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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 | CNMV Advisory Committee |
| Activity | Other Financial service providers |
| Are you representing an association? | [ ]  The Advisory Committee of the CNMV has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV. |
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

The Advisory Committee of the CNMV (hereinafter the Advisory Committee) values very highly the aim of ESMA to establish harmonised criteria for naming the funds and appreciates the opportunity given to participate in this Consultation.

However, we do trust ESMA will take into account the observations below and reconsiders the content of the Guidelines proposed to avoid negative impacts on the credibility of the investment funds and of the sustainable finance regulation itself, and, hence, on the confidence of investors (on whom, in last instance, the redirection of capital enabling the green transition will depend).

This introduction includes preliminary considerations that help put later answers in context. And before going into greater detail on the content of the Consultation, it is appropriate to first reflect on the following:

**a) The ESMA Guidelines within the current sustainable finance framework:**

The European Commission's (EC's) Action Plan on Sustainable Finance has backed the development of a complex regulatory package concerning the application, since March 2021, of SFDR.

Although the initial aim of SFDR was not the classification of investment products in terms of their ESG commitment, but to regulate the information on sustainability to be provided by these, the delay in the approval of a harmonised regime for the ecolabel or the like has led for Articles 8 and 9 of SFDR to become a substitute for said regime.

That is to say, in the absence of a better regulation, the financial industry and investors have been using, since 2021, SFDR as a product classification system in terms of their ESG aspirations. In this sense, at the current stage of the regulation, it is extremely worrying that certain ESMA Guidelines may provisionally change the rules of the game, since the difficulties for the European legislator to specify the products that are subject to Articles 8 and 9 of SFDR, or the delay in establishing an ecolabel, should not become problems of the industry, let alone of investors.

The green transition requires investment. Then again, a fragmented, incoherent and ever-changing regulation means uncertainty for investors. In this sense, ESMA plays an essential role providing guides that promote uniform compliance with the regulation, while it should avoid introducing new criteria that overlap and are inconsistent with previous criteria.

Finally, regarding the risk of greenwashing referred to by ESMA in the Consultation, it should be recalled that the ESAs themselves have just published a call for evidence to define this concept, in order to comply with the order of the EC of 23 May 2022.

Therefore, as long as it is not legally defined, it would be advisable for any ESMA regulation or Guideline to avoid any reference to possible greenwashing practices or risks by Investment Fund Managers so as not to undeservedly threaten the reputation of this sector.

**b) The need for rules for naming Investment Funds:**

Investment Funds are subject to authorisation and supervision requirements for the information provided to investors to be impartial, clear and not misleading. In fact, this is one of the most transparent products offered to investors, containing information previously scrutinised by National Competent Authorities (NCAs).

Specifically, the marketing of funds in the EU requires the previous completion of a registration process that affects, among others, the actual name of the funds. An example of this is the Spanish legislation which foresees that: (i) the CIS management regulation will not only include its name for legal purposes, but also any other name used in its marketing; and (ii) this will not be misleading regarding its investment policy or its risk indicator and remuneration.

Thus, the name of the funds, whatever their aspirations regarding sustainability, should have all the credibility it supposedly deserves for having passed a prior authorisation process with the intervention of the supervision authorities.

In all, the reason for focussing on the name of the funds would precisely seem to be the high transparency of and control on the product, which allow for an immediate analysis of the samples and conforms an ideal testing ground, to later spread similar requirements out to other savings or investment products should they be beneficial. However, this methodology can unintentionally become a threat to the market’s confidence in the Investment Funds, as a change in the naming rules will be understood as a problem (in the home state) of the product and not of the regulation.

c) The origin and urgency of the Guidelines proposed:

Continuing with that stated, the naming of products in terms of their ESG bias would merit a calm debate at the level of the ESAs to comprehensively address the costs and benefits of establishing these kinds of rule for products marketed for consumers and, where applicable, to propose these are adopted within the context of the ordinary legislative procedure of the EU[[1]](#footnote-2) .

In this sense, this Consultation not only proposes coherent, efficient and effective supervisory practices that guarantee a common, uniform and coherent application of EU Law, as laid down in Article 16 of Regulation (EU) no 1095/2010 establishing ESMA (hereinafter “ESMA’s Regulation”), but goes far beyond this. If approved, the additional thresholds and minimum safeguards to access one or another name, would constitute substantive regulation that should be addressed within the scope of ecolabels or of the rules on disclosure.

