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

18 November 2022

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 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	The Norwegian Consumer Council (Forbrukerrådet)
Activity	Non-financial counterparty
Are you representing an association?	☐
Country/Region	Norway

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

Knowledge and information promote consumer power and enable consumers to make informed choices. Consumers must therefore be informed and enabled to make sustainable choices, including through good labelling schemes, so that more people become aware of the possibility to make green choices.

The Norwegian Consumer Council is concerned with securing consumers' right to be able to choose sustainable products and services and believes that in the ongoing shift towards a greener future, consumers must be informed of the environmental consequences linked to the choices of various financial products and services, in the same way as for other product information.

Investors are allocating an ever-increasing proportion of their portfolios towards ESG strategies in order to use their capital to help sustainable purposes and reasonably expect funds with such names to invest in companies with policies, practices, or characteristics that are consistent with ESG standards. Thus, it is important that ESG and sustainability dimensions presented to consumers also measures the ESG and sustainability impact of an investment in a clear and consistent way.

It is important to avoid greenwashing and strengthen consumer and retail investor protection. Consequently, it is necessary that labelling schemes, classification systems for sustainable business, standards for green financial products and reference indices for sustainable investments are established in an honest way. It is important that financial products that are sold as sustainable by financial institutions are communicated on a truthful basis. This requires clear labelling schemes and the existence of objective standards and benchmarks for green financial products and sustainable investments.

All relevant retail investment products should highlight the main features regarding their environmental and/or social objectives in their KIDs (Key Information Document) in an understandable way. Such information must be easily and readily accessible, and consumers should not be expected to familiarize themselves with extensive documentation in order to obtain an overview. Information needs to be presented in a way that provide clarity to consumers and retail investors. One possibility could be to build upon a type of colour rating system with a scale somewhat similar to the already well-known EU energy label, where a solid green A is the most energy efficient and a deep red G the least efficient, or by using a more simplified traffic light model (green, yellow, red). In the case of the traffic light model, only article 9 funds should be able to obtain the green light.

In order to ensure that a rating give the correct expression of the sustainability of a financial product, an independent third party should generally always carry out such classification. This would also provide non-professional retail investors with valuable and trustworthy information prior to a transaction and might be used as a potential differentiator between various funds. It is also necessary to strengthen oversight by the supervisory authorities to ensure that classifications are carried out correctly.

Consumer and investor protection must also be strengthened by establishing clear requirements for labelling schemes that also account for the climate risk that various financial investments are exposed to. Financial institutions should be required to incorporate assessments of climate risk, both in connection with specific investment projects and in connection with the sale of fund and savings products to consumers.

New regulation is necessary to help consumers and retail investors to navigate an increasingly complex investment product landscape and to protect them from greenwashing. Tackling greenwashing should be a core priority to protect consumers, to protect and enhance market integrity, and to promote effective competition in the interests of consumers.

The Norwegian Consumer Council would also make ESMA aware that we have carried out samples tests of fund products offered by Norwegian fund providers, who for years have made use of ESG and sustainability in their names. Our findings shows that some providers are partly struggling with classifying own funds correctly while others are partly indifferent to whether or not their so-called sustainable funds contain non-sustainable investments. It is therefore crucial that the criteria that are established when it comes to naming funds are made absolutely clear, so that misunderstandings and misinterpretations are avoided to the greatest extent possible.

<ESMA_QUESTION_FUNA_0>

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

<ESMA_QUESTION_FUNA_1>

Yes, the Norwegian Consumer Council agree with the notion in the consultation document that the proposed guidelines should address funds' names by proposing quantitative thresholds criteria for the use of ESG- and sustainability-related terminology. This would help to prevent potential greenwashing risk in funds' names.

According to the proposal, which we mostly support, certain minimum shares of the investments in funds that use ESG or sustainability concepts in the name of the fund must promote environmental or social characteristics or be sustainable. However, these thresholds need to be as high as possible, preferably as close to 100 percent as possible.

We also agree that placements must be in accordance with the investment strategy. However, the guidelines also need to contribute to investor protection and ensure fair, clear, and non-misleading marketing of funds, to avoid greenwashing.

It is fundamental that the stated investment strategy and what is communicated about a fund's characteristics correspond to how the fund is actually managed, unless there are special conditions or characteristics of the fund that necessitate deviations. Misleading information about the sustainability of financial products can undermine the purpose of the new regulations and contribute to weakening confidence in the financial markets in general.

The fund managers need up-to-date information from companies that the funds are invested in (or are considering investing in) in order to be able to classify the investments correctly and to publish the correct information. It is vital that third parties who contribute background information to the fund companies linked to the classification of fund portfolios ensure that the information is updated and correct at all times.

<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>

A threshold of 80 percent is basically too low to allow funds to be named using any ESG- or impact-related words. Such a threshold would imply that 20 percent of the investment may be classified as un-sustainable, which in turn could be characterized as greenwashing. Therefore, if an initial threshold of 80 percent is set, then the Norwegian Consumer Council will stress that the requirements of the remaining 20 percent of the investments should satisfy “do-no-harm” requirements, and the one-fifth of the investments that initially cannot be classified as sustainable should gradually have to increase the degree of compliance related to ESG- or impact-related requirements within a relatively short period of time like, for example, over a span of 5-10 years.

Also, the distinction between funds using ESG- or impact-related words and funds using the word "sustainable" should be eliminated. The same set of rules should apply to all such funds regardless of whether they use ESG- or impact-related terms or sustainability-related terms in the names of the funds.

