

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

Top 10 talking points

UPDATE: August 2024

On 14 May 2024, ESMA published its final [Guidelines](#) on funds' names using ESG or sustainability-related terms (the **ESMA Guidelines**). This follows its consultation on the Guidelines in November 2022 (which we reported on [here](#)) and its interim update in December 2023 (reported on [here](#)). We have discussed the change from the draft guidelines [here](#).

The effect of the ESMA Guidelines is to impose **quantitative investment requirements and mandatory exclusions** on funds using ESG or sustainability-related terms in their name. Funds with ESG terms in their name will either need to **comply with these restrictions or change their name**.

The ESMA Guidelines are published under new mandates granted to ESMA under the amended AIFMD and UCITS Directive (amended by [Directive 2024/927](#)). These new mandates request ESMA to develop guidelines specifying the circumstances where the name of an AIF or UCITS is unclear, unfair or misleading.

This note provides our summary of the top 10 things that firms need to know about the ESMA Guidelines.

1. Who do the ESMA Guidelines apply to?

The ESMA Guidelines apply to:

- EU UCITS management companies,
- self-managed EU UCITS,
- Alternative Investment Fund Managers (**AIFMs**)
- self-managed Alternative Investment Funds (**AIFs**).

The ESMA Guidelines also apply to EU competent authorities.

2. What funds do the ESMA Guidelines apply to?

The ESMA Guidelines apply to **EU UCITS** and to **AIFs** (both open- and closed-ended).

This includes European Venture Capital Funds (**EuVECA**), European Social Entrepreneurship Funds (**EuSEF**), European Long-term Investment Funds (**ELTIF**) and Money Market Funds (**MMFs**).

The final report suggests that the ESMA Guidelines will apply to closed-ended funds, even if they are closed to further investment at the time the ESMA Guidelines apply. We expect that it may be operationally difficult to apply the ESMA Guidelines to funds which are closed to further investments (particularly closed-ended funds) and so firms managing such funds may wish to seek further advice on the scope and application of the ESMA Guidelines.

The ESMA Guidelines do not have the same scope as the EU Sustainable Finance Disclosure Regulation (**SFDR**) which applies to a broader range of financial products (including portfolio management services, insurance based investment products and certain pension products). As a result, other SFDR financial products will not be subject to the ESMA Guidelines, even where they are using ESG or sustainability-related terms in their name.

3. Do the ESMA Guidelines apply to non-EU firms and non-EU funds?

The ESMA Guidelines (and ESMA's Final Report) do not expressly state whether or not non-EU AIFMs and non-EU AIFs are in scope.

EU AIFM marketing a non-EU AIF?

Non-EU AIFs managed by an EU AIFM will likely be in scope of the ESMA Guidelines where they are marketed in the EU.

Non-EU AIFM marketing an AIF?

As the ESMA Guidelines are made by ESMA under Article 23(7) AIFMD, and non-EU AIFMs marketing AIFs in the EU under Article 42 AIFMD (the national private placement regimes, where available) are required to comply with Article 23 AIFMD, there are strong arguments that the ESMA Guidelines should apply to such AIFs. Note that this would align with the application of SFDR to non-EU AIFMs marketing AIFs in the EU – and the Commission has indicated that product names can be means by which environmental or social characteristics can be promoted, thereby triggering Article 8 SFDR disclosures.

However, the picture is not black and white, and some non-EU managers may be willing to take a risk-sensitive view on this matter, particularly pending any definitive confirmation from ESMA or from relevant EU competent authorities.

Non-EU AIFM relying on reverse enquiry?

Non-EU AIFMs who rely on reverse enquiry (i.e., they do not carry on AIFMD marketing) will not be caught by the ESMA Guidelines.

UK AIFMD?

There is no indication that the UK FCA will apply the ESMA Guidelines in the context of UK AIFMD post-Brexit. Further discussion of similar FCA rules is set out at **Q9** below.

4. When will the ESMA Guidelines apply? (Updated 21 August 2024)

On 21 August 2024, ESMA [published](#) the official translations of the ESMA Guidelines, which triggers the application timeline.

The ESMA Guidelines will apply to **new funds** three months after the publication date and to **existing funds** nine months after the publication date. There is therefore effectively a six month transitional period for existing funds to comply.

