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ESG in 2025: Finding the Sweet Spot in a Complex World

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With ESG regulation now well embedded across all major jurisdictions, the trend we see for 2025 is about increasingly sophisticated triangulation by private fund managers between the regimes that apply by default (such as mandatory corporate sustainability reporting), those that apply by choice (such as becoming an Article 8 fund within the meaning of the EU's SFDR or the new for 2024 ESMA ESG Fund Name Guidelines – see summary here) and those that apply by third party request or expectation (such as reporting obligations within side letters). As regimes evolve, the ESG-approach of any fund once identified, chosen and defined must also take into account tracking developments and monitoring compliance.

The best advice to counter claims and penalties for greenwashing remains to "say what you do and do what you say" (as the SEC has advised). This, however, requires a manager to have a full record of *what* was said (including in historic side letters) and done (in policies and processes, both current and historic) and to appreciate what that *means* in the eyes of all relevant regulators and the eyes of investors. To support this, we often recommend that managers have a tailored definitions and concepts bank to ensure compliance across all relevant jurisdictions and an in-house understanding of what, for example, "sustainability" means for them.

Greenwashing has recently come to the fore with several high-profile targeted regulatory enforcement claims and actions, including Aviva Investments which was fined in Luxembourg – see blog here. This is noteworthy because it is the first penalty under SFDR imposed by the Luxembourg Commission de Surveillance du Secteur Financier (the CSSF) with Luxembourg continuing to be a very popular location for EU fund formation. Other asset managers are finding themselves the subject of campaigns by the third sector, for example by ClientEarth, designed to capture the focus of local regulators, with the French regulator, the Autorité des marchés financiers (the AMF), being a target as it positions itself as a thought leader in the EU, including in ESG matters.

The counter temptation – to greenhush (or play down ESG credentials) – may therefore seem appealing, as ESG strategies in investment decision-making become increasingly divisive, especially in certain US jurisdictions. Alongside this, the market has grown more sophisticated in its expectations and analysis of ESG disclosures and commitments. However, it is not always an option to greenhush when advisers or investments fall within scope of mandatory corporate sustainability reporting or sustainable finance requirements. One example is the Corporate Sustainability Reporting Directive, which if in scope is a complex disclosure exercise that can attract penalties for non-compliance at Member State level – including in some cases holding individual board members liable.

While the reports of the death of ESG in the US have been greatly exaggerated, as Mark Twain might say, 2025 may well be the year in which we see increased divergence between the EU, UK and US approaches. In the US, on one hand, the dedicated ESG task force within the SEC has been disbanded, but only because the topic is now largely embedded as core within the SEC divisions so that advisers should still expect to see ESG-related disclosures as a key examination topic, and several Blue State pension funds are honing in on increased ESG-related investment criteria. On the other hand, the predicted approach of the new Republican administration could be to follow President Trump's lead, or he has previously described ESG investing as 'radical left garbage'. A recent finding by a Texas federal court that an American Airlines 401(k) plan breached its duty of loyalty to investors by offering ESG investments – even if participants weren't required to invest in such investments, appears to endorse this sentiment. Conversely in the UK, Chancellor Rachel Reeves, has committed to "sustainable finance" as one of the UK's five priorities for the country Financial Services Growth and Competitiveness Strategy. In the EU, there is further divergence of approach with momentum to deepen sustainable finance disclosures under a SFDR 2.0, yet also calls from EU leaders to streamline sustainability requirements on financial market participants and businesses more broadly.

Private fund managers operating on an international level need to assess and understand their position in this global, interlocking and overlapping – and occasionally conflicting – web of rules and politics. With advisers, LPs, the fund vehicles and portfolio companies hailing from many different jurisdictions, this assessment is not necessarily simple or available off the shelf. However, a tailored and suitable assessment of risk, and appropriate use of ESG approaches can reap significant rewards in mitigating downsides and attracting investment.

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