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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 | APFIPP - Associação Portuguesa de Fundos de Investimento, Pensões e Patrimónios (Portuguese Association of Investment Funds, Pension Funds and Asset Management) |
| Activity |  |
| Are you representing an association? |  |
| Country/Region | Portugal |

# 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>

APFIPP acknowledge the importance of the fund’s name and consider that it should be carefully thought out and used responsibly to avoid greenwashing and reduce the risk of misleading investors.

In general, if specific words in the name of the fund could be deemed as characteristics or features of the fund’s investment strategy, we would agree that, to a reasonable extent, there should be a relationship between that name and the fund’s investment strategy. As such, asset managers should be able to justify the inclusion of ESG specific words with some element of its investment strategy.

Although the name itself should not be misleading, it shouldn’t be the key element contributing to an investment decision by a Client in that fund, neither a simple shortcut for a Client to infer what the product allocation is.

Given the disclosures that are required under article 8 and 9 of Sustainable Finance Disclosure Regulation (SFDR), with prescribed tables and specific placeholders to indicate the proportion of investments that promote social and/or environmental characteristics, sustainable investments, etc., there is transparency on the minimum allocations for each of these buckets.

Even though we recognize the necessity of a standardized and comparable approach to this issue and the use of threshold might, in theory, seems an effective approach to the situation, we also believe that the introduction of quantitative requirements could lead to the adverse consequence of lowering the standards, or having worse criteria, for what could be considered “investments that promote social and/or environmental characteristics” or “sustainable investments”, since those concepts are not clearly defined and could differ from entity to entity. We believe it may be better to have a lower proportion of such investments while maintaining a rigorous and robust criteria for them to be included in such bucket. It would also reduce the risk of greenwashing attached to a lousier criteria trying to meet a threshold.

Thus, while we believe the choice of words in a funds’ name should be adequate, we don’t see the need to introduce general quantitative thresholds to assess funds’ names.

In the interest of simplification of current regulation and guidelines, fund naming could be directly related to the SFDR Regulation, that makes a distinction between Article 6, 8 and 9 products and foresees, as highlighted above, several rules and is already widely implemented across the EU. Given the fact that Article 8 Funds promote social and environmental characteristics and that Article 9 Funds have a sustainable objective, one option could be that any fund that fits these categories could use the terms ESG and/or Sustainable in their fund naming and marketing (with the possibility of differentiated names between fund types/sectors and/or SFDR framework), thus excluding Article 6 funds, which do not promote any environmental or social characteristics, of using related terminology.

Nevertheless, if ESMA decides to go forward with these Guidelines, it is important to emphasize that, despite the regulations already in place, clarity and legal certainty are still missing in many aspects, namely in what exactly qualifies as a “sustainable investment” under SFDR. In our opinion, any further requirements need to be based on clear definitions and the data to comply with them needs, also, to be readily available. In that sense, we believe that the future Corporate Sustainability Reporting Directive (CSRD) will play a crucial role in delivering of accurate and meaningful data and we suggest, as developed in our answer to Q2 and Q3, a phased approach.<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>

As stated above, we do not believe a threshold mechanism should be implemented, but if ESMA decides to go forward with these Guidelines, it is important to clarify, first, what is considered "ESG" and "impact” related words, through the publication of a list of terms or combination of words related to ESG, and to what extent those same words combined in another way, or under other investment strategies, may also be associated to terms related to sustainable investments. That list should be updated whenever needed.

In relation to the proposed threshold of 80%, we think it is too demanding, especially in relation to Article 8 products, but in order to correctly access what is the appropriate minimum proportion, there are several aspects that should be addressed.

In fact, we do not believe that these requirements will necessarily increase the transparency of the funds, nor will this prevent greenwashing due to the lack of a clear definition of what a sustainable investment really is.

Furthermore, this can be especially difficult to implement for certain types of funds, such as those that invest, at least, part of their assets in government bonds (even if those countries are on the forefront of sustainable investment), real estate, derivatives or cash. So, if ESMA pretends to go forward with the purposed approach, there should be a clearer definition of rules and exceptions for certain types of investments.

In addition, we think this process should be graduated and proportional to the information that is publicly available. Specifically, if CSRD defines a scheduled to disclose sustainable information, the rules applied to funds should realistic be aligned to that time frame. On other hand, 70% is, in our opinion, a threshold relevant enough to ensure that funds using any ESG-, or impact-related words in their names have a real and material reasons to do so and are not deceiving their investors.

In conclusion, our preference would be: Year 1 – 30%; Year 2 – 50%; and Year 3 – 70%.

Moreover, we think that if a fund falls below the minimum threshold it should have a grace period to correct such situation.

