

ESAs Call for Evidence Regarding Greenwashing

The three European Supervisory Authorities (“ESAs”) have published a Call for Evidence seeking input on potential greenwashing practices in the whole EU financial sector, including banking, insurance, and financial markets, and which may be relevant to various segments of the sustainable investment value chain and of the financial product lifecycle. All interested parties have been invited to contribute to the survey, including financial institutions under the remit of the three ESAs and other stakeholders ranging from retail investors and consumers associations to NGOs and academia. The deadline for the acceptance of comments is Tuesday 10 January 2023 23.59 CET.

Background

There is a growing demand for sustainability-related financial products which has necessitated a rapid evolution of regulatory regimes and financial products offerings. In this context, the European Commission expressed an expectation that supervisors will help to identify, prevent, investigate, sanction and remediate greenwashing and requested input from the ESAs relating to greenwashing risks and supervision of sustainable finance policies. The Call for Evidence uses the term “greenwashing” broadly to also include sustainability-related claims relating to all aspects of the ESG spectrum, including environmental, social and governance dimensions. The Call for Evidence will contribute to a collection of up-to-date, detailed evidence to complement other sources of information. Obtaining a more granular understanding of greenwashing will help inform policy making and supervision and will help foster the reliability of sustainability-related claims. Contributions should focus on greenwashing risks and occurrences arising in the financial sector and affecting financial products or services, which are under the scope of the ESAs.

Key points of interest

The ESAs are primarily interested in collecting:-

- The views of various stakeholders on how greenwashing should be understood and what are the main causes of greenwashing;
- Examples of potential greenwashing practices across the EU financial sector relevant to various segments of the sustainable investment value chain and of the product cycle; and

- Any available data which will assist the ESA in gaining a concrete sense of the scale of greenwashing and identifying high risk areas for greenwashing.

The Call for Evidence is seeking evidence of both entity-level and product-level greenwashing practices. Product-level claims typically relate to how a product or service takes into account sustainability while entity-level claims are made in connection to what an entity is doing at the overall firm level.

The ESAs encourage respondents to consider providing examples of potential greenwashing practices relating to products, practices, and/or documents currently not explicitly covered by the EU sustainable finance legislation. The ESAs also encourage respondents to consider providing examples which comply with existing EU sustainable finance legislation but the outcome would still result in greenwashing.

Next steps

Contributions will feed into the ESAs’ findings for their progress reports due in May 2023, and final reports due in May 2024. This development emphasises a growing focus by regulators on greenwashing in the financial sector. The asset management team of Clerkin Lynch LLP have recently published two legal updates which detail the European Securities and Markets Authority and the Central Bank of Ireland’s respective announcements that greenwashing would be a given a greater focus.



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