Reply form for the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds' names

18 November 2022

European Securities and Markets Authority

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

Name of the company / organisation	La Banque Postale Asset Management
Activity	Other Financial service providers
Are you representing an association?	☐
Country/Region	France

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

About La Banque Postale Asset Management (« LBPAM »)

La Banque Postale Asset Management (LBP AM) is a multi-specialist SRI conviction manager, applying ESG characteristics to all its funds and mandate, representing €51,4 billion in January 2023.

LBP AM is organised around four investment areas:

- Listed equities through its subsidiary Tocqueville Finance
- Real & private assets (with a focus on debt)
- Multi-asset & absolute performance
- Quantitative solutions

For all our open-ended funds that are eligible to the French SRI label, we made the strategic choice in 2018 to seek to obtain the label in order to offer robustness and transparency to our clients. This was achieved in 2020.

Introductory comment

La Banque Postale Asset Management (« LBPAM ») welcomes EMSA's objective to take a step further in regulating the substance of ESG strategies applied by market participants for the products they market as ESG.

In LBPAM's view, SFDR has unfortunately been wrongly used by the European market as a labelling system. It currently faces the risk of falling short of effectively preventing greenwashing, given it does not require a minimum substance for products that promote ESG characteristics. It is therefore critical to set meaningful minimum standards for Article 8 and Article 9 funds to ensure that investors willing to invest in responsible products will not be victims of greenwashing; and to ensure a homogeneous regulatory playing field across jurisdictions.

ESMA's proposal therefore goes in the right direction. However, LBPAM identifies the following shortcomings that would prevent this initiative to reach its goals, should they not be addressed before publishing the final proposal:

- **The scope of the proposal is too narrow and should be extended to all financial products that could be offered to retail investors following the assessment of their sustainability preferences**.

Otherwise, investors will still face the risk of greenwashing for a wide range of products offered to them (e.g. insurance-based products, structured products…). Limiting the scope of this requirements to AIFs and UCITS would also create an unlevel playing field;
- **ESMA should refrain from relying on "sustainable investments" unless they are defined more precisely by the European Commission**. Currently, the calibration of the methodology is left to the hands of product manufacturers, who may be tempted to weaken their definitions to reach the 50% floor. Therefore, such a threshold based on sustainable investments is currently not appropriate to effectively prevent greenwashing in the current regulatory framework. ESMA could rely on other elements of the SFDR's precontractual disclosures, such as the contractual minimum SRI reduction of the investments universe to achieve prior the application of the investment strategy ;
- **Requirements applicable to impact allegations should be strengthened** to avoid impact washing. To this end, guidelines could refer to a three-pillars approach, which underpins how impact is currently defined in many standards: intentionality, additionality, and measurability.

LBPAM fully understands the need for prompt regulatory action. This could be achieved by ESMA guidelines. However, LBPAM considers that a revision to SFDR Level 1 or 2 to set effective minimum standards for art 8 and art 9 products should be preferred for greater simplicity and clarity, and to avoid the risk of additional inconsistencies between different pieces of EU sustainable finance regulation.

<ESMA_QUESTION_FUNA_0>

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

<ESMA_QUESTION_FUNA_1>
LBPAM fully concurs with the objective of these guidelines to seek to set common rules in order to avoid misleading information and to enhance trust in the market, more particularly the fast evolving "ESG" market.

To achieve this, LBPAM agrees that setting thresholds could ensure that product names fit the actual investment strategy of the product and are not deceptive to the investor. Quantitative thresholds can be easily presented to investors and facilitate the supervision of a wide range of products.

However **quantitative thresholds are meaningful only when the underlying indicator is sufficiently standardized** such that they have the same or a very close meaning across all products. This is unfortunately not the case in the current situation, notably for sustainable investments. **LBPAM would therefore advise to either further standardize their definition or set quantitative thresholds relying on other indicators.**

LBPAM would also recommend to **clearly define the denominator** to ensure the comparability of information across products. LBPAM would support using the net asset value of the fund.

<ESMA_QUESTION_FUNA_1>

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.

<ESMA_QUESTION_FUNA_2>

LBPAM understands that a simple exclusion based on ESG considerations and applied to the whole funds could be sufficient to reach this threshold. If so, LBPAM fears this requirement, which could be **attained without a meaningful incorporation of sustainability considerations into fund management, would therefore not really enhance protection of retail investors**.

LBPAM instead suggests **setting minimum requirements on the ESG characteristics of the funds**. LBPAM believes that the section "*What is the committed minimum rate to reduce the scope of the investments considered prior to the application of that investment strategy"* (see screenshot below) could be helpful in attaining this objective.
For example, funds could be required to commit to reduce the scope of the investments by a minimum of 20%. In order to **keep sufficient flexibility** to allow various investment strategies, **this rate could be considered as a minimum exclusion rate or a selectivity ratio** (i.e. the funds should outperform the ESG performance of its investment universe after excluding 20% of the investable assets).

