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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 | ADICAE |
| Activity |  |
| Are you representing an association? |  |
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

Every year, the number of consumers interested in sustainable investments grows significantly. Investment service providers are aware of this reality and will use all sorts of tricks to whitewash their image and gain market share. These practices include references to certain keywords in the name of the product.

Apart from the obvious environmental problems that lie beneath the practice, the main problem is the mis-trust and disaffection it generates among consumers towards green and sustainable products as a whole.

When a company or entity is punished for such a practice, it casts doubt on the entire industry and ultimately discourages consumers from making further economically sustainable investments.

This negative effect of greenwashing has to be compensated in other ways through positive reinforcement. It is not only about punishing those entities that have lied to consumers, but also about rewarding those that are truly taking steps towards a sustainable economy.

ADICAE considers the guidelines that aim to establish a minimum threshold for investment to be considered sustainable and the proposed changes to the commercial names of funds to be positive, however, we believe that some points could be better clarified for the benefit of consumers and small investors, such as the types of labelling or the laxity with some particularly polluting companies.

On the other hand, the emergence of the digital Euro and smart finance may radically change the scenario in the medium term. The "tokenisation" of finance will revolutionise the sector and allow the creation of smart money that can only be invested under the premises determined by its holder, a fact that could lead to the disappearance of unfair practices such as greenwashing.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Many investors, regardless of their financial capacity, are incorporating sustainable products into their portfolios. It is a fact that many financial institutions and investment services companies, among others, may use confusing or unclear terminology about their investment policy or use sustainability-related terms directly to broaden the attractiveness of the investment.

That said, the proposal to introduce quantitative thresholds for assessing the terminology of funds seems appropriate. However, at country level, controls on sustainable investments should be strengthened to en-sure their proper functioning.

The prospectus with investor information may comply with the requirements or thresholds set by European legislation, but national supervisors must be provided with the necessary means to enable them to assess, in a material way, that the investment policies indicated in the prospectus are being complied with.

<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 proposed threshold may be high enough as long as certain exclusions apply to the destination of the remaining 20% of the fund's investment. For example, it does not seem very reasonable to set up a fund under the label "sustainable" that meets the proposed threshold and yet allocates up to 20% of its invest-ments to fossil energy related industries.

In our view, funds that allocate 100% of their investments to sustainability-related issues are only those that could use sustainability-related nomenclature or ESG-related wording and should be subject to special labelling that identifies them as such. Those that meet the proposed threshold and the rest of their investments are consistent with the fund's objective could use the nomenclature, but under a label deferential to 100% sustainable investments.

Funds with sustainable investments at a threshold of less than 80% should not use this nomenclature or, if it is used, the percentage of sustainable investments should be clearly stated in the name of the fund. In such cases, the use of sustainable investments may simply be due to a broad diversification of the portfolio or the fund managers may seek to benefit from being able to include certain words in the name of the fund to attract potential investors.

<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>

In line with the previous question, it does not seem reasonable to us that a fund that does not allocate up to 80% of its investments to sustainable purposes can make use of the word "sustainable" or other words that may be related to ESG criteria.

If a fund that allocates 80% of its investments to sustainable purposes may have conflicts of interest depending on the use of the 20%, one that contains "at least 50%" may give rise to a wide range of investments that have nothing to do with sustainability and its purposes. The use of this terminology will particularly affect consumers or small investors who do not have adequate knowledge to discern the destination of the rest of their investment or who will not go beyond the name of the fund itself.

In a less restrictive scenario, it is proposed that such funds should clearly and concisely state in the fund nomination the percentage earmarked for sustainable investments.

<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>

The proper functioning of the proposed thresholds will depend on the control that national supervisors apply to this type of products. With regard to their construction, the proposed thresholds are adequate, however, in our view and as has already been reflected, it is advisable to implement improvements in labelling that allow differentiation of investments even among those funds that comply with the most demanding threshold.

<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>

Europe can and must set clear rules in order to drive the economy towards sustainability. Once the limits have been set, as ESMA intends, it is up to the supervisory task to ensure that the market functions properly. The risk, moreover, is high. If consumers or small investors start to detect greenwashing practices in this type of investments, it can lead to a loss of confidence and disaffection towards sustainable investments.

On the other hand, the digital Euro and the digitisation of finance may offer solutions in the medium term. If investors, in the medium term, start to be able to "programme or tokenise" the money destined for an investment so that it meets a series of requirements, such as being invested in companies or products related to sustainability, this would eliminate all or a large part of the problems that arise and reduce greenwashing practices to a minimum. This "smart" money can only be used for those purposes pre-programmed by the investor.

<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>

Article 12(1) and (2) of the Commission Delegated Regulation (EU) 2020/1818 can serve as a starting point, however, it shows a certain laxity towards certain types of companies that have nothing to do with sustainable purposes.

Within paragraph 1, the following is quoted verbatim:

*1. Administrators of EU benchmarks harmonised with the Paris Agreement should exclude the follo-wing companies from these benchmarks:*

*(d) undertakings deriving 1 % or more of their revenues from prospecting, mining, extraction, distribution or refining of anthracite, hard coal and lignite;*

*(e) undertakings deriving 10 % or more of their revenues from the exploration for, extraction, distribution or refining of liquid fuels;*

*(f) undertakings deriving 50 % or more of their revenues from the exploration for, extraction, production or distribution of gaseous fuels;*

*(g) undertakings deriving 50 % or more of their revenues from electricity generation with a GHG intensity exceeding 100 g CO2 e/kWh.*

It does not seem appropriate to us that a company that derives up to 10% or 50% of its profits from the exploration, extraction, production or distribution of fossil fuels or the generation of electricity by highly po-lluting means can be labelled as sustainable.

