in Shell, Eni SpA, and TotalEnergies, as well as other inconsistent holdings; and

[158] AMF Position - Recommendation DOC-2020-03 (amf-france.org), p.1.

- ███████████████████: holdings in Shell, TotalEnergies, BP, Equinor and Eni SpA as well as other inconsistent holdings.

These funds' investment objectives are inaccurate and misleading in their claims that they seek to reduce their carbon emissions '*by allocating […] to lower carbon emitting issuers and issuers committed to decarbonisation*', a claim which is contradicted by the inconsistent holdings in each of the funds.

Misleading ESG strategy in the prospectus and / or SFDR disclosures

211. Similarly, eight of the Article 8 Target Funds explain in the prospectus or in the binding elements of the investment strategy as set out in the SFDR disclosures that they seek to '*limit investments that are deemed to have associated negative externalities (i.e. higher carbon emitters […])*'. Seven of these funds have holdings in ExxonMobil, Shell, BP, Chevron, TotalEnergies, Eni, Equinor and ConocoPhillips alongside their other inconsistent holdings. As we explain in paragraphs 189 and 191 above, these investee companies are among the highest emitters of GHGs in the world. Holdings in these companies are entirely incompatible with limiting exposure to '*higher carbon emitters*'. Funds with exposure to these holdings that make this claim in their ESG Policy include:

    - *BSF Sustainable Fixed Income Credit Strategies;*
    - *BGF Sustainable Global Bond Income Fund;*
    - *BGF Sustainable Emerging Markets Corporate Bond Fund;*
    - *BSF Sustainable Euro Corporate Bond Fund*;
    - *BlackRock Sustainable Fixed Income Strategies Fund*;
    - *BGF Sustainable World Bond Fund*; and
    - *BGF Sustainable Euro Bond Fund*.

    The claim to limit investments in '*higher carbon emitters*' is inaccurate and misleading; this claim is directly contradicted by the inconsistent holdings in each of the funds, most strikingly in the investments in the companies listed above.

212. The Article 8 Target Funds' inconsistent holdings make it difficult to see how this limitation, or any of the criteria listed at paragraph 184 or 185 above can have been properly or consistently applied. Exposure to these holdings – including some of the most polluting companies in the world – suggest that non-financial analysis coverage may not have been consistently applied to 90% or more of a fund's holdings (where applicable), or that selectivity, ratings upgrades or other ESG-related approaches have failed in relation to particular investments. These criteria are either not met in practice by the Article 8 Target Funds – and may therefore be unclear and misleading in addition to the misleading effect of their names – or are applied so loosely as to be meaningless.

AMF 2020-03

213. To the extent that the Article 8 Target Funds may incorporate various elements of the minimum criteria specified by AMF 2020-03 for presenting extra-financial details as a key element of product communications, we repeat our arguments and analysis set out at paragraphs 43 to 52 above and (as if applied to these funds) at paragraph 105.

214. The inclusion of certain minimum criteria as suggested by AMF 2020-03 and its potentially flawed application by BlackRock does not negate the overriding legal obligation that the name and marketing of the Article 8 Target Funds is fair, clear and not misleading to retail investors. In the terms set out in AMF 2020-03, the use of 'sustainable' in the names of the Target Funds is disproportionate to their actual approaches to sustainability – both because of their inconsistent holdings and because of the broader point that their strategies do not justify the use of the term in their names. Through the misleading inclusion of 'sustainable' in its name, the funds fail to meet legal standards.

215. Moreover, we note that ten of the 16 Article 8 Target Funds include the disclaimer recommended by the AMF in Position 7 of AMF 2020-03 which states:

> *Investors' attention is drawn to the fact that this UCITS presents, in view of the expectations of the Autorité des Marchés Financiers, a disproportionate communication on the consideration of non-financial criteria in its management.*[159]

There is no discernible or consistent difference in the presentation of 'minimum criteria' set out in the prospectus between the Article 8 Target Funds which include the disclaimer and those which do not: the majority of the Target Funds include some elements of the minimum criteria suggested by AMF 2020-03 irrespective of whether they use the disclaimer. Although every one of the Article 8 Target Funds uses the term 'sustainable', some disclaim compliance with AMF 2020-03, others do not. The same inconsistency of approach toward the doctrine is applied across the Control Funds: two of these funds use the disclaimer, the others do not.[160]

216. This approach is contradictory and confusing. Investors are not provided with the information they need in order to make informed choices, and BlackRock's approach toward applying the disclaimer is inconsistent and inexplicable. It may also suggest that BlackRock's compliance with the minimum criteria, and their inclusion in the regulatory documents for the funds, lacks substance. We note in any event that the use of the disclaimer (much like compliance with the minimum criteria set out in AMF 2020-03) does not negate BlackRock's obligations to comply with its obligations to act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market, or to ensure that all regulatory and marketing information (including SFDR disclosures) are fair, clear and not misleading' in accordance with the laws and regulations set out above at paragraphs 18 and 19.

217. In summary: neither the provision of a disclaimer nor the (potentially flawed) application of the minimum criteria set out in AMF 2020-03 justify the use of the term 'sustainable' in the Target Funds' names or remove the obligation to ensure communications and names are fair, clear and not misleading overall.

218. We also note that, in addition to the failings set out above, there may well be various other breaches of the Recommendations and Positions set out in AMF 2020-03 by the Article 8 Target Funds. We would encourage the AMF to investigate this further in response to this Complaint, in addition to our central submissions in relation to the Target Funds.

The overall impression created by the funds is misleading

219. The incongruity between the name of the Article 8 Target Funds' names and their inconsistent holdings is not adequately explained in the Technical Sheet, KID, SFDR disclosures or in any other

[159] The funds which include the disclaimer are indicated on the table attached at **Annex D**.
[160] As indicated in the table at **Annex E**.

documentation. Because of that, when taken together with the funds' name, the various investment objectives, ESG strategies and disclosures (though insufficient to substantiate the use of 'sustainable' in the funds' names for the reasons given above) may operate as half-truths which create a false impression which may deceive, or is likely to deceive, customers. The cumulative effect of is to give the impression that the funds will not invest in companies that are demonstrably unsustainable. This cumulative impression is misleading, inaccurate and unfair: the funds' inconsistent holdings are fundamentally misaligned with the impression created that they will invest 'sustainably'.

3.3.5 ATF Breach 3: breach of own exclusions

220. As shown in **Annex D**, each of the Article 8 Target Funds apply the Baseline Screens.[161] The Baseline Screens provide that:

- *'BlackRock has developed a set of exclusionary screens, 'BlackRock EMEA Baseline Screens', that seeks to address a majority of our clients' requests for exclusions';*
- *'Where BlackRock EMEA Baseline Screens are applied to a BlackRock managed fund, BlackRock will seek to limit and / or exclude direct investment (as applicable) incorporate issuers which, in their opinion of [sic], have exposure to, or ties with, certain sectors';*
- *The 'sectors' include 'Fossil Fuels' with the 'Screen Policy' applying to:*
    - *'Issuers deriving more than 5% of their revenue from thermal coal extraction and / or thermal coal-based power generation, with the exception of "green bonds" […]; and*
    - *'Issuers deriving more than 5% of their revenue from the production and generation of tar sands (also known as oil sands).*

221. The presentation of the Baseline Screens in the funds' ESG Policies set out in the prospectus and SFRD disclosures creates a strong expectation that the Baseline Screens will apply through the use of imperatives:

- The SFDR disclosures and prospectus state that '*The Fund **will apply** the BlackRock EMEA Baseline Screens*'; the Baseline Screens are referred to as '**exclusionary** screens';
- It is a **binding element** of the funds' investment strategy, included within the SFDR disclosures, for the fund to '***Apply** the Baseline Screens*'; and
- The statement that the Investment Adviser '***intends** to limit direct investment in securities of issuers involved in the extraction of, or the generation of power using, thermal coal and [….] tar sands*' is presented as part of the binding exclusionary screens.

