

## **ESMA – Consultation Paper**

### **On Guidelines on funds' names using ESG or sustainability-related terms**

#### **Q1. Do you agree with the need to introduce quantitative thresholds to assess funds' names?**

Yes, we agree, this is necessary if we want the information given to customers to be clear, precise and not misleading and thus avoid any attempt of greenwashing.

#### **Q2. 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.**

Yes, we agree with this proposition for funds investing in big firms or listed on a stock exchange. Other firms should not be required to offer the same level of information. The reason being that it may not be easy for the Asset Manager to obtain clear information about ESG criteria on those firms and then end not invest in young and dynamic firms. In France, the AMF and ACPR are proposing higher percentages to meet ESG or sustainable criteria. For example, the AMF (Autorité des Marchés Financiers) proposes a rate of 90% for ESG . The ACPR proposes a rate of 80%. However, it is necessary to take into account that the market is currently undergoing a transformation and that professionals underline that it is complicated to reach these percentages because of the lack of financial instruments called ESG or sustainable. Moreover, it would be relevant to certify the different European labels by giving them a common basis to define a financial instrument as ESG or sustainable in order to avoid green washing.

#### **Q3. 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.**

Yes, we agree with this proposition of a threshold but not with the level of it. We believe that the additional threshold should be set at 35%. Furthermore, in our opinion, if the fund refers to an additional percentage of sustainable investments equal to the provided threshold, such a fund should specify in the KID that the remaining part of the investments adopt, or not, the exclusion criteria for some sectors, such as arms. Otherwise, it cannot be considered sustainable. However, it is necessary to take into account that the market is currently undergoing a transformation and that professionals underline that it is complicated to reach these percentages (50%) because of the lack of financial instruments called ESG or sustainable. Moreover, it would be relevant to certify the different European labels by giving them a common basis to define a financial instrument as sustainable in order to avoid green washing

#### **Q4. Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.**

Option 1:

An alternative way to construct the threshold mechanism could be to include qualitative thresholds in addition to quantitative ones, particularly for virtuous firms that have begun a sustainable transition process and should be rewarded. For example, a rewarding mechanism could be envisaged for sustainable investments of such firms in sustainable transition, whereby when a threshold of at least 20% is reached, a multiplier effect is applied, which allows such companies to reach the 30% threshold (the multiplier is 1,5).

Option 2:

For the threshold mechanism to be effective and understandable, labels such as SRI or Greenfin, to name but a few, would have to be approved at the European or national level, and for that to happen, they would have to be given a common basis for certifying that a financial product corresponds to ESG or sustainable criteria. This will prevent any attempt at greenwashing.

**Q5. 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 or objectives? If yes, please explain your alternative proposal.**

Yes, as suggested in response to the previous question.

**Q6. 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.**

Yes, we agree. These safeguards should also be based on Article 6 of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector and on Taxonomy Regulation (EU) 2020/852. Of course, these criteria could be based on the exclusion criteria of article 12, paragraphs 1 and 2, of the European Commission's delegated regulation (EU) 2020/1818. Disregarding this article would be like promoting greenwashing. But it could also exclude too many funds or asset managers interested in ESG and restrict the ESG market. Perhaps would it be better to define a rule like this: a minimum the first year, and 2 or 3 years for a final result.

**Q7. Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating the thresholds?**

This would indeed be relevant to avoid any attempt of greenwashing through derivatives.

a) 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?  
Both could be of interest.

b) Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments for naming purposes?

No

We could perhaps suggest that the notional value should be applied for calculating the minimum investment quota in general and in ordinary market situations, while we believe that in an extraordinary situation, such as the current one, it is more appropriate to apply the market value.

**Q8. Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds names like any other fund? If not, explain why and provide an alternative proposal.**

The question assumes that there are unambiguous indices and benchmarks, but it is not currently the case. Once standardised indices are provided for the European market, comprehensive and widespread, as well as institutionalised, such indices can be used to identify ESG funds and used alternatively to a threshold.

**Q9. Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?**

There is a distinction between physical and synthetic replication: in the physical one it is possible to change the weighting, in the synthetic one it is not. The difference can be identified with active/passive management. Anyway, it doesn't need different rules regarding benchmarks or thresholds.

**Q10. Do you agree with having specific provisions for "impact" or impact-related names in these Guidelines? If not, please explain why.**

Yes and no. In cases where impact refers to ESG of course, but it could also have to be seen with other goals. i.e.: "growth impact" - express something but not definitely re ESG.

**Q11. Should there be specific provisions for "transition" or transition-related names in these Guidelines? If yes, what should they be?**

It seems necessary that the Directive makes reference to the term "transition" or to names related to transition. Indeed, these are most often accompanied by the terms ecological, energy or social. Consequently, it would be appropriate for these terms to be subject to the same rules as those imagined for the term "impact". It's probably more needed than for the term "impact". Names linked to the term impact as proposed in point 4 paragraph 20 of Annex 3 containing the draft guidelines on the name of funds using ESG or sustainability-related terms.

**Q12. The proposals in this consultation paper relate 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?**

Yes, we believe that the proposals in this regulation might be appropriate for other sectors as well. These guidelines can have consequences and affect other financial products, such as life insurance. Therefore, it would be very interesting to have similar guidelines for other financial products. As already mentioned, in France, the supervisory authorities (AMF, ACPR) have published recommendations that allow for the harmonisation of rules concerning ESG and sustainability

criteria between different financial products. This avoids having too heavy a legislative mass that would not allow a quick and clear implementation of ESG and sustainability criteria for professionals.

**Q13. 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.**

We agree with a transitional period, as long as the terms run from the full implementation of the taxonomy, otherwise the transition process costs will be absorbed by citizens. We agree with the transition period for existing funds. But it's probably too short. Asset Managers would probably need at least 1 year and, re PRIIPS, we can probably consider a reasonable period of time of 2 or 3 years.

**Q14. 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.**

We believe that the principle of retroactivity is inapplicable due to the specific nature of the closed-ended funds. Such application could lead to a proliferation of irremediable litigation. In particular, changing the name of the product will not allow the client to renounce the subscription of these financial products. Moreover, the guidelines are not intended to have a retroactive application but are only aimed at the future.

**Q15. What is the anticipated impact from the introduction of the proposed Guidelines?**

As highlighted, although compliance costs will apply on a one-time basis, it is clear that these costs will have to be absorbed over several years, with possible impacts on final clients. It is expected that the guidelines will allow professionals a better understanding of their obligations concerning their information obligations concerning ESG criteria and sustainability criteria; to enable them to fulfill their obligation of information that is clear, precise and not misleading. It is also expected that these guidelines will provide the client with a better understanding of ESG and sustainable financial products. It could also clearly help fighting against greenwashing.

**Q16. What additional costs and benefits would compliance with the proposed Guidelines bring to the stakeholder(s) you represent? Please provide quantitative figures, where available.**

Answering this question is difficult. Anyway, it will cost, for administrative tasks: registration, legal research, buying new names, training, etc ... At least no less than 60 to 100 K€. Additionally, communication will need a lot of means: advertising, documentation, website, refreshing the brand. It could cost millions. For instance, an advertising campaign for only one large Member State could cost from 5 to 40 M€ depending on the target and medias used. These costs could also translate into a 30% increase for final clients, over current costs. Consideration must also be given to the onerous impact on financial advisors in having to explain these increased costs to clients, resulting from a regulatory requirement.