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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 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 under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

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| Name of the company / organisation | Danish Institute for Human Rights (DIHR) |
| Activity | Government, Regulatory and Enforcement |
| Are you representing an association? |[ ]
| Country/Region | Denmark |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

**The DIHR endorses ESMA’s conclusion that standardised guidelines and quantitative criteria are critical to ensure alignment on the use of ESG or sustainability-related terms in fund names and avoid misleading information about the impacts of a given investment fund. These Guidelines would build transparency and thus enhance investor trust in sustainable finance options.**

**The DIHR encourages ESMA to elevate social considerations equally alongside environmental impacts when establishing threshold criteria or minimum safeguards for sustainable funds. ESG investing has often focused on the ‘E’ at the expense of the ‘S,’ as noted in our responses to subsequent questions below. Inadequate attention to the social aspects of sustainability risks overlooking human rights harms that may arise from environmentally ‘green’ activities, and thus misleading or confusing investors by classifying funds as ‘sustainable’ without regard to the totality of their impacts on the full scope of sustainability. The EU has emphasised repeatedly that ‘sustainability’ is not only about environmental sustainability but also includes social dimensions, so this is also a question of policy coherence. The EU’s commitment to a just and fair transition as part of its transition strategy is one example, in line with its overall human rights obligations.**

**Beyond the risks to people and planet, failure to account for social dimensions also poses financial risks to funds: Overlooking social impacts in favour of environmentally focused sustainability criteria could lead fund managers to reduce their estimation of exposure to social-related risks, thus giving a false sense of security in their investments, and distort market valuations by failing to reflect the costs associated with human rights harms.**

**We also encourage ESMA to make explicit reference to the UN Guiding Principles on Business and Human Rights (UNGPs) as well as the OECD Guidelines for Multinational Enterprises to ensure that funds claiming to be ESG or sustainability-focused align with internationally recognised standards on responsible business conduct. ESMA will recognise that these international standards are incorporated into other EU financial regulations, including the Taxonomy Regulation, the SFDR RTS and other relevant legislation, including the Corporate Sustainability Reporting Directive, thus reinforcing policy coherence across instruments.**

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

**The DIHR agrees that ESMA should introduce quantitative thresholds to assess the use of ESG or sustainability in funds’ names. Transparent, quantitative criteria governing the use of ESG- and sustainability-related terms will help avoid ‘greenwashing’ or misleading portrayals of social impacts, building trust among investors and ensuring that sustainable finance lives up to its name. ESMA criteria can drive:**

* **Clarity among fund managers as to which types of activities and which proportions of investments qualify a fund as ‘sustainable’ or ‘ESG’-focused;**
* **Standardisation of sustainability and ESG thresholds across European markets;**
* **Honest, fair, and accurate communications with investors to avoid misunderstanding regarding an investment’s environmental and social impacts; and**
* **Clearer understanding of overall financial flows towards sustainable activities, thus enabling progress towards sustainable finance.**

<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>

TYPE YOUR TEXT HERE

**The DIHR agrees with the proposed 80% threshold. The proposed threshold is a reasonable criterion to ensure that funds marketing themselves as ESG or impact-focused direct an adequate proportion of their assets to investments supporting that claim and, thus, align with the expectations that the fund name creates. It also promotes policy coherence on this issue across jurisdictions, as the proposed threshold would match the ‘80% investment policy’ set out in the ‘Names Rule’ of the U.S. Investment Company Act. In 2022, the U.S. Securities and Exchange Commission (SEC) amended and expanded this rule to require a broader group of funds to invest at least 80% of their assets in line with the investment focus suggested by their names, noting that investors may reasonably expect funds with names containing terms like ‘ESG,’ ‘sustainable,’ or ‘socially conscious’ to offer an investment portfolio attentive to social and environmental impacts.**

**However, the efficacy of any such threshold will depend on the underlying criteria. Financial actors will disclose sustainable investment objectives under the SFDR. ESMA’s proposed threshold of 80% would establish a reasonable minimum proportion of investments that must meet the sustainable objectives that the financial actor itself identifies and discloses. However, unless that threshold is also subject to the SFDR ‘sustainable investment’/Do No Significant Harm (DNSH) test that would currently apply to the additional proposed threshold of 50% sustainable investments (see Q3), ESMA risks undermining its commendable threshold by permitting trade-offs of one sustainability objective against another. Funds could use ESG or impact-related terms in their names but nonetheless perpetuate greenwashing by including within funds investments that have serious social or environmental harms. Minimum safeguards to avoid environmental and social harms are critical to ensure that funds align their impacts with the claims in their names.**

**For any threshold, both the minimum percentage and the underlying criteria should be clear and comprehensible to investors so they can understand how their investment aligns with stated objectives and reasonable expectations around terms like ‘ESG’. Applying the same DNSH test would ensure consistent minimum safeguards across funds and enhance clarity for 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>