222. This presentation suggests a binding exclusionary policy in relation to issuers involved in the extraction of, or the generation of power using, thermal coal. These exclusions are breached by the fund's investment in thermal coal issuers as noted at paragraph 188 above.

223. Five of the funds appear to breach the screens by including at least one company deriving '*more than 5% of their revenue from thermal coal extraction and / or thermal coal-based power*

[161] Microsoft Word - BlackRock EMEA Baseline Screens Policy website final draft.docx. NB. This document does not appear to be available in French.

generation, with the exception of "green bonds"'.[162] These funds (and their apparently breaching investments) are:

- ***BlackRock Sustainable Advantage US Equity Fund***:
  - ███., deriving 19% revenue from thermal coal
  - ███., deriving 10% revenue from thermal coal
- ***BGF Systematic Sustainable Global Small Cap Fund***:
  - ███, deriving 49% revenue from thermal coal
- ***BGF Sustainable World Bond Fund***:
  - ███ deriving 19% revenue from thermal coal
  - ███., deriving 11% revenue from thermal coal
  - ███ deriving 28% revenue from thermal coal
  - ███ deriving 8% revenue from thermal coal
  - ███ deriving 10% revenue from thermal coal
- ***BGF Sustainable Global Bond Income Fund***:
  - ███., deriving 20% revenue from thermal coal
  - ███., deriving 11% revenue from thermal coal
  - ███ deriving 28% revenue from thermal coal
  - ███., deriving 8% revenue from thermal coal
  - ███ deriving 10% revenue from thermal coal
- ***BGF Sustainable Fixed Income Global Opps. Fund***:
  - ███., deriving 10% revenue from thermal coal

224. ███ ███ invests nearly US$███ in Exxon Mobil Corporation – a company which is active in oil sands production and exploration.[163] It is not possible to identify from Exxon's public documents (including its annual accounts) what percentage of its revenue is derived from tar sands because these revenues are included in its 'Results of Operations' figures.[164] However, GOGEL shows that 10.1% of Exxon's hydrocarbons production stems from tar sands. With GOGEL also showing that 92.3% of Exxon Mobil's revenue is derived from fossil fuels, it is likely that Exxon derives over 5% of its revenue from tar sands and that the investment by the ███ in Exxon Mobile therefore breaches the tar sands exclusion set out in the Baseline Screens.

225. The apparent breach by these funds of their own exclusions constitutes a breach of clear, fair and not misleading requirements and, by virtue of the exclusions forming part of the fund's binding

[162] Percentage revenue derived from thermal coal is set out in GCEL.
[163] See ExxonMobil Annual Report 2023, pp.17, 45, 120.
[164] Exxon explain, in their accounts, that this is in accordance with SEC and FASB rules.

investment strategy under its SFDR disclosures, renders the SFDR disclosures misleading in breach of Article 10 of SFDR.

226. The presentation of the Baseline Screens suggests, as explained in paragraphs 221 and 222 above, that the exclusions are binding. To the extent that the AMF considers that the Baseline Screens comprise a less stringent obligation on the Investment Adviser to merely 'limit' (but not exclude absolutely) direct investment in securities of issuers involved thermal coal and tar sands, the presentation of these exclusions as if they are binding is itself unfair and misleading and in breach of fair, clear and not misleading requirements.

3.3.6 Conclusion: Article 8 Target Funds

227. In conclusion:

- The name of each Article 8 Target Fund includes the term 'sustainable' which is incompatible with the funds' exposures to inconsistent holdings in breach of fair, clear and not misleading law and regulation;
- None of the Article 8 Target Funds' documentation addresses or explains this inconsistency, in breach of fair, clear and not misleading law and regulation;
- There is no discernible correlation between the use of the term 'sustainable' in the names of the Article 8 Target Funds and the presence of 'sustainability' or 'ESG' considerations in their investment objectives disclosed in the Technical Sheets and / or KIDs (including when compared to the Control Funds). This adds to the confusion generated by the use of the term 'sustainable', obscuring the nature of the funds and exacerbating the risk of misleading investors.
- In some cases, the investment objectives exacerbate the false impression given by the 'sustainable' fund name by suggesting that the fund will invest in lower emitting companies or those which are '*committed to decarbonisation*'; and
- At least 5 of the Article 8 Target Funds appear to be in breach of exclusions which prohibit investment into companies which derive more than 5% revenue from thermal coal or oil sands.

4. Conclusion and action requested

4.1 Regulatory context: the AMF and ESMA

228. This Complaint reflects a broader trend of greenwashing in the French and European investment funds markets, as highlighted in Reclaim Finance's recent open letter to the AMF.[165] This letter built on research published by Reclaim Finance in May 2024 showing that 70% of supposedly 'sustainable' passive funds in the EU market invest in fossil fuel expansion, a practice that is incompatible with the imperatives of the energy transition and the Paris Agreement temperature goals.[166]

229. The AMF has recognised the major greenwashing risks associated with the marketing of sustainable thematic funds in its recent supervisory work, observing '*mismatches between the*

[165] See Open letter to the AMF against greenwashing in the financial sector - Reclaim Finance.
[166] 15032024-Report-Unmasking-greenwashing-a-call-to-clean-up-passive-funds.pdf (reclaimfinance.org).

funds' contractual commitments, the ability to obtain adequate data and the communications provided by distributors and portfolio management companies on the sustainability of these thematic funds and the marketing carried out as to the sustainability of these thematic funds by distributors and asset management companies', particularly in respect of foreign funds marketed in France that have not been authorised by the AMF.[167]

230. In its 2024 Action Plan and Supervision Priorities, the AMF states that in 2024 it will '*continue to strive to give investors the best tools to support them in their investment choices […] by paying particular attention to new themes with a high risk of poor marketing (risk of greenwashing linked to 'sustainable' financial products […] etc.)*' while '*reserv[ing] the right to use all its powers, in particular to combat the risk of greenwashing*'.[168] There have been welcome signs that the AMF is actively increasing its enforcement in relation to greenwashing and related breaches of sustainable finance regulation.[169]

231. ESMA also recognises '*the growing importance of sustainability results in a growing supply of, and demand for, sustainable investment products [which] has also led to greater scrutiny and retail interest in the ESG characteristics of companies and investment products that requires supervisory action to address the risk of greenwashing*' in its 2023 to 2028 strategy and is committed to deepen its understanding of greenwashing to develop a supervisory response.[170]

232. ESMA's May 2023 Progress Report on Greenwashing confirmed addressing greenwashing as one of ESMA's key priorities,[171] set out the ESAs common understanding of greenwashing[172] and highlighted financial product naming as '*one of the practices that most facilitates greenwashing*'.[173] ESMA's 2024 Final Report on Greenwashing builds on this position and sets out ESMA's expectation that the NCAs responsible for supervising financial markets carry out '*intensified supervisory work on this topic*'.[174]

233. ESMA's recent publications reflect the urgency of addressing misleading and damaging greenwashing practices in financial markets. Confidence in the term 'sustainable' in financial products is eroded through the mis-selling of funds as 'sustainable' when their holdings include material investments in some of the most environmentally damaging companies in the world. As a result, consumer interests are damaged and a market integrity crisis is developing, with significant consequences for financial stability.[175] Regulatory correction of the widespread misnaming of funds is required to restore investor confidence that funds marketed as 'sustainable' are genuinely 'sustainable'.

