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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 | SPAINSIF, SPANISH SUSTAINABLE INVESTMENT FORUM |
| Activity | Non-financial counterparty |
| Are you representing an association? |[x]
| Country/Region | SPAIN |

# 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>

It is reasonable to introduce quantitative thresholds in the form of percentages for the use of certain terms in the names of sustainable financial investment products marketed in Europe. This can help reduce the risk of greenwashing and align fund names with their sustainable investment strategies and objectives. However, the introduction of these thresholds must be coherent with the existing sustainable finance regulatory framework, including the SFDR, and the proposed thresholds should be interoperable across EU member states. There is a risk of fragmentation in the application of the SFDR and the guidance on the use of sustainable terms due to different interpretations by national supervisors. It is desirable for future thresholds proposed for the use of sustainable terms in fund names to be coherent with supervisory thresholds and proposed thresholds of the regulator in future developments of the SFDR and future public sustainability labels for financial products.

Although the guide is independent of the SFDR Regulation, its application could lead to reclassifications of article 8 and 9 funds due to their greater or lesser alignment with the terms of use guide, given the link it establishes between the use of certain sustainability terms and the definition of sustainable investment and description of articles 8 and 9 of the SFDR. For example, an entity that had an article 8 fund called "ESG" that did not meet the proposed 80% threshold for the use of that term might be inclined to reclassify the fund, given the implications of using the term "ESG" and its relationship with the SFDR, or even to modify the investment strategy to comply with the proposed percentage. In turn, any change in classification under the SFDR connects with one of the criteria for responding to customer sustainability preferences under MiFID II, with the added complexity it brings to assessing the consequences of applying the guide.

In the case of UK, the FCA also proposes quantitative indicators in the form of percentages for a financial product to be able to present the sustainable focus category or label. The FCA´s proposed threshold is different to ESMA´s proposed threshold.

<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>

Regarding the thresholds for the use of terms related to ESG or impact, it is advisable to clarify first what is considered "ESG" and "impact," by clarifying or expanding a list of words or combinations of words related to ESG, and to what extent those same words combined in other ways, or under other investment strategies, may also be related to terms related to sustainable investments.

In the case of the use of terms linked to "Impact," it would be advisable to clarify whether the 80% threshold, the 50% threshold, or both apply (the wording of the proposal and the wording of the questions have generated different interpretations).

<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>

It would be helpful to clarify the list of words or combinations of words related to "sustainable," and to what extent those same words combined in other ways or under other investment strategies may also be related to terms related to ESG or impact investing.

While it has been informally clarified that the 50% threshold applies to 100% of the portfolio instead of 80% of investments with ESG characteristics, it would be advisable to include this directly in the wording of a possible definitive guideline to avoid possible confusion among market actors not related to the public consultation process and who would be affected by the guidelines. Finally, it would be helpful to clarify whether compliance with the 50% threshold is sufficient in this category or must be accompanied by compliance with the 80% threshold proposed for promoting environmental and social characteristics.

<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>

It is currently possible that the system of percentage thresholds could increase the complexity of the framework, as it does not ensure interoperability with future criteria or thresholds that SFDR may define for labels.

Additional provisions would be necessary for impact and transition products in the event of a scheme that refers to two major categories between ESG and sustainability.

In other regions, a process has been adopted that combines 1) labels or categories for products based on investment strategies, without having to define thresholds for each of them, 2) disclosure requirements for each of the categories, and 3) rules for fund names; in an integrated way that ensures interoperability between the different regulations (see the case of the FCA process in the UK).

<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>

The proposal is limited to setting rules for the names of funds and does not fully address the differentiation of different investment products based on their investment strategies and objectives for investors. The proposed percentages also do not represent product labels based on investment objectives and strategies, but rather rules for naming funds for marketing purposes.

We agree that a normative development model that ensures the interoperability of all provisions is crucial to prevent greenwashing. Setting rules for fund names as ESMA proposes, is only a part of the solution and does not fully address the differentiation of different investment products based on their strategies and objectives. Clarification of classification criteria for product categories or labels, along with disclosure requirements for each of them, is also necessary to achieve greater transparency and prevent misunderstandings by investors. Additionally, it is important to have appropriate rules to enable proper marketing of investment products, especially in the retail segment.

<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>

Establishing general minimum safeguards seems necessary, although the proposed minimum safeguards are overly strict (they correspond to the most ambitious climate index construction standard in the regulatory framework), with a climate focus that may not be transferable to funds pursuing social or other environmental objectives. Additionally, the establishment of quantitative exclusions by the supervisor may limit asset allocation.

As an alternative proposal, the drafting of exclusions for funds using sustainability-related terms could take the form of commonly accepted principles in sustainable investment practice, such as the minimum social safeguards included in the green taxonomy. Additionally, transparency measures could be included, such as the disclosure of exclusions applied in fund prospectuses, so that advisors and investors can individually determine their level of alignment beyond compliance with minimum and commonly accepted sustainable investment principles.

