

Consultation Paper

On Guidelines on funds' names using ESG or sustainability-related terms



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex II. Comments are most helpful if they:

- 1. respond to the questions stated;**
- 2. indicate the specific question to which the comment relates;**
- 3. contain a clear rationale; and**
- 4. describe any alternatives ESMA should consider.**

ESMA will consider all comments received by 20 February 2023.

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 close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response 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 heading Legal Notice.

Who should read this paper

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EuSEF managers and/or EuVECA managers, alternative investment funds, EuSEFs and EuVECAs, ELTIFs and their associations as well as (ii) institutional and retail investors (and associations of such investors) investing in alternative investment funds, UCITS, EuSEFs, EuVECAs and ELTIFs.

Table of Contents

1	Executive Summary	4
2	Background	6
3	Scope of the Guidelines	7
4	Guidelines on funds' names	8
4.1	General requirements.....	8
4.2	Proportion of investments for funds' names using ESG or sustainability-related terms 8	
4.3	Additional recommendations related to fund names	11
4.4	Application and transitional period.....	12
5	Annexes	13
5.1	Annex I: Cost-benefit analysis	13
5.2	Annex II: Summary of questions.....	17
5.3	Annex III: Draft Guidelines on funds' names using ESG or sustainability-related terms 19	
5.4	Annex IV: Examples of assessment of funds' names according to the thresholds.....	23

1 Executive Summary

Reasons for publication

In recent years, investor demand for investment funds that incorporate environmental, social and governance (ESG) factors has been growing sharply and it is expected to continue growing in the future. This increasing demand without the effective application of existing criteria for sustainability such as the EU Taxonomy, has led to concerns in ESMA. Sustainability disclosures may give rise to risk of “greenwashing” and this is particularly relevant if funds are named as green or socially sustainable, when sufficient sustainability standards commensurate with that name have not been met.

In the existing UCITS and AIFM Directives there are provisions for management companies, related to their business activities, which shall be conducted by acting honestly and fairly. In addition, the Regulation on cross border distribution of funds requires the fair, clear and not misleading nature of marketing communications.

On 31 May 2022 ESMA published a supervisory briefing on sustainability risks and disclosures in the area of investment management (ESMA34-45-1427)¹ which aimed to enhance supervisory convergence in the area of sustainability-related disclosures and the integration of sustainability risks. The supervisory briefing contained, inter alia, some principles-based guidance for funds’ names with ESG and sustainability-related terms.

This consultation paper (“CP”) aims to develop Guidelines on funds’ names with ESG or sustainability-related terms with more specific guidance compared to the supervisory briefing on the use of ESG or sustainability-related terms in funds’ names on which ESMA is seeking the views of external stakeholders, as further explained in the following sections.

Contents

Section 2 explains the background to our proposals. Sections 3 and 4 give detailed explanations on the content of the proposals and seek stakeholders’ input through specific questions.

Annex I sets out the cost-benefit analysis related to the draft Guidelines.

Annex II sets out the list of questions contained in this paper.

Annex III contains the full text of the draft Guidelines.

Annex IV provides examples of how the threshold mechanism would work.

Next Steps

ESMA will consider the feedback it received to this consultation and expects to issue the final Guidelines by Q2/Q3 2023.

¹ [Supervisory briefing on sustainability risks and disclosures](#)

2 Background

1. Article 14(1)(a) of Directive 2009/65/EC (UCITS Directive)² provides that Member States shall draw up rules of conduct which management companies shall observe, and which implement at least the principle that a management *company* “*acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market*”. Equally, Article 12(1)(a) of the Directive 2011/61/EU (AIFMD)³ provides that Member States shall ensure that, at all times, AIFMs “*act honestly, with due skill, care and diligence and fairly in conducting their activities*”.
2. Article 4(1) of the Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings⁴ (“Regulation (EU) 2019/1156”) provides that AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications addressed to investors are identifiable as such and describe inter alia that all information included in marketing communications is “*fair, clear and not misleading*”.
3. The need to enhance investor protection is particularly evident when dealing with the quality of transparency of funds, especially when they use terms in their name which suggest an investment focus in companies that meet certain ESG standards. This type of terminology may be particularly powerful in fund names, as funds can attract significant interest and stand out to investors by using sustainability or ESG terms in their names.
4. The name of a fund is an instrument to communicate information about the fund to investors and is also an important marketing tool for the fund. The name of a fund is usually the first fund attribute investors see and, while investors are expected to look beyond the name itself and check in detail the fund’s documentation, the name can have a significant impact on their investment decisions.
5. Investors are allocating an ever-increasing proportion of their portfolios towards ESG strategies in order to use their capital to help sustainable purposes and may reasonably expect funds with these names to invest in companies with policies, practices, or characteristics that are consistent with ESG standards. Competitive market pressures create incentives for asset managers to include terminology in their funds’ names designed to attract investor assets, leading in certain instances to greenwashing, for example by making false claims about sustainability practices.
6. With the supervisory briefing on sustainability risks and disclosures in the area of investment management published on 31 May 2022 ESMA already provided some principles-based

