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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 | ZIA Zentraler Immobilien Ausschuss e.V. |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

As an umbrella organisation of entrepreneurs and federations, the German Property Federation (ZIA) represents the interests of the property sector along its entire value chain, as well as all its types of uses. Among more than 350 members represented by the ZIA are a large number of financial market participants, including more than 40 AIFM that manage open and closed-end real estate AIF. We will limit our comments primarily to points arising from the special features of open-end and closed-end real estate funds.

First of all, we would like to propose to apply the guidelines only to those funds that may (also) be purchased by retail investors. Professional and semi-professional investors are less in need of protection with regard to the application of fund names. They deal intensively with the structure and investment strategy of a fund. The name or the influence of the name plays no role in the considerations of professional investors. A restriction to AIFs aimed at retail investors would also be in line with the approach taken by the German BaFin in its draft guideline on sustainable funds.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

The use of quantitative thresholds offers the advantage of clear and comprehensible regulations.

On the other hand, there is a risk that the approach chosen is too general due to the variety of different fund concepts. Individual specifics cannot be sufficiently taken into account in this way. This is mainly due to the fact that the threshold is based on the requirements of Art. 8 and 9 or 2 (17) SFDR. For many real estate funds, it is still not clear whether and when the requirements under Art. 8 and 9 or 2 (17) SFDR are met.

As a result, for securities funds with established exclusion criteria it should be easier to determine whether the 80% threshold has been reached than for funds that invest in real estate or other tangible assets. The investment and ESG strategies of real estate funds are comparatively heterogeneous. Standardized or established ESG criteria, such as exclusion criteria, do not exist for real estate funds in this sense. This heterogeneity is very clearly reflected in the approval practice of the German BaFin since the application of the SFDR. Thus, the requirements that BaFin demands for a classification according to Art. 8 SFDR have continuously changed and will probably continue to change in the future. It is to be feared that these changes and uncertainties will also have an impact on the question of whether the thresholds are reached and complied with.

Consideration should therefore be given to linking the authorization to use ESG or sustainability in the fund name to other criteria as well. Insofar as specific investment quotas are to be complied with, we are in favor of also taking into account concepts that do not already reach the targeted thresholds at the time of the fund's issuance, but only at a later point in time.

In the case of real estate funds, strategies should also be possible in which existing properties are made "greener" or "more sustainable" over a longer period of time. Such "manage to green" approaches take into account the fact that, for example, the CO² emissions of older, energy-inefficient properties cannot usually be reduced overnight, but complex and cost-intensive measures are often required. At the same time, considerable CO² savings potential can be leveraged as part of "manage to green" strategies.

<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>

We consider the proposed threshold to be appropriate in principle. However, from the perspective of open-ended and closed-end real estate funds in Germany, whether the proposed threshold is appropriate depends to a large extent on the basis of calculation. It is not clear from the draft - and also from Annexes II and III of Delegated Regulation (EU) 2022/1288 of the SFDR - which basis is to be used. If all investments of an AIF, i.e. the gross fund volume, were used as the basis for calculation, the threshold of 80% would in fact hardly be achievable for real estate funds and would therefore be too high.

Open-ended real estate funds are obliged by national legislation ("KAGB") to maintain high liquidity ratios due to redemption rights. In practice, these are usually between 10 and 20 percent. Liquidity investments and hedging instruments serve the stability and flexibility of the fund, but are not part of the actual investment objects of a real estate AIF. They pursue other purposes and will regularly not contribute to the ESG objectives of an AIF.

We therefore endorse that the 80% should be based on the net fund volume and that only those investments should be taken into account that correspond to the actual investment purpose, i.e. real estate in the case of real estate funds. Liquidity investments and hedging instruments, on the other hand, should be excluded.

Furthermore, the 80% threshold should not apply to newly issued funds during the phase of initial investing. For newly issued real estate funds, the real estate investments are often made successively over a longer period of several years. If 80% of the ESG criteria had to be taken into account from the beginning of investments of a real estate AIF, the AIFM would be disproportionately restricted in its investment activities and in structuring the portfolio. For other product regulations, for example on diversification or leverage thresholds, it is accordingly common that these are not yet applicable during the phase of initial investing. Open-ended real estate funds in Germany, for example, do not have to take diversification rules into account during a starting period of four years (§ 244 KAGB). Such a starting period should also be taken into account with regard to the 80% threshold.