21 August 2024	ESMA Guidelines (+ translations) published on ESMA's website
21 October 2024	Deadline for EU member state competent authorities to notify ESMA whether they comply or intend to comply with the ESMA Guidelines
21 November 2024	ESMA Guidelines apply to new funds created from this date
21 May 2025	ESMA Guidelines apply to funds existing prior to 21 November 2024

5. In what circumstances do the ESMA Guidelines apply?

The ESMA Guidelines apply when the name of an in-scope fund uses an ESG or sustainability-related term in its name.

There is not a specific list of words which trigger the ESMA Guidelines. Instead, there are categories of words identified in the ESMA Guidelines, with a short non-exhaustive list of examples, as set out in the table below.

The use of a particular category of term will trigger different requirements per **Q6** below. Furthermore there are specific requirements where terms are used in combination.

"Transition"-related terms	any terms derived from the base word "transition", e.g. "transitioning", "transitional" etc. and those terms deriving from "improve", "progress", "evolution", "transformation", "net-zero", etc.
"Environmental"-related terms	any words giving the investor any impression of the promotion of environmental characteristics, e.g., "green", "environmental", "climate", etc. These terms may also include "ESG" and "SRI" abbreviations.
"Social"-related terms	any words giving the investor any impression of the promotion of social characteristics, e.g., "social", "equality", etc.
"Governance"-related terms	any words giving the investor any impression of a focus on governance, e.g., "governance", "controversies", etc.
"Impact"-related terms	any terms derived from the base word "impact", e.g., "impacting", "impactful", etc.
"Sustainability"-related terms	any terms only derived from the base word "sustainable", e.g., "sustainably", "sustainability", etc.

Note that “SRI” (socially responsible investments) has been expressly identified as an “environmental”-related term, thereby triggering certain additional environmental-related exclusion requirements as identified in **Q6** below. It is not clear whether this is a drafting error.

The ESMA Guidelines are not triggered in other circumstances (for example where an ESG or sustainability-related term is used in fund marketing materials).

6. What are the requirements where a fund uses an ESG or sustainability-related term in its name?

Use of an ESG or sustainability-related term in a fund name will trigger mandatory quantitative investment requirements and exclusions to the fund. (If a fund manager is unwilling or unable to comply with these restrictions, then it will need to change the name of the fund, to cease using the relevant ESG term which triggers these requirements).

The table below sets out the requirements that apply to an in-scope fund using an ESG or sustainability-related terms in its name. Note that different requirements may apply for different terms and there are specific provisions where a fund uses more than one term in its name.

ESMA expects competent authorities to consider the below requirements through the life of the fund. A temporary deviation from the threshold and the exclusions, should be treated as a passive breach and corrected in the best interest of the investors, provided that the deviation is not due to a deliberate choice by the fund manager.

Terms	Transition-related	Social-related	Governance-related	Environmental-related	Impact-related	Sustainability-related
Asset Threshold (see further at Q7 below)	Fund should meet an 80% threshold linked to the proportion of investments used to meet environmental or social characteristic or sustainable investment objectives in accordance with the binding elements of the investment strategy, which are to be disclosed in the SFDR pre-contractual disclosure templates.					
Additional asset-level requirements	Fund should ensure that assets used to meet the 80% threshold are on a clear and measurable path to social or environmental transition	N/A			Fund should ensure that assets used to meet the 80% threshold are made with the objective to generate a positive and measurable social or environmental impact alongside a financial return	Fund should commit to invest meaningfully in “sustainable investments” referred to in Article 2(17) of the SFDR. NB. There is no further guidance as to how “meaningfully” should be interpreted.

Terms	Transition-related	Social-related	Governance-related	Environmental-related	Impact-related	Sustainability-related
Baseline Exclusions (see further at Q8 below)	Fund should exclude investments per the exclusions for Climate Transition Benchmarks (CTBs) in Commission Delegated Regulation 2020/1818 (Article 12(1)(a) – (c)): <ul style="list-style-type: none"> • companies involved in any activities related to controversial weapons • companies involved in the cultivation and production of tobacco • companies that benchmark administrators find in violation of the United Nations Global Compact (UNGC) principles or the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises 					
Additional Exclusions (see further at Q8 below)	N/A			In addition to the Baseline Exclusions, the fund should exclude investments per the exclusions for Paris-aligned Benchmarks (PABs) in Commission Delegated Regulation 2020/1818 (Article 12(1)(d) – (g)):: <ul style="list-style-type: none"> • companies that derive 1 % or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite • companies that derive 10 % or more of their revenues from the exploration, extraction, distribution or refining of oil fuels • companies that derive 50 % or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels • companies that derive 50 % or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO₂ e/kWh. 		
Combination of terms	If terms are used in combination, the relevant requirements shall apply cumulatively. Note where environmental-related terms are combined with transition-related terms in the fund name, only the requirements for funds using transition-related terms will apply. For example, a fund using both transition-related and environmental-related terms in its name would only have to apply the Baseline Exclusions, not the Additional Exclusions.				No additional requirements where sustainability-related terms are used in combination with other terms.	

