

EuropeanIssuers' Position Paper on ESAs Call for Evidence on Greenwashing

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EuropeanIssuers believes that greenwashing is a fundamental topic that will need to be addressed, as it is a key feature of the sustainability discourse. Nevertheless, considering the current initiatives related to sustainable finance, we believe priority should be on finalizing the regulatory framework on Sustainable Finance and sustainability reporting first, to ensure that it is fit for purpose, before addressing greenwashing specifically. As a matter of fact:

- Technical standards adopted under the Sustainable Finance Disclosure Regulation (SFDR) apply since 1 January 2023 and many concerns have been raised on some fundamental concepts of said regulation. In this regard, Commissioner McGuinness mentioned in early December 2022, during an exchange of views with the ECON and ENVI Committees of the European Parliament, that the Commission services are working on a comprehensive assessment of SFDR.
- Implementation of the Taxonomy Regulation is still work in progress, considering that technical screening criteria have been adopted only for the first 2 climate objectives (climate change mitigation and climate change adaptation), alignment of economic activities with the taxonomy will be reported for the first time in 2023 by non-financial companies, and the Commission has published 5 FAQ documents including 289 questions related to the interpretation and implementation of this regulation, illustrating the complexity of the EU Taxonomy, with implementation of 4 additional environmental objectives still pending.
- The European Sustainability Reporting Standards are expected to be adopted in June 2023 by the European Commission for first publication only in 2025.

As long as the regulatory framework is not finalised and stabilised and the new requirements not fully understood by both entities subject to these requirements and regulators in charge of their enforcement, risks of non-compliance can arise from diverging interpretations and practices which could be seen as greenwashing by certain stakeholders. Therefore, only a robust, clear, comprehensible and stabilised framework can eventually prevent diverging interpretations or practices.

Therefore, EuropeanIssuers considers that at this stage it is too early to establish a definition of greenwashing. Taking into account, as mentioned above, that the regulatory framework is not yet finalised and that there are many interpreting issues, it seems very difficult to draw the line between misinterpretation of existing rules that would result in non-compliance with requirements and greenwashing. A clear distinction is needed between greenwashing and non-compliance with the new disclosure rules. Companies cannot be held responsible for unclear reporting rules. The ESAs should also take into account the fact that risks of inaccuracies are greater when reporting in particular on environmental topics (use of estimates, longer time horizons with significant uncertainties...) as compared to financial reporting. Furthermore, many practices listed in the questionnaire for the Call for Evidence could be addressed by existing legislations: e.g. dissemination of misleading ESG

information related to a company or by a company could fall in the scope of the Market Abuse Regulation when such information has an impact on the price of securities. The ESAs should not create new rules that could conflict with existing legislations, complexify the existing regulatory framework or add burden to market participants. Moving forward, the ESAs could reflect on an indicative list of practices which could put market participants at risk in order to provide guidance to practitioners.

Finally, EuropeanIssuers considers that it is not possible and relevant to rate, as requested by the ESAs, the role of market participants (trigger, spreader, receiver) nor the topics or assets more exposed to greenwashing practices. However, EuropeanIssuers reiterates its position on the fact that ESG rating agencies have clearly not reached a sufficient level of maturity and comparability. As methodological choices are not sufficiently disclosed, investors are not in a position to make truly informed decisions, making it necessary for them to compare several ESG ratings and conduct their own research in parallel, often using raw ESG data. The fact that ESG rating agencies sometimes reach opposite conclusions in certain categories regarding one and the same company necessarily leads to uncertainty and confusion about ESG in general, and ESG performance of specific companies in particular. Companies acknowledge that ESG rating is constantly evolving and that innovation in this field must remain possible. Therefore, they do not ask for a standardisation of methodologies, except where this is justified and possible, such as for example on the calculation of CO² emissions in certain sectors. However, they call for an increased transparency and quality of ratings and better prevention of conflicts of interests.

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