

Asset Management & Investment Funds Update

December 2022



ESMA Proposes Minimum Investment Thresholds for Article 8 and 9 Funds

On 18 November 2022, ESMA published draft guidance on fund names for consultation which includes quantitative and qualitative thresholds for use by UCITS managers and AIFMs of ESG-related, sustainable and/or impact-related terms in fund names (the **Guidance**). The consultation on the Guidance is open until February 2023.

If finalised in its current form, the Guidance would introduce minimum investment criteria for Article 8 and 9 funds which would be triggered by the use one or more of the specified terms in the fund name.

Notably, ESMA specifically states that the Guidance is not for SFDR or Taxonomy disclosure rules. Instead, the Guidance is proposed in respect of the UCITS and AIFMD rules to act honestly and fairly and on the basis that managers' compliance with those rules can only be ensured if funds using one or more of the specified terms comply with the relevant quantitative and qualitative investment thresholds.

Quantitative & qualitative thresholds

The proposed Article 8 and 9 thresholds for use of ESG-related, sustainable or impact-related terms in the name are:

- **Article 8 funds** (including index trackers) that use **any ESG-related words** in the name, should invest a **minimum of 80% in environmentally or socially (E/S) aligned investments** (on an ex-ante and ex-post basis). Examples of ESG-related words include 'society', 'impact', 'biodiversity', 'water', 'climate change'. By way of additional criteria for such funds with the term 'impact'/'impact investing' or any other impact-related term, ESMA expects disclosure of investment in E/S aligned investments 'with the intent to generate, positive, measurable social or environmental impact alongside a financial return'.
- **Article 8 funds** (including index trackers) that use the term '**sustainable**' or any derivative thereof in its name, should invest a **minimum of 50% of its E/S aligned investments in SIs** (on an ex-ante and ex-post basis). By way of additional criteria for funds with the term 'impact'/'impact investing' or any other impact-related term, ESMA expects disclosure of investment in E/S aligned investments 'with the intent to generate, positive, measurable social or environmental impact alongside a financial return' in addition to the fund's compliance with the quantitative thresholds.
- **Article 9 funds** (including index trackers) that use **any ESG-related words and/or the term 'sustainable' or any derivative** thereof in the name, should invest **at least 80% in SIs** (on an ex-ante and ex-post basis). By way of additional criteria for funds with the term 'impact'/'impact investing' or any other impact-related term, ESMA expects disclosure of investment in SIs 'with the intent to

generate, positive, measurable social or environmental impact alongside a financial return' in addition to the fund's compliance with the quantitative thresholds.

- **any Article 8 or 9 fund** that uses either an **ESG or sustainability-related term** is recommended to apply **minimum safeguards** to all fund investments including the exclusion criteria applicable to PABs under Article 12 BMR delegated regulation (2020/1288).

Binding limits & breaches

The above minimum investment amounts would apply on a binding basis throughout the life of the fund. Any temporary breach of a limit which is not due to a deliberate choice of the manager would be treated as a passive breach and should be corrected in the best interests of investors. Non-passive breaches should be a risk indicator for further investigation and supervisory action by the NCA.

Next steps

ESMA expects to publish finalised Guidance by Q2/Q3 2023 with an application date of 3 months after the publication of translations on the ESMA website. The application date would be subject to a transitional period of 6 months for existing funds. By the end of the 6-month transitional period, funds must either have adjusted their portfolio to comply with the thresholds or changed the name of the fund to remove the relevant ESG-related term.

The following is an extract from ESMA Chair [speech](#) addressing the consultation:

"In addition, today ESMA is launching a consultation paper on draft guidelines on the use in funds' names of ESG or sustainability-related terms. Many voices both in the public and private sector have expressed concerns with the misuse of article 8 and article 9 categories in the SFDR as marketing labels. We hope that through our proposal on the use of names we may address any such misuse of these categories by funds. Fund names are a powerful marketing tool, especially for retail investors. In order not to mislead investors, ESMA believes that when ESG- or sustainability-related terms are used in a fund's name, this should be 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. We are particularly seeking input on the introduction of quantitative thresholds for what would be the minimum proportion of investments to support the ESG or sustainability-related terms in funds' names. We are suggesting a threshold of 80% when ESG related terms are used and an additional threshold of 50% where sustainable or sustainability related terms are used. I encourage you to take part in this consultation, share your views, comments and suggestions. Your feedback will be essential."

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