Note that the above requirements will also apply to funds which have designated an index as a reference benchmark (eg passive funds). The ESMA guidelines make no distinction between funds replicating an index either synthetically (eg through a total return swap) or physically.

7. How should the 80% threshold be calculated?

Despite raising the question in its consultation paper (specifically in relation to calculation methodologies for derivatives) ESMA decided not to provide any guidance on how the 80% threshold should be calculated.

Instead the 80% threshold should be derived from the SFDR pre-contractual disclosures for Article 8 and Article 9 funds – in particular the narrative description in the section “*What is the asset allocation planned for the financial product?*” in the pre-contractual disclosure templates.

As a result, the 80% threshold will be dependent on how the fund manager has decided to calculate asset allocation for the purposes of SFDR pre-contractual disclosures.

We are aware that different firms have taken different approaches with regards to the asset allocation disclosures under SFDR – for example, determining which assets are used to meet environmental and/or social characteristics where an exclusion/negative screening strategy is applied and whether to include uninvested cash in the denominator etc.) In the absence of guidance under the ESMA Guidelines, firms will need to ensure that they are at least consistent with the approach taken under SFDR in the application of the ESMA Guidelines.

8. How should the exclusions be applied?

The references to the CTB and PAB rules are a read-across of the mandatory sectoral exclusions under the Benchmark Regulations. A fund must apply those exclusions to its investments. (There is no requirement that funds use a CTB or PAB as a reference benchmark or otherwise make use of those benchmarks.)

Although not explicit in the ESMA Guidelines, it is understood that the reference to “benchmark administrators” in relation to violations of the UNGC Principles of OECD Guidelines should be a reference to the fund manager/fund. There is no further guidance on how firms should apply this particular exclusion.

It is important to note that the exclusions only apply in relation to investment in companies. As a result, other asset classes (such as sovereign debt and real estate) are not caught by the exclusion criteria.

ESMA has clarified that the exclusions would apply to companies “regardless of how investment in those companies are made or which financial instrument those companies may issue”. Taking into account the ESMA response to consultation feedback in relation to funds designating an index as a reference benchmark (see **Q6** above), this would suggest that synthetic exposure to such companies should also be subject to the exclusions.

9. How do the ESMA Guidelines compare with the UK FCA’s Naming and Marketing Rules?

As part of its Sustainability Disclosure Requirements (**SDRs**), the UK Financial Conduct Authority (**FCA**) has introduced new rules (applicable from **2 December 2024**) in relation to the use of ESG related terms in fund names and marketing. For further details on the FCA’s SDRs and investment labels rules, see our client note [here](#).

The table below compares the ESMA Guidelines with the FCA rules.

	FCA Naming and Marketing Rules	ESMA Guidelines
Scope (firm)	<ul style="list-style-type: none"> • UK UCITS Management companies • UK AIFMs. 	<ul style="list-style-type: none"> • EU UCITS Management Companies, • EU AIFMs • non-EU AIFMs marketing AIFs in the EU (see Q3 above)

