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ESMA Guidelines on ESG or sustainability-related fund names

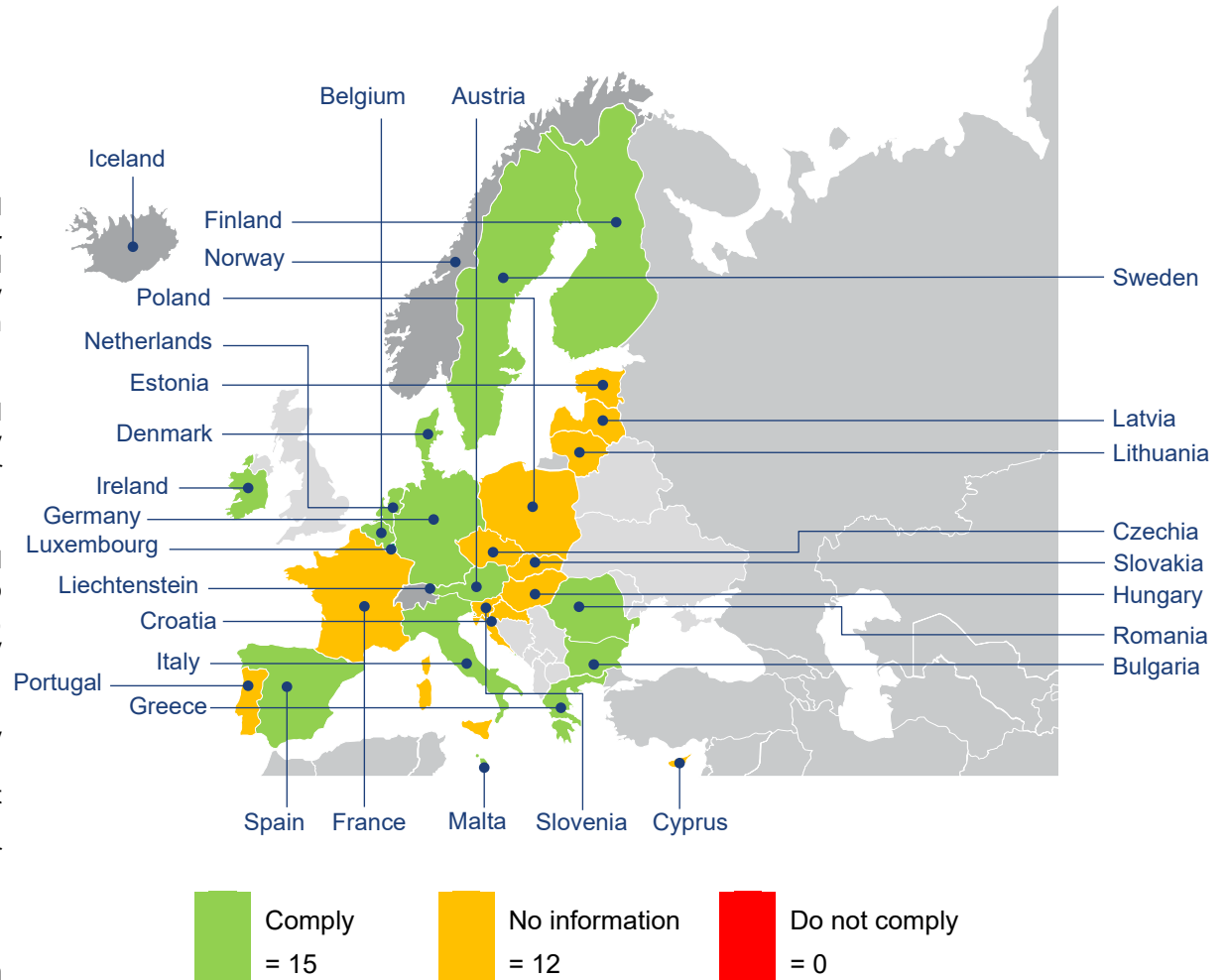
National Regulator Compliance Guide

16 December 2024









Key Facts:




