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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 | Assogestioni |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Italy |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

Assogestioni appreciates the opportunity to contribute to the discussion on how to further improve ESG products transparency. While we share the view that names of funds play a significant role in the communication of funds characteristics**, we are of the view that fund naming regulation should be designed and introduced as part of level one regulation and in the framework of the forthcoming SFDR review**. An introduction of a new form of ESG/Sustainable fund classification at this stage would risk further confusing the overall landscape and imposing additional costs for a solution that would likely require further revision once SFDR is revised: We would hence recommend postponing the publication of the proposed guidelines and reviewing them in the framework of the broader forthcoming SFDR revision.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

In principle, Assogestioni shares the view that the introduction of a reliable EU-level guidance for the appropriate use of ESG related terms in name of funds with specific characteristics could help improve the transparency of funds, reducing the risk of misrepresentation and, consequently, the threat of greenwashing. It could help investors in the preliminary identification of the characteristics of financial products, raising their awareness and matching their investment expectations. Furthermore, it could potentially enhance an effective harmonisation at EU level, overcoming the regulatory fragmentation currently existing at national level on this issue.

However, **the current proposal** **appears to potentially add confusion to an already complex landscape of sustainable products categorization** stemming from the set of regulations already in place, namely **SFDR** and **MIFID ESG Suitability** provisions (MiFID Commission Delegated Regulation (EU) 2021/1253). In order to design a consistent and effective framework, it is paramount to design a framework that **aligns the naming rules to the existing classifications, so that products adhering to these guidelines also meet any other necessary requirements already set by existing regulation.**

Although neither SFDR nor MIFID ESG modifications where intended as labelling tools, their implementation has led to an implicit fund classification that has to be kept into account when establishing naming regulation.

Instead, the classification proposed by ESMA, while based on information disclosed in the SFDR, does not seem to be consistent with the existing framework.

As regards **MIFID ESG**, there is **a risk that a category identified by the regulations suitable for clients with sustainability preferences is excluded from the possibility of applying ESG-related terms in its name**. In fact , the third and last category (c) identified by MiFID ESG Regulation Art. 1 (1), as *a financial instrument that considers principal adverse impacts (PAI) on sustainability factors where qualitative or quantitative elements demonstrating that consideration are determined by the client or potential client* , although potentially susceptible to be integrated into the client's investments in accordance with its sustainability preferences, may not be eligible for the adoption of a name containing references to either the term ESG or the term sustainable.

This is further penalizing when considering the impact of adopting these thresholds in light of the misalignment that already exists between MiFID classification and that set by SFDR. Indeed, the classification made by the MiFID ESG Regulation does not take into account Article 8 financial products despite the fact that they are managed applying binding ESG policies.

**Therefore, the application of ESMAs’ proposed quantitative threshold mechanism would entail an inconsistency for which there would be products art.8 SFDR that, if they do meet the threshold promoted by ESMA of 80 percent, would potentially be eligible to have ESG-related terms in their names - even though they are not, under the terms of the MiFID regulation, sufficiently ESG focused (or green enough) to meet the sustainability preferences of clients investing through MiFID distribution channels; at the same time, there would be products classified by MiFID as letter (c) financial instrument that considers principal adverse impacts (PAI) and likely to be integrated into clients' investments accordingly to its sustainability preferences that, however, are excluded from being identified by a name that refers to both the term sustainability or the term ESG.**

<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>

In our view, setting a minimum threshold for investments promoting E/S characteristics at 80% of the total investments for the use of ESG-related terms in the name of funds appears to be **difficult to apply** **to all portfolios’ asset classes**, and this is particularly true if the denominator of the ratio used for this calculation refers to 100% of investments, here included cash and derivatives. While we do appreciate the choice of ESMA to use the percentage that are published in the SFDR annexes (as detailed in the SFDR templates) as the reference for the thresholds (rather than defining a new indicator for the purpose of naming), it should be considered that a fund’s assets are always invested in other components in addition to the assets which are characteristics of that products (typically in cash and derivatives but also in other short term investment tools) which are essential to the liquidity and the risk management of the products. As a consequence, setting 80% as the threshold based on the total asset of a product is extremely strict and even unrealistic for certain categories of products: whereas the 80% threshold might be considered achievable for an equity fund, it might not be equally suitable for fixed income and/or multi-asset portfolios, since these latter hold more derivatives, government bonds and particularly cash – and this challenge is even more amplified when taken in the context of emerging markets, posing significant limits to hold investments where there’s no sufficient data to assess this alignment.