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[167] See The Autorité des Marchés Financiers (AMF) publishes the findings of three supervisory initiatives on sustainable finance | AMF (amf-france.org); synthese-doc-co-clean-en.pdf (amf-france.org).
[168] AMF *2024 Action Plan and Supervision Priorities*, pp.27 and 30.
[169] See, for example: French regulator to step up SFDR enforcement (responsible-investor.com); Spot inspection by French regulator finds no asset manager fully compliant with SFDR (responsible-investor.com); A step towards sanctioning greenwashing practices in France - Reclaim Finance; and Accord de composition administrative conclu le 28 février 2024 avec Primonial Reim France | AMF (amf-france.org).
[170] ESMA Strategy 2023 - 2028 (europa.eu), pp.13 and 28.
[171] ESMA Progress Report on Greenwashing (europa.eu), para.1, p. 8.
[172] As '*a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants*', (ESMA Progress Report on Greenwashing (europa.eu), para.13, p.11.
[173] ESMA Progress Report on Greenwashing (europa.eu), para.49, p.25.
[174] ESMA Final Report on Greenwashing (europa.eu). para.23, p.9.
[175] ESMA refers to '***immediate damage to individual consumers or investors** (in particular through mis-selling) or the gain of an **unfair competitive advantage.** Regardless of such outcomes, if not kept in check, greenwashing may **undermine trust in sustainable finance markets and policies***' (bold text in original document), ESMA Final Report on Greenwashing, p.79.

4.2 Action requested

234. As we have explained in detail in **Section 2** above, the AMF can act pursuant to existing fair and not misleading requirements under the UCITS Directive, the Distribution Regulations, MiFID II, SFDR, PRIIPs, FMFC and the AMF General Regulation to address the greenwashing practices described in this Complaint.

235. The AMF has authority to impose sanctions over foreign entities which commit a breach of European regulations likely to undermine investor protection on French territory or abroad, including under Article L621-15 Code monétaire et financier.

236. The AMF has a mandate to:

- '*ensure that investors are informed and that markets in financial instruments […] are properly functioning'*; and
- '*ensure the quality of the information provided by management companies for the management of collective investment schemes on their investment strategy, and their management of risks related to the effects of climate change'*.[176]

It must also '*[ensure] the quality of the information provided by management companies for the management of collective investment schemes on their investment strategy and their management of risks related to the effects of climate change*'.[177]

Enforcement action

237. In light of the AMF's duties and its acknowledgement of the need for enforcement, the applicability of fair, clear and not misleading rules, as well as ESMA's call for the NCAs to intensify their supervisory work on greenwashing, this Complaint asks the AMF to take firm, prompt and decisive enforcement measures. These measures include:

- Requiring Blackrock to:
  - remove the term sustainable from the Target Funds' names; or
  - procure that the Target Funds divest their inconsistent holdings; or
  - otherwise remedy the misleading elements of the Target Funds' marketing and regulatory documentation; and
- Considering appropriate sanction or redress for the historic misleading communications issued to customers by the Target Funds.

238. Clarity from the AMF is also required on the application of the minimum criteria suggested by AMF 2020-03. In this respect, we note that ESMA gives the term 'sustainable' special status, confirming the principle that it is inconsistent for a fund with 'sustainable' in its name to invest in certain fossil fuel companies (see Section 2.3 above). We also note that the new SRI investment fund label excludes '*companies that exploit coal or unconventional hydrocarbons, as well as those that*

[176] French Monetary and Financial Code (**MFC**), Article L621-1.
[177] MFC, Article 621-1. See also Our missions: regulate, supervise, inform and protect | AMF (amf-france.org).

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launch new projects for the exploration, exploitation or refining of hydrocarbons (oil or gas)', establishing a principle that investing in fossil fuels is not consistent with an ESG strategy.[178]

Revision of AMF 2020-03

239. In addition to the measures set out in paragraph 238, we also ask that in light of ESMA's authoritative position, the principle established by the French government's SRI label and the facts raised in this Complaint, that the AMF:

- Reviews the extent to which AMF 2020-03 permits funds named and marketed as 'sustainable' to hold exposure to companies which are demonstrably unsustainable, creating risk for customers; and
- Updates AMF 2020-03 to include minimum criteria requiring funds which use the term 'sustainable' as a key aspect of product communication to exclude investments in fossil fuel companies which are operating incompatibly with Paris Agreement temperature goals.

'Do no significant harm' test under SFDR

240. Finally, there is a serious need, and clear opportunity, for robust interpretation and application of the DNSH test by the AMF to bring clarity to the treatment of fossil fuel investments within SFDR Article 9. Addressing this lack of clarity will correct significant greenwashing among Article 9 funds in the French market. We ask that the AMF bring use the opportunity for regulatory enforcement presented in this complaint, and or issue authoritative guidance, to demonstrate that:

- meeting the DNSH test request requires the exclusion of investments in coal, oil and gas companies operating incompatibly with the Paris Agreement temperature goals, including those which are expanding fossil fuel production or capacity from holdings in Article 9 funds; and / or
- failure to fully disclose, explain and demonstrate how such holdings do not significantly harm any of the sustainable objectives, is a breach of SFRD requirements.

ESMA Guidelines

241. In light of the systemic issues raised in this Complaint, we urge the AMF to comply with, or indicate its intention to comply with, the ESMA Guidelines by the specified deadline of 21 October 2024, and to develop enforcement action under those rules where equivalent fact patterns are observed in the French investment funds market.

Contact

242. We welcome further discussion with the AMF in relation to this Complaint. For any follow up questions, please contact Robert Clarke (rclarke@clientearth.org), Alex Bennett (abennett@clientearth.org) and Quentin Mautray (QMautray@clientearth.org).

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[178] See 06/11/2023 - Bruno Le Maire announces the outlines of the new Socially Responsible Investment (SRI) label - Press - Ministry of Finance (economie.gouv.fr).

Annex A: BlackRock and the Target Funds

1. Each of the Target Funds (listed at Annex C) is a sub-fund of one of the following umbrella funds. Each of the umbrella funds is structured with several sub-funds, each with segregated liability.

A1 BlackRock Global Funds (BGF)[179]

2. BGF is a public limited company (société anonyme) established in Luxembourg as an open-ended variable investment company on 14 Jun 1962 with company registration number B6317. BGF is authorised by the Commission de Surveillance du Secteur Financier (**CSSF**) as an undertaking for collective investments in transferable securities. BGF is the umbrella fund to seven Article 8 Target Funds and the two Article 9 Target Funds

Management & Administration Management Company:	BlackRock (Luxembourg) S.A.
Investment Advisers:	BlackRock Financial Management, Inc., BlackRock Investment Management, LLC BlackRock Investment Management (UK) Ltd BlackRock (Singapore) Ltd
Principal Distributor:	BlackRock Investment Management (UK) Ltd
Target Funds (Article 9):	*BGF Sustainable Global Infrastructure Fund* *BGF Sustainable Energy Fund*
Target Funds (Article 8):	*BGF Systematic Global Sustainable Income & Growth Fund* *BGF Sustainable Global Bond Income Fund* *BGF Systematic Sustainable Global SmallCap Fund* *BGF Sustainable Emerging Markets Corporate Bond Fund* *BGF Sustainable Global Dynamic Equity Fund* *BGF Sustainable Fixed Income Global Opportunities Fund* *BGF Sustainable World Bond Fund*

[179] BlackRock Global Funds Prospectus 23 February incl. First Addendum March 2024.

A2 BlackRock Strategic Funds (BSF)[180]

3. BSF is a public limited company (société anonyme) established in Luxembourg as an open-ended variable capital investment company on 2 May 2007 with company registration number B127481. BGF is authorised by the CSSF as an undertaking for collective investments in transferable securities. BSF is the umbrella fund to five Article 8 Target Funds.