<ESMA_QUESTION_FUNA_2>

Q3 : Do you agree to include an additional threshold of at least 50% of the 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>
Even if a small portion of a fund is not sustainable, then it would be greenwashing to use the word "sustainable" in the name of the fund. It is our understanding that the proposed figure of 50 percent is in conjunction with the proposed 80 percent figure in Q2, which in effect will put the threshold for using the word "sustainable" at only 40 percent of the portfolio. In our view, the proposed threshold is way too low for a fund to be classified and named by using words like "sustainable".

The Norwegian Consumer Council will point out that if an equity portfolio is to be classified as truly sustainable, then close to all investments in the portfolio should generally also comply with strict sustainability requirements. If stricter rules are not introduced from day one, then the requirements should be sufficiently tightened over a relatively short period of time until the goal of near full compliance is achieved.

Also, the distinction between funds using ESG- or impact-related words and funds using the word "sustainable" should be eliminated. The same set of rules should apply to all funds regardless of whether they use ESG- or impact-related terms or sustainability-related terms in the names of the funds.

<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>
We currently have no comments on this question.
<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>
We currently have no comments on this question.
<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, the Norwegian Consumer Council support the need for minimum safeguards for investment funds with an ESG- or sustainability-related term in the name of the fund. It is important that consumers can trust investment products that are labelled as sustainable, that such products contribute to positive environmental or social outcomes. If the financial industry is making either exaggerated, misleading, or unsubstantiated sustainability-related claims about their financial products, then consumers' trust in investment products that are labelled as "sustainable" or ESG-compliant will gradually erode over time.

Also, if consumers cannot trust claims that the financial industry make about the sustainability of their investment products, they will probably shy away from investing in such products, which in turn will slow the flow of much-needed capital to investments that can genuinely drive positive impact and change.

<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>

We currently have no comments on this question.

<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>

We currently have no comments on this question.

<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>

We currently have no comments on this question.

<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>

Yes, it is difficult to argue that funds with designated indexes as reference benchmarks should be exempt from the requirements for funds' names that other funds will have to meet.

<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>
Yes. Physical and synthetic replication for index-tracking should be distinguished. As there is no connection between companies in a synthesised index and the fund itself, there is also no sustainability-relevant effect. Therefore, the Norwegian Consumer Council would propose that synthetic funds should not be allowed to have names that include ESG- or sustainability-related terms.
<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>
Yes, the Norwegian Consumer Council support the suggestion that funds using the word "impact" or "impact investing" or any other impact-related term in their name should meet specific provisions and thresholds in the guidelines. Funds claiming to make an impact have to make investments with the intention to generate positive and measurable social or environmental impact alongside a financial return. Stricter requirements would also be a reasonable supervisory solution in the short and medium term.

The Norwegian Consumer Council will also point out that the British FCA (Financial Conduct Authority) is currently in the process of strengthening provisions and expectations regarding impact investment products in the UK, a process that ESMA might consider exploring in parallel with the similar on-going process in the EU.

<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>
We currently have no comments on this question.
<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>
The Norwegian Consumer Council support similar guidelines for other financial products. Knowledge and information generally promote consumer power and enable consumers to make informed and better choices. In order for consumers to make sustainable choices, the basic requirement is that consumers are informed.
<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>

A transitional period of 6 months from the date of the application of the Guidelines for existing funds, seems reasonable. It would allow providers enough time to either bring their investments in line with the Guidelines or adjust/change the naming of any funds that are not in compliance with the Guidelines.

<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>

Yes. The Norwegian Consumer Council support applying naming-related provisions to closed-ended funds which have terminated their subscription period before the application date of the Guidelines. Names on such funds matter because closed-end funds are still traded even after the initial offering is over. Consumers and retail investors should always be informed and made aware whether the fund they hold complies with the requirements in the Guidelines, or not.

<ESMA_QUESTION_FUNA_14>

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

<ESMA_QUESTION_FUNA_15>

The Norwegian Consumer Council will emphasize that the Sustainable Finance Disclosure Regulation (SFDR) and the taxonomy regulation is a framework that contains criteria for classifying economic activity as environmentally sustainable. The purpose is to channel capital to sustainable activities and projects and to prevent greenwashing. The regulation defines six climate and environmental targets, and for an activity to be defined as sustainable, it must contribute significantly to the achievement of at least one of the goals, and not have a significant negative impact on the other goals. In addition, the activity must meet minimum requirements for social and governance conditions. It is crucial that both the taxonomy and the SFDR contribute to achieving these goals.

The SFDR will hopefully increase comparability and reduce greenwashing among financial products. The SFDR sets out strict criteria for the classification of funds that are defined as sustainable, and these criteria are described in the regulation's Articles 6, 8 and 9. The regulation will increase the information available for retail investors about both the potential positive and negative impact of their investments.

The taxonomy guidelines, together with a common European system for labelling of funds, where the main purpose is to channel private savings into green transition, should be expected to add restructuring capital to climate-friendly businesses at the expense of businesses that are not climate-friendly. The taxonomy, therefore, if implemented the right way, has the potential to provide a common, climate-related ranking system for funds and pension savings.

Providing consumers and retail investors with relevant information about the sustainability of an investment would also follow up on the 2016 Paris Agreement on Climate Change and the United Nations 2030 Agenda for Sustainable Development and would support in transforming Europe's economy into a greener, more resilient, and circular system. The needs of the present must not compromise the ability of future generations to meet their needs.

<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 currently have no comments on this question.
<ESMA_QUESTION_FUNA_16>

Q17