What would be advisable, if keeping 100% of investments- cash and derivatives included- as the denominator of the ratio for determining the minimum threshold, is therefore **lowering the minimum commitment to percentages more realistically achievable-**, in the current funds’ scenario, without, however, deviating drastically from that threshold proposed by ESMA.

In this light, we would argue that **the minimum threshold should be lowered** **to 2/3 or 66% of total investments,** in order to give funds’ managers enough flexibility in keeping sufficient cash and derivatives needed to efficiently manage the fund, especially during extraordinary market circumstances which would require such a flexibility in order to protect investors’ interests.

<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>

Firstly, we question the need to have a differentiated regime for the use of “sustainable” and “sustainability-related” terms compared to the one set for the use of “ESG-related” words in funds name, since it is doubtful that these terms difference is easily perceived by retail investors and specifically that the word “sustainable” is universally considered more meaningful than “green” or other related terms. One could argue that “sustainable” does not necessarily give the impression to be more qualifying than “ESG”.

Furthermore, we note that **there is a lack of clarity in the market regarding to what exactly qualifies as a “sustainable investment” under SFDR**, since we are still waiting for the Commission to respond to ESAs regarding operationalisation of the definition of sustainable investments according to SFDR.

ESMA argued how the proposed threshold does not undermine funds disclosing under Article 8 SFDR to be potentially able of being labelled as “sustainable”, since those funds are not excluded to allocate a relevant proportion of their portfolio in “sustainable investments”, being the latter structured as a subcategory of investments that promote E/S characteristics, accordingly to Asset Allocation template provided in Annex II of Delegated Regulation (EU) 2022/1288.

However, this possibility is not matched by reality; a recent market research by Morningstar shows that a very small share of Article 8 funds (approximately 4%) is currently committed to 50% or more of sustainable investments (*SFDR Article 8 and Article9 funds: Q4 2022 in Review*, Morningstar Manager Research from 26 January 2023, exhibit 30 in page 32). Setting an additional-stringent- requirement, in terms of sustainable investment, for the use of the word “sustainable” or similar in the name, would in practice mean that only Article 9 SFDR funds will be able to claim the term “sustainable” in the name.

Therefore, the additional threshold of at least 50% for the use of “sustainable” or sustainability-related terms in fund names would be particularly binding and inflexible and become particularly and unjustifiably exclusive.

**Assogestioni recommends setting this requirement in such a way that could allow** **the applicability to a broader range of financial products,** including also products disclosing under Art. 8 and allocating part of their assets in sustainable investments.

In order to meet this objective, should ESMA decide to set an additional threshold to the use of the word sustainable, it is suggested **the minimum threshold should be lowered to 30% -** already an ambitious proportion in terms of minimum commitment.

<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>

While we maintain that the preferable approach to naming would be in the framework of the SFDR revision and the possible identification of fund categories complying with certain requirement and being allowed to use certain “labels”, we consider that an alternative to setting firm thresholds would be **to measuring the Sustainable Investment proportion of the fund relative to the Sustainable Investment proportion of its benchmark or its investment universe**, using the same assessment methodology.

In such a case, the words “sustainable” could be used provided that the fund commits to have a % Sustainable Investment exceeding significantly the percentage of Sustainable Investment of its investment universe. For funds without a reference benchmark or investment universe, the fund could identify a proxy reference to be in line with this requirement; this would allow to adapt the threshold to the evolution of the market.

<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>

It has already been argued in Q1 answer that the proposed thresholds mechanism advanced by ESMA could potentially lead to a further and additional categorisation of financial products with respect to those financial products’ classifications already made by SFDR and MiFID Commission Delegated Regulation (EU) 2021/1253 (also known as MiFID ESG Regulation), thereby creating apartial misalignment between products.

