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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 | WWF European Policy Office |
| Activity |  |
| Are you representing an association? |[x]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_QUESTION\_FUNA\_0>

WWF appreciates the opportunity to contribute to this consultation and strongly welcomes the ESMA objective to prevent greenwashing. As a science-based non-governmental organization, WWF seeks to support the systemic shift of our economies into our planetary boundaries (including a net-zero emission economy). WWF takes a systemic view that the whole financial sector will need to contribute to this environmental transition, by 4 ways schematically:

(1) immediately ending support to new harmful activities;

(2) increasing support to sustainable activities;

(3) transitioning existing harmful activities towards sustainability in a timely way;

(4) phasing out existing harmful activities that cannot be transitioned in a timely way.

In such an approach, every financial flow should be evaluated with regard to its potential contribution to a sustainability objective.

Greenwashing is a dynamic phenomenon. Expectations on what needs to be achieved change over time. With regard to environmental objectives, the expectations grow as the consequences of our actions become more apparent. The already notable increasing gap to meet these expectations describes the risk of greenwashing.

* WWF agrees that funds’ names are an important element, in particular for marketing claims. Regulatory guidance on funds’ names is therefore relevant.
* In particular, the word ‘impact’ is important for retail investors as it suggests a clear positive benefit for one or several sustainability issues.
* However, funds names are not the only relevant element, and focusing only on this issue would have severe limitations. As committed by the European Commission in its renewed sustainable finance strategy in July 2021, “The Commission will propose minimum sustainability criteria, or a combination of criteria for financial products that fall under Art. 8 of the SFDR, in order to guarantee minimum sustainability performance of such products to further strengthen a harmonised application of the Regulation and incentivise transitional efforts”. This calls for a comprehensive review of SFDR Articles 6, 8, 9, to put in place clear sets of minimum mandatory sustainability criteria which are robust and meaningful, to cover ALL ESG/sustainable/green funds whatever their name, in order to (1) prevent greenwashing and (2) maximise sustainability benefits. WWF and other organisations issued [recommendations](https://www.beuc.eu/sites/default/files/publications/beuc-x-2022-027_joint_recommendations_for_min_criteria_for_sustainable_investments_and_products_with_esg.pdf) in that regard in 2021.

<ESMA\_QUESTION\_FUNA\_0>

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

<ESMA\_QUESTION\_FUNA\_1>

WWF agrees with the introduction of quantitative minimum requirements for funds that use terms like 'sustainable', 'ESG', 'green', 'climate' etc. in their names.

However we raise four related concerns:

* Other minimum requirements should be added for all ESG funds whatever their name, not only quantitative thresholds linked to their names.
* The distinction between funds that use the term 'sustainability' or related terms, and those that use ESG-related terms is not clear and does not seem to be evidenced. There is no strong reason why different thresholds should apply to a ‘climate action’ fund and a ‘sustainable action’ fund. We are not convinced that this criteria is the most relevant criteria to set different quantitative thresholds.
* Analysis shows that the word ‘impact’ may be more important for retail investors in the fund’s name or in marketing claims than sustainability or climate, as ‘impact’ strongly suggests a clear positive benefit for one or several sustainability issues. ‘Impact’ is not defined in EU legislation, which causes great confusion. It is therefore necessary to introduce a legal definition of it in EU legislation, and complementary clarifications about how it shall and shall not be used in the fund’s names - but also in marketing claims related to any ‘ESG’, ‘green’, ‘climate’ etc fund.
* As we raised in the introduction, WWF believes that given the current major confusion it will also be necessary to significantly reshape the SFDR Art 6, 8, 9 categories of funds and introduce minimum sustainability requirements for Art 8 and for Art 9 funds, to provide clarity and avoid greenwashing. The use of the word ‘impact’ for fund’s names and marketing claims should be thought through in this framework. To avoid confusion, product categorizations need to be clearly differentiated with regard to their respective way to achieve sustainability benefits, in order to provide enough orientation for retail investors. Retail investors need to be able to distinguish whether the sustainability objective is intended to be realized through directly financing activities (e.g. in underserved markets) or whether its contribution towards a given sustainability objective is to be realized indirectly through the alignment of inevstment portfolios (either by picking already aligned assets, or by selecting companies doing transition efforts and systematically engaging with those as well as other relevant stakeholders for alignment). In this context it could be relevant to categorise Article 9 funds as ‘impact’ funds and use another wording for Article 8 funds (e.g. funds with investor ‘contribution’) – with different minimum sustainability requirements for each category.
* In addition, the definition of ‘sustainable investment’ in SFDR Article 2(17) is not referring to the EU Taxonomy for the environmental sustainability, which is inconsistent. WWF considers that this definition will have to be reviewed and fine-tuned in the framework on the comprehensive SFDR review, in order to refer to the EU taxonomy wherever EU taxonomy technical screening criteria have been defined for certain economic activities. This is necessary to ensure consistency between SFDR and the EU Taxonomy.