<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 comments on Q2 apply here accordingly.

<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>

Insofar as specific investment quotas are to be complied with, we are in favor of also taking into account concepts that do not already reach the targeted thresholds at the time of the fund's issuance, but only at a later point in time.

In the case of real estate funds, strategies should also be possible in which existing properties are made "greener" or "more sustainable" over a longer period of time. Such "manage to green" approaches take into account the fact that, for example, the CO² emissions of older, energy-inefficient existing properties cannot usually be reduced overnight, but complex and cost-intensive measures are often required. At the same time, considerable CO² savings potential can be leveraged as part of "manage to green" strategies.

<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>

TYPE YOUR TEXT HERE

<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>

We oppose the proposed minimum safeguards in the form of exclusion criteria under the Benchmark Regulation for several reasons.

First of all, it should be noted that investment funds already regularly have to meet the Principle Adverse Impacts ("PAI") via the SFDR as well as the "do-no-significant-harm" criteria under Art. 2 (17) SFDR. We therefore do not see why further exclusion criteria should be defined in the ESMA Guidelines. We also believe it is systematically wrong to use the exclusion criteria of the Benchmark Regulation as a set of rules that is not related to the SFDR. The Benchmark Regulation refers to CO² reference values, while the ESMA Guidelines, with reference to the SFDR, concern sustainability and ESG criteria in their entirety.

Furthermore, the exclusion criteria of the Benchmark Regulation are tailored exclusively to investments in companies. Since real estate and other real asset funds do not invest in companies, the exclusion criteria of Art. 12 (1) and (2) of the Benchmark Regulation are not applicable to real estate funds.

In addition, unlike in the case of securities funds exclusion criteria hardly play a role for real estate investments in practice. These are conceivable in principle, for example in the selection of tenants and service providers. However, in the case of tenants in particular, it is often not even possible to identify their potentially ESG-harmful activities for data protection reasons. For real estate and other real asset funds, exclusion criteria should therefore be avoided.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

From the perspective of real estate funds and other funds with illiquid assets, we consider the transition period to be inappropriate. Unlike securities funds, existing real estate funds with ESG or sustainability in the fund name will regularly not be able to restructure their portfolio or assets during a period of only 6 months in such a way that they are in line with the investment thresholds of the present ESMA Guidelines. Existing funds with illiquid investments would therefore be at a considerable disadvantage compared to securities funds, for which any necessary reallocation might be easier.

For closed-end real estate funds in Germany, there is also the peculiarity that in many cases the assets are fixed in accordance with the investment conditions and prospectus or have already been acquired at the beginning. Part of the investment strategy is to hold these specific assets for a period of 10 to 15 years, then sell them and dissolve the fund. In these cases, reallocation is contrary to the investment strategy and would be legally impermissible.

We therefore propose generally grandfathering existing funds with ESG or sustainability in the fund name, at least for closed-end funds. In this context, we would also like to refer to the German BaFin guidelines, which provide for fundamental grandfathering of existing funds. As an alternative to full grandfathering, we recommend extending the transition period for funds with illiquid assets to at least two years.

<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>

We reject such an extension. The specifications for the use of ESG in the fund name are intended to ensure that investors are not being misled about the ESG criteria of the fund during the marketing and sales phase. However, in the case of a closed-end fund whose subscription phase has been completed, such marketing no longer takes place. Accordingly, once the marketing phase has been completed, the AIFM will no longer provide any marketing communications or sales documents. The fact that the protective purpose ceases to exist at the end of the subscription period is also evident elsewhere: for closed-end funds in Germany the obligation to update sales prospectuses and brief information (PRIIPs-KID) ends in accordance with § 268 (2) KAGB at the end of the sales phase. This approach should apply in the same way with regard to fund names. Furthermore, we refer to the particularities of closed-end funds, which in many cases do not allow for a reallocation of assets (see answer Q13).

<ESMA\_QUESTION\_FUNA\_14>

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

<ESMA\_QUESTION\_FUNA\_15>

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<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>