

# ESMA publishes finalised guidelines on fund names' using ESG or sustainability-related terms

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## Background

ESMA has voiced ongoing concerns around the risk of greenwashing arising from the use of ESG or sustainability-related terms in the names of funds which fail to meet sustainability standards commensurate with the use of such names.

In November 2022, it published a [consultation](#) on its proposed guidelines on funds names using ESG or sustainability-related terms in which it outlined specific criteria which it proposed must be satisfied by such funds. In a [statement](#) published in December 2023, ESMA confirmed that it proposed to make a number of amendments to the draft guidelines originally consulted on in light of responses received to the consultation.

On 14 May 2024, it published its finalised [guidelines](#) on this matter (**Guidelines**).

In this briefing, we provide an overview of the rules set down in the Guidelines which must be complied with by funds which use ESG or sustainability-related terms in their names (**In-Scope Funds**).



## Basis of Naming Framework

It is worth noting at the outset that ESMA has not provided a definitive list of all terms which will bring a fund within the scope of the Guidelines.

Under the Guidelines, all In-Scope Funds must comply with two rules, namely:

1. the application of an “80% threshold” rule; and
2. compliance with the exclusion criteria applicable to either EU Paris-Aligned Benchmarks (**PAB Exclusion Criteria**) or EU Climate Transition Benchmarks (**CTB Exclusion Criteria**).

Funds using the term “sustainable” or a derivative thereof must also “invest meaningfully” in sustainable investments within the meaning of the SFDR while In-Scope Funds using a transition-related term or impact-related term are also subject to additional requirements outlined below.

The criteria to be met by In-Scope Funds will depend on the specific term used in the fund name, as detailed in the table below.

Term used in fund name	Applicable Criteria
<b>“Sustainable” or sustainability-related term<sup>1</sup></b>	80% Threshold + PAB Exclusion Criteria + the fund must “invest meaningfully” in sustainable investments within the meaning of the SFDR.  ESMA does not provide any guidance on what is meant by “invest meaningfully” for the purpose of complying with this rule.
<b>“Environmental” related terms (including terms such as green, environmental, climate, ESG and SRI)<sup>2</sup></b>	80% Threshold + PAB Exclusion Criteria <sup>3</sup>
<b>“Impact” related terms</b>	80% Threshold + PAB Exclusion Criteria <sup>4</sup> + investments must generate a positive and measurable social or environmental impact alongside a financial return.
<b>“Social” related terms<sup>5</sup> (including terms such as “social”, “equality” etc)</b>	80% Threshold + CTB Exclusion Criteria
<b>“Governance” related terms (including terms such as “governance”, “controversies”<sup>6</sup> etc)</b>	80% Threshold + CTB Exclusion Criteria
<b>“Transition” related terms<sup>7</sup></b>	80% Threshold + CTB Exclusion Criteria + investments must be on a clear and measurable path to social or environmental transition.

## What is meant by the 80% Threshold Rule and the PAB/CTB Exclusion Criteria?

### 80% Threshold Rule

At least 80% of the investments of In-Scope Funds must be used to meet (i) environmental or social characteristics promoted by the relevant fund in the case of Article 8 funds or (ii) the sustainable investment objective of the relevant fund in the case of Article 9 funds. ESMA has confirmed that this is linked to the minimum commitment figure disclosed in the relevant pre-contractual annex

<sup>1</sup> Includes any terms derived from the base word “sustainable” e.g. sustainably, sustainability, etc”

<sup>2</sup> Described by ESMA as “any words giving the investor any impression of environmental characteristics”

<sup>3</sup> Note that where a fund name uses both an “environmental” related term and a “transition” related term, ESMA has confirmed that the relevant fund must comply with the CTB Exclusion Criteria instead of the PAB Exclusion Criteria.

<sup>4</sup> Note that where a fund name uses both an “impact” related term and a “transition” related term, ESMA has confirmed that the relevant fund must comply with the CTB Exclusion Criteria instead of the PAB Exclusion Criteria.

<sup>5</sup> Described by ESMA as “any words giving the investor any impression of the promotion of social characteristics.”

<sup>6</sup> Described by ESMA as “any words giving the investor any impression of a focus on governance.

<sup>7</sup> Described by ESMA as “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.



related to the promotion of environmental/social characteristics or sustainable investment objective as applicable.

### Application of Exclusion Criteria

As outlined in the table above, In-Scope Funds must comply with either the PAB Exclusion Criteria or the CTB Exclusion Criteria<sup>8</sup> depending on the term used in the fund name. The exclusion criteria applicable in both cases are set out in the table below.

Type of Exclusion Criteria	Exclusion Criteria
<b>PAB Exclusion Criteria</b>	<p>Investment in the following companies are prohibited:</p> <ul style="list-style-type: none"> <li>(a) companies involved in any activities related to controversial weapons;</li> <li>(b) companies involved in the cultivation and production of tobacco;</li> <li>(c) 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;</li> <li>(d) companies that derive 1% or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite;</li> <li>(e) companies that derive 10% or more of their revenues from the exploration, extraction, distribution or refining of oil fuels;</li> <li>(f) companies that derive 50% or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels; and</li> <li>(g) companies that derive 50% or more of their revenues from electricity generation with a GHG intensity of more than 100 g CO<sub>2</sub> e/kWh.</li> </ul>
<b>CTB Exclusion Criteria</b>	Investment in any of the companies falling within (a) to (c) listed above is prohibited.

Importantly, ESMA has confirmed in its feedback statement contained in Annex I to the Guidelines that these exclusions would apply to companies "regardless of how investment in those companies are made or which financial instrument those companies may issue".

### Index-tracking funds

An In-Scope Fund can only use a term covered by the Guidelines in its name if the applicable criteria outlined above is satisfied by the relevant fund, even in circumstances where the fund's name references the index which it tracks.

<sup>8</sup> The PAB Exclusion Criteria are set down in Article 12(1)(a) to (g) of Commission Delegated Regulation (EU) 2020/1818 while the CTB Exclusion Criteria are set down in Article 12(1)(a) to (c) of the same Commission Delegated Regulation.

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## Application Date of the Guidelines

The Guidelines must now be translated and will apply to all newly established In-Scope Funds three months after the date on which they are published on ESMA's website in all EU official languages.

There is a further six month transition period for existing In-Scope Funds.

Therefore, while we do not yet have a finalised publication date for the translated versions of the Guidelines, if we take a publication date of 15 June 2024 as an example, the Guidelines will apply to all newly created In-Scope Funds from 15 September 2024 onwards and will apply to existing In-Scope Funds from 15 March 2025.

## Contact Us

If you would like to discuss the Guidelines in further detail, please get in touch with your usual contact in Dillon Eustace or any of the authors listed below.



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