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ESAs Call for Evidence on Greenwashing

Dear Madam,
Dear Sir,

As organization of German exchange-listed and capital markets-oriented companies, Deutsches Aktieninstitut follows the ESAs' common call for evidence on greenwashing with great interest. German listed companies are eager to successfully achieve the transition to a green and low-carbon economy. Greenwashing could prove as a serious obstacle to this development as it hinders investors to clearly identify sustainable investments and effectively distinguish them from other investments. Against this background, Deutsches Aktieninstitut supports efforts to effectively counter/avoid greenwashing.

From our point of view, however, the current joint ESA-initiative comes at a premature stage. Although we welcome the objective of achieving more clarity and precision on the meaning of greenwashing, we doubt that a clear definition can be developed from the results of the present consultation. At present, the experiences with greenwashing are still limited especially as sustainable investment is a relatively new discipline. The perception of sustainable investment is still evolving as is the regulatory environment covering this discipline. Consequently, norms addressing adverse developments to sustainable investment are largely non-existent at this stage. A clear picture on the shape and magnitude of greenwashing cannot be drawn yet. From our point of view, the regulatory framework should first be completed and prove its effectiveness before further steps on a definition are undertaken.

Moreover, as the regulatory environment is still under construction, the call for evidence appears to see the risk of greenwashing in an almost borderless range of activities involving among others advertisement, PR or corporate reporting. This perception, however, does not take into account the volume of new obligations, especially in corporate reporting, that companies are confronted with (EU-Taxonomy, Corporate Sustainability Reporting Directive and European Sustainability Reporting Standards). Especially the ESRS, which will soon be adopted as delegated acts under the CSRD, are supposed to effectively counter greenwashing. A general definition for greenwashing should respect these developments and not interfere with them. This would contribute to much needed legal certainty.

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In addition, a clear distinction is needed between greenwashing and non-compliance. Not every non-compliance with new disclosure rules can be seen as an act of greenwashing. It has to be considered here that guidance from the European institutions on the new sustainability disclosure frameworks, which companies have been asking for, still lacks to a large extent. Companies, however, cannot be held responsible for unclear reporting rules. Their willingness to share sustainability information and intention to comply with new reporting obligations should be rewarded and cherished. The opposite would result in their reluctance to report more on sustainability than absolutely necessary. This, however, would not only stand in contrast to the European legislator's intention but also produce significant detriments to the objective of an effective and timely economic transformation towards sustainability shared by all stakeholders.

We kindly ask you to take our comments into account and encourage you to follow up on the collection of evidence once the sustainability reporting ecosystem has been completed and sufficient practical experience with it has been gained.

We remain at your disposal in case of questions or for further explanations on our position upon your convenience.

Yours faithfully

A handwritten signature in blue ink, reading "Uta-Bettina v. Altenbockum". The signature is fluid and cursive, with the first name "Uta" and last name "Altenbockum" clearly legible.

Dr. Uta-Bettina von Altenbockum
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