Consequently, the approach taken by ESMA in its Supervisory Instructions for NCAs, of May 2022, is much more appropriate, in effect focussed on achieving convergence in the application of the regulation. In this sense, it should also be taken into account that the criteria proposed affect the definition of the product lines designed in accordance with the regulation in force and have a strong impact on the list of funds already registered, therefore being disruptive for the funds market and a cause for worry.

Therefore, it is important for the final Guidelines to be put forth in such a way an appropriate cost-benefit calibration of the more or less restrictive requirements is attained, thus ensuring the regulation achieves the purpose sought.

**d) The need for its adoption by all European supervisors**

It is necessary for all NCAs of Member States to adopt ESMA’s Guidelines for these to be in any way successful regarding standardisation.

This is in no way guaranteed and, furthermore, will be complicated taking into account that that considered is the establishment of thresholds that do not fit in the European regulatory framework for sustainable finance or in that of investment funds, and which also have such an unsettling effect on the market as that explained in this Report.

Any Investment Fund whose NCA did not follow these Guidelines would be in a different position with regard to the rest, creating an additional problem (heterogeneity between countries) to that intended to be resolved (product heterogeneity).

That aforementioned would mean a foreseeable threat to the credibility of and the trust in the internal market, this being based on the “principle of mutual recognition”, that allows funds to be marketed throughout the EU territory under the terms authorised by the NCA of the home state.

In this way, for ESMA’s Guidelines to comply with the purpose for which they were envisaged, it would be essential for these to be adhered to by each and every one of the NCAs targeted. Otherwise, ESMA’s Guidelines themselves would end up being an obstacle to achieve the single fund market, either by being a differentiating element in the regulation or by being an instrument that limits the operation of the European passport, questioning the principle of mutual recognition of funds authorised in other Member States.

**e) Possible undesirable effects of the Guidelines with their present wording**

It is certainly convenient to tackle some of the possible most harmful effects that the Guidelines, as they stand, could entail:

• The overlapping and generation of inconsistencies with the legislation in force regarding sustainable finance and, possibly, with the future ecolabel.

• The risk of entities restricting the launch of further funds with a sustainable bias due to excessively strict or inadequate criteria (such as the case of the minimum safeguards proposed).

• The increased difficulties to understand the differences between the various savings/investment financial products with a sustainable bias and the different protection levels faced by investors.

• The costs arising from the continuous regulatory amendments with regard to local authorities, entities and, ultimately, unitholders.

• Or the high reputational risks resulting from the inclusion of criteria regarding non-crosscutting sustainable finance between 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 Advisory Committee positively values ESMA’s effort to establish criteria that reduce the heterogeneity of supervisory practices in the European Union (EU) but, as already indicated, the quantitative thresholds would have a disruptive effect on the regulation and on the list of registered funds whose introduction via the Guidelines should certainly be avoided.

Said Guidelines could undermine the credibility of the funds which are making an effort to align with sustainability, also being left to whatever is dictated in the next wave of reclassifications resulting from the modification of SFDR, the establishment of ecolabels and the clarification of legal concepts such as “sustainable investment” in Article 2.17, or the consideration of principal adverse impacts (PAIs) of SFDR (requested from the EC by the actual ESAs in September 2022).

Moreover, it is extremely unlikely that the Guidelines with the proposed thresholds will be able to solve the European market fragmentation problem due to several reasons:

* In the first place, the “ESG related words”, the use of which intends to be limited with an 80% threshold, are an undefined legal concept in themselves. If the words included in said category are not specified, each NCA will make its own interpretation with the resulting application of different criteria in each jurisdiction. Let us take the word “health” as an example: Is this in any case an ESG related word? Or must it appear in combination with some other word for its inclusion to be subject to a certain restriction? When is a combination of words necessary for it to be considered an ESG related term?
* The thresholds do not manage to increase investor protection. Consumers receiving, e.g., as is customary at any distributor’s branch, offers for a range of savings/investment instruments, do not experience any higher protection as a result of the application of these Investment Fund thresholds.
* Last but not least, for ESMA’s Guidelines to have any success regarding standardisation, these will have to be adopted by all European supervisors (this being complicated if thresholds with such an unsettling effect are established).

If, despite the above, ESMA should decide to maintain the threshold approach for naming funds, it should seek a method that minimises operational and reputational costs arising from its implementation.

In regard to this, see the answers to questions 2 and 5.

