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| 18 November 2022 |

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| Reply form for the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds’ names |
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| Date: 18 November 2022 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds’ names published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered);
* do not remove the tags of type <ESMA\_QUESTION\_FUNA\_0> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

* if they respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_CP\_FUNA\_NAMEOFCOMPANY\_REPLYFORM.

e.g. if the respondent were ABCD, the name of the reply form would be:

ESMA\_CP\_FUNA\_ABCD\_REPLYFORM

***Deadline***

Responses must reach us by 20 February 2022.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Ørsted |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Denmark |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

Working as a Non-Financial Company, Orsted generally supports this initiative. Thus, we do not have an opinion on some of the more detailed and practically related questions.

<ESMA\_QUESTION\_FUNA\_0>

1. : Do you agree with the need to introduce quantitative thresholds to assess funds’ names?

<ESMA\_QUESTION\_FUNA\_1>

Response: Yes, we generally support frameworks that underpins avoidance of greenwashing. We support the basic idea. This said, however, currently some of the aspects are too blurry/unclear.

<ESMA\_QUESTION\_FUNA\_1>

1. : Do you agree with the proposed threshold of 80% of the minimum proportion of investments for the use of any ESG-, or impact-related words in the name of a fund? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_2>

We support the general idea of having a minimum threshold to secure only real sustainable funds can claim being that without justified by the portfolio managed. However, the rules of the thresholds need to be very clear and reasonable. Based on the consultation paper, we don’t think the current definitions of social or environmental characteristics is clear. A closer relation to definitions in other EU sustainability legislation would be helpful

We would propose that ESMA produces further detailed guidance, clarifying what it means to have an environmental / social characteristic. Before there is a clear understanding, it is difficult to comment on what quantitative % threshold should be.

The characteristics need to be clearer to ensure that greenwashing is avoided.

<ESMA\_QUESTION\_FUNA\_2>

1. : Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word “sustainable” or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_3>

We support the general idea of having a minimum threshold although a threshold of only 50% seems quite low. Above 60% seems more reasonable before a claim of being sustainable can be made. Nevertheless, we do support the idea of having different tiers.

However, once again the rules of the thresholds need to be very clear and reasonable. Currently, we don’t think the definition of social or environmental objectives is clear. For example, should it be interpreted as EU Sustainable Finance Taxonomy aligned CAPEX? We would support something along those lines, in terms of being well defined, science based, and audited.

We would propose that ESMA produces additional detailed guidance on how it defines the threshold.

<ESMA\_QUESTION\_FUNA\_3>

1. : Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.

<ESMA\_QUESTION\_FUNA\_4>

We support using EU Sustainable Finance Taxonomy alignment thresholds, further making the EU regulation coherent on what is defined as sustainable and not. The EU Sustainable Finance Taxonomy and other EU pieces of legislation should be used for the qualifying framework.

For any fund claiming to be an ESG and/or sustainable funds, the following should apply:

* All companies should live up to a minimum sustainability performance standard on across ESG factors
* Of those companies in the fund a minimum percentage of a financial KPI should be in alignment with the social or environmental Taxonomy objectives. Otherwise, a “non sustainable” company could be part of a fund. Furthermore, the thresholds need to allow for companies to be included that are in transition
  + Examples for already largely green companies – a threshold on revenues
  + Examples for companies in transition – a threshold on CAPEX and a SBTi or other verified credible commitments.
* ESG funds should be subject third-party review, audit

<ESMA\_QUESTION\_FUNA\_4>

1. : Do you think that there are other ways than the proposed thresholds to achieve the supervisory aim of ensuring that ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives? If yes, please explain your alternative proposal. If yes, please explain your alternative proposal.

<ESMA\_QUESTION\_FUNA\_5>

EU legislation (e.g., CSRD, CSDD, EU Taxonomy substantial contribution criteria, or ESRS data), should be used where possible as disclosure requirements or thresholds, depending on the objective of the fund and industry. For example, GHG intensity (scope 1 and 2) would be a good metric for an energy focused fund.

<ESMA\_QUESTION\_FUNA\_5>

1. : Do you agree with the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in their name? Should such safeguards be based on the exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2)? If not, explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_6>

As a default, all sustainable investment funds should live up to the minimum safeguards and should be able to provide proof in this regard. <ESMA\_QUESTION\_FUNA\_6>

1. : Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?