² [UCITS Directive](#)

³ [AIFM Directive](#)

⁴ [Regulation on cross-border distribution](#)

guidance to national competent authorities on fund names using ESG or sustainability-related terms.⁵

7. The proposed Guidelines, which complement the principle-based guidance on funds' names in the supervisory briefing, address funds' names by proposing quantitative thresholds criteria for the use of ESG- and sustainability- related terminology. This would further help to prevent potential greenwashing risk in fund names.
8. The option of including quantitative thresholds has been discussed in depth in the ESMA context and the choice has also been inspired by current developments in Europe and the US. Germany has considered criteria for the use of ESG- and sustainability-related words in funds' names.⁶ France has introduced minimum expectations on the approach that managers should follow if they want to communicate extensively about non-financial characteristics within their marketing material and regulatory documents. Those are based on sustainable commitments made by asset managers in their legal documentation and agnostic about the way the manager demonstrates the sustainability of their approach.⁷
9. Outside Europe, the US is proposing an amendment to rule 35d-1⁸ under the Investment Company Act of 1940 (also known as the "Names Rule") to expand its scope to apply to any fund name with terms that suggest, among others, investment decisions incorporating one or more ESG factors while in the UK, the FCA⁹ is proposing to introduce restrictions on how certain sustainability-related terms – such as 'ESG', 'green' or 'sustainable' – can be used in product names and marketing for products which do not qualify for the sustainable investment labels. It is also proposing a more general anti-greenwashing rule covering all regulated firms, with the goal of avoiding misleading marketing of products.
10. Against this background, the following section summarises ESMA's proposals for Guidelines on funds' names where funds use ESG or sustainability-related terms.

3 Scope of the Guidelines

11. The proposed Guidelines are not intended to interfere with the requirements of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR)¹⁰ or the requirements of the Regulation (EU) 2020/852 on the establishment of a

⁵ [ESMA Supervisory Briefing on Sustainability risks and disclosures in the area of investment management \(ESMA34-45-1427\)](#) paragraphs 29-31

⁶ BaFin press release under [BaFin Press Release](#). BaFin has in the meantime decided to postpone the issue of these guidelines. Spain has referred to the ESMA Supervisory Briefing in their Question 3 of Questions and Answers On Sustainability Regulations Applicable To Financial Products: Regulation 2019/2088 (SFDR) And Regulation 2020/852 (Taxonomy) [CNMV Q&A SFDR](#)

⁷ [AMF Recommendation Doc 2020-03](#)

⁸ For the US see SEC press release under [SEC Press Release](#)

⁹ [FCA Press Release](#)

¹⁰ [SFDR Regulation](#)

framework to facilitate sustainable investment (the “Taxonomy Regulation”)¹¹. They apply in relation to the above-mentioned requirements in the UCITS Directive, AIFMD and Regulation 2019//1156.

4 Guidelines on funds’ names

4.1 General requirements

12. Funds’ names in fund documents or marketing communications should not be misleading, as the disclosure of sustainability characteristics should be commensurate with the effective application of those characteristics to the fund. The use of ESG- and sustainability-related terminology in fund names should be used only when supported in a material way by evidence of sustainability characteristics, or objectives that are reflected fairly and consistently in the fund’s investment objectives and policy and its strategy as described in the relevant fund documentation.
13. In order to tackle greenwashing risk in funds, ESMA is providing guidance on funds’ names indicating quantitative thresholds for the use of ESG- and sustainability- related terminology in funds’ names so that marketing communications are clear, fair and not misleading and that the fund managers are acting honestly.

4.2 Proportion of investments for funds’ names using ESG or sustainability-related terms

14. ESMA’s proposal would introduce thresholds that, in ESMA’s view, would entail that the name of a fund that uses ESG or sustainability-related terms is aligned with its investment characteristics and objectives. This alignment between the name of the fund and the investments characteristics or objectives is achieved by linking the disclosure of the “minimum proportion of investments” (expressed in percentage) used to meet the financial product’s characteristics or objectives to the threshold indicated in these Guidelines. The information on the minimum proportion will be provided by financial market participants making available the investment fund and will be available in the pre-contractual disclosures of those funds (in the templates provided for in Annexes II¹² and III¹³ of Commission Delegated Regulation (EU) 2022/1288¹⁴ (“SFDR Delegated Regulation”)) from January 2023, while the actual proportion during a specific reference period will be disclosed in the

¹¹ [Regulation \(EU\) 2020/852 - Taxonomy Regulation](#)

¹² [Annex II of CDR \(EU\) 2022/1288](#)

¹³ [Annex III of CDR \(EU\) 2022/1288](#)

¹⁴ [CDR \(EU\) 2022/1288](#)

periodic disclosures (Article 53(a), Article 61(a), Annex IV¹⁵ and V¹⁶ of the SFDR Delegated Regulation).

