



European Securities and
Markets Authority

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



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 `<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	AIPB (Associazione Italiana Private Banking)
Activity	Banking and financial Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

Dear Sirs,

In answering the questions asked in the above-mentioned consultation paper (“**Consultation**”), Associazione Italiana Private Banking (“**AIPB**” or the “**Association**”) would like first of all to thank for the opportunity.

Firstly, AIPB agrees that “*funds names in fund documents or marketing communications should not be misleading*”; on the other hand, it considers it important, by way of general and overriding requests, details of which will be provided below, that the guidance under consultation be modified:

- This Association understands and agrees with the need to identify minimum investment thresholds intended to promote environmental and social characteristics or sustainable investments, but it believes that this must necessarily be done within the framework, and as a further specification, of the ESG product categories already laid down in Regulation 2019/2088 and for all the financial product, not only for investment funds. To be more specific, such proportions shall be required not only for funds having certain acronyms in their names, but for all SFDR Article 8 financial products, as far as the suggested 80% proportion is concerned, and for all Article 8 products with a minimum proportion of sustainable investment (i.e. “8 “plus” funds/products), as far as the 50% proportion of sustainable investments as compared to 80% of investments promoting environmental and social characteristics is concerned.
- In fact, we disagree with the intention to create a further differentiation and classification in the ESG area, because the level of regulatory stratification is already high. More specifically, we believe that – contrary to what is stated in ESMA’s paper (para. 11) – the new proposed rules must necessarily align with the requirements of Regulation 2019/2088. Otherwise, in addition to the existing categories for Article 8, Article 8 plus and Article 9 products, there would be a proliferation of categories for Article 8 funds having the acronym ESG in their names and Article 8 funds without that peculiarity. Thus, for example, the following categories would be created for investment funds: 1. Article 8 funds having ESG-related terms in their names; 2. Article 8 funds without ESG-related terms in their names; 3. Article 8 funds having impact-

related terms in their names; 4. Article 9 funds, etc.. This further classification, where not aligned with the SFDR regulation, would make it even more complex firstly for end investors, but also for distribution networks to distinguish one product from another. In fact, we believe that, paradoxically, such an accumulation of rules and regulations may contribute to confusion and therefore, albeit unintentionally, facilitate greenwashing phenomena.

- This further classification, based on terminological criteria, would make it more complex for the investor to understand the meaning of ESG products as well as the different product categories that comply with the SFDR.
- Even agreeing with the intention to identify minimum thresholds for Article 8 and Article 8 *plus* financial products, we believe that the proposed thresholds are too high and, in any case, not in line with market benchmarks. We therefore suggest that the aforesaid thresholds should be lowered for example to 60 % for all Article 8 financial products and, only for Article 8 *plus* financial products, to provide for the additional investment limit of 50% in sustainable investments compared to the general constraint of 60%.
- Finally, we consider it more efficient to suspend the definition of these Guidelines and to resume the contents in 2024 with the consideration of the proposed revision of the SFDR.

<ESMA_QUESTION_FUNA_0>

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

<ESMA_QUESTION_FUNA_1>

- Yes, we do; however, we believe that, as already mentioned in the introduction, this should be done within the framework of the existing nomenclatures already introduced by Regulation 2019/2088. In fact, we disagree with the intention to create a further differentiation and classification in the ESG area, because the level of regulatory stratification is already high. More specifically, we reiterate that, contrary to what is stated in the paper (para. 11), the new proposed rules must necessarily align with the requirements of Regulation 2019/2088, in order to avoid any further differentiations that are detrimental to clarity. Otherwise, in addition to the existing categories for Article 8, Article 8 plus and Article 9 products, there would be a proliferation of categories for Article 8 funds having the acronym ESG in their names and Article 8 products without that peculiarity. Thus, for example, the following categories would be created for investment funds: 1. Article 8 funds having ESG-related terms in their names; 2. Article 8 funds without ESG-related terms in their names; 3. Article 8 funds having impact-related terms in their names; 4. Article 9 funds, etc.. This further classification, where not aligned with the SFDR regulation, would make it even more complex firstly for end investors, but also for distribution networks to distinguish one product from another. In fact, we believe that, paradoxically, such an accumulation of rules and regulations may contribute to confusion and therefore, albeit unintentionally, facilitate greenwashing phenomena.
- Therefore, we are of the view that such minimum proportions shall be required not only for financial products having certain acronyms in their names, but for all Article 8 financial products, as far as the suggested 80% proportion is concerned, and for all Article 8 plus financial products, as far as the 50% proportion of sustainable investments as compared to 80% of investments promoting environmental and social characteristics is concerned.
- We also point out that these Guidelines do not consider Article 8 financial products that manage Principal Adverse Impact (“PAI”) and therefore do not have a minimum sustainable investment constrain; this exclusion would result in unequal treatment of these products because they would not be able to use the term ESG or sustainability-related in the name of the funds.