Given the relevance of the issue of naming for funds and the attempt to reorganise the regulation of sustainable finance by making it consistent and coherent in its evolution, it appears more appropriate to consider the need to address this issue at a higher level in the hierarchy of sources; notably, it seems pertinent to discuss the introduction of specific provisions in using ESG/ sustainability-related terms in funds' names by means of first-level and directly applicable regulation, rather than in the third-level regulation. Specifically, given that the scope of application and the proposed threshold criterion refer directly to SFDR concepts, we indeed believe that this issue should be broadly debated in the interim of the upcoming review of the SFDR framework, or at least it should be rolled out as a joint ESG guidance under the SFDR framework.

Ideally**, the timing of detailed guidance on fund names should align with changes in SFDR** or, at least, should be faced **when further SFDR-related interpretations issues are being solved**. Temporary solutions that are not aligned with potential changes to SFDR would be highly undesirable given the time and resources needed to change the name and/or align portfolio and keep it aligned accordingly to these requirements.

<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>

  In our view, requesting the application of such minimum safeguards goes clearly beyond the current requirements of the Disclosure Regulation; if additional exclusion criteria are needed, **they should be part of an overall approach to fund classification that consider consistency between art.8 and art.9 classifications, their naming and the eligibility for clients with sustainability preferences under the MiFID framework.**

In addition, it has to be underlined a general incongruity in the aim of these minimum safeguards as defined by ESMA; in the Consultation paper, in fact, ESMA seeks views about minimum safeguards that might be necessary for remaining investments of the funds (i.e.: investments not used to meet the environmental and/or social characteristics or objectives of the fund). To address this need, ESMA proposed to adopt minimum safeguards based on the exclusion criteria which apply to all investments of the fund. If applying these exclusion criteria to the overall investments of the fund, a **conceptual inconsistency with SFDR requirements for environmental or social characteristics** would emerge and should be avoided. Given that SFDR does not impose any material requirements for environmental or social characteristics that can be promoted as binding elements of the funds’ investment strategy, exclusion criteria, since based on certain environmental or social considerations, could be potentially qualified as relevant E/S characteristics that could be defined as relevant in the ESG templates for a product disclosing under Art.8 SFDR. This problem is particularly concrete and detrimental for those transition funds that, if they applied PAB-based exclusion criteria to the entire portfolio, would not be able to hold assets related to companies currently not green, but are committed to the energy and sustainable transition, assets that could be qualified by the manager as " promoting E/S characteristics" under the SFDR.

Given these criticalities, **the adoption of minimum safeguards based on exclusion criteria applied to the entire portfolio is highly discouraged, especially if those are based on the minimum exclusions under the Paris-Aligned Benchmark (PAB)**. PAB minimum exclusions criteria were in fact designed to apply to very ambitious climate products and therefore are not suitable for a broader universe of ESG products; PAB exclusions may inhibit transition strategies especially in the energy sector, since they require fund managers to disinvest from certain company or sectors instead of incentivising the use of engagement tools for facilitating the transition. It may be relatively more appropriate using the set of minimum exclusions proposed for Climate Transition Benchmark (CTB) as the reference for setting minimum safeguards. Exclusion criteria based both on CTB or PAB, however, are mainly climate-focused and therefore not suited for other labels or strategies which are not fully climate oriented (eg: funds with a social objective).

Therefore, we recommend the application of minimum safeguards to all the investments’ fund to enable overall coherence and consistency of its assets allocation and strategy, but **to design them** based on less stringent criteria, for example, **using as exclusions criteria the Violation of United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.**

This requirement would also more easily find alignment with the current SFDR disclosure where in the template there is a specific question that refers to these criteria, but it also refers to one of the indicators that financial participants must disclose under SFDR regulation, calculated as share of investments in investee companies that have been involved in violations of the UNGC principles or OECD Guidelines for Multinational Enterprises.

<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>

In our view, **ESMA Guidelines should abstain from any specific provisions for calculating thresholds in relation to derivatives or any other assets**. This is because **calculation of the minimum commitments** that are relevant in terms of the thresholds takes place under SFDR and should be **exclusively governed by SFDR rules** that apply likewise to funds and other relevant financial products, and that currently does not define any regulatory or market standards as to how derivatives shall be taken into account for commitments to E/S characteristics or sustainable investments.