Management & Administration Management Company:	BlackRock (Luxembourg) S.A.
Investment Advisers:	BlackRock Financial Management, Inc BlackRock Institutional Trust Company N.A. BlackRock Investment Management, LLC BlackRock Investment Management (UK) Ltd BlackRock (Singapore) Ltd
Principal Distributor:	BlackRock Investment Management (UK) Ltd
Target Funds (Article 8):	*BSF Systematic Sustainable Global Equity Fund* *BSF Sustainable Fixed Income Credit Strategies Fund* *BSF Sustainable Euro Corporate Bond Fund* *BlackRock Sustainable Fixed Income Strategies Fund* *BSF Sustainable Euro Bond Fund*

180 blackrock-strategic-funds-prospectus-en.pdf

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A3 BlackRock Funds I ICAV (the ICAV)[181]

4. The ICAV is an Irish collective asset-management vehicle registered on 8 March 2018 and is authorised in Ireland by the Central Bank of Ireland as a UCITS.

   The ICAV is the umbrella fund to four Article 8 Target Funds.

Manager:	BlackRock Asset Management Ireland Ltd
Investment Manager and Distributor:	BR Investment Management (UK) Ltd
Target Funds (Article 8):	*BlackRock Sustainable Advantage World Equity Fund* *BlackRock Sustainable Advantage US Equity Fund* *BlackRock Global Corporate Sustainable Credit Screened Fund* *BlackRock Global High Yield Sustainable Credit Screened Fund*

[181] BlackRock Funds I ICAV - Prospectus - [18 July] 2024.

Annex B: Methodology

Data and fund holdings

1. Our analysis is based upon the methodology developed by Reclaim Finance in its *Unmasking Greenwashing* report.[182] Reclaim Finance provided ClientEarth with data analysis underlying its report and which formed the basis of its findings (the **Original Analysis**).
2. The Original Analysis is based on data and information extracted from the Morningstar Data Services platform on 23 November 2023. Details of fund holdings and other information is collected by Morningstar based on information communicated by asset managers (in this case, BlackRock). This information can be obtained from regulatory filings, public filings, communications by asset managers to Morningstar directly and from other third party sources.
3. Although the *Unmasking Greenwashing* report focuses on 'sustainable' passive investment funds, the Original Analysis covers all of those BlackRock funds (whether active or passive) for which Morningstar Data Services holds information. Morningstar holds information for open funds and ETFs, however there are certain limitations to the information made available on the platform for other types of funds.[183] The funds which are the focus of this Complaint are 'open funds'.
4. A further limitation is that, even for open funds and ETFs, holdings information available via Morningstar Data Services is sometimes incomplete or does not provide a direct way to identify the underlying companies linked to the holding. Reclaim Finance therefore excludes market value related to index derivatives and fund of fund holdings from its analysis of fossil fuel company holdings. The nature of index derivatives and fund of funds holdings is such that it is not possible to accurately assess their exposure to certain companies. The difficulty in accessing fund level data highlights both a transparency issue and the complexity of certain financial products, both of which limit capacity to correctly estimate the exposure of asset managers to fossil fuel companies.
5. This limitation means that our analysis does not identify holdings such as derivatives which indirectly finance issuers that would have otherwise been categorised as inconsistent holdings in our analysis. The figure for the value of assets under management does, however, include these types of derivative and fund of fund holdings. This AUM figure is Therefore, the percentage of AUM identified as inconsistent holdings in our analysis may be conservative.
6. The Original Analysis identifies whether or not a fund is 'sustainable'. Reclaim Finance defined 'sustainable' funds using SFRD classifications and by searching for sustainability-related key words in the name of the funds, and categorised these funds in their findings as 'ESG' funds.[184]
7. In order to identify inconsistent holdings (and therefore instances of greenwashing) for each fund, each fund's holdings have been cross-referenced against companies listed on GOGEL (published on 15 November 2023) and GCEL (published on 19 October 2023).[185] In addition to identifying

[182] 15032024-Report-Unmasking-greenwashing-a-call-to-clean-up-passive-funds.pdf (reclaimfinance.org).
[183] Certain subscriptions to Morningstar Data Services may also permit access to information on 'closed funds', but this type of information did not form part of the Original Analysis or the analysis of the Target Funds.
[184] ESG ; Sustainability ; Sustainable ; SRI ; Global Impact ; Climate ; Environment ; Environmental ; Carbon transition ; Energy transition ; Climate transition ; Environmental transition ; Environment transition ; Sustainable transition ; Paris aligned ; Low carbon ; Carbon neutral ; Carbon aware ; Carbon constrained ; Carbon efficient ; Fossil fuel free ; Fossil fuel reserves free ; Fossil free ; Fossil fuel screened ; Clean power ; Clean energy ; Green power ; Green energy ; ISR ; Sust ; Global Impact; Green ; Clean ; Green ; PAB ; CTB ; ESR ; Durable.
[185] Home | gogel; GCEL 2023 | Global Coal Exit List

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companies active in the coal, oil and gas industries, GCEL and GOGEL identify companies involved in new fossil fuel projects or capacity.

8. Using the analysis provided to us by Reclaim Finance, we identified the holdings of each fund to identify companies which are developing fossil fuel projects or capacity.

Identification of the 18 Target Funds

9. We took the Original Analysis as a starting point to identify the funds which are the subject of this Complaint. We filtered the Original Analysis to identify:

   - Active funds;
   - With the word 'sustainable' (or derivatives) in the fund name.

   This filtering exercise produced a shortlist of 30 funds.

10. We excluded funds from the shortlist based on the following criteria:

    - ETFs;
    - Funds marketed to professionals;
    - Funds which were not categorised by Reclaim Finance as 'ESG' funds;
    - Funds with fewer than 4 holdings in GCEL and / or GOGEL listed companies; and / or
    - Funds with less than 1% AUM exposure to GCEL and / or GOGEL listed companies.[186]

11. Using these filters and exclusions, and by cross-referencing those funds which are available to retail customers in France, we identified the 18 Target Funds.

Updated holding data

12. Reclaim Finance updated its Original Analysis in respect of the fund holdings for the 18 funds which are the subject of this Complaint (the **Updated Analysis**). Again, the holdings for these funds and information about the funds were extracted from the Morningstar Data Services platform.

13. Data and information was extracted from the Morningstar Data Services platform on 17 July 2024 and includes the following information for each of the funds which are the subject of this Complaint:

    - Total value of holdings identified on the Morningstar Data Services (which we refer to in the Complaint as 'AUM';
    - Total value of holdings in companies listed on GCEL and / or GOGEL;
    - Individual holdings in companies listed on GCEL and / or GOGEL;

[186] We apply these minimum inconsistent holdings thresholds in the interests of focusing our Complaint on the most striking examples of breach. The application of these minimum thresholds in our methodology is not intended to suggest that it is acceptable for any fund using the term 'sustainable' in its name to invest in any company which is listed on GCEL and/ or GOGEL and is therefore a fossil fuel developer or a fossil fuel company which is not phasing out fossil fuel production consistently with the Paris Agreement temperature goal. We would be happy to provide the AMF with a list of funds which include holdings in these types of companies below the thresholds set out above.

- Total value of green bond holdings, if any (green bonds are excluded from our definition of inconsistent holdings, but are included in the total AUM figures for each fund, where applicable).

14. From this data, Reclaim Finance were able to calculate the percentage of AUM invested in companies listed on GCEL and / or GOGEL per fund.

15. The figures and holdings referred to in this Complaint are, unless stated otherwise, drawn from and based upon the Updated Analysis.

The Global Coal Exit List (GCEL)

16. GCEL collates information on over 1,400 companies operating in along the entire thermal coal value chain.[187] Companies are included on GCEL if they meet one or more of three criteria: (1) at least 10% of the company's revenue or power production (for utilities) is coal-related; (2) the company's annual thermal coal production exceeds 10 million tonnes, or it has 5 gigawatts or more of coal-fired power plants; or (3) the company has coal power, coal mining or coal infrastructure expansion plans.[188]

17. According to Urgewald (which publishes the data), the global coal plant fleet has grown (on a net basis) 186 gigawatts since the Paris Agreement was signed. According to the 2023 GCEL analysis, companies on the List are still planning to develop an additional 516 gigawatts of new coal-fired capacity – an increase of 25% to global capacity. The GCEL companies are also planning to develop new thermal coal mining projects with a total capacity of 2.5 billion tonnes per year – an amount equal to over 35% of the world's current production.