The following points should also be taken into consideration:

- When it comes to **debt funds and private equity funds**, it should be made clear that the ratio to be considered for the name is the committed ratio at the end of the "investment period".

- It should be made clear that **indicators** on the basis of which the investments have been selected to meet the E/S requirements of the fund can be **reasonably estimated** data, or based on estimated data (such as ratings)

- As per guideline § 21, it is important to clarify that the threshold would apply in "normal circumstances" and thus a "passive breach" process would be applicable otherwise. This is in line with any other regulatory ratio applicable to UCITS and AIFs.

What investment strategy does this financial product follow? *[provide a description of the investment strategy and indicate how the strategy is implemented in the investment process on a continuous basis]*

- ***What are the binding elements of the investment strategy used to select the investments to attain each of the environmental or social characteristics promoted by this financial product?***

- ***What is the committed minimum rate to reduce the scope of the investments considered prior to the application of that investment strategy?*** *[include an indication of the rate, where there is a commitment to reduce the scope of investments by a minimum rate]*

- ***What is the policy to assess good governance practices of the investee companies?*** *[include a short description of the policy to assess good governance practices of the investee companies]*

<ESMA_QUESTION_FUNA_2>

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.

<ESMA_QUESTION_FUNA_3>

LBPAM strongly disagrees with this proposal.

As long as the definition of Sustainable Investments is not further clarified, aligning the fund's name to the proportion of SI in the fund may amplify the current flaws of SFDR: market fragmentation across the

EU, confusion of investors and increase in "greenwashing allegation risks". Relying on this kpi would incentivize some asset managers to loosen the constraints of their definitions to reach the 50% floor.

Should ESMA still want to proceed in this direction, LBPAM would suggests the following alternative approach: **measure the SI proportion of the fund relative to the SI proportion of its benchmark or its investment universe**, using the same assessment methodology. In such a case, the word "sustainable" could be used provided that the fund commits to have a % SI significantly exceeding the % SI of its investment universe. Such an approach would have the advantage of being **immune to manipulations of the level of ambition of the SI definition, contrary to the current proposal.** For the avoidance of any doubts, investment universe should be clearly defined in the fund's prospectus.

<ESMA_QUESTION_FUNA_3>

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

<ESMA_QUESTION_FUNA_4>

Regarding the first threshold relating to the E/S characteristics of the funds, and as stated in response to Q2, LBPAM would suggest complementing the threshold by **setting minimum requirements on the ESG characteristics applied by the funds**. LBPAM believes that the section "*What is the committed minimum rate to reduce the scope of the investments considered prior to the application of that investment strategy"* could be helpful in attaining this objective.
For example, it could be required that funds should commit to reduce the scope of the investments by a minimum of 20%. In order to **keep sufficient flexibility** to allow various investment strategies, **this rate could be considered as a minimum exclusion rate or a selectivity ratio** (i.e. the funds should outperform the ESG performance of its investment universe after excluding 20% of the investable assets).

Regarding the second threshold relating to the minimum share of sustainable investments, LBPAM would strongly disagree with setting thresholds on SI as long as such investments have not been further defined in the European legislation.
Should ESMA want to set requirements on SI**, LBPAM would recommend setting relative thresholds compared to the investment universe of the fun or its benchmark**.

<ESMA_QUESTION_FUNA_4>

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 and objectives? If yes, please explain your alternative proposal. If yes, please explain your alternative proposal.

<ESMA_QUESTION_FUNA_5>

Regarding the first threshold relating to the E/S characteristics of the funds, and as stated in response to Q2, LBPAM would suggest complementing the threshold by **setting minimum requirements on the ESG characteristics applied by the funds**. LBPAM believes that the section "*What is the committed minimum*

rate to reduce the scope of the investments considered prior to the application of that investment strategy" could be helpful in attaining this objective.
For example, it could be required that funds commit to reduce the scope of the investments by a minimum of 20%. In order to **keep sufficient flexibility** to allow various investment strategies, **this rate could be considered as a minimum exclusion rate or a selectivity ratio** (i.e. the funds should outperform the ESG performance of its investment universe after excluding 20% of the investable assets)

<ESMA_QUESTION_FUNA_5>

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.

<ESMA_QUESTION_FUNA_6>
LBPAM agrees that minimum safeguards should be set for investment funds with an ESG or sustainability-related term in their name but disagrees with ESMA's suggested safeguards.