15. ESMA is seeking stakeholder feedback on the following proposals:

- a. If a fund has any ESG-related words in its name, a minimum proportion of at least 80% of its investments should be used to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding elements of the investment strategy, as disclosed in Annexes II and III of SFDR Delegated Regulation.
- b. If a fund has the word “sustainable” or any other term derived from the word “sustainable” in its name, it should allocate within the 80% of investments to “meet the characteristics/objectives” under sub-paragraph a) above at least 50% of minimum proportion of sustainable investments as defined by Article 2(17)¹⁷ of Regulation (EU) 2019/2088 (SFDR) as disclosed in Annexes II and III of SFDR Delegated Regulation.

16. Examples of assessment of funds’ names according to the thresholds above are to be found in Annex IV and aim to explain how the guidance in the paragraph above would work in practice.¹⁸

17. ESMA believes that the proposed threshold of 80% is high enough to meet investors’ expectations that a large majority of the fund’s actual or intended investments is made in assets consistent with its name thus avoiding fund names to be deceptive or misleading. Furthermore, proposing a consistent figure across the EU will enhance convergence and could make it easier for funds distributed outside the EU to comply with naming conventions.

18. ESMA recommends a threshold of at least 50% of sustainable investments as an appropriate proxy so that funds disclosing under Article 8 SFDR (that meet the minimum proportion of 80%) are ensuring the consistency of their investments with the use of the word “sustainable” or any other sustainability-related terms in their name. ESMA is of the opinion that the proposed figure of 50%, in conjunction with the 80% figure, is high enough

¹⁵ [Annex IV CDR \(EU\) 2022/1288](#)

¹⁶ [Annex V CDR \(EU\) 2022/1288](#)

¹⁷ Art. 2(17) SFDR: ‘sustainable investment’ means an investment in an economic activity that contributes to an environmental objective, as measured, for example, by key resource efficiency indicators on the use of energy, renewable energy, raw materials, water and land, on the production of waste, and greenhouse gas emissions, or on its impact on biodiversity and the circular economy, or an investment in an economic activity that contributes to a social objective, in particular an investment that contributes to tackling inequality or that fosters social cohesion, social integration and labour relations, or an investment in human capital or economically or socially disadvantaged communities, provided that such investments do not significantly harm any of those objectives and that the investee companies follow good governance practices, in particular with respect to sound management structures, employee relations, remuneration of staff and tax compliance.

¹⁸ With reference to sub-paragraph b under paragraph 15, the disclosure under the Section “What are the objectives of the sustainable investments that the financial product partially intends to make and how does the sustainable investment contribute to such objective” in Annex II SFDR Delegated Regulation or the Section “What is the sustainable investment objective of this financial product” in Annex III SFDR Delegated Regulation should help determine whether the sustainable investments can be considered within the 80% of investments to meet the characteristics or objectives.

to justify the use of the term sustainable or any other sustainability-related terms also in the name of fund disclosing under Article 8 SFDR. As a reminder, such guidance would not affect the interpretation by the European Commission in its Q&A published on the ESMA website on 26 July 2021¹⁹, that funds disclosing under Article 9 SFDR “may invest in a wide range of underlying assets, provided these underlying assets qualify as ‘sustainable investments’, as defined in point 17 of Article 2 SFDR”.

19. ESMA is seeking views about any potential safeguards that might be necessary for remaining investments of the funds, i.e. investments not used to meet the environmental or social characteristics or objectives of the fund. In order to address them, ESMA recommends in this consultation some minimum safeguards consisting of the exclusion criteria, that would be applied to all investments of the fund for the sake of consistency. For the consultation ESMA has proposed the exclusion criteria applicable to Paris-aligned Benchmarks in the Benchmark Regulation Delegated Regulation (Commission Delegated Regulation (EU) 2020/1818) Article 12(1)-(2) to support the name of the fund in the fund documentation and the marketing communications to be fair, clear and not misleading and that fund managers act honestly.
20. The disclosures of the minimum proportion of investments used to meet the environmental or social characteristics or sustainable investment objectives in Annexes II and III of the SFDR Delegated Regulation do not contain any specific instruction for how derivatives should be treated. ESMA is seeking views from stakeholders whether derivatives should have a specific calculation method for the purpose of calculating the naming thresholds indicated in these Guidelines.
- Q1. Do you agree with the need to introduce quantitative thresholds to assess funds’ names?**
- 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.**
- 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.**
- Q4. Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.**
- 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**

¹⁹ [Q&A of the European Commission on SFDR July 2021](#)

funds are aligned with their investment characteristics or objectives? If yes, please explain your alternative proposal.

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.

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

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

4.3 Additional recommendations related to fund names

21. In order to consider the specificities of certain ESG or sustainability strategies the following aspects could also be addressed in the Guidelines depending on feedback to this consultation:

- a. Funds designating an index as a reference benchmark could use ESG- and sustainability- related words in their name only if the relevant thresholds proposed are met by the fund.**
- b. Funds using the word “impact” or “impact investing” or any other impact-related term in their name should meet the proposed thresholds and additionally make investments with the intention to generate positive and measurable social or environmental impact alongside a financial return.**

Q8. Do you agree that funds designating an index as a reference benchmark should also consider the same requirements for funds names like any other fund? If not, explain why and provide an alternative proposal.

Q9. Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?

