

EU Regulatory Focus on Greenwashing

The European Supervisory Authorities (the “ESAs”) published their respective Final Reports on Greenwashing in the financial sector on 4th June 2023 (the “Final Reports”). The ESAs are the European Banking Authority (“EBA”), the European Insurance and Occupational Pensions Authority (“EIOPA”) and the European Securities and Markets Authority (“ESMA”) respectively.

Background

In their respective reports the ESAs reiterate the common understanding of greenwashing as a practice whereby 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 may be misleading to consumers, investors, or other market participants.

The ESAs stress that financial market players have a responsibility to provide sustainability information that is fair, clear, and not misleading. In each Final Report each ESA provides a stocktake of the current supervisory response to greenwashing risks under their remit. The ESAs also provide views on how sustainability-related supervision can be enhanced in the future.

ESMA’s Final Report

ESMA notes that the supervision of sustainability-related claims has become a priority for National Competent Authorities (“NCAs”). ESMA and NCAs are taking steps to better monitor and detect greenwashing and to critically scrutinise

sustainability-related claims. Several related Common Supervisory Actions have already been launched, with a view to ensure effective and consistent supervision.

ESMA has indicated the following priority actions in order to enable NCAs to better mitigate greenwashing risks:

- ESMA will continue to support the monitoring of greenwashing risks and will initiate Common Supervisory Actions where needed as well as producing additional guidance for market participants and supervisors in high-risk areas of greenwashing.
- NCAs are expected to gradually expand their critical scrutiny of sustainability-related claims by market participants.
- The European Commission has been invited to reinforce NCAs’ and ESMA’s mandates in certain areas, including benchmarks, and make sure all NCAs have appropriate related powers.

How Clerkin Lynch Can Help

Clerkin Lynch’s asset management team have a keen focus on ESG related topics pertaining to financial services and are well placed to advise on related compliance, including in relation to the Final Reports. Contact us for more information.



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