Finally, if ESMA decides to maintain the proposed thresholds, in the case of impact-related words, it would be advisable to explain whether the threshold of 80%, 50% or both applies (the text 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>

As stated in answer to Q1 we don’t favor thresholds based in funds purpose in what stands to ESG claims. We believe that, at the present status of legislation (regarding, for instance, MIFID II and SFDR), the market doesn’t need extra new layers of requirements on top of the present ones, namely with the purpose of differentiate between Articles 8 and 9 SFDR funds. In fact, nowadays the purpose of any fund in what relates do ESG claims should comply with Client’s sustainability preferences and expressed in explicit terms in the pre-contractual and periodic statement disclosures.

Nevertheless, if ESMA decides to go forward with these Guidelines, it would be useful to, also, clarify the list of words or combination of words related with "sustainable", and to what extent those same words combined in other ways, or under other investment strategies, may also be associated to terms related to "ESG" or impact investing.

Additionally, although ESMA has elucidated, during its “Open hearing on consultation on ESG terms in funds’ names”, realized on 23rd January 2023, that the 50% rule applies to 100% of the portfolio rather than 80% of investments with ESG characteristics, it would be advisable to include this explanation directly in the wording of a possible definitive guide, to avoid potential confusion among market actors not involved in the public consultation process and who would be affected by these Guidelines.

Regarding the inclusion of an additional threshold of at least 50% of minimum proportion of “sustainable investments” for the use of the word “sustainable”, it is worthy to highlight, once again, that this is a concept could differ from entity to entity and, going forward with these rules, will, also, create some confusion and mismatch with MiFID II sustainability preferences regime, since the other two possible approaches (i.e.: EU Taxonomy and PAI) are not considered.

In that sense, we advocate an implementation with a similar scheduled suggested in our answer to Q2, with the following thresholds: Year 1 – 15%; Year 2 – 25%; and Year 3 – 35%.<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>

As stated above, in our answers to Q1-Q3, we do not believe a threshold mechanism should be implemented, but if such mechanism were to be implemented, it should be phased over time and the minimum threshold shouldn’t be too high, to minimize the risks already mentioned - the adverse consequence of lowering the standards, or the setting of less rigorous and lousy criteria. The higher it is the threshold, the higher the risk.<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>

As mentioned above, before thinking about ways, beyond what SFDR Regulation already requires, to achieve the supervisory aim of ensuring that ESG or sustainability-related names of funds are aligned with their investment characteristics and objectives, it is necessary to solve the undefinition problems and introduce more clarity in what exactly qualifies, under SFDR, as a “sustainable investment”.<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>

Based on our answer to Q1, we don’t agree with the name-based approach in what relates to ESG claims, and we favour the SFDR approach, with the safeguards associated with issuers eligibility under that legislation and, also, the principle of do no significant harm (DNSH), when it applies.<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>

As mentioned above, we believe that the introduction of general quantitative thresholds to assess funds’ names is not necessary, so we won’t suggest specific provisions for derivatives.<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>

As mentioned above, we believe that the introduction of general quantitative thresholds to assess funds’ names is not necessary, so we won’t suggest neither 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>

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

<ESMA\_QUESTION\_FUNA\_2>

As mentioned above, we believe that the introduction of general quantitative thresholds to assess funds’ names is not necessary, so we won’t suggest any other measures for derivatives for the calculation of the minimum proportion of investments in relation to naming purposes.<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>

As stated above, we do not believe a threshold mechanism should be implemented, but if these Guidelines were to go forward, we agree that funds designating an index as a reference benchmark should also consider the same requirements for funds naming as any other fund. Complying with such requirements is a matter of transparency with investors, stakeholders and supervisors and, also, a matter of fair competition.<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>

As stated above, we do not believe a threshold mechanism should be implemented, but if these Guidelines were to go forward, a synthetic replication of an index should be only considered as eligible for ESG, Sustainable or impact names if the index complies with the minimum thresholds and the collateral fulfils minimum safeguards.<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>

We acknowledge the importance of the fund’s name, and we consider that it should be carefully thought out. Moreover, if specific words in the name of the fund could be deemed as characteristics or features of the fund’s investment strategy, we would agree that, to a reasonable extent, there should be a relationship between that name and the fund’s investment strategy. As such, asset managers should be able to justify the inclusion of “impact” or impact-related names with some element of its investment strategy.

While the name itself should not be misleading, it shouldn’t be the key element contributing to an investment decision by a Client in that fund, neither a simple shortcut for a Client to infer what impact it may have in any sustainability targets, or what the product allocation is.

Given the disclosures that are required under SFDR, with prescribed layouts/templates to provide information on sustainability features, we believe that there is already transparency in these matters.

We also believe that the introduction of specific provisions such as quantitative thresholds for “impact” or impact-related words on the name could also lead to the adverse consequence of lowering the standards, or having worse criteria, for what could be considered as “investments with the intention to generate positive and measurable social or environmental impact alongside a financial return”.