<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 and, besides the previous considerations regarding the general problems of thresholds, the following should be taken into account:

• In line with that envisaged in ESMA’s Supervisory Instructions, of May 2022, the use of the ESG or a similar acronym should be considered whenever the assets of the Fund back in a substantial manner, at least 50% of the investments, the characteristics or aim of the sustainable investment. In fact, this threshold would be understandable for the average consumer, less arbitrary, and acceptable for the general market.

• Moreover, if a 50% threshold is proposed for the use of the term “sustainable” in “sustainable investments”, the same should be applicable to the use of “ESG related” terms.

• The truth being that the 80% threshold sends misleading signs to the market: In particular, that the threshold is raised due to the lower credibility of the investments to which it refers, despite the fact they may be as critical or even more critical for the green transition.

• It is unreasonable for a Fund having, for example, 75% of sustainable investments aimed at the development of technology and tools to rationalise the consumption of water resources, not to be able to include the word “water” (given that the majority of its investments relate to its protection). Neither is it reasonable for a Fund in Article 9 of SFDR having a 75% of sustainable investments, not to be able to use ESG related terms in its name, while a Fund in Article 8 of SFDR, complying with the 80% threshold but having 0% of sustainable investments, is able to.

• A rule of this nature tends to result in arbitrary results that have a great impact on the funds market without really increasing investor protection.

In regard to the word “impact”, see question 10.

<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>

The Advisory Committee does not consider it appropriate for the thresholds to work in an additional manner.

It would be more logical for them to work independently and to assume that a product that passes the threshold for “sustainable investments” can also make use of the “ESG” acronym or of related terms, in accordance with the general principle of law: “Qui potest plus, potest minus” (“who may more, all the more so may less”).

In any case, ESMA should review the wording of the Guidelines proposed to clarify whether the thresholds work additionally (passing a threshold under the condition that a previous threshold is passed) or independently.

If they were additional, a clarification would also be desirable on whether the 50% percentage would be applied on the total value of investments or on the value resulting from applying the first percentage (i.e., if it is 50% of 80%, which in absolute terms would be equivalent to 40% of the value of the investments).

On the other hand, the use of terms such as “sustainable” or “sustainability” in the names of funds cannot be conditioned by the performance of “sustainable investments” referred to in Article 2.17 of SFDR, as it is one of several conceptual and operational approximations to sustainability considered by the legislation in force, in itself being a concept pending harmonisation.

So as not to hinder the credibility of sustainable finances, the actual definition of “sustainability preferences” must be taken into account, contained in Commission Delegated Regulation (EU) 2021/1253, of 21 April 2021, while also understanding as sustainable investments those aligned with the Taxonomy or those taking into consideration the principal adverse impacts on sustainability factors.

In this sense and in order not to confuse retail investors any further, it should be avoided for ESMA’s Guidelines to identify as “unsustainable” those products that should be offered to clients that chose the consideration of PAIs or the investments aligned with the Taxonomy when revealing their “sustainability preferences” in the MiFID suitability test.

<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>

See questions 1, 2 and 3.

<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>

Yes, there are alternatives to the thresholds proposed, such as that considered below.

**a) Alternatives to the threshold criterion:**

As already indicated, the approach adopted by ESMA in its Supervisory Instructions of May 2022 is considered more appropriate than the thresholds proposed to choose one name or another.

These Instructions established that NCAs should ensure that the use of ESG references in the names was limited to those cases in which this was manifestly appropriate, having a substantial backing of the Fund investments and taking into account the objectives or characteristics regarding the sustainability of the vehicle. Their advantage over the proposed Guidelines is: (i) they were faithful to the Guidelines and Recommendations concept established in Article 16 of ESMA’s Regulation; and (ii) they did not actually establish overlapping rules that were inconsistent with the legislation in force.

However, if ESMA wishes to develop in detail the previous Instructions regarding naming, instead of thresholds it could propose Guidelines whose approach was based on investment decision-making strategies and processes worded consistently with SFDR, differentiating funds seeking sustainable investment objectives from those promoting environmental or social characteristics.

In this sense, for a product to have a name with certain aspirations regarding sustainability, instead of passing investment thresholds, it could observe rules such as the following:

For products with higher aspirations (“dark green”):

• A measurable sustainable investment objective.

• An investment strategy aligned with the established objective.

• A minimum investment committed to the investment strategy.

• KPIs aligned with the objective and their follow-up.

• The necessary organisational and governance structures to achieve the objective.