Q10. Do you agree with having specific provisions for “impact” or impact-related names in these Guidelines? If not, please explain why.

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

Q12. The proposals in this consultation paper relate 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?

4.4 Application and transitional period

22. ESMA proposes that the Guidelines would become applicable from 3 months after the publication of their translation on the ESMA website.

23. A transitional period of 6 months would be given to those funds launched prior to the date in paragraph 22. Investment funds launched prior to the date referred to in paragraph 22 with ESG or sustainability-related terms in their names should either (1) bring their investments in line with these Guidelines by 6 months after the date referred to in paragraph 22 or (2) change their name not to have ESG or sustainability-related terms within the same deadline.

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.

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.

5 Annexes

5.1 Annex I: Cost-benefit analysis

Technical options

Article 14(1)(a) of the UCITS Directive and Article 12(1)(a) of AIFMD aim that a management companies and fund managers act honestly and fairly in conducting their activities while the Regulation 2019/1156, together with Directive (EU) 2019/1160 aims at abolishing the barriers stemming from divergent regulatory and supervisory approaches concerning the cross-border distribution of funds. In this context, the Guidelines aim at setting common standards for management companies when promoting UCITS and AIFs using an ESG- or sustainability-related name, including when these funds are set up as EuSEFs, EuVECAs, ELTIFs and MMFs in order to facilitate marketing of funds throughout EU Member States.

In this context, the proposed option was identified and analysed by ESMA to address the policy objectives of this amendment to the Guidelines.

This CBA is qualitative in nature. Should relevant data be received through the consultation process, ESMA will take it into account when finalising its Guidelines and will include it in the CBA accompanying the final report.

Policy Objective	<p>Under Article 14(1)(a) of the UCITS Directive and Article 12(1)(a) of AIFMD management companies and fund managers shall act honestly and fairly in conducting their activities while under Article 4(1) of Regulation 2019/1156 they shall ensure that all marketing communications addressed to investors are identifiable as such and describe inter alia that all information included in marketing communications is fair, clear and not misleading.</p> <p>In this context, the Guidelines aim at setting common standards on the fair, clear and not misleading character of funds' name.</p>	
Baseline scenario	The baseline scenario should be understood for this CBA as the lack of guidance relating to the name of the fund using ESG or sustainability-related terminology.	
Technical proposal	To ensure that the information included in fund documents and marketing communications are fair, clear and not misleading and that fund managers act honestly, the Guidelines include certain criteria for ESG or sustainable funds names for the assessment by NCAs.	
	Qualitative description	Quantitative description

<i>Benefits</i>	<p>ESMA considers that the adoption of common standards on the use of ESG-, impact-, or sustainability-related terms in funds' names throughout Member States reduces the risk of misleading information to investors.</p> <p>Furthermore, this guidance could have a beneficial effect in terms of standardising practices in naming funds, as consistent requirements will be applicable in all EU Member States, thus reducing the compliance costs over time.</p>	N/A
<i>Costs to regulator</i>	<p>The Guidelines on funds' names using ESG or sustainability-related terms may, by the introduction of quantitative thresholds, imply additional supervisory actions from NCAs to verify whether funds' names are misleading. However, this is not expected to add significant costs to NCAs, as this additional assessment will be part of the verification of fund documents or marketing communications that can be made pursuant to the powers conferred to NCAs by AIFMD, the UCITS Directive and Regulation 2019/1156. Hence, the supervision costs incurred for NCAs should not be seen as an obstacle for the implementation of the Guidelines.</p>	N/A
<i>Compliance costs</i> <ul style="list-style-type: none"> – IT – Training – Staff 	<p>No additional costs are expected in terms of IT systems, training or additional staff to comply with the proposed Guidelines on funds' names using ESG or sustainability-related terms.</p>	

<p><i>Other costs</i></p>	<p>It is anticipated that fund managers would incur additional cost to comply with these new requirements set out in the Guidelines. In particular, fund managers may have to amend their pre-contractual and periodic disclosure documents and the relevant marketing material in case of changes to the name of their fund or its relevant strategy.</p> <p>However, it is expected that the costs of compliance with the Guidelines may be incurred only on a one-off basis after the application of these Guidelines and only for existing funds.</p>	<p>Using data as of July 2022, an estimated 14% of EU-domiciled funds, corresponding to 4,192 out of a total of 29,701 funds, use at least one ESG-related word in their name. Funds' names have been screened for ESG words and phrases that include both derivations of the word 'sustain', such as sustainability, sustainable, etc., as well as other ESG-related words relating to environmental (e.g. 'climate change') or social (e.g. 'education') topics—governance-related words are relatively infrequent.</p> <p>Among these 4,192 funds containing at least one ESG-related word, the relative shares as per SFDR disclosure type are the following:</p> <ul style="list-style-type: none"> – Article 6 SFDR: 13% (534 funds) – Article 8 SFDR: 65% (2,730 funds) – Article 9 SFDR: 22% (928 funds) <p>It is reasonable to expect that those 534 funds disclosing under Article 6 SFDR could be particularly impacted by the guidance on funds' names, since they should not promote environmental or social characteristics ²⁰ nor have a sustainable objective (or, if they</p>
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²⁰ The European Commission noted in its July 2021 SFDR Q&A on page 8 that "use of product names" was one way that financial products "promote" environmental and/or social characteristics.

