

Greenwashing: the analysis of the European Supervisory Authorities

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At a time when sustainability has become a key pillar for business and consumers alike, it is imperative to keep up with the rapidly changing dynamics that characterise the regulatory and market landscape.

Greenwashing – the act of misleadingly presenting a company or financial product as more sustainable than it actually is – has become a major phenomenon, influencing investment decisions and undermining investor confidence.

In the context of increasing attention to these issues, on 4 June 2024, the three main European supervisory authorities – the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) – published their Final Reports on strengthening supervision and improving market practices related to sustainability claims, emphasising the need to escalate the fight against greenwashing.

Here are the highlights:

- **Increase in greenwashing:** The authorities noted a significant increase in greenwashing practices in the financial sector, with an increase of 21.1% globally and 26.1% in the EU compared to the previous year. There were also more cases of greenwashing reported to, or investigated by, Member States' Supervisory Authorities.
- **Recommendations for banks:** The EBA urged banks to implement measures to ensure that sustainability claims are accurate, substantiated, up-to-date and fairly represent the sustainability profile.
- **Resources and expertise:** ESMA has highlighted the lack of financial resources and expertise among national authorities, which hampers the ability to effectively tackle greenwashing.
- **Impact on the insurance and pension sectors:** EIOPA has reported an increase in cases of greenwashing in these sectors, highlighting the risk that such practices could undermine consumer confidence and the financing of the sustainable transition.
- **Need for harmonisation:** There is a joint call to improve and harmonise the regulatory framework, in order to facilitate the fight against greenwashing and promote more transparent market practices.

Implications for market participants

From a practical point of view, these developments mean that there is a need for a renewed focus on compliance and corporate responsibility issues. It is essential that market participants are increasingly aware of the following needs:

- Review of communication practices: Ensure that all sustainability-related communications are transparent, clear, and not misleading.
- Monitoring and compliance: Implement monitoring systems to ensure compliance with current and emerging regulations.
- Training and consulting: Provide appropriate staff training and legal advice to navigate the complex ESG regulatory landscape.
- International collaboration: Promote and participate in international collaborative initiatives to develop common standards and global responses to the phenomenon of greenwashing.

Conclusion

Paying attention to the phenomenon of greenwashing is increasingly a priority for regulatory authorities. This attention is manifested both nationally and internationally, outlining a constantly evolving legal and regulatory landscape. Financial market participants are, therefore, faced with a twofold scenario: on the one hand, the need for a substantial commitment of resources to monitor and adapt to emerging regulations; and, on the other hand, the need to correctly interpret the responsibilities that may arise from greenwashing practices, which are still the subject of debate and legal definition.

Therefore, the fluidity of regulations and the potential exposure to legal, reputational and economic risks make it essential to constantly update and analyse the implications that each new provision and/or orientation may entail. Proactivity translates, therefore, not only into the adoption of ethical and transparent business practices but also into understanding the legal nuances that govern the sector. In conclusion, staying ahead of the curve, correctly interpreting regulatory trends, and carefully assessing possible forms of liability related to greenwashing are necessary tasks that require constant commitment. Only in this way will financial market participants be able to confidently meet the challenges that the future holds.