Indeed, **exclusion criteria defined in Commission Delegated Regulation (EU) 2020/1818 are too stringent given the current state of play of the Economy (European and global)**. They would result in excluding almost the whole energy sector and a large part of the Utilities sector, **hence disqualifying ESG approaches aiming at fostering the transition of these critical sectors.**

In LBPAM's view, **these exclusions could be relevant for Article 9 funds which are considered as "green funds" by investors and distributors**.

For article 8 funds, LBPAM would favour a more flexible approach allowing transition strategies. To this end, LBPAM suggests **requiring asset managers to set for article 8 funds exclusion criteria that are compatible with the objective of the Paris Agreement.** Asset managers could be asked to justify the effective alignment of their exclusion strategy with the Paris agreement objective, and ESMA and national competent authorities could later clarify further their expectations based on the analysis of the approaches deployed in the market.

<ESMA_QUESTION_FUNA_6>

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

<ESMA_QUESTION_FUNA_7>
Derivatives are an integral part of financial markets and should not be disregarded for sustainability-related issues.

However, **LBPAM fears it is too soon to set rules in guidelines and would rather advise ESMA to further investigate the issue** and work on concrete cases to have a comprehensive view on how derivatives can be used and how they can contribute to, or conversely prevent, the attainment of the E/S characteristics or sustainable objective of the fund.

Simply allowing asset managers to take derivatives into account for calculating the thresholds would face the risk of greenwashing as managers could use derivatives to artificially support the ESG characteristics of their funds (e.g. by buying a large number of out-of-the-money options on green underlying). On the contrary, systematically disqualifying derivatives could lead some asset managers to use derivatives to expose their fund to assets they could not invest in should they have counted them for calculating the thresholds.

Moreover, derivatives can be very complex and have a significant impact on the return profile of the fund, such that LBAPM would advise ESMA to work on concrete examples to gain a better understanding of the link between derivatives and sustainability. For example, Total Return Swap are quite common for some strategies and require a tailored approach.

<ESMA_QUESTION_FUNA_7>

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?

<ESMA_QUESTION_FUNA_1>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FUNA_1>

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

<ESMA_QUESTION_FUNA_2>
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<ESMA_QUESTION_FUNA_2>

Q8 : 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>
TYPE YOUR TEXT HERE

LBPAM believes that such funds should apply the same requirements as investors often do not make any distinction between active and passive funds.

<ESMA_QUESTION_FUNA_8>

Q9 : 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>
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<ESMA_QUESTION_FUNA_9>

Q10 : Do you agree of having specific provisions for "impact" or impact-related names in these Guidelines?

<ESMA_QUESTION_FUNA_10>
TYPE YOUR TEXT HERE

Yes, as investors, notably retail, are sensitive to "impact" terms. To protect them, the use of this particular term should be linked to reality in the fund's strategy. A level playing field is necessary with all retail products, not only funds and mandates in the SFDR's scope.

LBPAM fears that the provisions suggested in the draft guidelines are not sufficient to address the risk of impact washing. Impact investing must rely on investor's impact and not only on underlying companies' impact. As currently drafted, example 5 of Annex IV falls short of ensuring that strategy of the fund will effectively generate a positive impact and could allow very light approach that could be contemplated as impact washing.

To assess investor's impact, LBPAMs suggests referring to the 3 following pillars : intentionality, additionality and measurability.

ESMA could consider provisions suggested in the following reports:

- Technical Report 4.0 for the development of EU Ecolabel (https://susproc.jrc.ec.europa.eu/product-bureau/sites/default/files/2021-03/2021.03.05 - EUEL financial products - Technical Report 4 FINAL.pdf (Criterion 5, Measures taken to enhance investor impact) ;
- The Impact Principles framework : https://www.impactprinciples.org/9-principles ;
- The Assessment gird and the investors impact charter published by the French "Institut de la Finance durable": https://institutdelafinancedurable.com/en/impact-finance/

<ESMA_QUESTION_FUNA_10>

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

<ESMA_QUESTION_FUNA_11>
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<ESMA_QUESTION_FUNA_11>

Q12 : 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>
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<ESMA_QUESTION_FUNA_12>

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.

<ESMA_QUESTION_FUNA_13>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_FUNA_13>

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.

<ESMA_QUESTION_FUNA_14>
TYPE YOUR TEXT HERE
For funds which have terminated their subscription period, LBPAM believes that extending these naming-related provisions is not necessary as there will be no new subscriptions. The name of the fund won't act as a "marketing tool" anymore.

<ESMA_QUESTION_FUNA_14>

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

<ESMA_QUESTION_FUNA_15>
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<ESMA_QUESTION_FUNA_15>

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.

<ESMA_QUESTION_FUNA_16>
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<ESMA_QUESTION_FUNA_16>
Q17