18. The vast majority of GCEL 2023 companies appear to be operating inconsistently with the Paris Agreement temperature goal: of over 1,400 companies on the List, only 71 (5%) have put an end date on their coal businesses; of those 71 that have set an exit date, only 41 have adopted a date that could conceivably be considered Paris-aligned. Most of those companies, however, are planning to replace their coal capacity with fossil gas. Only a tiny handful of companies have committed to timely closure of their coal assets and to switching to renewables. 577 (over 40%) of companies on the List are still planning to develop new coal assets.[189] This is consistent with findings from 2022, when Urgewald identified only 5 companies on the 2022 GCEL with coal transition plans that could be considered Paris-aligned.[190]

19. Given that 95% of companies on GCEL 2023 have failed to put any end date on their coal business, as required for Paris-aligned phase out, and 40% are planning to develop new coal assets we have compiled this Complaint on the working assumption that **any** company listed on GCEL should be considered an 'inconsistent holding' for funds with 'sustainable' in their names. As noted above, we also identify investee companies for each fund engaged in the most unsustainable activities of all by filtering for companies engaged in expanding fossil fuel production or capacity.

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[187] GCEL includes all components of the coal value chain, including: coal power generation, coal production, coal trading, coal logistics, coal processing, coal power transmission, coal chemicals (coal to gas/liquids), coal-related operation & maintenance services, coal mining services, coal-related engineering, procurement and construction services, coal exploration, coal equipment manufacturing, underground coal gasification, coal advisory services and all other activities that are thermal coal-related.

[188] See Methodology | Global Coal Exit List.

[189] See The 2023 Global Coal Exit List: Failing the Phase-Out | urgewald e.V..

[190] See GCEL.2022.Update_urgewald_Media.Briefing_20220929_Arial_0.pdf (coalexit.org).

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The Global Oil and Gas Exit List (GOGEL)

20. GOGEL collates information on over 1,600 companies active in the upstream oil and gas, midstream oil and gas or gas-fired power sector, covering 95% of global oil and gas production, over 90% of planned short-term upstream expansion and over 90% of exploration expenditures.[191]

21. The upstream section covers companies involved in oil and gas extraction and exploration. The midstream section covers companies responsible for over 100km of pipelines under development and over 1Mtpa of LNG terminal capacity. The gas-fired power section covers companies responsible for gas-fired power expansion projects.[192]

22. Urgewald has found that 96% of the 700 upstream companies on the 2023 GOGEL are still exploring or developing new oil and gas fields. 539 companies on the list are preparing to bring 230 billion barrels of oil equivalent (**bboe**) of untapped oil and gas resources into production. 1,023 companies are planning new LNG terminals, pipelines or gas-fired power plants. 651 companies are planning to develop an additional 567 gigawatt (GW) of gas-fired power capacity in the midst of the escalating climate crisis. If built, these projects would increase the world's installed gas-fired capacity by 30% Over the last three years, oil and gas companies on GOGEL spent a total of US$170.4 billion on exploring for new oil and gas reserves – activity which is flagrantly inconsistent with the Paris Agreement goals.

23. Given that the overwhelming majority of companies on the upstream section of the 2023 GOGEL are exploring or developing new oil and gas projects, and the companies included in the midstream and gas-fired power sections are all working on new oil and gas capacity projects, we have compiled this Complaint on the working assumption that **any** company listed on GOGEL should be considered an 'inconsistent holding' for funds with 'sustainable' in their names. As noted above, we also identify investee companies for each fund engaged in the most unsustainable activities of all by filtering for companies engaged in expanding fossil fuel production or capacity.

[191] See The 2023 Global Oil & Gas Exit List: Building a Bridge to Climate Chaos | urgewald e.V. and the GOGEL methodology, available at GOGEL Explained | gogel.
[192] See GOGEL Explained | gogel.

Annex C: Sustainability and climate change

1. This Annex provides evidence and authority for why investment into fossil fuel companies that are developing new fossil fuel projects or capacity, or are not otherwise phasing out fossil fuel production consistently with the Paris Agreement temperature goals, is not compatible with being (and being named and marketed as) 'sustainable'. [It discusses the following points in turn:

   - 'Sustainable' implies consistency with the Paris Agreement temperature goals;
   - The connection between climate change mitigation, Paris-aligned emissions reductions and what it means to be 'sustainable' as recognised in financial and corporate law; and
   - The implications of preserving a sustainable climate for the fossil fuel sector and investment in it.

C1 'Sustainable' implies consistency with the Paris Agreement temperature goals

2. In the context of sustainable development, sustainability has long been defined as '*meeting the needs of the present without compromising the ability of future generations to meet their own needs*'.[193] This definition has been adopted by, among many others, the Intergovernmental Panel on Climate Change (**IPCC**),[194] the United Nations (**UN**) body with responsibility for assessing the science related to climate change and presenting it to governments and policymakers.[195]

3. As explained below, consistency with the temperature goals of the Paris Agreement is a incontrovertible element of what it means to be 'sustainable'. This is because allowing 'dangerous anthropogenic interference' with the climate system to continue unchecked is self-evidently unsustainable in that it would compromise the ability of future generations to meet their needs. In the words of the IPCC, '*Climate change is a threat to human well-being and planetary health (very high confidence). There is a rapidly closing window of opportunity to secure a liveable and **sustainable** future for all (very high confidence)'.*[196] A sustainable climate requires the '*stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*'.[197] As explained below by reference to the global political and scientific consensus, this requires limiting global warming to 1.5°C above pre-industrial levels.

4. In order to '*significantly reduce the risks and impacts of climate change*', the signatories to the 2015 Paris Agreement agreed to the aim of '*holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels*'.[198] At the same time, the signatories agreed to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient

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[193] See para. 27 of the 1987 United Nations Brundtland Commission report on '*Our Common Future*': Our Common Future: Report of the World Commission on Environment and Development (un-documents.net).
[194] See Intergovernmental Panel on Climate Change, '*Special Report: Global Warming 1.5ºC: FAQ Chapter 5*' (p.477): SR15_Chapter_5_LR.pdf (ipcc.ch).
[195] See About — IPCC.
[196] See IPCC, AR6 Synthesis Report Summary for Policy Makers – Headline Statements at C.1: AR6 Synthesis Report: Summary for Policymakers Headline Statements (ipcc.ch)
[197] See Article 2 of the United Nations Framework Convention on Climate Change: UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (unfccc.int).
[198] See Article 2(1)(a) of the Paris Agreement: Paris Agreement text English (unfccc.int); Paris Agreement French (unfccc.int).

development.[199] The Glasgow Climate Pact concluded at COP26 recognised further that '*the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C*', and the parties '*resolved to pursue efforts to limit the temperature increase to 1.5°C*'.[200] This was reaffirmed at COP27 and COP28, where the parties recognised '*the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways*'.[201] These commitments represent the international political consensus on climate change mitigation.

5. The politically recognised need to limit global warming to 1.5°C to avoid the worst effects of climate change is also a well-established part of the global scientific consensus, which is best represented by the work of the IPCC.[202] From this work, it is clear that every fraction of a degree of warming matters. IPCC findings include:

   - *Climate-related risks for natural and human systems are higher for global warming of 1.5°C than at present, but lower than at 2°C (high confidence).*[203]

   - *Every increment of global warming will intensify multiple and concurrent hazards (high confidence) […] Risks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (very high confidence). Climatic and non-climatic risks will increasingly interact, creating compound and cascading risks that are more complex and difficult to manage (high confidence).*[204]

6. As such, allowing global warming to continue past 1.5°C is evidently unsustainable. Consistency with the temperature goals of the Paris Agreement is necessary to mitigate the worst effects of climate change and is a critical precondition for a 'sustainable' future. As such, it is an integral concept at the heart of what it means to be 'sustainable'.

