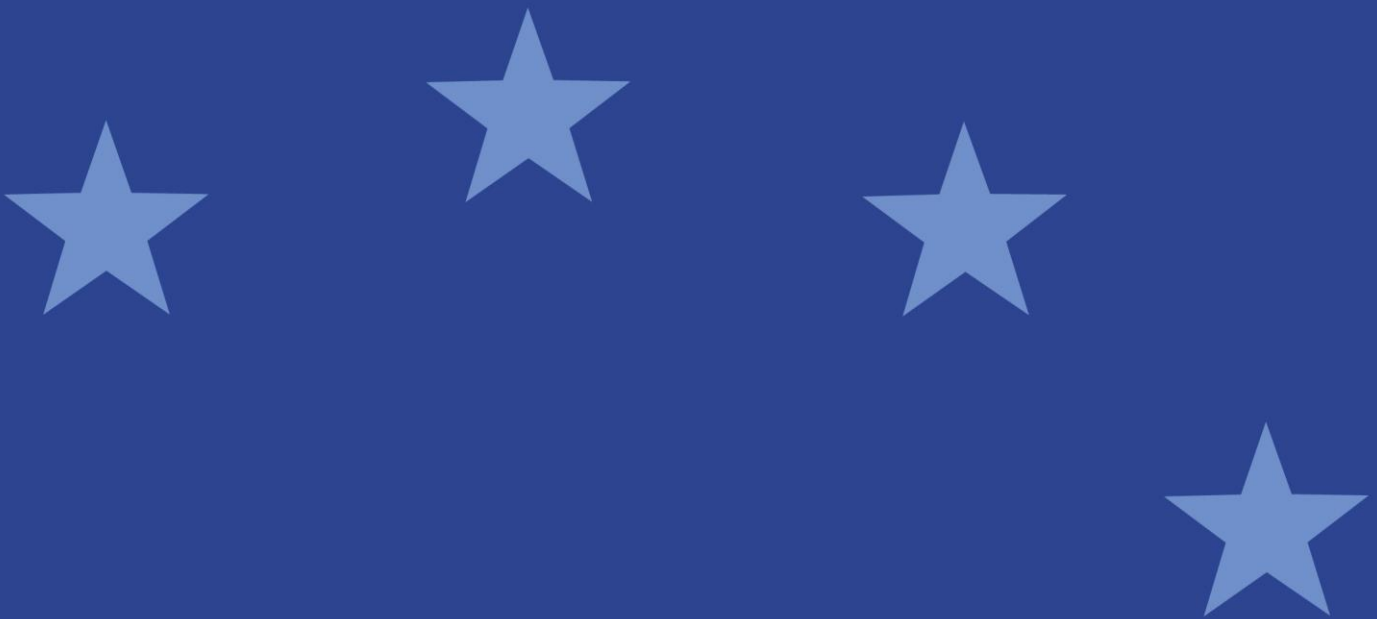




European Securities and
Markets Authority

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



18 November 2022

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Consultation Paper on Guidelines for the use of ESG or sustainability-related terms in funds' names published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered);
- do not remove the tags of `<ESMA_QUESTION_FUNA_0>` - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

Naming protocol

In order to facilitate the handling of stakeholders' responses please save your document using the following format:

`ESMA_CP_FUNA_NAMEOFCOMPANY_REPLYFORM.`

e.g. if the respondent were ABCD, the name of the reply form would be:

`ESMA_CP_FUNA_ABCD_REPLYFORM`

Deadline

Responses must reach us by 20 February 2022.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses



All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



General information about respondent

Name of the company / organisation	WSBI - ESBG
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESMA_QUESTION_FUNA_0>

The European Savings and Retail Banking Group (ESBG) represents the locally focused European banking sector, helping savings and retail banks in European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs.

ESBG members have total assets of €6,38 trillion, provide 313 billion euros in loans to SMEs and serve 163 million Europeans seeking retail banking services. ESBG unites at EU level some 871 savings and retail banks, which together employ 610.000 people driven to innovate at more than 41.000 branches.