		do, then they should instead disclose under either SFDR Article 8 or Article 9). Any of the 2,730 and 928 funds disclosing under Article 8 and 9 SFDR, respectively, would be impacted if the minimum proportion of their assets is not in line with the proposed threshold(s).
<i>Innovation-related aspects</i>	No innovation related impacts are expected from this option.	
<i>ESG-related aspects</i>	Due to the nature of this proposal, all issues discussed in this CBA are of relevance to ESG-related aspects.	
<i>Proportionality-related aspects</i>	Even though implementation costs appear to be limited they may impact smaller firms to a greater extent.	N/A

Conclusions

Considering what has been illustrated above, ESMA believes that the overall supervisory and compliance costs associated with the implementation of these Guidelines are justified by the objectives described above and will be largely compensated by the benefits for investors who would be able to rely to a greater extent on the names of ESG or sustainable funds.

In particular, it is expected that the Guidelines will enhance the clarity of the information addressed to investors and potential investors in relation to investments in ESG or sustainable funds and will encourage such investments. It is also expected that the Guidelines will increase certainty for fund managers in the area of ESG or sustainability-related financial products as particular terms could be used in product names with greater confidence.

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

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.

5.2 Annex II: Summary of questions

- Q1. Do you agree with the need to introduce quantitative thresholds to assess funds' names?**
- 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.**
- 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.**
- Q4. Do you think that there are alternative ways to construct the threshold mechanism? If yes, please explain your alternative proposal.**
- 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.**
- 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.**
- Q7. Do you think that, for the purpose of these Guidelines, derivatives should be subject to specific provisions for calculating thresholds?**
- 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?**
- b) Are there any other measures you would recommend for derivatives for the calculation of the minimum proportion of investments?**
- 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.**
- Q9. Would you make a distinction between physical and synthetic replication, for example in relation to the collateral held, of an index?**
- Q10. Do you agree of having specific provisions for "impact" or impact-related names in these Guidelines?**
- Q11. Should there be specific provisions for "transition" or transition-related names in these Guidelines? If yes, what should they be?**

- Q12.** The proposals in this consultation paper relate 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?
- 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.
- 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.
- Q15.** What is the anticipated impact from the introduction of the proposed Guidelines?
- 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.

5.3 Annex III: Draft Guidelines on funds' names using ESG or sustainability-related terms

1 Scope

Who?

1. These guidelines apply to UCITS management companies, including any UCITS which has not designated a UCITS management company, Alternative Investment Fund Managers, EuVECA, EuSEF and ELTIF managers as well as competent authorities.

What?

2. These Guidelines apply in relation to Article 14(1)(a) of Directive 2009/65/EC²¹, Article 12(1)(a) of Directive 2011/61/EU²² and Article 4(1) of Regulation (EU) 2019/1156²³. In particular, they apply in relation to the obligation to act honestly and fairly in conducting their business as well as the obligation that all information included in marketing communications is fair, clear and not misleading.
3. These obligations are relevant to all fund documentation and marketing communications addressed to investors or potential investors for UCITS and AIFs, including when they are set up as EuVECAs, EuSEFs and ELTIFs.
4. Examples of fund documentation are legal and regulatory documents/information of a fund, such as the prospectus or the information which is to be disclosed to investors in accordance with Article 23 of Directive 2011/61/EU, Article 13 of Regulation (EU) No 345/2013 or Article 14 of Regulation (EU) No 346/2013, the KIID and/or KID, the annual and half-yearly reports of a UCITS or an AIF, the Memorandum & Articles of Association, By-Laws, Trust Deed or similar documents required to legally establish a fund, or notice to a General Meeting of shareholders/unitholders.
5. Examples of documents that may be considered as marketing communications include, inter alia:
 - a) All messages advertising for a UCITS or an AIF, regardless of the medium, including paper printed documents or information made available in electronic format, press articles, press releases, interviews, advertisements, documents made available on the

²¹ Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) OJ L 302, 17.11.2009 p.32

²² Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 OJ L174, 1.7.2011, p.1

²³ Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014

internet, as well as webpages, video presentations, live presentations, radio messages or factsheets.

- b) Messages broadcasted on any social media platform, when such messages refer to any characteristics of a UCITS or an AIF, including the name of the UCITS or the AIF. For the purpose of these guidelines, the term “social media” should be understood as any technologies which enable social interaction and the creation of collaborative content online, such as blogs and social networks (Twitter, LinkedIn, Facebook, Instagram, Tiktok, Youtube, Discord etc.) or discussion forums, accessible by any means (in particular electronic means, via a computer or mobile applications for example).
- c) Marketing material addressed individually to investors or potential investors, as well as documents or presentations made available by a UCITS management company, an AIFM, a EuVECA manager or a EuSEF manager to the public on its website or in any other places (fund manager’s registered office, distributor’s office, etc.).
- d) Communications advertising a UCITS or an AIF addressed to investors or potential investors located both in the home Member State of the fund manager or in a host Member State.
- e) Communications by a third party and used by a UCITS management company, an AIFM, a EuVECA manager, or a EuSEF manager for marketing purposes.