	FCA Naming and Marketing Rules	ESMA Guidelines
Scope (fund)	<ul style="list-style-type: none"> • UK UCITS • UK AIFs (excluding qualifying Social Entrepreneurship Funds (SEFs), qualifying venture capital funds (RVECAAs) and closed-ended AIFs that makes no additional investments after 22 July 2013) <p>Non-UK funds are not in scope of the FCA Rules (although may be extended to non-UK funds under the Overseas Funds Regime)</p>	<ul style="list-style-type: none"> • EU UCITS • EU AIFs • non-EU AIFs marketed in EU (see Q3 above) <p>EuVECA, EuSEF, ELTIF and MMFs are included.</p>
Professional / retail	The FCA Naming and Marketing Rules only apply where funds are sold to retail investors .	The ESMA Guidelines apply regardless of whether the fund is sold to retail or professional investors .
Prohibited terms	“Sustainable”, “sustainability”, “impact” are prohibited terms in fund names. Funds can only use such terms if the fund is using a Sustainability Label.	None.
ESG terms	<p>The FCA Rules provide for a non-exhaustive list of ESG terms that trigger the Naming and Marketing Rules:</p> <ul style="list-style-type: none"> • ‘ESG’ (or ‘environmental, social and governance’); • ‘environment’, ‘environmental’ or ‘environmentally’; • ‘social’ or ‘socially’; • ‘climate’; • ‘sustainable’ or ‘sustainability’; • ‘green’; • ‘transition’; • ‘net zero’; • ‘impact’; • ‘responsible’; • ‘sustainable development goals’ or ‘SDG(s)’; • ‘Paris-aligned’; and • any other term which implies that a fund has environmental and/or social characteristics. 	<ul style="list-style-type: none"> • Transition-related terms • Environmental-related term • Social-related term • Governance-related term • Impact-related terms • Sustainability-related terms <p>See Q4 above</p>
Trigger event	Where an ESG term is used in a fund name or where it is used in a financial promotion to retail clients.	Where an ESG term is used in a fund name only.
Mandatory exclusions	None	Yes, depending on the term used in the fund name, the ESMA Guidelines apply the exclusions derived from the requirements for PABs or CTBs (see Q6 and Q8 above)

	FCA Naming and Marketing Rules	ESMA Guidelines
Asset threshold requirements	<p>If a fund is using an ESG-related term in its name:</p> <ul style="list-style-type: none"> • The fund must have environmental and/or social characteristics • The fund name must accurately reflect those characteristics <p>FCA guidance states that the characteristics should be material to the fund (eg at least 70% of the fund's assets should have environmental and/or social characteristics).</p>	<p>Yes – an 80% threshold applies (see Q6 and Q7 above)</p>
Additional disclosure requirements	<p>Yes. A fund using an ESG term in its name or in a financial promotion is required to prepare a consumer facing disclosure, make certain pre-contractual disclosures and carry out periodic reporting.</p>	<p>No additional disclosure requirements beyond the requirements under SFDR.</p>

10. What should firms be doing now?

Given the relatively short timeframes before the ESMA Guidelines apply, firms need to:

1. **Scope (funds):** Identify which of their existing and proposed UCITS and AIFs are in scope of the ESMA Guidelines
2. **Scope (fund names):** Identify which of their funds are using ESG or sustainability-related terms in their name, and which category(ies) of term is(are) being used
3. **Assess compliance:**
 - Determine (in accordance with their SFDR pre-contractual disclosures) whether the funds meet the **Asset Threshold** and any **Additional Asset Level Requirements**
 - Determine whether the funds meet the **Baseline Exclusion Requirements** and, if applicable, the **Additional Exclusions**
4. **Confirm compliance:** For those in-scope funds, by the relevant deadline firms will either need to:
 - Confirm that the fund will meet the specific investment requirements determined by the relevant term used (this could include amending investment strategies/portfolios and consequent updates to disclosures) or
 - Change the name of the fund.

Simmons + Simmons key contacts



Nick Colston

Partner

T +44 20 7825 4147

E nicholas.colston@simmons-simmons.com



Dr Harald Glander

Partner

T +49 69 907454 44

E harald.glander@simmons-simmons.com



Lucian Firth

Partner

T +44 20 7825 4155

E lucian.firth@simmons-simmons.com



Louise Tudor Edwards

Partner

T +44 20 7825 4539

E louise.tudor-edwards@simmons-simmons.com



James Wallace

Partner

T +44 20 7825 4249

E james.wallace@simmons-simmons.com



Daniel Lühmann

Partner

T +49 69 907454 25

E daniel.luehmann@simmons-simmons.com



Niamh Ryan

Partner

T +353 1266 1115

E niamh.ryan@simmons-simmons.com



James McKnight

Partner

T +353 1266 1122

E james.mcknight@simmons-simmons.com



France Vassaux

Partner

T +331 5329 1705

E france.vassaux@simmons-simmons.com



Augustin de Longeaux

Partner

T +352 26 21 16 34

E augustin.delongeaux@simmons-simmons.com



Pieter Leguit

Partner

T +352 26 21 16

E pieter.leguit@simmons-simmons.com



Benedikt Weiser

Partner

+49 96 907454 47

E benedict.weiser@simmons-simmons.com



Naomi Makita

Supervising Associate

T +352 26 21 16

E naomi.makita@simmons-simmons.com



Tristram Lawton

Of Counsel

T +44 20 7825 3488

E tristram.lawton@simmons-simmons.com

For additional information on our firm, please visit our website at simmons-simmons.com

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