• A policy on involvement aligned with the achievement of the objective.

For other products with a bias (“light green”):

• An investment strategy aligned with the characteristics sought to be promoted.

• A minimum investment committed to the investment strategy.

• Clear and measurable KPIs on the strategy and their follow-up.

• The necessary organisational and governance structures to achieve the characteristics being promoted.

**b) Alternative to the thresholds proposed:**

In the case ESMA should decide to maintain the threshold approach, it would be advisable to study the alternatives in line with the following:

- Equal and independent thresholds: Establishing equal and independent thresholds eliminates possible inconsistencies in the use of ESG related words.

- Progressive criteria: The proposal is to start with 20% (2025), 30% (2026), 40% (2027), 50% (2028) in order to establish minimum standards are established in line with the reality of the sustainable asset market and their foreseeable development with the advance in the access to and the quality of the data regarding sustainability, for example taking as reference the staggered implementation of the CSRD, or the ESAP (“European Single Action Point).

- A 12-month period for being below the threshold: The inclusion of this suggestion is essential for a correct and stable operation of the thresholds that avoids legal uncertainty and unnecessary operating costs. Furthermore, a period like that proposed affords sufficient flexibility to adapt to changing definitions and concepts such as those arising related to a constantly developing regulation as that regarding sustainable finance. Furthermore, a period like that proposed would afford sufficient flexibility to adapt to changing definitions and concepts resulting from a constantly developing regulation such as that regarding sustainable finance.

- Publication of an open list of ESG and sustainability related terms: At the very least, an open list of words, gradually updated by ESMA as market practices develop, should be provided to ensure legal certainty and avoid the proliferation of different criteria at a local level.<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>

From among all the elements of the Guidelines proposed by ESMA, it is considered particularly inappropriate to establish additional minimum safeguards to those resulting from SFDR for a product to have access to one name or another.

Once more, this would be substantive regulation of a product that should not be addressed by means of Guidelines, but by the ecolabel regulation or the modification of the current disclosure regulation, an issue that would require the intervention of the European co-legislators.

On the other hand, it is not in the slightest appropriate to apply the exclusions of the EU benchmarks harmonised with the Paris Agreement (IAP) for the funds to be able to use ESG related words in their names, as this would be inconsistent with the legislation as a whole.

• The EU Climate Transition Benchmark (CTB) Index does not apply the same exclusions when its name, chosen by the European legislator, includes the terms “climate transition”. Therefore, it makes no sense for this term to be forbidden when naming CTB tracking funds.

• SFDR refers to the products subject to its Articles 8 and 9, using terms related to sustainability (e.g., “promotion of environmental or social characteristics” or “sustainable investment objective”). It would be very confusing for investors that a product authorised by a NCA to provide information in accordance with a regulation acknowledging that it “promotes environmental or social characteristics”, was not able to include any of these terms in its name (for not complying with all the exclusions applicable to an IAP).

Finally, these types of criteria make sustainability an unacceptable commitment for CIS Management Companies which, in the absence of information and with scarce sustainable assets in the market, must continue building diversified portfolios. In the current situation in particular, it should be avoided for Management Companies to restrict the launch of more funds with a sustainable bias as these cannot even be sold as such.

<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>

For the sake of regulatory consistency, the derivatives should not be included in the calculation of the thresholds proposed.

However, the criteria adopted in the case of SFDR percentage calculation and the Taxonomy Regulation with the derivatives is extremely questionable. They may not be the most direct way to finance sustainable companies, but they are an instrument enabling the transition from the financial point of view.

<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>

TYPE YOUR TEXT HERE

<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>

No, the approach adopted in ESMA’s Supervisory Instructions of last May, with specific criteria for naming index tracking funds, would be more appropriate.

In addition, see the response to question 6 detailing the additional complications minimum safeguards would imply regarding names in index-linked management.

Without prejudice to the foregoing, in the case that the threshold approach is maintained, the thresholds should also be applied to benchmark tracking funds.

<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>

That would depend on the approach taken regarding derivatives.

<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>

Firstly, in order to grant impact investments specific provisions, it would be very useful to establish the legal definition of “impact”.

However, as long as there is no legal definition for “impact” and to avoid any further confusion to investors in the market itself, it would be convenient to establish the concept already envisaged in ESMA’s Supervisory Instructions that indicate “impact investments” are those with the intention of generating a positive and quantifiable social and/or environmental impact, together with a financial profitability.