With roots in 1924, WSBI-ESBG members enjoy a long history of socially responsible banking around the world. Although organizational structures vary from country to country, they each share certain values in their business models, embedded within the **three “R”s**:

- **Retail:** ESBG members are actively providing financial services for people – individual consumers and their households – as well as for MSMEs and local authorities and financing the real economy.
- **Regional:** ESBG members deploy broad distribution networks rooted within the communities they serve, including local and regional outreach in both urban and rural areas. Savings mobilized locally support the local economy.
- **Responsible:** Social responsibility is a core value of our members, towards their clients, employees, communities and the environment. Unlike Wall Street players, ESBG members are Main Street players.

<ESMA_QUESTION_FUNA_0>

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

<ESMA_QUESTION_FUNA_1>

First of all, ESBG welcomes ESMA's objective to tackle greenwashing and would like to recall that its members are intensively dedicated to the traceability, transparency and credibility of the sustainability features they have to consider in investment advice and financial portfolio management. Regarding the possibility to introduce thresholds, ESBG believes it is important to make sure that a harmonized methodology regarding the meaning of "ESG" and "sustainability" in the names of funds is implemented so that funds' investments are aligned with the features they claim. In this regard, in September 2022, the European Supervisory Authorities (ESAs) published a [list of queries](#) relating to the interpretation of Union law with reference to Regulation (EU) 2019/2088 (the Sustainable Finance Disclosure Regulation "SFDR") they had submitted to the European Commission, including relevant questions about Article 8 and Article 9 of the SFDR.

Indeed, as a prerequisite, **there must be a clear and scientifically comprehensible uniform legal definition of "sustainability" to be able to present sustainability features in investment products.** This harmonization would benefit not only the financial sector but also customers and supervisors. Whether establishing a clear distinction between the notions of "ESG" and "sustainability-related terms" within funds' names would provide more clarity for customers remains to be seen though. As for us, we believe that the distinction between "ESG" and "sustainability" is not clear, especially since some terms could fall into both categories (e.g. "climate"). EU sustainability-related initiatives, first and foremost the SFDR and the EU Taxonomy Regulation, are already aiming at creating a harmonised cross-border framework for offering sustainable products in the EU. The definition of sustainability preferences under MiFID II and IDD harmonises the understanding in distribution. Therefore, ESBG assesses that an additional regime with thresholds only for the fund market may create eventually confusion for product providers, distributors and investors. Not to mention that some countries have already started to regulate the use of ESG terms in funds' names. For instance, the French AMF (Autorité des Marchés Financiers) introduced some kind of a naming rule in its 2020/03 recommendation.

Therefore, **ESBG does not believe that there is a need to introduce quantitative thresholds to assess funds' names.** Indeed, ESBG believes it is too early to set thresholds until a harmonized methodology for "sustainable investments" is provided. In this regard, instead of implementing a naming rule that would end up defining what an ESG or sustainable product is, ESBG would rather prefer defining clearly what an ESG or sustainable product should be with a clear and unified methodology in the first place.

Moreover, from a distribution point of view, the respective quantitative minimum thresholds might conflict with the MiFID II regulations applicable for advising clients who have sustainability preferences. According to Art. 2 (7) lit. a) and b) MiFID II Regulation, the decision on the minimum proportion on environmentally Taxonomy-aligned investments or sustainable investments is reserved for the client. Accordingly, products with lower thresholds than the proposed one of 50% sustainable investments can also meet the sustainability preferences of clients and qualify as (environmentally) sustainable within the meaning of the MiFID II target market if they fulfil the characteristics listed in Art. 2 (7) lit. a) or b) of the MiFID II Regulation and meet the client's expectations. However, these funds would not qualify as sustainable or ESG in their names within the meaning of the guidelines if the thresholds are lower than 50% sustainable investments. If the new guidelines require that the term "sustainable" may only be included in the product name with a minimum share of 50%+, this could be irritating for the client and - at least from his point of view - would not match the MiFID II-queries.

Linking the naming of funds to minimum thresholds also raises questions regarding products according to Art. 2 No. 7 lit. c) of the MiFID II Regulation. The reduction of PAIs under MiFID II is considered as a separate criterion of sustainability preferences and is not cumulatively required in products that have a certain minimum proportion of sustainable investments or in promoting environmentally/social objectives. From the investor's point of view, however, the case where a product will be distributed as "sustainable" according to MiFID II but will not be named "ESG" or "sustainable" according to the suggested guidelines would make no sense. Again, **the elaboration of a consistent framework should definitely be implemented here.** Otherwise, there is a risk of (more) confusion and discontent among clients as well as complexity in advice that would be no longer manageable.