<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>

* The figure of 80% does not seem to be justified. If ESMA considers that there is a liquidity need or a diversification need for ESG funds and hence they cannot reach 100%, it should be properly explained. But 20% seems very high for liquidity needs.
* As raised in Q1, it is relevant to take the work ‘impact’ (or related words) into account in the fund’s name or marketing claims. WWF recommends to create a specific category (or subcategory) of impact funds for the sake of clarity.
* If the figure is below 100%, minimum sustainability safeguards must be introduced for the remaining investments of the fund. Do No Significant Harm criteria of the EU taxonomy may be relevant to use, in particular for new assets of a given company; exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2) may be relevant as well, depending on the category of ESG fund we focus on.

<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>

While quantitative thresholds are relevant in general, double thresholds may be complex for retail investors. It may be simpler to shape different categories of ESG funds with minimum sustainability requirements (see Q5). <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>

<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>

WWF believes that given the current major confusion on SFDR Articles 8 and 9, it is necessary to significantly reshape these categories of funds and introduce minimum sustainability requirements, to (1) provide clarity and avoid greenwashing, and (2) maximise sustainability benefits.

Several options have been proposed by various stakeholders:

* The FCA proposed three categories of ESG funds: ‘sustainable focus’, ‘sustainable improvers’ (transitioning), ‘sustainable impact’ (while eliminating the category of ‘responsible’ funds, after a public consultation)
* Eurosif and the Hamburg University proposed 5 categories: ‘exclusion-focused (no ambition)’, ‘basic ESG (marginal ambition)’, ‘advanced ESG (low ambition)’, ‘impact-aligned (medium ambition)’, ‘impact-generating (high ambition)’.

On these bases, it could be relevant to categorise Article 9 funds as ‘impact’ funds and use another wording for Article 8 funds (e.g. funds with investor ‘contribution’) – with some potentially common and some distinctive minimum sustainability requirements for each category. This would help to capture more investors’ approaches, provide more clarify reducing greenwashing risks, and maximise sustainability benefits.

As a general note, an overwhelming majority of retail investors want to invest their money in a sustainable way: this means that they have certain sustainability expectations (and these expectations can be assumed to further increase over time). This means that categories of ESG funds that do not reach a certain level of sustainability ambition should NOT be part of the SFDR Article 8 and 9 categories, otherwise the risk to deceive retail investors would remain high. This is why WWF believes that introducing minimum sustainability requirements (either common or distinctive) in redefined Article 8 and 9 categories is the best way forward.

<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>

Minimum sustainability safeguards are needed for all ESG funds, to avoid harm. Several options are Do No Significant Harm criteria of the EU taxonomy, exclusion criteria such as Commission Delegated Regulation (EU) 2020/1818 Article 12(1)-(2), or exclusions in the latest version of the [JCR technical report](https://susproc.jrc.ec.europa.eu/product-bureau/sites/default/files/2021-03/2021.03.05%20-%20EUEL%20financial%20products%20-%20Technical%20Report%204%20FINAL.pdf) that sets out criteria for an EU Ecolabel for retail financial products.

