

## Alert | Banking & Financial Services



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### ESMA Has Its Say on Sustainable Finance

*Sustainable finance is a hot topic of key importance which, with the aim of implementing new legislative schemes, will likely become a substantial part of the agenda of European institutions.*

On 6 February 2020, the European Securities Market Authority (ESMA)<sup>1</sup> took an important **position on sustainable finance**, in the context of a global trend increasingly marked by the desire to provide enforceability to investments in projects with a social focus. To date, such initiatives primarily have been isolated, adopted on a voluntary basis, and limited to a minority of individual investors particularly sensitive to the “green” component of their investments.

Along with the abovementioned notice, ESMA published a **strategic plan** for the enhancement of so-called “ESG factors” – the three main criteria for analysis and evaluation of a sustainable financial investment: (1) “environmental,” i.e., having a low impact on climate change, the production of toxic or non-recyclable waste, and damage to biodiversity; (2) “social”, i.e., focusing on the exclusion of social and gender inequalities; and (3) “governance”, i.e., transparency in the definition of corporate governance rules with a high ethical content, in order to protect the relevant business stakeholders.

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<sup>1</sup> Established with effect 1 January 2011, by Regulation EU 1095/2010, ESMA is a European Supervisory Authority that brings together the national financial market supervisory bodies of each EU Member State. Together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), ESMA is an integral part of the European Supervisory System.

Highlighting the need to introduce such ESG guidelines into ESMA’s mission, and to analyze the performance of markets that already have taken the above factors into account, assessing the related risks for investors, ESMA identifies the following focus areas:

1. **Definition of a single code of sustainable investments**, with the aim of identifying, by 2020/2021, harmonized technical standards, as well as transparency and due diligence requirements, to ensure the presence of ESG factors in the relevant investments and prevent the risk associated with financing projects which, even if presenting themselves as “sustainable”, do not have those characteristics (so-called “green washing”)<sup>2</sup>;
2. **Harmonization of national supervisory activities**, with the aim of ensuring consistency and effectiveness in the application of the European Union regulation, contributing to the development of common supervisory principles and raising awareness among national regulators – including through specific training activities – on the adoption of sustainable finance principles<sup>3</sup>.
3. **Direct supervision**, within 2020, by way of implementation of the guidelines on disclosure requirements applicable to Credit Rating<sup>4</sup>; and, from 2022, by way of implementation of the new climate transition and decarbonization benchmarks provided for in EU Regulation 2019/2089<sup>5</sup> for the assessment of financial instruments under direct supervision by ESMA<sup>6</sup>; and
4. **Risk assessment**, to be performed by monitoring the market and identification of the risk associated with the investments in sustainable financial instruments. This activity, which will be performed with quantitative and qualitative index, based on the investment data and information communicated by the relevant players in fulfilment of the obligations set out under the existing regulatory framework (e.g., MIFID II, EMIR, AIFMD, UCITS, and Securitization Regulation), will, *inter alia*, feed into the publication of a specific section in its quarterly Trends, Risk and Vulnerability (TRV) reports, starting from the first quarter of 2020.

This announcement represents one part of a broader framework of legislative, regulatory and case law, at both a European and international level<sup>7</sup>, aimed at gradually introducing into the European economic and legal area a series of general principles, measures and guidelines aimed at protecting, enhancing and encouraging sustainable and profitable business and management models in a medium to long-term perspective, in the interest of future generations.

<sup>2</sup> See the technical report sent by ESMA to the European Commission for the integration of sustainability factors and risks into the MiFID II, AIFM and UCITS directives: “[Final Report, ESMA technical advice to the European Commission on integrating sustainability risks and factors in MiFID II](#)”, 30 April 2019. ESMA: “[Final Report, ESMA technical advice to the European Commission on integrating sustainability risks and factors in the UCITS directive and AIFMD](#)”, 30 April 2019.

<sup>3</sup> To this point, see the recent experience of the Bank of Italy, which on 15 May 2019, announced the [adoption of ESG factors as a criterion for the management of its financial investments](#) (link in Italian).

<sup>4</sup> See [ESMA's Final Report, Guidelines on Disclosure Requirements Applicable to Credit Ratings](#), 18 July 2019.

<sup>5</sup> See [EU Regulation 2019/2089](#) (link in Italian), which implements in Europe the international provisions of the 2015 Paris Agreement on climate change.

<sup>6</sup> Reference is made to the analysis and verification of the accuracy and integrity of reference indices in financial instruments and financing agreements, or investment performance, provided by entities located in third countries for which the EU Commission has not adopted an equivalence decision. In such cases, such verification and analysis shall be subject to an opinion of ESMA, after positive verification by the relevant national competent authority. See Article 32(6) EU Regulation 2016/1011 (so-called “Benchmarks Regulation”).

<sup>7</sup> These include, by way of example and without limitation: (i) the United Nations Principles of Responsible Investment (2006); (ii) the Paris Agreement on the World Climate (2015); (iii) the Communication of the EU Commission of 8 March 2018, relative to an action plan to finance sustainable growth; (iv) the Proposal for a Regulation of 24 May 2018 on the establishment of a framework to facilitate sustainable investment (the so-called “Taxonomy” Regulation), and relevant phase of adoption of the delegated acts with the relative technical specifications for each environmental objective.

A new approach to sustainable finance is taking place, by which the typical instruments of finance and their own profit purpose would be enriched and could become an important tool in helping to reshape or redefine economic and development trends, in response to the new issues that have arisen in the international economy and modern socio-productive systems.

## Authors

This GT Alert was prepared by **Corrado Angelelli** and **Antonio Enrico Izzi**. Questions about this information can be directed to:

- **Corrado Angelelli** | + (39) 02.771971 | [Corrado.Angelelli@gtlaw.com](mailto:Corrado.Angelelli@gtlaw.com)
- **Antonio Enrico Izzi** | + (39) 02.771971 | [Antonio.Izzi@gtlaw.com](mailto:Antonio.Izzi@gtlaw.com)
- **Alessio Gerhart Ruvolo** | + (39) 02.771971 | [Alessio.G.Ruvolo@gtlaw.com](mailto:Alessio.G.Ruvolo@gtlaw.com)
- Or your **Greenberg Traurig attorney**

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