7. It is well understood that meeting the Paris Agreement goals requires rapid, deep and immediate greenhouse gas emissions reductions in all sectors.[205] Achieving net zero by 2050 is not enough - the pace at which the world decarbonises will determine the degree to which the planet warms. Specifically, according to the latest IPCC findings, to have a greater than 50% chance of limiting warming to 1.5°C with no or limited overshoot, global emissions must peak by 2025 at the latest, and fall by 43% by 2030 and then 84% by 2050 compared to 2019 levels. To have a greater than 67% chance of limiting warming to 2°C, global emissions must fall by 27% by 2030 and 63% by 2050.[206]

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[199] See Article 2(1)(c) of the Paris Agreement: Paris Agreement text English (unfccc.int); Paris Agreement French (unfccc.int).
[200] See para. 21 of the Glasgow Climate Pact: Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its second session, held in Glasgow from 31 October to 12 November 2021. Addendum (unfccc.int).
[201] See para. 28 of the COP28 decision on the outcome of the first global stocktake: Outcome of the first global stocktake. Draft decision -/CMA.5. Proposal by the President (unfccc.int).
[202] The IPCC is an intergovernmental organisation established by the World Meteorological Organisation and the United Nations Environment Programme in 1988 in order to assess the science related to climate change. The IPCC synthesises thousands of scientific papers to provide a summary of the causes, impacts and risks of climate change and how adaptation and mitigation can reduce those risks. After multiple stages of scientific expert and State review, formal acceptance of IPCC reports indicates that States accept that they represent a comprehensive, objective and balanced view of the subject matter. See IPCC, 'Factsheet: How does the IPCC approve reports?', July 2021; IPPC, 'Factsheet: How does the IPCC review process work?'; and IPCC, About — IPCC.
[203] See IPCC, SR15 Summary for Policymakers ('**SPM**') at A.3: SPM_version_report_LR.pdf (ipcc.ch).
[204] See IPCC, AR6 Synthesis Report Summary for Policy Makers – Headline Statements at B.1 – B.2: AR6 Synthesis Report: Summary for Policymakers Headline Statements (ipcc.ch)
[205] See IPCC, AR6 Synthesis Report Summary for Policy Makers – Headline Statements at B.6: AR6 Synthesis Report: Summary for Policymakers Headline Statements (ipcc.ch).
[206] See the IPCC WG III AR6 SPM at C1.1. The parties to COP28 recognised explicitly '*that limiting global warming to 1.5 °C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050.*' See para. 27 of Outcome of the first global stocktake. Draft decision -/CMA.5. Proposal by the President (unfccc.int).

These reductions have profound implications, above all, for the industry responsible for the greatest contribution to global emissions: fossil fuels (see below).

C2 Financial and corporate law: what it means to be 'sustainable'

8. This connection between climate change mitigation, Paris-aligned emissions reductions and what it means to be 'sustainable' is recognised in financial and corporate law. Recently implemented EU corporate sustainability reporting (notably the Corporate Sustainability Reporting Directive ((EU) 2022/2464) (**CSRD**))[207] and the EU Taxonomy Regulation ((EU) 2020/852 (**EU Taxonomy**)[208]) and due diligence (notably the Corporate Sustainability Due Diligence Directive ((EU) 2024/1760) (**CSDDD**)[209]) standards apply broadly to the full range of 'sustainability' issues, but nevertheless include explicit detailed provisions in relation specifically to climate change, illustrating the centrality of climate issues in the conception of 'sustainability' enshrined in EU regulation. For instance:

   - The sustainability reporting requirement introduced by CSRD requires undertakings to disclose '*information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position*', including a specific requirement for undertakings to disclose '*the plans of the undertaking, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5 °C in line with the Paris Agreement*'.[210] This focus is also reflected in the detailed disclosure requirements set out in European Sustainability Reporting Standards (**ESRS**) E1 which specifies the climate information to be included in companies' sustainability statements.[211]

   - CSDDD was framed as '*an important legislative tool to ensure corporate transition to a sustainable economy, **including** to reduce the existential harms and costs of climate change*' (emphasis added)[212] and includes a specific requirement for Member States to ensure that companies '*adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement*'.[213]

   - Climate change mitigation and adaptation are integral objectives within the EU Taxonomy – which was established as a framework to facilitate sustainable investment – and were the first objectives for which 'technical screening criteria' were developed to '*ensure that relevant*

[207] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 (Text with EEA relevance); Directive (UE) 2022/2464 Du Parlement Européen et du Conseil du 14 décembre 2022 (Texte présentant de l'intérêt pour l'EEE).
[208] Regulation - 2022/720 - EN - EUR-Lex (europa.eu); Règlement (Ue) 2020/852 Du Parlement Européen et du Conseil du 18 juin 2020.
[209] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance); Directive (UE) 2024/1760 du Parlement Européen et du Conseil du 13 juin 2024 sur le devoir de vigilance des entreprises en matière de durabilité et modifiant la directive (UE) 2019/1937 et le règlement (UE) 2023/2859 (Texte présentant de l'intérêt pour l'EEE).
[210] See Article 1(4) of CSRD, replacing Article 19a in Directive (EU) 2013/34.
[211] The first set of ESRS disclosure standards, including ESRS E1, is available here.
[212] See Recital 73 of CSDDD.
[213] See Article 22 of CSRD.

economic activities within a specific sector can qualify as ***environmentally sustainable***'[214] (emphasis added).

9. By explicitly focusing on climate change, and alignment with the Paris Agreement 1.5 °C goal in these sustainability reporting standards (often more prominently than other sustainability issues like water, bribery or modern slavery), the EU cements in legislation the necessary inclusion of climate change within 'sustainability'.

10. Similarly, various regulatory authorities also recognise a stable climate as an integral element of sustainability. In addition to the drawing a connection between using the term 'sustainable' in a fund name and the fossil fuel investment exclusions set out in the Paris-Aligned Benchmark Regulation in its Naming Guidance (as discussed in Section 2.3 of the Complaint), ESMA has recognised that entity-level '*claims about sustainability impact would typically include information related to GHG emissions to date*' and '*forward-looking information about [commitments] to future performance (e.g. net zero target, transition plan)*'.[215] More generally, it is clear from the ESAs' recent work on greenwashing that climate change is considered to be at the heart of sustainability disclosure and the related greenwashing risks.[216] As noted in Section 2.5 of the Complaint, in the context of SFDR, the ESA's have confirmed that the use of PAI indicators (including several climate indicators: GHG emissions, GHG intensity and exposure to fossil fuel companies) is mandatory to demonstrate that an investment qualifies as a sustainable investment. In doing so, the ESAs associate these characteristics with the meaning of 'sustainability'. This meaning has been adopted in practice by the AMF, for instance in its 2021 guidance on reporting climate transition plans in accordance with EU requirements. As well as acknowledging climate transition plans as a key part of sustainability reporting, this guidance refers to companies moving '*from an unsustainable emissions profile to a level of greenhouse gas emissions compatible with the objectives of the Paris Agreement*'.[217]

11. It is clear from all of these legislative and regulatory sources that climate change is at the heart of what it means to be 'sustainable' for the purposes of financial regulation.

