



THE CREDIT RATING
RESEARCH INITIATIVE

GREENWASHING REGULATORY UPDATES

- 2023 -



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EUROPEAN UNION

Deal agreed by Member States on world's first set of comprehensive rules for issuing green bonds, although compliance will be on a voluntary basis: [here](#).

Leaked EU Directive giving companies 10 days to justify green claims, or face 'effective, proportionate and dissuasive' penalties: [here](#).

France leads way with ban on all fossil fuel advertising and tobacco-style warnings on high-carbon industry advertisements: [here](#).

ESMA concludes public consultation of 'Guidelines on Funds' Names using ESG or Sustainability-related terms: [here](#).

EU Competition Chief criticises calls to relax Emergency State Aid Rules based on green claims to compete with global subsidy programmes like the US Inflation Reduction Act: [here](#).

European aviation industry pushes EU to classify new aircraft as a green investment: [here](#).

ESMA launches a Common Supervisory Action (CSA) to better align supervisory culture across Member States' National Competent Authorities on MiFID II disclosure rules to marketing communications for financial products: [here](#).

DIRECTION OF TRAVEL

THE EUROPEAN UNION

THE EU EMBARKED UPON SYSTEM-WIDE CHANGES AS PART OF THE 'GREEN DEAL' AND COMBATTING GREENWASHING IS INCREASINGLY BEING FACTORED IN BY THE COMMISSION AND SUPERVISORY AUTHORITIES.

BEST PRACTICE FROM WITHIN THE UNION (FRANCE) IS LEADING THE GLOBAL PUSH. HOWEVER, EXTERNAL FACTORS ARE PUTTING THE EU'S COMMITMENT TO THE TEST, WITH KEY INDUSTRIES SEEKING UNLIKELY ADMITTANCE (AVIATION) INTO THE GREEN CATEGORISATIONS AND THE EU FACING BATTLES WITH GLOBAL SUPERPOWERS REGARDING STATE AID THAT COULD DERAIL THEIR GREEN AGENDA



UNITED KINGDOM

FCA facing Judicial Review for approving prospectus of Ithaca gas exploration firm based on litigation by ClientEarth: [here](#).

FCA warns Asset Managers that their governance procedures will be examined for greenwashing with a focus on their 'consumer duty': [here](#).

The FCA's Sustainability Disclosure Requirements (SDR) regime is under consultation and due June 2024, though their 'anti-greenwashing rule' could take effect June 2023: [here](#) - this requires firms to ensure that any reference to the sustainability characteristics of a product or service is a. consistent with the sustainability profile and b. clear, fair, and not misleading: [here](#).

FCA concludes public consultation on 'Sustainability Disclosure Requirements (SDR) and Investment Labels': [here](#). The SDR is the British equivalent of the EU SFDR.

Advertising Standards Authority (ASA) publishes updates guidelines that include a proximity test that commands that information on a claim be sufficiently close to the claim for the consumer: [here](#).

ASA bans Lufthansa advert for misleading consumers on green technology in the aviation industry: [here](#).

The Digital Markets, Competition and Consumer Bill is due to be published (after delay) where big companies face the threat of civil penalties up to 10% of global turnover for breaches, including greenwashing: [here](#).

DIRECTION OF TRAVEL

THE UNITED KINGDOM

THE UK IS INCREASINGLY TURNING ITS ATTENTION TOWARDS GREENWASHING TO COMPETE WITH THE EU. THE ADVERTISING STANDARDS AUTHORITY IS TAKING PERHAPS THE GLOBAL LEAD IN SETTING STANDARDS FOR ADVERTISING. THE FCA IS SEEKING TO DEVELOP ITS OWN VERSION OF THE EU'S SFDR, AND HAS A NUMBER OF CONSUMER-BASED INITIATIVES PLANNED. YET, THE POST-BREXIT DYNAMIC LOOMS LARGE AND THE NEED TO BE OPEN TO BUSINESS MEANS SUSTAINABILITY/GREEN-RELATED PUSHES MAY BE TEMPERED, WITH KEY LITIGATION UNDERWAY TO REVEAL THE TRUE ACTIONS OF THE REGULATOR (SEE THE JUDICIAL REVIEW PENDING ABOVE). THERE ARE ALSO DELAYS TO KEY LEGISLATION WHICH CRITICS HAVE FOCUSED ON AS A REPRESENTATION OF THE CURRENT UK GOVERNMENT.

ELSEWHERE

Australia

Australian Competition and Consumer Commission finds 57% of 247 businesses investigated made 'concerning' claims about their environmental or sustainable practices: [here](#).

Australian Securities & Investment Commission (ASIC) issued first ever fine for greenwashing to Tlou Energy for A\$53,280 and is continuing probes with the ACCC: [here](#).

ASIC has sued Mercer Superannuation for misleading participants about the sustainability of some of its investment options: [here](#).

United States

The Enhancement and Standardisation of Climate-Related Disclosures for Investors Rule is due to be finalised by the SEC in April 2023: [here](#).

China

China Securities Regulatory Commission plans rules to regulate 'green funds' to rein in greenwashing, expected in Q2 2023: [here](#).

Japan

Japan's Financial Services Authority undertakes probes for greenwashing and vows to take 'regulatory action against malicious cases': [here](#).

The FSA has also proposed new guidelines for public funds in an effort to battle greenwashing: [here](#).

Response from Business

International Capital Market Association (ICMA) says that 'hard regulation is not necessary': [here](#).

ICMA's [Green Bond Principles](#) being incorporated into regulation by India's SEBI: [here](#).

Australian investors say that phased assurance is needed for climate-related disclosures and that protecting directors fully would undermine the benefits of ISSB: [here](#).



THE FUTURE FOR GREENWASHING REGULATION

Greenwashing regulation is high on the agenda around the world. Closely married to other regulatory agendas, like disclosure, consumer protection, and corporate governance, greenwashing is demonstrating its potential to be all-encompassing for the modern business arena. Interesting regulatory developments are taking place in the field of advertising, but others are still to blossom. There are fundamental issues that affect the issue of greenwashing, such as the standardisation of disclosure, regulatory and standards arbitrage, and the use of third-parties to verify/signal/assure, which modern regulators will need to grapple with if they are to build efficient regulatory frameworks to govern greenwashing.

AREAS FOR REGULATORY FOCUS

- Efficient assurance frameworks
 - Necessary protections for the use of third-parties
 - Guarding against the outsourcing of green signalling
 - Instilling simplicity for consumer protection
 - Focusing on language usage
 - Focusing on green education for consumers/market participants
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ASSOCIATED CONCERNS

Green regulatory agendas are coming into battle with global dynamics, and must be protected to maintain legitimacy. Regulators must maintain the very highest of standards and apply the anti-greenwashing rules equally and fairly, regardless of the potential benefit to the country in question. There is a public spotlight on regulators which means any mistakes will be magnified. To aid with this pressure, regulators ought to consult widely and across specialisms to gain advantages.