It can be seen that a significant proportion of funds with a sustainable bias fit the previous definition and, besides that stated in prior answers, there is no reason for these to have more specific rules regarding their names.

<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>

In first place, before establishing specific provisions for the inclusion of the word “transition” or of terms related to this, it would be useful to establish its legal definition, so as to avoid differences and asymmetries between jurisdictions.

Anyhow, with the objective of the sustainable finance package being to redirect investments to more sustainable technologies and companies, rules that do not penalise investments focussing on the transition should be established. It should be considered that contributing towards the financing of companies making a real effort to be more sustainable contributes substantially to a fair transition and rules on names not taking this into account would be contrary to the objective of the regulation.

Among others, the minimum safeguards proposed would have a very negative impact on funds committed to investing in transitioning companies.

<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>

As already stated in the introduction, this Advisory Committee considers that naming products in terms of their ESG bias would merit a calm debate at the level of the ESAs for this to be proposed to the legislator.

However, taking into consideration that the Sustainable Finance regulation is a transversal regulation with regard to sectors and products and, therefore, aims to preserve competition on equal terms, while avoiding different protection levels regarding investors, it would seem reasonable to adopt similar Guidelines that are applicable to the rest of the retail products marketed.

<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>

In the first place, it would be appropriate to clarify whether the 6-month adaptation period envisaged in the Guidelines is additional to the 3-month period established for the effective application of the rule.

In any case, a 6-month period would prove insufficient, not only due to the strenuous efforts to which the National Authorities and the Managing Companies have been subjected, resulting from the continuous amendments to the documentation of the funds to adapt to the incomplete and changing regulation, but also due to the difficulty of the actual product definition process: analysis and design, internal approval processes, information to unitholders, together with the processing with the legislator, together with the need to manage possible reputational risks and, in this way, attempting to avoid complaints and redemptions.

Considering all the above, it is understood to be more convenient for the adaptation period to be of 12 months at the very least.

<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 retroactive nature of the Guidelines is quite inappropriate. Under no circumstance should they be applied to funds in which no new subscriptions can be made or to funds that are not actively managed.

It should be taken into account that these Guidelines would play against the legal certainty by imposing rules that abruptly and unforeseeably affect situations forged when they did not exist; that is, funds launched and marketed, in many cases, complying with SFDR and which, despite this, have to take on the operating and reputational costs resulting from a change in name.

An example of this, in the Spanish market, could be the guaranteed funds or funds with a return objective, having closed structures whose name at the time of being launched complied with the regulation in force and were, as such, marketed to unitholders. Adapting these structures to the requirements proposed would entail extremely high costs that would not result in greater protection of the unitholders that subscribed such funds under the conditions established in the corresponding pre-contractual documentation, or of potential new investors since, apart from not being actively managed, they behave as closed-end funds regarding possible subscriptions by new investors.

Once again, these types of measure would not support the transition.

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

These Guidelines could be a solution to the disparity in the criteria of NCAs to avoid the fragmentation of the internal market. If this were achieved there would be an increase in regulatory consistency and in the scalability of the product, with the resulting benefits for end investors.

However, the success of the Guidelines will require that these are adopted by all NCAs, which will possibly depend on the complexity, the loads and the coherence with the remaining pieces of legislation.

Therefore, it is important for the final Guidelines to be put forth in such a way an appropriate cost-benefit calibration of the more or less restrictive requirements is attained, thus ensuring the regulation achieves the purpose sought.

For this reason, it is essential to tackle some of the most damaging effects that the Guidelines, as they stand, could entail:

• The overlapping and generation of inconsistencies with the legislation in force regarding sustainable finance and, possibly, with the future ecolabel.

• The risk of entities restricting the launch of further sustainability-oriented funds due to excessively strict or inadequate criteria (such as the case of the minimum safeguards proposed).

• The increased difficulties to understand the differences between the various savings/investment financial products with a sustainable bias and the different protection levels faced by investors.

• The costs arising from the continuous regulatory amendments with regard to local authorities, entities and, ultimately, unitholders.

• The high reputational risks resulting from the inclusion of criteria on non-crosscutting sustainable finance between instruments.

<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>

See answers 15 and 13.

<ESMA\_QUESTION\_FUNA\_16>

1. In particular, this could be included in the proposals that the ESAs send to the EC in response to the EC’s call, of August 2022, for advice on greenwashing risks and supervision of sustainable finance policies. [↑](#footnote-ref-2)