C3 Implications for fossil fuel investment

12. Preserving a sustainable climate has particular implications for the fossil fuel sector, and investment in it. The IPCC confirmed in April 2022 that projected CO_2 emissions from existing and planned fossil fuel infrastructure will substantially exceed levels consistent with pathways that limit global warming to 1.5°C (with no or limited overshoot);[218] existing fossil fuel industry operations and plans will inescapably deliver global heating well above 1.5°C and would jeopardise the well below 2 °C limit.[219] This increase in global heating will have widespread and massive impacts on health, livelihoods and ecosystems.[220] Further fossil fuel infrastructure will deliver further heating. The IPCC has also confirmed that in its 1.5°C emissions reduction pathways, global use of coal, oil and gas declines 95%, 60% and 45% (respectively) compared to 2019.[221] Another comprehensive study has

[214] See Recital 45 of the EU Taxonomy.
[215] See ESMA30-1668416927-2498 Progress Report on Greenwashing (europa.eu), p. 9.
[216] See the numerous references to climate change, risks and impacts in ESMA36-287652198-2699 Final Report on Greenwashing (europa.eu).
[217] See p.13 of reporting-on-climate-transition-plan-in-esrs-format-a-user-guide-for-undertakings.pdf (amf-france.org).
[218] See the IPCC WG III AR6 SPM at B.7.
[219] Produced after the IPCC report AR6 WGIII. Existing fossil fuel extraction would warm the world beyond 1.5 °C - IOPscience
[220] See Fig. SPM3 at C.4.7 IPCC_AR6_WGII_SummaryForPolicymakers.pdf
[221] See the IPCC WG III AR6 SPM at C3.2. The use of coal, oil and gas without carbon capture and storage is projected to decline 100%, 60% and 70% (respectively).

suggested that '*global oil and gas production and consumption must decrease by at least 65% by 2050'*.[222]

13. The necessary implication of this is that:

- many fossil fuel reserves must be left in the ground if there is to be any realistic prospect of the 1.5°C goal of the Paris Agreement being achieved; and
- fossil fuel company business models predicated on extracting, selling and burning such reserves are incompatible with the Paris Agreement temperature goals.

14. There have been various attempts to quantify the amount of fossil fuel reserves that may be 'unburnable' if global warming is to be limited to 1.5°C. A peer reviewed study published in Environmental Research Letters in 2022 found that '*staying within a 1.5°C carbon budget (50% probability) implies leaving almost 40% of 'developed reserves' of fossil fuels unextracted*' and that '*staying below 1.5°C may require governments and companies not only to cease licensing and development of new fields and mines, but also to prematurely decommission a significant portion of those already developed*'.[223] In 2023, research by Oil Change International found that the proportion of coal, oil and gas reserves that must be left in the ground was higher still at almost 60%. The research also found that '*a significant portion – almost one-fifth (20%) – of oil and gas fields must be shut down, even if no new fields are developed and coal extraction stops tomorrow*' to keep the 1.5°C limit in reach.[224] Similarly, independent financial think tank Carbon Tracker recently estimated the total carbon potential of all known fossil fuel reserves to be over ten times the remaining carbon budget to limit global warming to 1.5°C, meaning that up to 90% of fossil fuel reserves must remain in the ground unburned for this goal to be achieved.[225]

15. These findings are confirmed by the International Energy Agency's (**IEA**)[226] most recent net zero emissions scenario, which highlights the following implications for coal, oil and gas:

    a. **Coal**:

    - There should be an immediate end to new unabated coal plants[227], and as of 2023 there are no new coal mines or coal mine lifetime extensions[228].
    - Electricity generation from unabated coal is phased out by 2030 in advanced economies and 2040 in other economies[229][230].

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[222] International Institute of Sustainable Development, '*Navigating Energy Transitions: mapping the road to 1.5°C*' (21 October 2022), available here, at pp. iv and14.
[223] See the abstract of '*Existing fossil fuel extraction would warm the world beyond 1.5 °C*' (Trout et al., 17 May 2022, Environ. Res. Lett. 17), available here: https://iopscience.iop.org/article/10.1088/1748-9326/ac6228/pdf.
[224] See skys-limit-data-update-2023-v3 (priceofoil.org).
[225] See the Key Findings (p.5-6) of Carbon Tracker, *Unburnable Carbon: Ten Years On* (June 2022).
[226] The IEA is the leading global authority on the emissions reduction pathways for the international energy sector.
[227] See p.14 of Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach - 2023 Update (iea.blob.core.windows.net).
[228] Ibid. p.76.
[229] See the table on p.92 of Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach - 2023 Update (iea.blob.core.windows.net).
[230] This phase out schedule is also reflected in the UN Secretary-Genera's Climate Action Acceleration Agenda (available here) and the declaration of the Powering Past Coal Alliance, which has been signed by 50 national governments and 49 subnational governments: PPCA-Declaration_Text-1.pdf (poweringpastcoal.org).

b. **Oil and gas**:

- There are '*no new conventional long lead time oil and gas projects are approved for development after 2023'*.[231] This reaffirms the conclusion reached in the IEA's 2021 World Energy Outlook that, in its net zero scenario projections, '*no new oil and natural gas fields are required beyond those that have already been approved for development*'.[232] In its 2023 World Energy Outlook, the IEA concluded that, in the net zero scenario, '*investment in existing fields is needed to ensure that supply does not decline faster than demand, but no new conventional long lead time oil and gas projects are developed after 2023 and investment is much lower than today*'.[233]
- All large oil-fired power plants in are phased out by 2030.[234]
- Unabated natural gas accounts for below 5% of electricity generation by 2040.[235]

16. Moreover, reaching climate goals fundamentally requires a '*a huge acceleration in clean energy technology deployment and faster reductions in oil and gas use*', although *'[r]ecent momentum in deploying clean energy technologies means that oil and gas demand peak before 2030 [in the scenario based on current policies], but the declines after these peaks are not steep enough to achieve the world's climate goals*'.[236] The opportunity cost of each new fossil fuel extraction project and each new fossil fuel infrastructure project is the lost opportunity to put the relevant capital into the development of renewable energy. For example, the IEA finds that '*our bottom-up analysis of cash flows in a 1.5 °C scenario suggests that a reasonable ambition [for oil and gas producers] is for 50% of capital expenditures to go towards clean energy projects by 2030, on top of the investment needed to reduce scope 1 and 2 emissions*'.[237] The IEA notes that '[n]ot all oil and gas companies have to diversify into clean energy, but the alternative is to wind down traditional operations over time'.[238]

17. The AMF itself has recognised the '*broad consensus […] on the need to reduce and / or phase out fossil energies, i.e. coal, oil and gas*' as '*a major decarbonisation lever*' in its transition plan disclosure guidance. In doing so, it refers to the report of the UN High-Level Expert Group on the integrity of transition plans, which sets out '*red lines regarding support for fossil fuels […] and to financial actors for the financial services they provide to projects*', which are referred to in more detail below. The AMF goes on to list various authoritative associations and frameworks which recognise the need to reduce and phase out fossil energies as part of a just transition, including UN Race to Zero, UNEP FI, the IIGCC, the CBI and ACT methodologies for investors (in development at the time of writing).[239]

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[231] See p. 76 of Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach - 2023 Update (iea.blob.core.windows.net).
[232] See IEA, 'World Energy Outlook 2021' (October 2021), available here, at p.100.
[233] See p.135 of IEA, 'World Energy Outlook 2023' (October 2023), available here.
[234] See the table on p.92 of Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach - 2023 Update (iea.blob.core.windows.net).
[235] Ibid.
[236] See IEA, 'The Oil and Gas Industry in Net Zero Transitions' (February 2024 revision), available here, at p. 19.
[237] See IEA, 'The Oil and Gas Industry in Net Zero Transitions' (February 2024 revision), available here, at p. 16. And '*for forward-looking companies, looking to invest close to 50% of capital expenditure in 2030 in clean energy would be plausible even in a scenario that does not align with global climate targets*', page 148.
[238] Ibid.
[239] Reporting-on-climate-transition-plan-in-esrs-format-a-user-guide-for-undertakings.pdf (amf-france.org), p.42-43 rendre-compte-de-son-plan-de-transition-au-format-esrs.pdf (amf-france.org) p. 47. It is worth noting that the AMF also cites positively the use of the Urgewald Global Coal and Oil and Gas exit lists to identify companies developing new coal, oil or gas projects, as we have done in this Complaint.

