

Finance Denmark's response to EBA Consultation on the revision of the Guidelines on product oversight and governance



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Introductory remarks

Finance Denmark appreciates the opportunity to contribute to this consultation. Finance Denmark represents banks, mortgage institutions, asset management, securities trading, and investment funds in Denmark as well as being an employer's association.

In general, we welcome a revision of the guidelines in relation to products with ESG features and to mitigate the risks of greenwashing. However, the EBA's guidelines on product oversight and governance (POG) are applied to retail banking products, which evidently entails a very broad range of products with very different purposes and characteristics across a broad spectrum of services provided to consumers. Thus, it can be difficult to comply with requirements to explicitly consider ESG and greenwashing risks for all types of products. This requires a level of flexibility for the financial institutions, which must be reflected in the guidelines.

For investment products and services, ESMA has issued guidelines on POG including sustainability. These guidelines are a result of a longer development of legal frameworks and gradual integration and implementation of ESG characteristics and considerations specifically for investment products and services. Retail banking products have not undergone the same development, thus the institutions need sufficient time to adjust to the new requirements and possibly integrating new infrastructure.

Question 1. Do you have any comments on the targeted amendments and consequential changes made to Chapter 2 of the POG Guidelines on 'subject matter, scope and definitions'?

As a general comment, the Consultation Paper from EBA refers to the "common high-level understanding of greenwashing". We believe that this common understanding should be reflected directly in the guidelines to ensure clarity on the definition of greenwashing.

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Question 2. Do you have any comments on the targeted amendments made to Guidelines 2, 3, 7, 8 and 12?

Guideline 2:

With reference to our reply to Question 1, the term "perceived greenwashing" in 2.1a, should be clarified. Without proper definitions or common understanding of central terms in the guidelines, there is a risk of uncertainty in terms of how the institutions ensure compliance with the guidelines.

Furthermore, also regarding 2.1a, it is our understanding that the purpose is to mitigate the greenwashing risks to prevent greenwashing – before such an incident could occur. However, the wording of 2.1a could suggest that the purpose instead is to handle and mitigate the risks that would arise from greenwashing – i.e. after a greenwashing-incident has occurred.

Guidelines 8 and 12:

Guidelines 8 and 12 create grounds for uncertainty related to marketing and communication.

Specifically, this relates to the changes to item 17 in Guideline 8 (information to distributors) on page 20, including the elaborations in items 29–31 on page 11, as well as changes to items 18 and 19 in Guideline 12 (information to and support for the manufacturer's arrangements), including the elaborations in items 32–34 on page 12:

- In both provisions, it is stated that we must "*ensure that sustainability related communication is fair, clear and not misleading, and that sustainability claims are accurate, substantiated, up to date, provide a fair representation of the institutions overall profile or the profile of the product*".
- It is however unclear whether the communication must include a description at both company level and product level – or only at product level: The draft of Guideline 8 and 12 uses the word "or," but in the elaborations in item 30, page 11 (elaboration for Guideline 8), the words "both" and "and" are used in relation to the description at company level and product level respectively. This must be clarified.

Kind regards,

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