

ESMA Publishes Q&As on Its Fund Naming Guidelines

16 December 2024

On 13 December 2024, the European Securities and Markets Authority (“ESMA”) published three Q&As (the “Q&As”—see [here](#)) on its “Guidelines on funds’ names using ESG or sustainability-related terms” (the “Guidelines”). The Guidelines contain important new conditions on the use of ESG or sustainability-related terms in fund names and came into effect on 21 November 2024. The German regulator BaFin and the Luxembourg regulator CSSF have recently published on their interpretation and administrative process for the Guidelines (see our Debevoise Debrieves [here](#) and [here](#)).

The Q&As relate to the following questions:

- “How should the exclusions related to controversial weapons [...] be interpreted for different types of controversial weapons?”
- “Is there a minimum level for investment funds with the term ‘sustainable’ in their name to be considered to be investing ‘meaningfully’ in sustainable investments?”
- “When applying the exclusions referred to in paragraphs 16-18 of the Guidelines, can fund managers consider the underlying project for use of proceeds instruments or should the manager always consider the whole issuer?”

Exclusions Related to Controversial Weapons. ESMA clarified that controversial weapons are “anti-personnel mines, cluster munitions, chemical weapons and biological weapons”, with reference to the principal adverse impact indicators of the Commission Delegated Regulation supplementing the Sustainable Finance Disclosure Regulation.¹

Investing “Meaningfully”. For funds using the word “sustainable” in their name, the Guidelines require the fund to invest “meaningfully” in sustainable investments, within the meaning of the Sustainable Finance Disclosure Regulation (see our initial Debevoise Update [here](#)). ESMA states that to invest “meaningfully” in sustainable investments generally means that at least 50% of a fund’s investments are sustainable investments, whilst making clear that competent authorities could set a higher threshold, depending

¹ Please see indicator 14 of table 1 of Annex I of Commission Delegated Regulation (EU) 2022/1288.

on the circumstances. A competent authority will presumably set a higher threshold for investor protection purposes and may prompt some funds to increase their existing allocation of the portfolio to sustainable investments.

Application of Exclusion Lists for Use of Proceeds by Investments. This question relates to the application of the various exclusions (such as in investing in coal and oil) in the context of “use of proceeds” financing by a fund, which is providing financing for specific projects. In this case, ESMA confirms that the exclusions are applied on a look-through basis to the projects or activities financed by the fund and not applied to the borrower as a whole. However, the requirement that the investment complies with the United Nations Global Compact Principles and the Organisation for Economic Cooperation and Development’s Guidelines for Multinational Enterprises always applies at the level of the borrower, without any look-through to the underlying activities financed. The Q&As also helpfully state that investments by funds in EU Green Bonds do not need to be assessed under the exclusions.

Conclusion. As the Guidelines applied on 21 November 2024, the Q&As provide welcome initial clarifications on their application. It should be noted, however, that in relation to the second Q&A, giving national competent authorities freedom to decide the definition of investing “meaningfully” on a case-by-case basis may lead to regulatory arbitrage and may not benefit the actual investor-protection purpose of the Guidelines.



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