- As reported in our [ESG Notes](#), on 14 May 2024 the European securities regulator ESMA published its long-awaited "Guidelines on funds' names using ESG or sustainability-related terms" (ESMA Guidelines). EU fund managers and managers of funds marketed into the EU will need to comply with minimum sustainability requirements when using such terms.
- Following their translation and publication in all EU official languages on 21 August 2024, the ESMA Guidelines apply from 21 November 2024 for new funds and 21 May 2025 for existing funds.
- The national regulators (NCAs) must follow the so-called "comply-or-explain" procedure, meaning that they had to notify ESMA until 21 October 2024 whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the ESMA Guidelines.
- The table below provides an overview of the NCAs' comply or explain statements (Statements) on the ESMA Guidelines. Even though some Statements are still pending, it seems that most NCAs will comply with the ESMA Guidelines. However, a number of NCAs have identified unresolved aspects or questions on which they have requested further clarification from ESMA.
- On 13 December 2024, ESMA has published [Q&As](#) with further guidance addressing some of the issues raised by the NCAs (see questions ID 2368-2374 in the [ESMA Q&A IT tool](#)). For more details see our updated Client Briefing in the [ESG Notes](#).










The contents of this document are current at the date of publication set out in this document.


Please note that this table represents the status of 16 December 2024 and only considers statements by NCAs published by that date.




| EU Member State | Date | Link to Statement | Further specifications by the NCA |
|---|------------------|--|--|
|  Austria | 2 October 2024 | Available here | <ul style="list-style-type: none"> The Austrian NCA (Finanzmarktaufsicht, FMA) has announced that it will conduct targeted supervisory activities for checking disclosures as well as compliance with the disclosed investment strategy. For this purpose, FMA is using a greenwashing analysis framework for retail funds, which also makes use of automated text analysis and artificial intelligence. |
|  Belgium | 12 November 2024 | Available here (available only in Dutch and French) | <ul style="list-style-type: none"> In its Statement, the Belgian NCA (Financial Services and Markets Authority, FSMA) has emphasised that the lists of terms triggering the requirements set out in the ESMA Guidelines are not exhaustive. FSMA has announced that it will also include non-Belgian fund managers in its monitoring of compliance with the ESMA Guidelines where such managers manage a retail AIF domiciled in Belgium (in addition to the supervision by the home state regulator of the respective non-Belgian EU fund manager). |
|  Bulgaria | 29 October 2024 | Available here (available only in Bulgarian) | No further specifications published in the context of the Statement. |
|  Croatia | | | |
|  Cyprus | | | |
|  Czech Republic | | | |



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|  Denmark | 22 August 2024 | Available here (available only in Danish) | <ul style="list-style-type: none"> Although not listed as examples in the ESMA Guidelines, the Danish NCA (Finanstilsynet, FSA) considers the word "responsible" as well as the abbreviations "ESG" and "SRI" to fall into the environmental and/or impact category (both categories require the application of the Paris-aligned Benchmark exclusions and a minimum threshold of 80 % of investments meeting E/S characteristics or sustainable investments under SFDR). According to FSA, it depends on the name of the fund what constitutes a "meaningful" proportion of sustainable investments for funds using sustainability-related terms in their names (e.g. the word "sustainable" can, without further limitations by words such as "partially", create the expectation that the fund consists exclusively of sustainable investments). In its recent guidance ESMA has suggested using a threshold of at least 50% (see question ID 2374 in the ESMA Q&A IT tool). |
|  Estonia | | | |
|  Finland | 1 October 2024 | Available here | <ul style="list-style-type: none"> In its Statement, the Finnish NCA (Finanssivalvonta, FIN-FSA) has emphasised that the lists of terms triggering the requirements set out in the ESMA Guidelines are not exhaustive. According to the Fin-FSA Statement, terms should always be assessed as to whether a term may correspond to the environmental, social and governance (ESG) or sustainability-related terms according to the ESMA Guidelines. |
|  France | | | According to market information, the French NCA (Autorité des Marchés Financiers, AMF) has asked ESMA for further clarifications on the ESMA Guidelines (for example on the treatment of green bonds) before it can provide a Statement. There is no official statement from AMF on this approach. It remains to be seen whether the guidance published by ESMA on 13 December 2024 (see questions ID 2368-2374 in the ESMA Q&A IT tool) are considered sufficient by AMF to now issue its Statement. |