When?

- 6. These guidelines apply three months after the date of the publication of the guidelines on ESMA’s website in all EU official languages.
- 7. A transitional period of 6 months should apply for those funds already existing before the date of the publication of the guidelines on ESMA’s website in all EU official languages.

2 Purpose

- 8. These guidelines are issued under Article 16(1) of the ESMA Regulation. The purpose of these guidelines is to specify criteria, in terms of quantitative thresholds, to assess whether the name of a fund containing terms, acronyms or abbreviations suggesting that the fund focuses on investments that have, or investments whose issuers have, ESG or sustainability features, are fair, clear and not misleading.
- 9. The name of a fund is a means of communicating information about the fund to investors and is also an important marketing tool for the fund. A fund’s name is often the first piece of fund information investors see and, while investors should go beyond the name itself and look closely at a fund’s underlying disclosures, a fund’s name can have a significant impact on their investment decisions.

3 Compliance and reporting obligations

3.1 Status of the guidelines

10. This document contains guidelines issued under Article 16 of the ESMA Regulation²⁴. In accordance with Article 16(3) of the ESMA Regulation national competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
11. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

3.2 Reporting requirements

12. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
13. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
14. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.
15. Financial market participants are not required to report.

4 Guidelines on funds' names using ESG or sustainability-related terms in their names

Quantitative thresholds

16. If an investment fund has any ESG-, or impact-related words in its name, a minimum proportion of 80% of its investments should be used to meet the environmental or social characteristics or sustainable investment objectives in accordance with the binding

²⁴ [Regulation \(EU\) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority \(European Securities and Markets Authority\).](#)

elements of the investment strategy, which are disclosed in Annexes II and III of Commission Delegated Regulation (EU) 2022/1288.

17. If an investment fund has the word “sustainable” or any other term derived from the word “sustainable” it should allocate within the 80% of investments to “meet the environmental or social characteristics or sustainable investment objectives” under paragraph 16 above at least 50% of minimum proportion of sustainable investments as defined by Article 2(17) of SFDR, which is also disclosed in Annexes II and III of Commission Delegated Regulation (EU) 2022/1288.
18. Minimum safeguards including exclusion criteria as defined in the Benchmark Regulation Delegated Regulation (Commission Delegated Regulation (EU) 2020/1818) Article 12(1)-(2), are recommended for all investment funds using an ESG- or sustainability-related term in their name.

Further recommendations for specific type of funds

19. Funds designating an index as a reference benchmark could use ESG- and sustainability-related words in their name only if the guidance under paragraphs 16 and 17 are fulfilled by the fund.
20. The use of the word “impact” or “impact investing” or any other impact-related term should be used only by funds meeting the quantitative thresholds set out in paragraphs 16 and 17, and additionally whose investments under the minimum proportions mentioned in those paragraphs are made with the intention to generate positive, measurable social or environmental impact alongside a financial return.

Supervisory expectations

21. ESMA recommends that NCAs consider the abovementioned paragraphs throughout the life of the fund. Market participants could verify this information through the periodic disclosures provided in accordance with the Commission Delegated Regulation (EU) 2022/1288. A temporary deviation from the thresholds, if the said deviation is not due to a deliberate choice of the asset manager, should be treated as a passive breach and corrected in the best interest of the unitholders.
22. Discrepancies in the level of the quantitative thresholds which are not passive breaches may be considered by the NCA, in light of the relevant circumstances, as a risk indicator warranting further investigation. In the case of a fund that does not demonstrate sufficiently high level of investments to use ESG terms in its name and where the NCA considers that using such terms in the fund name would result in misleading investors, NCAs are invited to communicate on these issues at an early stage and cooperate effectively to find a common position.

5.4 Annex IV: Examples of assessment of funds' names according to the thresholds

The mechanism of the use of the threshold is meant to be easy and transparent. If a fund has an ESG-related word in its name, then the percentage of its planned asset allocation shown in the relevant SFDR templates should be equal or above the threshold of 80%.

In case the fund has a sustainable-related word in its name, then within the 80% threshold above, at least 50% should be allocated in sustainable investments as defined in SFDR.

The following examples are entirely theoretical and have only an explanatory function, aiming to illustrate how the guidance in paragraphs 16 and 17 in Annex III Section 4 above would work in practice.

Example 1: Climate Change Solutions Fund

Description of the objectives and policy of the fund

The "Climate Change Solutions Fund" has as objective to achieve a return through investing in companies with exposure to the theme of climate change solutions. Companies are selected in relation to key sub-themes of climate change solutions, which may change from time to time, such as sustainable transport, sustainable construction, sustainable food & water, renewable energy and recycling and re-use. Companies developing solutions within the sub-themes, such as companies developing clean energy from wind, solar or hydro are expected to have positive impacts from a climate change mitigation perspective

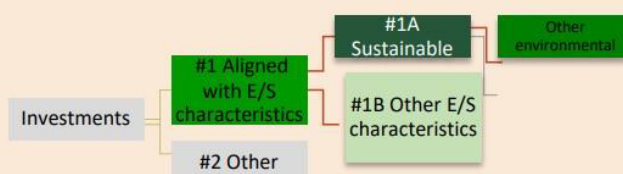
Assessment of the name



What is the asset allocation planned for this financial product?

