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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 | Association of Austrian Investment Fund Management Companies (VÖIG) |
| Activity | Asset Management Association |
| Are you representing an association? |[x]
| Country/Region | Austria |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

In general, uniform requirements, such as thresholds, are to be welcomed in principle, as they are suitable for reducing legal uncertainty and creating a level playing field in the internal market. They also reduce potential greenwashing allegations and create clarity for (retail) investors and legal certainty for fund managers.

Notwithstanding this, VÖIG is **critical** of the guidelines consulted for the following reasons:

**I.** Austrian law does not grant the NCA the power to develop binding standards on fund names. Nevertheless, the Austrian FMA has developed an **administrative practice** with regard to fund names which respects the specificities of the Austrian fund landscape: In Austria fund names depend on a **51% threshold** which is deeply enshrined in the Austrian fund landscape and has proven itself over the years. ESMA Guidelines on sustainability names should not introduce name requirements that are completely independent and detached from this matter, such as adapting new criteria and breaking up existing structures. We therefore want to highlight the **national specificities** and ask to respect the existing **administrative practice with regard to fund naming.** For these reasons, the quantitative thresholds introduced by the guidelines are considered to be **too high**; this concerns both the 80% and 50% thresholds.

**II.** Furthermore, VÖIG is concerned that **other regulatory developments (Level I)** with reference to fund names are not sufficiently taken into account. Fund naming is currently also being discussed in the course of the **reform of the AIFM Directive (AIFMD II) and the UCITS Directive**. The current compromise proposal of the European Parliament (as of January 2023) provides for the following in Art 7 (6) AIFMD II and Art 5(8) UCITS Directive:

*"In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for the authorisation of the AIFM, including the programme of activity,* ***and to specify situations where the name of the AIFs it intends to manage could be materially deceptive or misleading*** *to the investor. (Peksa 243, Tang+ 244)"*

This provision could serve as a gateway for sustainable fund naming standards if criteria for misleading names were to be developed. It must therefore be ensured that the negotiations on the AIFMD II/UCITS Directive are not conducted in isolation from the ESMA consultation. In particular, the situation should not arise that ESMA guidelines on fund naming are published just to be promptly superseded by later (and possibly diverging) RTS. This would lead to considerable uncertainty and additional burdens for the industry, especially since the fund names also affect the investment strategy and the fund documentation. This is accompanied not least by uncertainty on the part of investors.

In addition, a **reform of the SFDR** cannot be ruled out, which could lead to binding requirements for product design and fund naming. New changes in the investment strategy and/or the fund name and fund documentation would be necessary. From this perspective, too, an anticipation by means of guidelines would create an excessive burden and uncertainty for both the management companies and the (retail) investors.

Finally, an amendment to the **UCP Directive (COM(2022)143 final)** is also under consideration, which aims in particular to prevent greenwashing and contains new per se prohibitions on making misleading environmental claims and non-transparent sustainability labels. Greenwashing - insofar as it is not already covered by the existing regulations on unfair competition - is thus also combated at this level. After all, the fund name is a marketing tool. From this perspective, too, no discrepancy between statutory regulations under private law and the supervisory assessment should arise. In particular, the **prohibition of unfair competition might be sufficient to combat greenwashing**.

**III.** Concerning the introduction of **quantitative thresholds** VÖIG wants to emphasise that any quantitative threshold **depends on the** **availability of data**, which is not granted. Furthermore, a quantitative threshold would also have an impact on the limits-checks; however, ESG/sustainable investments should not be treated like risk limits.

<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>

The level of a quantitative threshold of **80%** for the use of ESG-related terms in fund names is in contradiction with existing national guidelines of NCAs. According to the Austrian FMA, the use of a fund type, such as stock funds, requires that at least 51% of the value of the fund's assets be invested in the named asset, i.e. stocks. The same requirements apply in Germany, as the BaFin fund category guidelines provide for a threshold of more than 50%.

<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>

The additional threshold of **50%** for the use of "sustainable" or other sustainability-related terms does not seem practicable either, as this is inappropriate before the still pending clarification of the definition of "sustainable investment" in the meaning of Art 2(17) SFDR and the still insufficient data situation in connection with the introduction of the CSRD. Within the framework of Art 2(17) SFDR, each FMP decides for themselves - along the known parameters - how a "sustainable investment" is structured; if, for example, a FMP chooses the approach, analogous to the taxonomy, of actually only taking into account the percentage of a company's turnover that is "sustainable" in the calculation, the values of sustainable investments will be very low. If, on the other hand, the entire investment - from a defined threshold value onwards - were to be assessed as "sustainable", a much higher value of "sustainable investments" could be achieved; a quantitative threshold value that is too high could thus lead to a dilution of the institution's internal definition of "sustainable investments", which in turn would not be in the interest of the investor.

<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>

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<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>

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<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>

ESMA proposes the application of minimum safeguards for sustainable investment funds based on exclusions related to EU benchmarks. This proposal is considered an **excessive restriction** as it limits the possibility of different sustainability approaches in the management of investment funds. The guidelines should not lead to specifications with regard to product design and thus indirectly set minimum exclusion criteria for investment funds.

In the event that minimum safeguards are nevertheless applied, the proposed exclusion criteria in Art 12 (1) DelVO (EU) 2020/1818 are suitable for strictly sustainable single stock funds without significant disruptions of the investment process. However, Art 12(1)(g) may lead to a high degree of uncertainty in the creation of the investment universe. For example, a utility company mainly active in the renewable energy sector may be forced to use power plants with an emission intensity of more than 100 g CO2e/kWh due to external factors such as water scarcity, even if this is not in line with its production strategy. Therefore, a reasonable period of time should be set for taking such factors into account. The requirements in Art 12(2) should already be met by sustainable funds under Art 8 or 9 SFDR with an environmental focus. These criteria can be problematic for fund of funds structures, as compliance by the invested sub-funds cannot be guaranteed and non-compliance by a sub-fund could lead to non-compliance for the entire fund of funds. While this risk can be minimised by reviewing the sustainable investment process before investing, it cannot be eliminated entirely.

<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>

It is important to have a uniform definition for "**proportion of investments**" in order to achieve better comparability between different financial products. Without a uniform definition, financial products with active risk management strategies involving derivatives and/or an allocation of risk positions and cash that varies over time could be disadvantaged. To avoid negative effects, it is important to also consider the statement made in Recital 33 on the SDFR, which specifically focuses on the **market value** of investments in companies and does not include derivatives in the numerator, while considering the market value of all investments in the denominator. This ensures that financial products with variable risk strategies can continue to pursue and disclose sustainable investment objectives. Finally, cash and **derivatives** should not be included in the numerator.

<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>

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<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>

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<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>

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<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>

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<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>

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<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>

**A specific regulation for the use of the term "transition" or transition-related names does not seem to be helpful.** The result is the danger of a - probably undesired - restriction. Although this term is often used in connection with the energy transition, investments in government bonds, for example, can also support positive developments in the respective state.

<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>

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<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>

ESMA currently provides for a transitional period of six months from the entry into force of the guidelines (point 23). **This period appears to be too short** (as is the view in other EU member states). If a change of name necessitates a change of the fund documentation, this also requires an approval by the Austrian FMA and corresponding waiting periods (in particular the legal period concerning the notification of investors). **At least a transition period of one year from the applicability of the guidelines would be necessary and practicable.**

Furthermore, the transition period should not be too short, also with regard to the marketing aspect and the perception by the retail investor. This is because SFDR funds have in many cases only recently been launched and would potentially have to be "downgraded" as a result of the guidelines, which also creates confusion and uncertainty for investors.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

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<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>

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