If it is deemed necessary to incorporate exclusions from a climate index, the minimum safeguards of the Climate Transition Index would be more applicable than those of the Paris Agreement Alignment Index.

Furthermore, funds oriented towards ecological transition should have additional provisions and exemptions from exclusions, linked to the disclosure of their active management strategies in high-impact or traditionally excluded sectors from climate indices.

<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>

Derivatives should be excluded from the rules on the use of ESG, sustainable, or impact investment fund terms when the underlying portfolio does not pursue sustainable investment strategies or is difficult to trace.

<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>

Yes, the term "indexed" should be included in the name and be subject to the same rules.

<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>

Yes. It should be distinguished whether the index is synthetic, as in that case, the sustainable collateral would only be linked to the fund's performance via a derivative or swap with collateral not necessarily linked to sustainability.

<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>

Regarding the additional provisions for the term "impact," it is notable the differences between the definition of impact investing given by the regulator and supervisor in the EU and the definition by the GIIN adopted in other regions, such as the FCA of the UK.

The Impact Task Force (ITF) initiative promoted by the G7 and GSG distinguishes between “impact-aligned” investments and “impact-generating” investments (Busch et al. 2021). Both categories focus on addressing specific environmental and social challenges and incorporate a follow-up approach to investments, although the latter must contribute to specific solutions to these problems, incorporating additional capital and the need to measure future goal achievement with a medium to long-term perspective (the ITF proposal and Busch et al.'s classification (2021) are adapted by Eurosif and the University of Hamburg in their White Paper).

On the other hand, with a more restrictive approach, there is the concept of impact investing by the GIIN, which requires an investment objective in problems unaddressed by the market, a strategy that explains a Theory of Change Model without necessarily giving up a financial return, and the need to measure the impact in social and environmental terms.

<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, there should be specific terms for “transition” and the safeguards should entail less strict exclusions, linked to greater disclosure about each product's transition strategy.

Eurosif and the University of Hamburg in their joint White Paper mentioned earlier incorporate transition objective investments within the category of “impact generating” investments, although they do not mention the requirement of additional capital. In this context, funds that invest using active ownership strategies (engagement and voting) or best-in-class/best-in-universe strategies with impact objectives linked to invested capital in climate transition (or any other environmental transition with a different objective -biodiversity, circular economy, pollution, etc.) could be considered as “impact generating” investments. In any case, these funds with names linked to the transition would be incompatible with the activities exclusion criteria and the exclusion criteria of climate indices, particularly those established for Paris Agreement-aligned climate benchmarks.

Similarly, it would be helpful to clarify the concept of transition, for example:

1. if it is limited exclusively to the concept of transition activities as defined in the Taxonomy, or

2. if it refers to the Climate Transition Plans as defined in Article 15 of the proposed text of the European Commission's Corporate Due Diligence Directive on Sustainability.

<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>

The direct correlation of these guidelines with SFDR would hardly be transferable to other credit financial products, for example, as the commercial catalog is configured (green mortgages, sustainable consumer credits, green guarantees, etc.), although the use of certain words for retail customers should carry the same type of truthfulness and rigor, regardless of the financial product to which it refers. It could be applied to pension plans, unit-linked products, or the designation of discretionary portfolios that seek ESG aspects promotion objectives.

<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>

It is recommended to establish a sufficient adaptation period for funds to comply with the guidelines proposed by ESMA. Similarly, understanding that a change in name would need to be communicated to the participants, it would be interesting to assess how much a name change can influence disclosure practices under SFDR and its resulting reclassifications, if any, in order to establish one or the other timeframe.

It is important to understand the procedure to follow in case of non-compliance with the guidelines, as well as the consequences of a name change and/or reclassification under SFDR with respect to the right of withdrawal of participants or the obligation to modify the prospectuses.

Therefore, it is suggested to extend the adaptation period to 12 months.

<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>

There are arguments for and against the retroactive application of the guidance. On the one hand, it is positive that the guidance applies uniformly to all fund names to ensure comparability, regardless of their type, since the name of the fund is relevant in all types of markets. On the other hand, the closed-ended funds are funds that complied with the framework at the time of establishment, which have a more limited possibility of re-selling than open-ended funds, and which may have difficulty attributing the cost of the name change to the original management fees. In any case, if a name change is required in these cases, it should be accompanied by communication to the investor indicating that it does not involve a substantial modification of the investment objectives and strategy committed by the fund.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

The impact of ESMA's proposed guidelines on the universe of Article 6 funds that use sustainability-related nomenclature, as well as Article 8 and 9 funds based on their alignment with the proposed thresholds, aside, it could affect market participants' perception of what their original SFDR disclosures should be.

<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>

The cost of changing fund names would generate a multitude of impacts on staffing, communication with investors, pre-contractual and post-contractual information, internal and sectorial coordination, training of financial advisors, possible modification of suitability tests regarding the integration of sustainability preferences, etc.

<ESMA\_QUESTION\_FUNA\_16>