<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>

ESBG believes that the proposed threshold of 80% for investments with sustainable and social objectives has a major **shortcoming. ESBG finds the suggested threshold too high.** ESBG would be grateful if ESMA could detail on which basis or assumptions the amount of this threshold was calculated. In this regard, ESBG would like to mention that some National Authorities like the BaFin in Germany (fund category directive) and like the CSSF for Luxembourgish funds are currently setting a minimum threshold of 50% for various fund names, e.g. a fund designated as an equity fund must be more than 50% invested in equities. These requirements serve to avoid misleading investors. The gap between the threshold suggested by ESMA and these ones is a bit surprising.

The proposal especially raises questions for funds with relatively high liquidity ratios. In volatile market phases, funds need to be able to build up liquidity reserves and redeploy investments to minimise losses for investors. Open-ended real estate funds often have to work with high liquidity ratios in order to be able to process large-volume real estate transactions or meet pending redemption requests. The requirement to permanently ensure 80% on an ongoing basis would radically reduce the scope for efficient portfolio management.

<ESMA_QUESTION_FUNA_2>

Q3 : Do you agree to include an additional threshold of at least 50% of minimum proportion of sustainable investments for the use of the word “sustainable” or any other sustainability-related term in the name of the fund? If not, please explain why and provide an alternative proposal.

<ESMA_QUESTION_FUNA_3>

ESBG is not in favour of the inclusion of an additional threshold of at least 50% of minimum proportion of sustainable investments for now. An important fact is that the definition of “sustainable investments” currently poses great challenges for asset managers. For an investment to be considered sustainable within the meaning of the SFDR, it must fulfil three conditions:

- Firstly, the investment must be made in economic activities that make a positive contribution to the achievement of an environmental objective or a social objective.
- In addition, the investment must not significantly harm any of the sustainable investment objectives, and
- The companies in which the investment is made must apply good corporate governance practices.

Moreover, there are currently no clear specifications on how the positive contribution is measured. In particular, it is unclear whether only the share of the company's turnover that flows into sustainable activities is taken into account when calculating the share of sustainable investments or whether the entire investment in a company may be counted. For instance, in the German market, crediting at activity level is common, which often results in significantly lower ratios of sustainable investments. Many of the leading companies in stock indices, when considered at activity level, only achieve low, single-digit percentages. Thus, with such stocks it will nearly be impossible to reach the proposed 50% as a minimum proportion at present. This would eventually lead to the fact that very broadly diversified equity products bearing the name suffix “sustainable” are unlikely to exist.

As long as the standards for assessing the sustainability components mentioned in Art. 2 (17) SFDR remain unclear, ESBG believes that ESMA should not refer to the definition of sustainable investments when designing guidelines for fund names. There should be a comprehensible minimum standard that can be relied upon by clients. ESBG is therefore in favour of first establishing a uniform calculation method for sustainable investments at European level which ensures comparability. Subsequently, the proposed threshold of 50% should be reviewed and tested for its market suitability.



According to MiFID II, a client may also want a minimum share of sustainable investments that is lower than 50% (lit. b product). However, this fund with a lower proportion of 50% is no longer likely to be described as sustainable / ESG according to the proposed guidelines, even though the fund meets the sustainability preferences of the client. This is very confusing for a client and makes the advisory process even more complex. In addition to that, ESG wonders what terms article 8 funds could use given this threshold. Indeed, some article 8 funds could be considered as sustainable (e.g. they were awarded the ISR label in France) but they do not yet meet the 50% proportion of sustainable investments.

<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>

ESBG believes that **sustainable finance regulations should incentivise asset manager and product manufacturers to increase the taxonomy level of ESG financial instruments. This has not been sufficiently the case so far.** The minimum percentages for investments in “sustainable assets” are set very high so they can only be achieved - if at all - by those (environmentally) sustainable funds that move outside the taxonomy (i.e. that derive their environmental and/or social sustainability exclusively from the notion of “sustainable investment” as defined in Art. 2 (17) SFDR, which is not further specified). The guidelines thus would create an incentive to develop funds that bypass the European taxonomy. However, the minimum thresholds for both types of sustainable investments should be significantly lower than the ones suggested. Such standards should also provide some kind of graduation to show the level of effort made by asset managers towards sustainability.