We believe it may be better to have a lower proportion of such investments while maintaining a rigorous and robust criteria for them to be included in such bucket. It would also reduce the risk of greenwashing attached to a lousier criteria trying to meet a threshold.

Thus, while we believe the choice of words in a funds’ name should be adequate, we don’t see the need to introduce general quantitative thresholds to assess funds’ names in this case either.

Nevertheless, if thresholds were to apply, there would be a need to clarify exactly what “impact” or impact-related names refers to. In fact, there should be a closed list, without any ambiguity.<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>

It was difficult to find a definitive answer to this question, since it raised several interpretative doubts among APFIPP Members, namely if the concept of “transition” is related or limited to the definition of “transition activities” under the EU Taxonomy.<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. If these Guidelines were to go forward, it is important that they are, also, applicable to other sectors and products (subject or not to SFDR), for consistency and transparency reasons with investors, regulators and financial market participants and, also, in order to ensure a level playing field and fair and equal conditions for competition.<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>

Although it would be necessary to know the correct procedure to be followed in the event of non-compliance with the suggested thresholds, in order to evaluate the deadline for entry into force of the Guidelines, the transitional period of 6 months, proposed by ESMA, seems too short.

In fact, the process of adaptation to these new guidelines will take time, since it would involve several managing/operating areas, analysis/decision stages and will depend on the asset classes, geographies, and strategies in question.

Asset managers will have to decide if they change the name of the fund, or they commit to the new requirements. If a name changing is needed, it might have to be communicated to unitholders and it would be interesting to assess how much a name change may influence disclosure practices under SFDR and the resulting “reclassifications”, if any, in order to establish a more realistic timeframe.

In this regard, it would be useful to clarify the consequences of a name change and/or reclassification under SFDR with respect to the unitholders' rights of redemption and, also, the obligation to amend SFDR templates and prospectus.

Therefore, we recommend an adaptation period of up to three years, during which entities should be able to exhibit evidence of progression, rather than any regression.<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, applying these Guidelines to a closed-ended fund that has finished its fundraising and marketing phase will not have the desired effect of avoiding misleading investors, since it is no longer available for new clients/subscriptions. This would impose a significant burden on fund managers and some closed-ended might not have the capacity to comply with the new guidelines, given the characteristics of the assets in their portfolios and the potential increase on costs, that were originally identified, which may not be financially in the investor’s best interests.<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

According with ESMA (“Annex I: Cost-benefit analysis” of the Consultation Paper), 14% of EU-domiciled funds (i.e.: 4,192 funds) use, at least, one “ESG-related” word in their name, and their relative shares, as per SFDR disclosure type, are: i) Article 6 SFDR: 13% (534 funds); ii) Article 8 SFDR: 65% (2,730 funds); and iii) Article 9 SFDR: 22% (928 funds).

Although those numbers could be higher, depending on the list of “ESG-related” words that will be used by Competent Authorities (which, as previously suggested, should be published by ESMA) “It is reasonable to expect…”, as ESMA states, “that those 534 funds disclosing under Article 6 SFDR could be particularly impacted by the guidance on funds’ names, since they should not promote environmental or social characteristics nor have a sustainable objective (or, if they do, then they should instead disclose under either SFDR Article 8 or Article 9). Any of the 2,730 and 928 funds disclosing under Article 8 and 9 SFDR, respectively, would be impacted if the minimum proportion of their assets is not in line with the proposed threshold(s).”

Besides those impacts, there is a potential risk of increasing greenwashing, since the proposed thresholds are based on a concept that could differ from entity to entity.

Additionally, it could affect financial market participants' perception if, for instance, an Article 8 product needs to change its name or relevant strategy, in order to comply with the Guidelines, raising doubts about what their original SFDR disclosure/transparency requirements should be.

Moreover, and as previous mentioned, we believe that the introduction of specific provisions such as quantitative thresholds for “impact” or impact-related words on the name could lead to the adverse consequence of lowering the standards, or having worse criteria, for what could be considered as “investments with the intention to generate positive and measurable social or environmental impact alongside a financial return’”. <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>

In addition to what was said in the previous questions, regarding costs, we would like to highlight the ones that are, on the one hand, associated to any possible change in investment allocation in order to comply with the potential new levels of commitment associated with this process. On the other hand, the necessity to change the name of the fund would generate a multiplicity of impacts in terms of staffing, communication to participants, pre-contractual and post-contractual information, internal and sector coordination, training for financial advisors, possible modification of suitability tests with respect to the integration of sustainability preferences, etc.

With respect to benefits, some APFIPP Members believe that their Clients exposure already fits with their sustainability preferences on top of financial and risk including ones, and, with this background, they don’t foresee any benefit to their Clients associated with this proposed Guidelines.<ESMA\_QUESTION\_FUNA\_16>