<ESMA\_QUESTION\_FUNA\_7>

Without further justification for such split, we do not see a reason for derivatives to be subject to specific provisions.

<ESMA\_QUESTION\_FUNA\_7>

1. Would you suggest the use of the notional value or the market value for the purpose of the calculation of the minimum proportion of investment?

<ESMA\_QUESTION\_FUNA\_1>

It would add significantly to the complexity and uncertainty if not the notional value is the basis for the threshold calculation. Market value may well fluctuate and will, thus, not be a good basis. Whether or not a fund is having the status of being sustainable just because of changes of the market value could create inappropriate situations. Hence, there is a need for certainty around whether a fund is sustainable or not <ESMA\_QUESTION\_FUNA\_1>

1. Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?

<ESMA\_QUESTION\_FUNA\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_2>

1. : Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds’ names as any other fund? If not, explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_8>

Without further justification for different requirements, we do not see a reason for a reference benchmark to be subject to other requirements.

<ESMA\_QUESTION\_FUNA\_8>

1. : Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?

<ESMA\_QUESTION\_FUNA\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_9>

1. : Do you agree of having specific provisions for “impact” or impact-related names in these Guidelines?

<ESMA\_QUESTION\_FUNA\_10>

Without further justification for different provisions, we do not see a reason for having specific provisions for “impact” or impact-related names in these Guidelines.

<ESMA\_QUESTION\_FUNA\_10>

1. : Should there be specific provisions for “transition” or transition-related names in these Guidelines? If yes, what should they be?

<ESMA\_QUESTION\_FUNA\_11>

Yes, it seems reasonable and justified to have specific provisions for “transition” or transition-related names in these Guidelines. Hence, it is appropriate to make it transparent whether the basis is sustainable activities according to e.g. Sustainable Finance Taxonomy for climate risk mitigating activities or whether it is only a transitional activity according to Sustainable Finance Taxonomy Complementary Delegated Act for fossil gasses. Without transparency in terms of what funds that are based on real sustainable activities and funds only based on transitional activities the whole purpose of these guidelines – to avoid greenwashing – will not be reached.

* Thresholds need to allow for companies to be included that are in transition
  + Examples for already largely green companies – a threshold on revenues
  + Examples for companies in transition – a threshold on CAPEX and a SBTi or other verified credible commitments.

<ESMA\_QUESTION\_FUNA\_11>

1. : The proposals in this consultation paper relates to investment funds’ names in light of specific sectoral concerns. However, considering the SFDR disclosures apply also to other sectors, do you think that these proposals may have implications for other sectors and, if so, would you see merit in having similar guidance for other financial products?

<ESMA\_QUESTION\_FUNA\_12>

In order to get a level playing field and avoid confusion on what is sustainable or not we generally think also other financial products should be subject to guidelines avoiding greenwashing.

<ESMA\_QUESTION\_FUNA\_12>

1. : Do you agree with having a transitional period of 6 months from the date of the application of the Guidelines for existing funds? If not, please explain why and provide an alternative proposal.

<ESMA\_QUESTION\_FUNA\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_13>

1. : Should the naming-related provisions be extended to closed-ended funds which have terminated their subscription period before the application date of the Guidelines? If not, please explain your answer.

<ESMA\_QUESTION\_FUNA\_14>

Yes, they should apply to ensure true standardization and alignment across the industry. This is particularly important since closed ended funds do not always have a s specified maturity date and can remain open indefinitely.<ESMA\_QUESTION\_FUNA\_14>

1. : What is the anticipated impact from the introduction of the proposed Guidelines?

<ESMA\_QUESTION\_FUNA\_15>

We believe that these guidelines will have a positive impact on the ‘green transition’. Greenwashing can be devastating if not identified in due time. Not least in financial markets transparency around offered ‘products’ is important to underpin the trust for investors needed for the markets to functioning. <ESMA\_QUESTION\_FUNA\_15>

1. : What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.

<ESMA\_QUESTION\_FUNA\_16>

For a company like Orsted, truly believe in the need for the green transition, it is key that the financial markets can trust claims on sustainability. Transparency and credibility for investors when investing in funds claiming to be sustainable is of significant value for a company like Orsted also to ongoingly be able to attract capital for further expenditures in assets providing the green transition.

<ESMA\_QUESTION\_FUNA\_16>