Additionally, **a one-size-fits all approach might not be adequate** due to the differences in the way the funds are designed. For instance, a fixed income fund is different than a mixed income fund, an equity fund, or a fund of funds, to name a few. These differences should be taken into consideration when comparing different types of funds to avoid misleading results. Following the mentioned ESAs list of queries to the European Commission, **ESBG believes more clarity regarding Article 8 and 9 of the SFDR would be needed before designing a threshold mechanism** based on evolving standards which could eventually lead to different evaluations over time.

<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>

As a first step, ESGB is of the opinion that **ESMA should focus on strengthening transparency through a consistent enforcement of existing transparency obligations.** To the extent that investors are offered products labelled as "ESG" or "sustainable", although sustainability issues play no role either in the investment strategy or its practical implementation, ESGB believes that actions should be taken against the relevant providers within the framework of ongoing supervisory practice, for example in case of violation of the general prohibition of misleading statements or the consistency requirement of Article 13 (1) SFDR. ESGB believes that an **enforcement-based approach** offers greater flexibility and avoids undesirable side-effects. On top of that, uniform requirements for minimum proportions can be useful, but only with realistic minimum proportions.

<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>

ESBG does agree on having some minimum safeguards in principle. However, they should not be based exclusively on the exclusion criteria related to the Commission Delegated Regulation (EU) 2020/1818. Indeed, by referring to the exclusion criteria in Delegated Regulation (EU) 2020/1818 and its climate reference, ESBG fears that this could limit the investment universe if a fund has, for example, a social focus. Furthermore, this requirement is not linked to the MiFID II requirements in Art. 2 (7) lit. c (MiFID II Delegated Regulation), which, with regard to the consideration of the most important adverse sustainability impacts (PAI), does focus on a reduction of these impacts, but, like the SFDR, does not make any strict specifications regarding the strategies to achieve this reduction. This also goes against the provision of exclusion criteria for investment funds with an ESG- or sustainability- related term in their name.

<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>

Since ESBG is against the application of the suggested thresholds, ESBG is also against the application of the suggested thresholds to derivatives for a matter of consistency. Nonetheless, in case thresholds were to be applied, ESBG believes derivatives should be treated as any other underlying asset of "sustainable" or "ESG" funds (in this regard, the risk-related rules of the current legal framework are adequate). Indeed, on the one hand, they often serve to hedge other transactions, so that a restriction of the derivatives that can be acquired would be at the expense of investors' risk hedging. On the other hand, in practice there are major problems with the availability of data for the look through. This also raises the question of whether the focus should be on the "issuer" or the underlying or both. In the end, this could further restrict the products that can be acquired.

<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>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FUNA_1>

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

<ESMA_QUESTION_FUNA_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_FUNA_2>

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

<ESMA_QUESTION_FUNA_8>

Since clear definitions are provided and rules are properly defined, ESBG does not see a reason for funds designating an index as a reference benchmark to be treated differently (bearing in mind that the aim of these funds is to replicate or track an index).

<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>

ESBG does not believe there is a need to make such a distinction.

<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>

ESBG deems that there is currently a lack of clear and uniform standards on what is a measurable contribution regarding the notion of “impact”. Unless there is a clear guidance on the measurability of an impact, ESBG would like to ask ESMA to refrain from having specific provisions for “impact” or impact related names in the guidelines. Common standards would benefit not only the financial sector but also customers and supervisors in this regard.

<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>

In this regard, ESBG fears that the introduction of another category might result in complicating the already unclear legal and conceptual situation in the area of transparency-related sustainable finance regulation.

ESBG believes it is essential to have clear and uniform standards regarding the concept of “transition” or transition-related names as a prerequisite to present design products with such features and minimising potential risks of misalignment. Therefore, it would be very difficult to understand that a transition-related fund, which is strongly committed towards achieving EU sustainability targets, could be excluded from using “sustainability-related” words in its name. In these cases, the ultimate objectives of the fund should also be duly considered.