These scales established in RD 2020/1818 constitute in themselves a greenwash for this type of company, as the investments are diluted and laundered through the indexes referenced. These points should be reviewed to make them more consistent with the sustainability criteria that the European Commission itself transmits or, failing that, new complementary criteria should be established that do not allow this type of company access to products that can be considered sustainable.

<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>

Financial derivatives are particularly complex products, based on leverage, and are usually quite out of the hands of consumers or small investors. That said, we do not believe it is appropriate that such a complex product should benefit from the possibility of including nomenclature or wording linked to sustainability or ESG criteria. With regard to the guidelines on % investment, we consider it appropriate that, if derivatives contracts linked to the performance of sustainable commodities or products are formulated, these can be differentiated through the labelling described above and that this will be sufficient for professional investors, the target audience for this type of product, to clearly identify the sustainability of the product. <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>

The notional value will allow a clear determination of whether the investment meets the thresholds defined at the time of the transaction. The market value may vary significantly over the life of the investment and may therefore imply losing or gaining sustainability status. To avoid this possibility, we consider that the risk assumed in the formalisation of the financial derivative is sufficient to determine the character of the investment irrespective of the performance of the investment.

<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>

No. Only extend the above-mentioned proposals to this type of products. With the peculiarity that they can’t include words or expressions linked to sustainability in their commercial name.

<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>

The proposed guidelines should be sufficient to ensure the proper functioning of an index fund. In their conception, funds are designed to replicate as closely as possible the performance of an index or fund and therefore replicate exactly its composition. To do otherwise would imply unfair management towards the index fund's unit-holders. We insist once again, because of its importance, on the need for clear differentiation in labelling and that funds that do not reach 80% of sustainable investments do not include references to these in their commercial name, at most a reference to the percentage of this type of investment. <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>

It is clear that determining the sustainability threshold of a passively managed fund will be much easier if it performs physical replication or optimised physical replication. This type of replication ensures that the fund will invest almost exactly like the benchmark and therefore replicate its sustainability threshold in the same way.

Funds governed under synthetic replication should be excluded from the possibility of including trade names linked to sustainability or ESG criteria. The possibility for the fund to enter into transactions with third parties that may include the purchase of baskets of securities that have nothing to do with its original perception or to transfer the investment directly to an investment bank perverts the situation and the traceability of the sustainability of the product is lost.

<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>

The terms "impact" or "impact investment" may have nothing to do with social or environmental sustainabi-lity, although it is true that they can be misleading if used in a malicious way. If ESMA considers that the use of these terms is linked to the above criteria, they must obviously also comply with the thresholds and proposals made in the previous sections.

<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>

The use of the terms set out here, as in the previous question, may be misinterpreted, especially by consumers or retail investors. The specific provisions should therefore be extended to all those terms or expressions that ESMA, or other bodies in their supervisory work, have identified as potentially problematic or that may induce greenwashing practices.

<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>

Although investment funds have acquired a special categorisation within the different savings and invest-ment products, the truth is that the measures proposed here should be extended to all these types of pro-ducts in order to achieve a cohesive and clear market.

Investment funds are not the only products marketed under the premises of sustainability or economically responsible, among other types of terminology. To ensure understanding of an already complex market for consumers, all products should be subject to the same rules. It would make no sense if, for example, a savings insurance product had different thresholds or requirements for sustainability than an investment fund.

<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>

This consultation is in the public domain. Fund managers, financial institutions or investment services firms are aware, or should be aware, of the regulatory developments to which they are subject, so the 6 month deadline seems exaggerated, as they can correct their positions or product trade names as the proposals are consolidated. If they do not do so, it is because they are evidently benefiting from some practice.

This period could be reduced to 3 months. This is generous in itself and would solve the problem more quickly.

<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>

If the fund is permanently closed as a result of liquidation, it does not make much sense for it to be obliged to change its nomenclature. On the other hand, those funds that are closed for reasons related to the management of their assets and are therefore likely to be opened in the short or medium term in the future should be subject to the guidelines resulting from this consultation.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

The proposed guidelines allow for clarification and unification of criteria in a niche market that is clearly growing. Consumers and small investors will clearly benefit from the proposed measures, or the suggestions that ADICAE makes to the consultation, being able to know with certainty the destination of their investments.

However, as discussed above, there are some gaps in the labelling of products, as well as in the require-ments contained in Delegated Regulation (EU) 2020/1818 regarding the sustainability criteria for certain investments.

Once the rules have been clearly established, it is up to the national or European supervisory bodies to ensure that they function properly, as they can still give rise to greenwashing techniques, especially in the case of passively managed funds governed under synthetic replication or financial derivatives.

In any case, once the necessary measures have been adopted, they should be extended to all savings and investment products traded on European territory.

<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>

ADICAE, the Association of Consumers and Users of Banks, Savings Banks and Insurance Companies, represents consumers and/or small investors residing in Spain. The benefits or positive impact of the pro-posed measures have already been mentioned.

With regard to the cost of these guidelines, it is possible that fund managers may decide to make their services more expensive because of the costs that may arise from the application of these guidelines. For this reason, it should be made clear that the costs arising from the application of these guidelines should not be passed on to investors.

<ESMA\_QUESTION\_FUNA\_16>