<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>

- Although we understand the need to identify a minimum proportion of ESG investments in the portfolio, and apart from what has already been pointed out in our answer to question no. 1, we believe that this proportion is too high, also considering the already existing differentiation between Article 8 products and Article 9 products and the need for the former to be graded with respect to Article 9 products. Conversely, an 80% proportion seems to be more in line with an entirely sustainable, or Article 9, product. Therefore, we suggest that this



proportion should be revised and set at 60% of the portfolio. Moreover, such a high investment constraint, set at 80% of the portfolio, would greatly limit the manager's discretion in selection of investments to reach the fund's potential performance.

<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>

- If the proportion referred to in question no. 2 is revised, it may potentially be considered reasonable to preserve this proportion.

<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>

Without prejudice to what was specified under question no. 1, we believe we can agree with the proposed mechanism, provided that – let it be reiterated – it applies not only to financial products having ESG-related terms in their names, but to all Article 8 and Article 8 plus financial products.

<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>

See answer to question no. 4.

<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>

Yes, we agree that the total portfolio of an Article 8 financial product, excluding liquidity and hedging, must meet minimum ESG safeguards, such as being subject to negative screening, i.e., screening based on exclusion criteria. However, while we regard such a reference to "*Exclusions for benchmark indices*" as more than reasonable, we believe preferable to leave discretion to the intermediaries in identifying the *good governance* practices deemed relevant, notwithstanding however that ancillary liquidity and the use of hedging instruments should be excluded from the minimum ESG safeguard perimeter.

<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>

In our opinion, if they are used for hedging purposes, they should be excluded from the ESG AUM with a view to compliance with proportions for ESG purposes.

<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>

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<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>

TYPE YOUR TEXT HERE

<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>

We agree that, for the purposes underlined in our introductory comments, i.e., the need to avoid further categorisations and complexity in the already complex landscape of ESG rules, the same approach should be maintained also for funds using a reference index as benchmark.

<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>

No, as already mentioned, we believe that the minimum proportions that you intend to introduce should be linked directly to the notion of Article 8 and Article 8 plus financial products. For the reasons set forth above, we do not recommend introducing further categorisations.

<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>



As already clarified in other answers, we suggest that minimum proportions should not be linked to terms used in the names, but directly to all products qualified as Article 8 or Article 9 products, for the reasons pointed out above.

<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>

As already mentioned, we believe that these minimum proportions should apply to all Article 8 financial products under the SFDR and not only to investment funds.

<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>

Yes, we do.

<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>

No, because in that case the subscription period has already terminated, so it seems impossible to consider revising the investment policies and strategies of a given financial product after investors have already accepted certain fund rules with certain characteristics. In addition, it seems persecutory to focus on products for which the subscription procedure has already ended.

<ESMA_QUESTION_FUNA_14>

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

<ESMA_QUESTION_FUNA_15>

The new provisions will have a profound impact on the industry in any case, because they will require managers to revise their ESG policies to identify the minimum requirements in order for a fund to be identified as an Article 8 fund.

<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>

We believe that, from a qualitative viewpoint, there can be benefits only if these minimum proportions are introduced for all Article 8 and Article 8 plus financial products. Otherwise, fragmentation will increase and only additional costs and no benefits can be envisaged, either for manufacturers or distributors or especially investors, who will likely not be able to distinguish the different types of



products and will mix up the – hardly digested and understood – nomenclature contained in the SFDR templates introduced by Regulation 1288, because they will then have to distinguish between other categories, i.e. those of investment funds having the ESG acronym or impact-related terms in their names.

<ESMA_QUESTION_FUNA_16>

Q17