**It would be preferable to require a substantially higher percentage of sustainable investments within those (minimum 80%) investments used to meet a fund’s environmental or social characteristics or sustainable investment objectives so that it is more than half (50%) to justify the “sustainability” label.**

**We agree that this subset of investments should be subject to the SFDR’s ‘sustainable investment’/Do No Significant Harm (DNSH) test. This threshold would more meaningfully contribute to sustainability than the initial 80% threshold, because it looks across the whole range of sustainability impacts, rather than focusing only on one dimension (see Q2 on trade-offs). This test ensures that investments marketed as ‘sustainable’ not only pursue the fund’s stated objectives as disclosed under the SFDR, but also:**

* **align with objective criteria for sustainable investments across the European market, and**
* **do no significant harm to environmental or social objectives**

**as set out the SFDR and the international principles and standards to which it refers.**

**However, we suggest that this should be tied to the SFDR RTS (EU) 2022/1288) and specifically cross-reference the RTS DNSH requirements to describe alignment with the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, including the International Labour Organisation’s core conventions. Specific reference to these international standards in the RTS is critical to ensure that activities are not inaccurately characterised as sustainable if, for example, they pursue environmental objectives at the expense of social impacts or without due consideration of adverse human rights impacts on local stakeholders. Linking the threshold to these international frameworks already incorporated in the SFDR RTS would strengthen ESMA’s safeguards around the use of ‘sustainability’ in fund names.**

<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>

**NO RESPONSE**

<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>

**NO RESPONSE**

<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>

**The DIHR strongly emphasises the need for minimum safeguards for investment funds with ESG- or sustainability-related terms in their names. It supports the use of the exclusions in Regulation (EU) 2020/1818 Article 12(1)-(2) as these refer to investments that are clearly not aligned with the EU’s sustainability objectives and should be excluded from these funds. However, the DIHR also suggests that ESMA include the references to the minimum safeguards in Article 18 of the Taxonomy Regulation that are also and already cross-referenced in the SFDR RTS. These include references to international standards – the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises – which offer internationally recognised principles for how businesses, including financial actors, can avoid harms to human rights. This cross-reference would help support policy coherence that is another ESMA objective.**

<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 RESPONSE**

<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>

**NO RESPONSE**

<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 RESPONSE**

<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 DIHR agrees that funds designating an index as a reference benchmark should be subject to the same requirements for funds’ names as any other fund. Applying the same requirements will further ESMA’s goals of standardisation and accuracy in fund names and communications (see our response to Q1). Failing to cover indexes would leave a serious compliance gap and could create perverse incentives to move funds into indexes to take advantage of the gaps and profit from exactly the kind of greenwashing ESMA intends to root out.**

<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>

**NO RESPONSE**

<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 DIHR agrees that fund names including the word ‘impact,’ ‘impact investing’ or any other impact-related term should meet the proposed thresholds and additionally make investments with the intention and demonstrated strategy to generate positive and measurable social or environmental impact alongside a financial return. Requiring ‘impact’ funds to meet the same requirements** **will further ESMA’s goals of standardisation and accuracy in fund names and communications (see our response to Q1).** <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 RESPONSE**

<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>

**NO RESPONSE**

<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 RESPONSE**

<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>

**The DIHR believes that the naming-related provisions should extend to closed-end funds that have terminated their subscription period before the application date of the Guidelines. The naming provisions should apply consistently to all investment funds so as not to create confusion among investors.**

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

**The proposed Guidelines would enable standardisation for both fund managers and investors around the use of ‘ESG’ and sustainability-related terms in fund names. The DIHR believes that, with the modifications we suggest to ensure due attention to social impacts and alignment with internationally recognised standards on responsible business conduct and human rights, these Guidelines would:**

* **Enable investors to rely on accurate information when considering sustainable or ESG investments;**
* **Provide clarity to fund managers on the types and proportions of investments that can qualify as sustainable:**
* **Standardise ESG and sustainability-related terms not only to enhance clarity for investors but to level the playing field and ensure that all funds using such terms in their names are subject to the same criteria;**
* **Avoid trade-offs among sustainability objectives, thus promoting a more coherent approach**
* **Standardise the use of such terms across European markets to avoid the confusion caused by a patchwork of sustainability and ESG thresholds; and**
* **Better encourage financial flows to sustainable activities through clear criteria that enhance trust.**

<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>

**While the DIHR agrees with much of the cost-benefit analysis laid out in ESMA’s Consultation Paper, we also consider that compliance could carry more benefits than costs for fund managers, as these requirements could enhance coherence among the various EU regulations. Formal criteria and thresholds on what constitutes a ‘sustainable’ or ESG investment would complement the SFDR and the EU Taxonomy Regulation, lending additional clarity to the sustainability reporting and disclosures that fund managers will already be required to undertake. Compliance with the proposed guidelines could thus help connect and reinforce fund managers’ understandings and marketing of their sustainable investment portfolios.**

<ESMA\_QUESTION\_FUNA\_16>