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|  | Germany | 1 October 2024 | <p data-bbox="801 347 981 448">Available here (available only in German)</p> <p data-bbox="1010 347 2000 432">In a press release dated 25 July 2024 (available only in German), the German NCA (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has identified the following unresolved aspects regarding the interpretation of the ESMA Guidelines:</p> <ul data-bbox="1043 453 2000 754" style="list-style-type: none"> • Interpretation of the requirement to "invest meaningfully" in sustainable investments for funds using sustainability-related terms in their names; • Eligibility of green bonds (as a non-technical term) issued by companies which fall under the minimum exclusions set out in the ESMA Guidelines (since these exclusions are company-related, they would exclude investments in all kinds of bonds issued by the excluded companies, even if these bonds are used to fund sustainable projects/activities); • Specification which requirements apply to the "clear and measurable transition path" which investments of funds with transition-related names must follow. <p data-bbox="1010 775 2000 892">According to BaFin, these unresolved aspects will be discussed in future ESMA working groups in order to reach an EU-wide consensus. Two of these three aspects have been addressed by ESMA in its recent guidance (see questions ID 2368-2374 in the ESMA Q&A IT tool).</p> <p data-bbox="1010 912 2000 967">In December 2024, BaFin has informed German industry associations about its interpretation of several questions raised by the industry covering the issues below:</p> <ul data-bbox="1021 987 1980 1015" style="list-style-type: none"> • <u>Application of minimum exclusions to target funds in fund of funds structures</u> <p data-bbox="1081 1035 2000 1362">For target funds held in fund of funds structures where the target fund is not subject to the ESMA Guidelines, but the fund of funds is, BaFin differentiates between open-ended and closed-ended target funds. The documentation of open-ended target funds only needs to be "oriented towards" the minimum exclusions, meaning that it has to apply the majority of the applicable minimum exclusions in order to be an eligible investment for the fund of funds. Moreover, the positions held in the target fund must factually comply with the ESMA Guidelines. The fund of funds manager must monitor this and redeem the units in the target fund if the target fund holds investments which are not compliant with the minimum exclusions applicable to the fund of funds under the ESMA Guidelines. Since it is not possible to redeem units in closed-ended target</p> |



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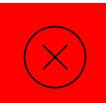

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| | | | <p>funds, BaFin takes a stricter view and requires that the documentation of these funds must fully comply with the minimum exclusions applicable to the fund of funds.</p> <ul style="list-style-type: none"> • <u>Application of minimum exclusions to investments in derivatives</u> According to BaFin's interpretation of the ESMA Guidelines, derivatives used for hedging or efficient portfolio management purposes do not have to comply with the minimum exclusions applicable to the respective fund. If, however, the fund uses derivatives for investment purposes, such derivatives must comply with the minimum exclusions. • <u>Application of ESMA Guidelines to funds that are not actively marketed</u> BaFin has confirmed that funds which are closed to new investments and are no longer actively marketed are still subject to the ESMA Guidelines and must ensure compliance by 21 May 2025. • <u>No fast track procedure planned by BaFin</u> Unlike the Irish NCA and the Luxembourg NCA (see below), BaFin will not provide a fast track procedure for applications relating to the implementation of the ESMA Guidelines (required for retail funds). Instead, BaFin has emphasised that it expects fund managers to file such applications timely to ensure that the proposed changes become effective by 21 May 2025. According to the press release of 25 July 2024 "timely" means at least 8 weeks before that date for applications limited to changes ensuring compliance with the ESMA Guidelines. |
|  | Greece | 21 October 2024 | Available here No further specifications published in the context of the Statement. |
|  | Hungary | | |









