

Informative Note

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Finance and Capital Markets

Funds' names using ESG or sustainability-related labels



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

On 14 May 2024, the European Securities and Markets Authority ("ESMA") published general guidelines on the use of terms related to environmental, social or governance criteria ("ESG criteria") (the "Guidelines").

The Guidelines stem from the general duty of fund managers to conduct its business behaving honestly and fairly. In this sense, the Guidelines intend to protect investors by preventing funds from using language that may mislead investors to believe that investments of that fund follow ESG or sustainability related criteria. Thus, the Guidelines are an ESMA measure aiming at the prevention of greenwashing.

Below you will find the key takeaways of the Guidelines:

- **Application**
Apply to all types of funds and their management companies.
- **Scope and Relevant Nomenclature**
The Guidelines exist only in English. The terms below are identified in the Guidelines as examples, and any investment fund with a nomenclature deriving from the terms identified therein should also be deemed covered.
 1. Transition related terms: *transitioning, improving, progress, evolution, transformation, net-zero.*
 2. Environmental related terms: *green, environmental, climate, ESG21 e SRI22.*
 3. Social criteria related terms: *social, equality.*
 4. Governance related terms: *governance, controversies.*
 5. Impact related terms: *impacting, impactful.*

6. Sustainability related terms:
sustainable, sustainability,
sustainably.

- **Guidelines**

- Investment thresholds:

- In accordance with the Guidelines, funds with names including any of the terms (or derivatives thereof) listed above must ensure that at least 80% of their investments are used to achieve environmental, social or sustainability objectives, in accordance with their investment policy disclosed under Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022.

- Exclusion of investments:

- Funds with names containing “transition”, “social” and “governance” related terms should exclude investments in companies referred to in points 12(1)(a) to (c) of Commission Delegated Regulation 2020/1818 of 17 July 2020 on minimum standards for EU benchmarks for the climate transition and for EU benchmarks aligned with the Paris Agreement.

Funds with names related to any of the other terms referred to in points 2, 5 and 6 must exclude investments in companies referred to in points 12(1)(a) to (g) of the aforementioned regulation.

In summary, both cases involve companies whose activities are related to arms, tobacco, or in some way violate the Principles of the United Nations Global Compact or the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises.

- Sustainable Investment:

- Funds with names containing “sustainability”-related terms must ensure that they invest significantly in sustainable investments, in accordance with the definition set out in Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (known as the “SFDR”).

The above requirements are cumulative if a fund includes in its name terms related to more than one of the relevant categories.

- **Deadlines and Next Steps**

- The Guidelines will be translated into the different European Union languages and these translations will come into force three months after publication.

The management companies of funds targeted by the Guidelines will have 6 months to reorganise their portfolios or change the name of the funds which do not comply with the established thresholds. This means, in practice, a total of 9 months to adapt the funds and their portfolios to the Guidelines.

TELLES has a team of lawyers specialised in ESG (Environmental, Social, Governance) matters. The Finance and Capital Markets practice of TELLES has been advising funds on structuring its investment policy to ensure that its investments may qualify as sustainable investment and, when necessary, putting in place restructuring measures such as the issuance of debt instruments which may qualify as sustainable investments.

For this transition phase, at TELLES you will find a specialised ESG Due Diligence service for projects and investments, which will enable funds and their portfolios to be assessed and, if necessary, adapted in order to comply with the obligations arising from the Guidelines. 

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