The financial product commits to a minimum proportion of 90% of investments to attain the characteristic promoted by the financial product, in accordance with the binding elements of the investment strategy. The financial product also commits to invest a minimum proportion of 25% in sustainable investments. The remaining portion of the investment of the financial product consist of cash and other ancillary liquid assets.

[Include only relevant boxes, remove irrelevant ones for the financial product]



#1 Aligned with E/S characteristics includes the investments of the financial product used to attain the environmental or social characteristics promoted by the financial product.

#2Other includes the remaining investments of the financial product which are neither aligned with the environmental or social characteristics, nor are qualified as sustainable investments.

[include the note below where the financial product commits to making sustainable investments]

The category **#1 Aligned with E/S characteristics** covers:

- The sub-category **#1A Sustainable** covers sustainable investments with environmental or social objectives.
- The sub-category **#1B Other E/S characteristics** covers investments aligned with the environmental or social characteristics that do not qualify as sustainable investments.

The name of the fund presents the words “**climate change**”, which can be considered as ESG-related words.

The minimum proportion of investments aligned with E/S characteristics indicated in the planned asset allocation is 90%. The fund also commits to invest at least 25% of its assets in sustainable investments.

As the name is in line with the proposed investments and the minimum proportion is above the 80% threshold required to use an ESG-related word, it is in compliance with the guidance on funds’ names.

Example 2: Sustainable Water Equities Fund

Description of the objectives and policy of the fund

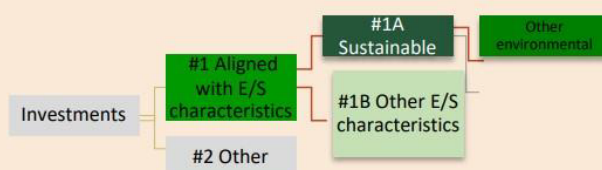
The “Sustainable Water Equity Fund” is an actively managed fund that invests globally in companies offering products and services across the water value chain. The fund will take exposure to equities of companies all over the world which operate or benefit from developments across the water value chain, i.e. utilities, equipment and products for effective water sourcing, collection and distribution, materials for water infrastructure as well as technologies for water quality and analytics.

Assessment of the name



What is the asset allocation planned for this financial product?

The financial product commits to a minimum of 80% of investments to attain the characteristic promoted by the financial product, in accordance with the binding elements of the investment strategy. The financial product also commits to a minimum proportion of 60% in sustainable investments. The remaining portion of the investment of the financial product consist of other investments and cash.



#1 Aligned with E/S characteristics includes the investments of the financial product used to attain the environmental or social characteristics promoted by the financial product.

#2 Other includes the remaining investments of the financial product which are neither aligned with the environmental or social characteristics, nor are qualified as sustainable investments.

[include the note below where the financial product commits to making sustainable investments]

The category **#1 Aligned with E/S characteristics** covers:

- The sub-category **#1A Sustainable** covers sustainable investments with environmental or social objectives.
- The sub-category **#1B Other E/S characteristics** covers investments aligned with the environmental or social characteristics that do not qualify as sustainable investments.

The minimum proportion of investments aligned with environmental characteristics indicated in the planned asset allocation is 80%, The fund also commits to invest at least 60% of its assets in sustainable investments.

The name of the fund presents the word “**water**”, in combination with the word “sustainable” can be considered as an ESG-related combination. In addition, the name clearly features the word “**sustainable**”. As the name is in line with the proposed investments and the threshold of the minimum proportion of investments aligned with environmental characteristics is 80% and the commitment to invest in sustainable investments is 60%, then it is compliant with the guidance on funds’ names.

Example 3: Biodiversity Equity Fund

Description of the objectives and policy of the fund

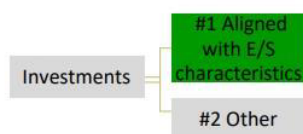
The “biodiversity Equity Fund” has as objective to support the sustainable use of natural resources and ecosystem services, as well as technologies, products and services that help to reduce Biodiversity threats or restore natural habitats.

Assessment of the name



What is the asset allocation planned for this financial product?

The financial product commits to a minimum of 50% of investments to attain the characteristic promoted by the financial product, in accordance with the binding elements of the investment strategy. The remaining portion of the investment of the financial product consist of investments not aligned with environmental or social characteristics and cash



#1 Aligned with E/S characteristics includes the investments of the financial product used to attain the environmental or social characteristics promoted by the financial product.

#2 Other includes the remaining investments of the financial product which are neither aligned with the environmental or social characteristics, nor are qualified as sustainable investments.