18. First and foremost among these findings is the principle that the development of new coal, oil and gas projects is incompatible with achieving the Paris Agreement temperature goal. This conclusion reflects the '*large consensus across multiple modelled climate and energy pathways*' identified by the International Institute of Sustainable Development that '*developing any new oil and gas fields is incompatible with limiting [global] warming to 1.5°C*'[240] and equivalent findings in relation to coal.

19. In consequence, companies that are engaged in or support the development of new coal, oil or gas projects are operating unsustainably. This is also the case for companies whose business models are predicated on coal, oil and gas production and consumption that does not decline as required to meet the Paris Agreement goals.

20. The UN Expert Group on non-state climate commitments has translated these conclusions into requirements that financial institutions immediately cease lending, underwriting and investing in new coal infrastructure, power plants and mining and end the financing and investment in support of any new gas and oil exploration, expansion and production.[241]

21. These conclusions support the conclusion, adopted in this Complaint, that investment in fossil fuel companies that are (a) developing new fossil fuel projects or capacity; or (b) are not phasing out their fossil fuel production consistently with the Paris Agreement temperature goal, is by nature unsustainable.

[240] International Institute of Sustainable Development, '*Navigating Energy Transitions: mapping the road to 1.5°C*' (21 October 2022), available here, at pp. iv and 14.
[241] See p.24 of high-level_expert_group_n7b.pdf (un.org).

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Annex D: Article 8 Target Fund details

See enclosure

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Annex E: Control Fund details

Name of Fund	ISIN	Fossil fuel exposure (% of AUM)[242]	Fossil fuel expander (% AUM)	Art 8?	AMF 2020-03 Disclaimer?	Investment objective/strategy/ESG criteria where applicable
BGF Systematic Global Equity High Income Fund[243]	LU0265550359	7.1%	6.8%	No	No	The Fund aims to generate a high level of income on your investment. The Fund invests globally at least 70% of its total assets in securities of participation (e.g. shares).
BGF Emerging Markets Corporate Bond Fund[244]	LU0843229542	6.4%	6.4%	No	No	The Fund aims to maximise the return on your investment, through a combination of capital growth and income from the Fund's assets. The Fund invests at least 70% of its total assets in fixed income securities. These include bonds and money market instruments (i.e. debt securities with short maturities). At least 70% of the fixed income securities will be issued by companies domiciled in, or carrying out the majority of their business in, emerging market countries, which may include investments that have relatively low credit quality or are unrated.
BGF Euro Corporate Bond Fund[245]	LU0162658883	6.3%	5.8%	Yes	No	The Fund aims to maximise the return on your investment, by combining capital growth and income from the Fund's assets, in a manner consistent with the principles of environmental, social and environmental investment. governance (ESG). The Fund invests at least 70% of its total assets in fixed income securities denominated in euros. These include bonds and money market instruments (i.e. short-term debt securities).

[242] Where we refer to 'AUM' in reference to any of the Control Funds, this means the total value of holdings identified on the Morningstar Data Services as at 1 August 2024. See Annex B for more detail on our methodology; we identify 'fossil fuel company' holdings for the Control Funds according to the same methodology used to identify inconsistent holdings for the Target Funds.
[243] BGF Systematic Global Equity High Income Fund | PART A2 (blackrock.com)
[244] BGF Emerging Markets Corporate Bond Fund | PART A2 (blackrock.com)
[245] BGF Euro Corporate Bond Fund | PART A2 (blackrock.com)

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Name of Fund	ISIN	Fossil fuel exposure (% of AUM)[242]	Fossil fuel expander (% AUM)	Art 8?	AMF 2020-03 Disclaimer?	Investment objective/strategy/ESG criteria where applicable
						At least 70% of the Fund's total assets will be issued by companies domiciled or not in Eurozone countries and will be investment grade (i.e. they meet a defined level of creditworthiness) at the time of purchase. The remainder may include investments that have relatively low credit quality or are unrated. BlackRock 's website at www.blackrock.com/baselinescreens. At least 90% of the issuers of securities in which the Fund invests have an ESG rating or have been assessed in this light.
BGF Global Allocation Fund[246]	LU0072462426	5.4%	5.2%	No	No	The Fund aims to maximise the return on your investment, through a combination of capital growth and income from the Fund's assets. The Fund invests globally at least 70% of its total assets in equity securities (e.g. shares) and fixed income securities (FIS) under normal market conditions. FIS include bonds and money market instruments (i.e. short-term debt securities). It may also hold deposits and cash. Subject to the foregoing, the asset classes and the Fund's degree of investment in them may vary without limit depending on market conditions.
BGF US Flexible Equity Fund[247]	LU0154236417	4.5%	4.5%	Yes	Yes	The Fund aims to maximise the return on your investment, by combining capital growth and income from the Fund's assets, in a manner consistent with the principles of environmental, social and governance ("ESG") focused investment. The Fund invests at least 70% of its total assets in equity securities (e.g., stocks) of companies domiciled in, or carrying out the predominant part of their activities in, the United States. BlackRock 's website at https://www.blackrock.com/baselinescreens.

[246] BGF Global Allocation Fund | PART A2 (blackrock.com)
[247] BGF US Flexible Equity Fund | PART A2 (blackrock.com)

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Name of Fund	ISIN	Fossil fuel exposure (% of AUM)[242]	Fossil fuel expander (% AUM)	Art 8?	AMF 2020-03 Disclaimer?	Investment objective/strategy/ESG criteria where applicable
BGF Global Equity Income Fund[248]	LU0545039389	4.0%	4.0%	Yes	Yes	The Fund aims to generate an above average level of income on your investment, as well as to maintain long-term capital growth, in a manner consistent with the principles of investment focused on environmental, social and governance (ESG) criteria. The Fund invests globally at least 70% of its total assets in equity securities (e.g. shares) of companies domiciled in, or exercising the predominant part of their activities in, developed markets. BlackRock 's website at https://www.blackrock.com/baselinescreens.
BGF Fixed Income Global Opportunities Fund[249]	LU0278466700	3.6%	3.3%	No	No	The Fund aims to maximise the return on your investment, through a combination of capital growth and income from the Fund's assets. The Fund invests globally at least 70% of its total assets in fixed income securities. These include bonds and money market instruments (i.e. debt securities with short maturities). Fixed income securities are denominated in different currencies and may be issued by governments, government agencies, corporations and supranational entities (e.g. the International Bank for Reconstruction and Development)
BGF Euro Bond Fund[250]	LU0050372472	1.4%	1.2%	Yes	No	The Fund aims to maximise the return on your investment, by combining capital growth and income from the Fund's assets, in a manner consistent with the principles of environmental, social and governance (ESG) focused investment. The Fund invests at least 80% of its total assets in fixed income securities. These include bonds and money market instruments (i.e. debt securities with short maturities). At least 70% of the Fund's total assets will be invested in Euro-denominated securities.

[248] BGF Global Equity Income Fund | PART A2 (blackrock.com)
[249] BGF Fixed Income Global Opportunities Fund | PART A2 (blackrock.com)
[250] BGF Euro Bond Fund | PART A2 (blackrock.com)

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Name of Fund	ISIN	Fossil fuel exposure (% of AUM)[242]	Fossil fuel expander (% AUM)	Art 8?	AMF 2020-03 Disclaimer?	Investment objective/strategy/ESG criteria where applicable
						be invested in accordance with its ESG Policy as set out in the prospectus. For further details regarding ESG characteristics, please refer to the prospectus and BlackRock 's website at www.blackrock.com/baselinescreens . At least 90% of the issuers of securities in which the Fund invests have an ESG rating or have been assessed in this light.