<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>

ESBG is reluctant about introducing similar guidance for other financial products. It is not fully apparent what additional contribution such guidance is supposed to make in order to tackle “greenwashing” or to strengthen transparency. ESBG believes similar guidance (adapted to the characteristics of each sector/financial product) could be of interest **only if** it ensures a level playing field among market participants with clear definitions of the concepts mentioned in the previous replies. Otherwise, it would go beyond what could also be achieved through a consistent enforcement of existing transparency obligations.

<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>

ESBG generally advocates for a grandfathering of already approved and existing funds. This is necessary in the interest of the protection of the asset managers confidence. If ESMA should still hold on introducing a transitional period, ESBG would rather propose a period **between 12 and 18 months** from the date of the application of the guidelines.

ESBG would like to stress that asset managers have already spent an important amount of time and efforts within the last two years to ensure compliance with the SFDR requirements and the very detailed requirements for ESG related disclosure imposed by national supervisory authorities. It cannot be expected from fund companies to update their documentation another time within such a short transitional period of only 6 months. ESBG deems that a period of 6 months would be unrealistic, since asset manager would have to either increase their investment thresholds through reallocations or adjust all the fund names affected if the criteria are not met. This will take a lot of time and efforts, e.g. for approval procedures and writing letters to all investors to inform about the changes. Finally, ESBG would like to stress that consistency and regulatory stability are of utmost importance to preserve clients' trust in the sustainability domain. ESBG is therefore in favour of avoiding the implementation of too many evolving standards which could eventually lead to different evaluations over time, causing extra costs and potential regulatory inconsistencies.

<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>

Changing the names of these funds could be misleading and counterproductive. As stated above, **ESBG is in favour of avoiding the implementation of too many evolving standards** which could eventually lead to different evaluations over time, causing extra costs and potential regulatory inconsistencies. Hence, ESBG considers that a **grandfathering provision** will be necessary. ESBG believes that investment funds that were launched prior to the publication of the guidelines and are designated or advertised as ESG-product should not fall within the scope of application.

<ESMA_QUESTION_FUNA_14>

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

<ESMA_QUESTION_FUNA_15>

The financial system can play an important role in overcoming the associated environmental and social challenges of climate change, if and to the extent that capital can be redirected into sustainable investments. Legislators and supervisory authorities are consequently addressing the question of which regulatory interventions in the market mechanism promote a climate-friendly restructuring of national economies. It is in line with a global trend to improve the provision of information to investors on the sustainability profile of various investment products through a variety of transparency obligations in order to enable informed allocation decisions. Against this background, ESBG welcomes the fact that ESMA is also increasingly concerned about transparency and wishes to tackle the problem of "greenwashing".

However, ESBG assesses that **the application of the proposed Guidelines would require a significant effort to update documentation, communications, and marketing materials. This would have an impact on costs** (IT and staff as well as auditing and verification procedures for the supervisor). As previously mentioned, already existing EU requirements (contained in legislations such as the EU Taxonomy Regulation, SFDR and MiFID II) are based on different considerations. At the same time, a lack of a clear interplay between sustainability-related legislation adds an extra layer of difficulty to ensure a smooth implementation of rules. Issuers, banks, and customers must be able to understand directly how "sustainability" is defined and what makes their investment "green" or "social" and how the criterion of good corporate governance is assessed.



On top of that, numerous measures have already been taken at the EU level to reduce information asymmetries with regard to sustainable fund products and to put a stop to greenwashing, such as the recent call for evidence from the ESAs which ESBG contributed to. Another possible impact would be that fund companies will have to again update their fund documentation and marketing materials for existing investment funds because it will be necessary to change fund names due to the (too) high thresholds required for “sustainable” investment funds.

Overall, while ESMA argues that these guidelines will enhance investors’ understanding on the ESG or sustainability criteria promoted by the fund, **ESBG fears that the thresholds (especially the ESG and sustainability distinction) and minimum safeguards might not bring that much clarity as they are additional rules** that should require further explanations. As such, ESBG does not see any benefit in terms of business for the end-customers.

<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>

ESBG deems it would be necessary to provide more information to asset management companies so they could have more clarity on the practical applicability of thresholds as well as some flexibility to avoid fund name changes due to minimum variations.

<ESMA_QUESTION_FUNA_16>

Q17