For the time being, the ESG templates for pre-contractual disclosures include a dedicated sub-section on *“how does the use of derivatives attain the environmental or social characteristics/the sustainable investment objective”* for Article 8 or Article 9 products respectively. Here, it should be explained whether and under which conditions a fund can invest in derivatives as part of its ESG investment strategy. This transparency-based solution should be considered sufficient in the context of the ESMA Guidelines. In any case, clarifications of the calculation approach, if deemed necessary, should be sought in the broader context of SFDR in order to ensure equal treatment of all Article 8 and Article 9 products.

<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>

The approach should be the same as the one adopted for the SFDR disclosure.

<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>

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<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>

Considering the specificity of index funds, such as mutual funds/ETFs, designed to follow certain pre-set rules so that the fund can track a specific basket of underlying investments by designating an index as a benchmark, it is not deemed appropriate to apply the same conditions as those applied to non-index funds with regard to the use of terms specifically related to ESG/sustainability in their name. The main reason behind this consideration is that as their objective is to track the index they are linked to, those funds are obliged under index licensing terms to include the name of the chosen benchmark in their funds name, leaving no room for flexibility to fund managers in choosing the name. ESMA itself, in the Supervisory Briefing, Paragraph 30, setting principles-based guidance on fund names points out that

*Funds designating an index as a reference benchmark could use any ESG-related terms if the index the fund designates is itself ESG-focused as long as* [..] an index-tracking fund does not apply an exclusion policy that only excludes a small number of securities or where the holdings are materially different from a similar non-ESG index.

An eventual application of requirements for the use of ESG/sustainability terms by ESMA will therefore have to take this specificity into account, as well as the difficulty in applying exclusion criteria to index funds, given that the rebalancing rules of many indices only allow the index composition to be adjusted at certain intervals, usually quarterly, so that potential exclusions in the interim period cannot be reflected in the index composition before the date of the next rebalancing. <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>

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<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>

Given the characteristics and objective of impact investments defined by the GIIN, as investments are made with the intention to generate positive, measurable social and environmental impact alongside a financial return, **Assogestioni promotes the application of an alternative approach for funds using impact or impact-related terms in their name that can take these peculiarities into account and does not undermine their operability.** Firstly, funds pursuing impact-related strategies may find difficulties to meet the DNSH criteria for sustainable investments, mainly because in order to achieve a positive impact they do need to invest also in companies aimed at decreasing negative outcomes arising from their actions – e.g. transition companies that still have a significant proportion of non-sustainable activities involved in the transition. Therefore, while the application of the E/S threshold may seem to work, the requirement of compliance with the threshold on sustainable investments is considered to be unenforceable. Additionally, compliance with the GIIN Principles or the Operating Principles for Impact Management should be required which are widely adopted industry standards. Assogestioni agrees with ESMA’s suggestion that funds referring to “impact” in their name must strive for generating positive and measurable social or environmental impact alongside a financial return and therefore recognises the need to assess this impact also through different channels, including stewardship and engagement, aimed also at clearly understanding how the fund is positioned in the impact value chain.

<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>

We would consider Level 1 regulations to be the most appropriate regulatory tool to envisage the creation of such a category. However, should ESMA proceed with the proposed guidelines and introduce PAB-based exclusion criteria as minimum safeguards, we would favour allowing product that invest in companies engaged in **transition to use specific terms such as green transition or similar.**<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>

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<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>

Assogestioni would suggest extending the transitional period needed for existing funds to comply with the Guidelines to **at least twelve months** from the date of application of the Guidelines, in order to assure that the industry has sufficient time to adapt, by changing their names or by adjusting their asset allocation, and to revise their pre-contractual documents in line with the new requirements.

<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>

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<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

The introduction of the guidelines as proposed by ESMA entails potential problems of adaptation with existing regulation, given the interoperability issues with the SFDR and MIFID discussed at length above. Among the main unintended consequences that the application of these guidelines could have, must be mentioned the risk of increasing greenwashing, instead of reducing it, since these thresholds are set upon concepts not clearly defined, to which is added the risk of green-bleaching, since the requirements set by these guidelines appear to be way too stringent and inadequate – before all, the setting of PAB-based exclusion criteria as minimum safeguard to all the portfolio and the 50% of total investment requirement for the use of any sustainability-related term in funds name- to lead funds’ manager to stay out of ESG strategies, circumventing the risk of breaches of inflexible and unclear regulatory requirements. <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>

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<ESMA\_QUESTION\_FUNA\_16>