Depending on the category of ESG funds, WWF recommends to take into account another element: the differentiation between existing assets and planned asset of selected companies in a given fund:

* For WWF, companies investing in NEW harmful assets should not be part of ESG funds.
* A different case is for example a company like the electric utility Orsted, which has a legacy of remaining old coal plants; the company is investing only in renewable capacity, and has committed to gradually its coal plants them before 2030 and reach 100% renewable power production by 2030 – which is well aligned with a 1.5°C pathway for the power sector (requiring to reach zero-carbon power by 2035 in EU/OECD countries).

Such a company has a legacy of environmentally harmful assets, but is investing only in new green assets, and committed to align with a 1.5°C pathway hence phase out its existing harmful assets in a timely way. It needs to be discussed how such a type of companies could be included in a category of ESG funds, and what specific requirements would be necessary in such a case to avoid greenwashing - notably in terms of science-based target setting, setting up of a granular climate transition plan including a capex plan, and annual Measurement, Reporting and Verification of progress against the target and transition plan.

Through forceful stewardship with several minimum requirements to be specified (e.g. collective action reaching a critical mass of shareholders, annual monitoring of company’s progress against its climate science-based target and granular climate transition plan, public signalling, escalation strategy, etc.), investors can contribute to accelerating such transitions of companies.

.<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>

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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>

Yes

<ESMA\_QUESTION\_FUNA\_8>

1. : Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?

<ESMA\_QUESTION\_FUNA\_9>

No. With regard to synthetic replication the requirements should be applicable to both, the index itself as well as the collateral.

.<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>

<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>

The transition issue is very important – even for funds not including ‘transition’ or transition-related names. The bulk of companies in the current unsustainable economy have existing harmful assets, and they have the choices to invest in new harmful assets or not, and retrofit or decommission their existing harmful assets or not (depending on whether it is feasible or not to retrofit them in a timely way).

Depending on the category of ESG funds, WWF recommends to take this element into account: the differentation between existing assets and planned asset of selected companies in a given fund:

* For WWF, companies investing in NEW harmful assets should not be part of any ESG fund. Climate-wise for example, building on the IEA 1.5°C scenario there is no carbon budget anymore to accomodate new fossil fuel extraction/production projects globally (coal, oil, gas).
* A different case is for example a company like the electric utility Orsted, which has a legacy of remaining old coal plants; the company is investing only in renewable capacity, and has committed to gradually its coal plants them before 2030 and reach 100% renewable power production by 2030 – which is well aligned with a 1.5°C pathway for the power sector (requiring to reach zero-carbon power by 2035 in EU/OECD countries).

Such a company has a legacy of environmentally harmful assets, but is investing only in new green assets, and committed to align with a 1.5°C pathway hence phase out its existing harmful assets in a timely way. It needs to be discussed how such a type of companies could be included in a category of ESG funds, and what specific requirements would be necessary in such a case to avoid greenwashing - notably in terms of science-based target setting, setting up of a granular climate transition plan including a capex plan, and annual Measurement, Reporting and Verification of progress against the target and transition plan.

Through forceful stewardship with several minimum requirements to be specified (e.g. collective action reaching a critical mass of shareholders, annual monitoring of company’s progress against its climate science-based target and granular climate transition plan, public signalling, escalation strategy, etc.), investors can contribute to accelerating such transitions of 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>

Yes, WWF believes that similar guidance for other financial products would be relevant.

<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>

Yes. However the main WWF recommendation, raised in previous questions, is to redefined the SFDR Article 8 and 9 categories of ESG funds with minimum sustainability requirements, either common or distinctive.

<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>

Yes.

<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>