

Greenwashing in the Financial Sector – The ESAs’ Final Reports

June 2024

In response to a request from the European Commission (“**Commission**”) for input on greenwashing risks and the supervision of sustainable finance policies, the three European Supervisory Authorities (“**ESAs**”) have published their final reports on greenwashing. The publications follow the publication of interim progress reports in June 2023.

The ESAs reiterate their common high-level 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 practice may be misleading to consumers, investors, or other market participants.

The final reports focus on the role of supervision in mitigating greenwashing risks. Each report provides a stocktake of the current supervisory response to greenwashing risks under their remit as well as a forward-looking view of how sustainability-related supervision can be improved in the coming years.

The European Securities and Markets Authority (“**ESMA**”) notes that the supervision of sustainability-related claims has become a priority for national competent authorities (“**NCA**s”) and that a number of common supervisory actions have already been launched in an effort to ensure effective and consistent supervision in this area.

The key findings provided in the [ESMA report](#) are set out below.

- NCA and ESMA have been adopting a risk-based approach to supervision, focusing their supervisory attention and resources on the most significant risks.
- As a type of miscommunication or misconduct, greenwashing can be captured by existing EU rules prohibiting misleading information. Greenwashing can also be addressed by taking action on infringements against a series of specific sustainability-related requirements introduced in the EU in recent years.
- To date, NCA have reported having detected only a limited number of actual or potential occurrences of greenwashing.
- Irregularities related to sustainability-related claims have been mostly addressed in ongoing supervision rather than through formal enforcement decisions, which have been limited to date. ESMA notes that NCA face challenges in establishing infringements, where the regulatory framework builds on unclear or ambiguous definitions.

- While NCAs have started to build sustainability-related capacities and expertise to address the need for specialised knowledge, most NCAs consider that their resources are not sufficient.
- Access to data has been identified as a key issue for NCAs, with a growing number of NCAs considering purchasing third party data to assist their supervision.
- The use of SuperTech tools may increase supervisory efficiency and the majority of NCAs are already developing such tools or are planning or considering doing so in the future.

ESMA invites NCAs to continue increasing human resources, capacities and expertise and to adapt their organisational structure to the needs of sustainability-related supervision.

In relation to legislative change, ESMA makes the following suggestions to the Commission:

- revise the Benchmarks Regulation so that misleading information is explicitly prohibited;
- further foster machine-readability of sustainability disclosures and data access via the European Single Access Point (“**ESAP**”); and
- empower ESMA to provide additional guidance on marketing communications and strengthen supervisors’ mandates regarding retail investors’ financial literacy under the Retail Investor Strategy.

ESMA advises market participants to adapt their governance and processes (eg, regarding risk management, due diligence controls over ESG information, validation of marketing messages, remuneration policies), build expertise, upgrade data infrastructure and uphold comprehensibility for consumers.

Annex I of the report sets out a summary of actions to be considered by market participants, NCAs, ESMA and the Commission.

Two weeks after the publication of the final reports, the ESAs issued a **joint opinion** on the assessment of the Sustainable Finance Disclosure Regulation (“**SFDR**”), calling for the introduction of a product classification system and / or sustainability indicators for financial products. The ESAs argue for simple categories with clear objective criteria or thresholds to identify which category a product falls into, with at least categories of “sustainability” and “transition”. The Commission may issue proposals relating to its review of the SFDR later this year.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this briefing note.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.



Tara Doyle

Partner

T +353 1 232 2221

E tara.doyle@matheson.com



Dualta Counihan

Partner

T +353 1 232 2451

E dualta.counihan@matheson.com



Shay Lydon

Partner

T +353 1 232 2735

E shay.lydon@matheson.com



Philip Lovegrove

Partner

T +353 1 232 2538

E philip.lovegrove@matheson.com



Liam Collins

Partner

T +353 1 232 2195

E liam.collins@matheson.com



Michelle Ridge

Partner

T +353 1 232 2758

E michelle.ridge@matheson.com



Barry O'Connor

Partner

T +353 1 232 2488

E barry.oconnor@matheson.com



Donal O'Byrne

Partner

T +353 1 232 2057

E donal.o'byrne@matheson.com



Eunan Hession

Partner

T +353 1 232 2402

E eunan.hession@matheson.com



Orlaith Finan

Partner

T +353 1 232 2351

E orlaith.finan@matheson.com



Brónagh Maher

Professional Support Lawyer

T +353 1 232 3757

E bronagh.maher@matheson.com

This material is provided for general information purposes only and does not purport to cover every aspect of the themes and subject matter discussed, nor is it intended to provide, and does not constitute, legal or any other advice on any particular matter. The information in this document is provided subject to the Legal Terms and Liability Disclaimer contained on the Matheson website.

Copyright © Matheson