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|  Ireland | 21 October 2024 | Available here | <p>The Irish NCA (Central Bank of Ireland, CBI) has established a streamlined filing process (Fast Track) for changes made solely for the purpose of bringing the fund into compliance with the ESMA Guidelines.</p> <ul style="list-style-type: none"> • The Fast Track is applicable to name changes and to minor changes to disclosures in the prospectus, supplement and/or SFDR annex that are required to comply with the ESMA Guidelines. • The Fast Track is not available for material changes to either of the investment objective, investment policy, strategy or risk profile of the fund. • Filings must be made within the transition period applying to existing funds which runs from 21 November 2024 to 21 May 2025 (filings made after 21 May 2025 will be reviewed as part of the normal review process). • As part of the Fast Track procedure, fund managers must attest compliance with the ESMA Guidelines (for further information on the documents that need to be submitted as part of the Fast Track procedure see the Q&A (available via the link above) published by the Irish Central Bank). • The Irish Central Bank will carry out a sample review of the filings made under the Fast Track procedure. |
|  Italy | 29 October 2024 | Available here (English version published in newsletter no. 37 (4 November 2024), available here) | No further specifications published in the context of the Statement. |
|  Latvia | | | |


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|  | Lithuania | | |
|  | Luxembourg | 21 October 2024 | <p data-bbox="801 435 974 459">Available here</p> <p data-bbox="1010 435 2000 523">The Luxembourg NCA (Commission de Surveillance du Secteur Financier, CSSF) has established a priority processing procedure (PPP) for changes made to fund prospectuses/issuing documents to ensure compliance with the ESMA Guidelines.</p> <ul data-bbox="1059 544 2000 735" style="list-style-type: none"> <li data-bbox="1059 544 2000 632">• The amendments must be limited to either a name change of at least one sub-fund or minor adjustments to the fund's/sub-fund's ESG engagement/SFDR pre-contractual disclosure. <li data-bbox="1059 651 2000 735">• CSSF has published a Fund naming confirmation letter which fund managers have to file with CSSF together with the amended fund prospectus/issuing document as part of the PPP. <p data-bbox="1010 756 2000 812">In its communiqué supplementing the Statement, CSSF has published additional supervisory expectations:</p> <ul data-bbox="1043 833 2000 1321" style="list-style-type: none"> <li data-bbox="1043 833 2000 951">• Market participants, regardless of whether they are disclosing under Article 6, 8 or 9 of the SFDR, should carry out a self-assessment of the applicability of the ESMA Guidelines to the products they manage and to ensure compliance of fund names with the ESMA Guidelines. <li data-bbox="1043 970 2000 1026">• Fund names should adequately reflect the importance and scope of application of these characteristics for the fund. <li data-bbox="1043 1045 2000 1101">• Precontractual documentation should contain adequate disclosure of elements supporting the use of ESG or sustainability-related terms in fund names. <li data-bbox="1043 1120 2000 1238">• Since the list of ESG and sustainability-related terms mentioned in the ESMA Guidelines is not exhaustive, market participants should review the names of all the financial products they manage and assess, on a case-by-case basis, whether the ESMA Guidelines apply to those products. <li data-bbox="1043 1257 2000 1321">• CSSF expects market participants to closely monitor and take due consideration of any further developments on this topic at European level. |

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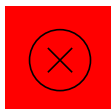
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|  Malta | 18 June 2024 | Available here | In its circular dated 18 June 2024, the Maltese NCA (MFSA) has stated that it intends to implement the ESMA Guidelines in its regulatory framework "in due course" and that it will publish a further update on this. However, the announced update is still pending. In the interim, MFSA expects fund managers to assess whether the funds under management are compliant with the ESMA Guidelines. MFSA may request this assessment as part of its supervisory interactions. |
|  Netherlands | 31 October 2024 | Available here | No further specifications published in the context of the Statement. |
|  Poland | | | |
|  Portugal | | | |
|  Romania | No date mentioned | Available here (available only in Romanian) | No further specifications published in the context of the Statement. |
|  Slovakia | | | |
|  Slovenia | | | |
|  Spain | 22 October 2024 | Available here | The Spanish NCA (Comisión Nacional del Mercado de Valores, CNMV) considers further specifications at European level to be necessary, particularly regarding the following two aspects: |

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| | | | <ul style="list-style-type: none"> • What constitutes a "meaningful" proportion of sustainable investments for funds using sustainability-related terms in their names; and • Application of the exclusion criteria to green bonds (regardless of the classification of the issuer's business activities). <p>In its guidance published on 13 December 2024, ESMA has addressed these two aspects (see questions ID 2368-2374 in the ESMA Q&A IT tool).</p> |
|  | Sweden | 23 October 2024 | Available here (available only in Swedish) |



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