[include the note below where the financial product commits to making sustainable investments]

The category **#1 Aligned with E/S characteristics** covers:

- The sub-category **#1A Sustainable** covers sustainable investments with environmental or social objectives.
- The sub-category **#1B Other E/S characteristics** covers investments aligned with the environmental or social characteristics that do not qualify as sustainable investments.

The minimum proportion of investments aligned with E/S characteristics indicated in the planned asset allocation is 50%.

The name of the fund presents the word “**biodiversity**”, which can be considered as an ESG-related word. As the minimum proportion of investments aligned with E/S characteristics is below the threshold of 80%, the fund it is not in compliance with the guidance on funds’ names.

Example 4: Sustainable Society Fund

Description of the objectives and policy of the fund

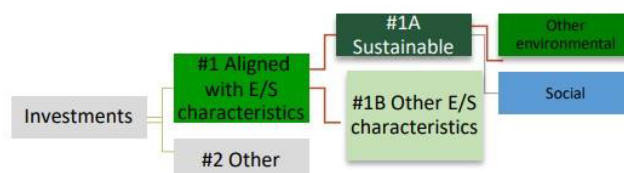
The fund's investment objective is to capitalise on the growth of disruptive and innovating sectors and companies that will shape our future society through the construction of a global equity portfolio centred on seven themes: Security, O2 and Ecology, Cloud & Digital, Industrial 5.0, Elder & Wellbeing, Tech Med, Young Generation. The fund promotes certain environmental and/or social characteristics.

Assessment of the name



What is the asset allocation planned for this financial product?

The financial product commits to a minimum of 80% of investments to attain the characteristic promoted by the financial product, in accordance with the binding elements of the investment strategy. The financial product also commits to invest 20% in sustainable investments. The remaining portion of the investment of the financial product consists of other investments and cash.



#1 Aligned with E/S characteristics includes the investments of the financial product used to attain the environmental or social characteristics promoted by the financial product.

#2Other includes the remaining investments of the financial product which are neither aligned with the environmental or social characteristics, nor are qualified as sustainable investments.

[include the note below where the financial product commits to making sustainable investments]

The category **#1 Aligned with E/S characteristics** covers:

- The sub-category **#1A Sustainable** covers sustainable investments with environmental or social objectives.
- The sub-category **#1B Other E/S characteristics** covers investments aligned with the environmental or social characteristics that do not qualify as sustainable investments.

The minimum proportion of investments aligned with E/S characteristics indicated in the planned asset allocation is 80%. The fund also commits to invest 20% of its assets in sustainable investments.



The name of the fund presents the word “**society**” which can be considered as an ESG-related word when used in combination with the word “sustainable”. In addition, the name features the word “**sustainable**”. As the minimum proportion of investments aligned with E/S characteristics is 80%, the fund is in compliance with the guidance on funds’ names concerning the use of ESG-related words. However, as the commitment to invest in sustainable investments is at 20%, below the threshold of 50%, the fund is not in compliance with the guidance as per the use of the word “sustainable”.

Example 5: Global Impact Fund

Description of the objectives and policy of the fund

The Fund aims to achieve a total return through a combination of capital growth and income on the Fund’s assets. The Fund invests at least 80% of its total assets in equity securities and equity-related securities of companies globally whose goods and services address the world’s great social and environmental problems, alongside financial returns. The Fund will aim to diversify its investments across companies that have an impact on people and the planet across themes including, but not limited to, affordable housing, education and skilling, financial and digital inclusion, public health, safety and security, green energy, pollution remediation and prevention, water and waste.

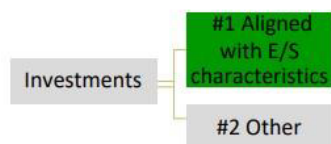
Assessment of the name



What is the asset allocation planned for this financial product?

The fund commits to invest a minimum of 80% of its assets to attain the impact characteristic promoted by the fund, alongside financial returns and in accordance with the binding elements of the investment strategy. The remaining portion of the investment of the financial product consist of other investments and cash.

[Include only relevant boxes, remove irrelevant ones for the financial product]



#1 Aligned with E/S characteristics includes the investments of the financial product used to attain the environmental or social characteristics promoted by the financial product.

#2 Other includes the remaining investments of the financial product which are neither aligned with the environmental or social characteristics, nor are qualified as sustainable investments.

[include the note below where the financial product commits to making sustainable investments]

The category **#1 Aligned with E/S characteristics** covers:

- The sub-category **#1A Sustainable** covers sustainable investments with environmental or social objectives.
- The sub-category **#1B Other E/S characteristics** covers investments aligned with the environmental or social characteristics that do not qualify as sustainable investments.

The minimum proportion of investments aligned with E/S characteristics indicated in the planned asset allocation is 80%

The name of the fund presents the word “**impact**”. The word “**impact**” is expected to be used only for funds investing their minimum proportion with the intent to generate positive, measurable social or environmental impact alongside a financial return. The fund’s investment policy and objective describe the strategy to attain these results. As the minimum proportion of investments in impact generating activities is over the 80% threshold, the fund is in compliance with the guidance on funds’ names concerning the use of the word “**impact**”.