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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 | Sustainable Finance Advisory Committee |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

The German Sustainable Finance Advisory Committee advises the German government on its Sustainable Finance strategy. To improve the transparency is one element of this strategy. The Sustainable Finance Advisory Committee is working inter alia on a proposal for an ESG-Scale (a transparent ESG-related categorisation of all financial products subject to PRIPS). The answers are given in the context of this activity. The answers represent the position of the Sustainable Finance Advisory Committee, as an independent body.

Not all questions of the consultation are answered.

We consider this guideline to apply only to retail investment products.

The following criteria are seen as critical prerequisite for this guideline:

* Consistency with/of existing regulation to account for interdependencies and impacts
* Clarification of definitions (e.g. impact) and calculation methods (e.g., for sustainable investments)

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

Yes. Clarity and thus legal certainty as to the characteristics of a product with ESG or sustainability in its name is important for both product providers and investors. We would strongly recommend a common EU approach instead of a wide range of different national approaches.

For an EU harmonization and true comparability of products it is of utmost importance to have a common understanding of naming convention, i.e. a clear differentiation which names/words (e.g. green, climate, etc.) relate to the ESG-terms and which ones to the sustainability-terms. Leaving this decision to national supervisory authorities might again lead to inconsistencies

<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>

No. We consider that this guideline should follow the same principles as other regulation addressing fund names (min. 51% investments with ESG characteristics). We would also recommend that this guideline in any case allows for a higher proportion such as 25% that can be allocated to cash and derivatives, as this is needed for liquidity and general risk management purposes. If a blanket threshold is applied, we would propose that this excludes cash and derivatives held for risk management. <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>

No. We consider it critical that before any threshold is determined, clarification on the definition, calcula-tion method and reference (e.g. NAV) for “sustainable investments” as per SFDR Article 2(17) is provided by the EU Commission. This is highly important to achieve true comparability across products. We thus recommend that the timing and outcome of this clarification is taken into account before finalization of the fund naming guidelines.” <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>

No. We do not agree with the proposed exclusions based on the exclusions for Paris-aligned benchmarks (PAB) due to the following reasons: (1) The PAB exclusions relate primarily to climate and are therefore not suitable for a holistic ESG approach. (2) The investment strategies of SFDR Art. 8 products already include exclusions. Additional mandatory layers of exclusions further reduce the investment universe/diversification opportunities. (3) The referenced Taxonomy DNSH criteria are designed for application at the level of economic activities and not for application to the entire company performing such activities or as minimum standard for ESG funds. Funds that commit to a certain level of Taxonomy-aligned investments as part of their sustainable investments would need to perform a threefold DNSH test (for the relevant economic activity under the Taxonomy; for the issuer with reference to the PAI indicators under Art. 2(17) SFDR; for the issuer based on the DNSH criteria of the Taxonomy). Given that the existing situation with two DNSH tests under Taxonomy and SFDR is already challenging and questionable from a regulatory consistency perspective, the introduction of yet another layer of DNSH test should be avoided.

As an alternative to the proposed exclusions, the consideration of PAIs, adherence to the internationally accepted “UN Global Compact principles” and the “OECD Guidelines for Multinational Enterprises” and “UN Guiding Principles on Business and Human Rights”, as well as the exclusion of “Exposure to controversial weapons” (anti-personnel mines, cluster munitions, chemical weapons and biological weapons) could be taken as minimum safeguards.

<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>

No, ESMA Guidelines should abstain from any specific provisions for calculating thresholds in relation to derivatives or any other assets. Calculations relevant for minimum commitments take place under SFDR and should be exclusively governed by SFDR rules that apply likewise to funds and other relevant financial products.

<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>

TYPE YOUR TEXT HERE

<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, if this is to apply for index-replicating funds only. It should not include funds assigning an index as a reference benchmark e.g. for performance measurement. A level playing field is needed

<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, the underlying investment should be the basis for assessment

<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>

Yes. The market is already differentiating between ESG and impact products. However, the definition and calculation of “impact” and how it relates to “sustainable investment” needs to be clarified outside the guidelines and prior to their finalization.

<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>

No. “The term transition is not defined/reflected in existing regulation. Introducing this term within this guideline would lead to increased complexity. More importantly, we deem investments into “transition” as a form and part of “sustainable investments”(in a wider understanding according to SFDR Art. 2 Nr. 17) and thus the ESG/sustainability naming categories are sufficient. No dedicated transition-related naming is needed.

<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>

Yes. A level playing field is needed.

<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>

No. We would recommend that this guideline is deferred to a point in time when there is, as expected, more clarity from the Commission around sustainable investments and criteria for products classified under Article 8 of SFDR. As this is likely to result in adjustments for several funds at the same time we would propose a longer transition period, for example 9-12 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>

No. Changing rules and regulation after the launch, marketing and sale of such products will only decrease trust in the regulation without a real benefit for investors. Second market transactions do not have a significant volume.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

Depending on the final guideline potentially many funds must adjust. a) Funds may change the name, if needed, which will lead to additional costs and tie up significant resources for both fund managers and national supervisory authorities. b) Applying the guidelines may lead to significant adjustment of fund holdings, which entail transaction costs for the funds, reducing financial performance.

<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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<ESMA\_QUESTION\_FUNA\_16>