



## WHAT'S IN A NAME?

### The ESMA Guidelines for ESG or sustainability-related fund names

On 14 May 2024, the European securities regulator ESMA published its long-awaited "*Guidelines on funds' names using ESG or sustainability-related terms*".<sup>1</sup> 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<sup>2</sup>, the guidelines apply from 21 November 2024 for new funds and 21 May 2025 for existing funds. In this updated briefing, we unpack the guidelines and guidance issued so far and explain what managers need to do next to ensure compliance.

#### 1. WHAT ARE THE GUIDELINES AND WHY ARE THEY RELEVANT?

On 14 May 2024, the European Securities and Markets Authority (**ESMA**) released a final report containing *Guidelines on funds' names using ESG or sustainability-related terms* (**Guidelines**). This marks the conclusion of one of ESMA's key projects to combat greenwashing in the fund industry that had begun with a consultation in November 2022.<sup>3</sup>

Following the conclusion of the consultation on 20 February 2023, the Guidelines were expected in April 2023 but were later postponed to October 2023. In December 2023, ESMA released a public statement outlining a few changes to what had been proposed in

16 DECEMBER 2024

Frankfurt | London

#### Table of contents

1. WHAT ARE THE GUIDELINES AND WHY ARE THEY RELEVANT?	1
2. TO WHOM DO THE GUIDELINES APPLY?	3
3. WHAT ARE THE MINIMUM REQUIREMENTS?	4
4. WHAT ROLE DO MINIMUM EXCLUSIONS PLAY?	5
5. WHEN DO THE GUIDELINES APPLY?	6
6. HOW WILL THE GUIDELINES BE ENFORCED?	6
7. WHAT GUIDANCE IS AVAILABLE ON THE GUIDELINES?	7
8. WHAT SHOULD FUND MANAGERS DO NEXT?	7
9. APPENDIX – CLASSIFICATION CHARTS	8
10. CONTACTS	10

#### Related links

[Herbert Smith Freehills – ESG Notes](#)

[ESMA Guidelines - Guide on comply or explain statements of national regulators \(NCA Compliance Guide\)](#)

[SFDR taking a new direction? - What to expect in 2025 and beyond](#)

[SFDR RTS 2.0 – A brief analysis of the ESAs Final Report published on 4 December 2023](#)

[The market has voted – looking at the results of the consultation on SFDR published by the European Commission](#)

<sup>1</sup> ESMA Final Report on Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-472-373) accessible [here](#).  
<sup>2</sup> Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657) accessible in all languages [here](#).

the consultation (**Public Statement**).<sup>4</sup> ESMA noted that this would permit the market to prepare for the Guidelines which they promised to issue in Q2 of 2024. The Guidelines issued in May align with the approach proposed in the consultation (as modified by the Public Statement) and provide additional detail on what is regarded as an "ESG" or "sustainability-related" term triggering their application.

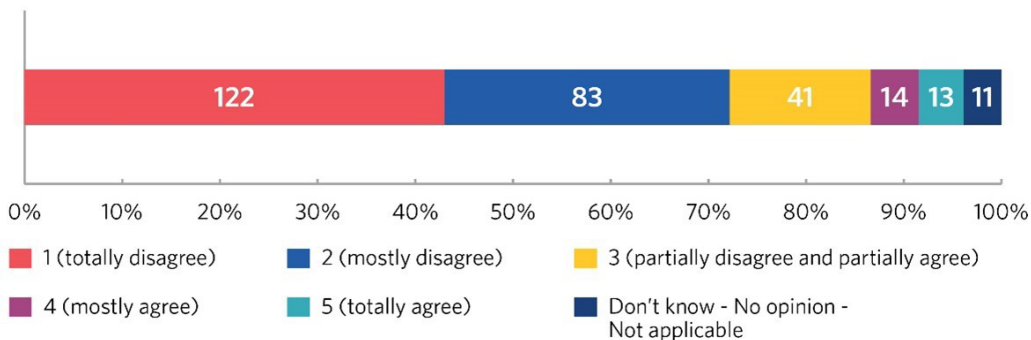
ESMA has always argued that the Guidelines are not meant to be a "labelling" regime and that the only intention behind them is to ensure fair, clear and not misleading fund names to protect investors. ESMA relies on its enhanced supervisory powers under the recently enacted EU AIFMD II and revised UCITS rules,<sup>5</sup> allowing it to address unfair, unclear or misleading fund names of any kind. The ESMA Guidelines therefore constitute supervisory practice in relation to marketing – an angle that has also been taken to enforce against greenwashing in other countries and sectors. This also follows examples of other national practices, e.g., by the French NCA (Autorité des Marchés Financiers, AMF).<sup>6</sup>

As fund-specific "marketing regulation" the Guidelines sit outside of the SFDR<sup>7</sup> and the EU Taxonomy.<sup>8</sup> The Guidelines are meant to apply only to Article 8 and 9 SFDR funds, as evidenced by the minimum threshold defined by ESMA by reference to the respective SFDR disclosures (see section 3. below). ESMA is obviously of the opinion that Article 6 SFDR funds may not use any ESG or sustainability-related terms in their fund name. Nevertheless, compliance with Article 8 or 9 SFDR or EU Taxonomy does not mean that the fund automatically meets the Guidelines requirements. Article 9 SFDR funds are likely to do so, whereas Article 8 SFDR funds less so and, in any case, a separate assessment will be required. The Guidelines are also not linked to any future labelling regime the European Commission considers introducing in the context of the SFDR reforms.

While they are not intended as a "labelling" regime, the Guidelines effectively create minimum standards for funds using the relevant terms, and thereby fill a perceived gap in the industry. According to the recently published report of the European Commission on the outcome of its consultation on the SFDR reforms<sup>9</sup> more than 70% of the respondents saw a need to create labels in addition to the existing disclosures.



**Do you agree that there is no need for product categories ("labels") and that disclosure only is sufficient?**



<sup>3</sup> Consultation Paper On Guidelines on funds’ names using ESG or sustainability-related terms (ESMA34-472-373) accessible [here](#).  
<sup>4</sup> Public Statement: Update on the guidelines on funds’ names using ESG or sustainability-related terms (ESMA34-472-373) accessible [here](#).  
<sup>5</sup> Amending Directive (Directive (EU) 2024/927) was published in the Official Journal on 26 March 2024 and entered into force on 15 April 2024. The new mandates are contained in Article 23(7) of the AIFMD and Article 69(6) of the UCITS Directive. The Directive is accessible [here](#).  
<sup>6</sup> "Position/Recommendation 2020-03" on non-financial claims of retail funds.  
<sup>7</sup> Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) accessible [here](#).  
<sup>8</sup> The EU Taxonomy Regulation (Regulation (EU) 2020/852) is accessible [here](#). The Taxonomy is supported by the Delegated Acts, namely the Environmental Delegated Act (Delegated Regulation (EU) 2023/2486) accessible [here](#), the Disclosures Delegated Act (Delegated Regulation (EU) 2021/2178) accessible [here](#) and the Climate Delegated Act (Delegated Regulation (EU) 2021/2139) accessible [here](#), further amended by the Complementary Climate Delegated Act (Delegated Regulation (EU) 2022/1214) accessible [here](#) and the Delegated Regulation (EU) 2023/2485 of 27 June 2023 amending the Climate Delegated Act, accessible [here](#).  
<sup>9</sup> Summary Report of the Open and Targeted Consultations on the SFDR assessment accessible [here](#).

We have discussed the key findings and implications of the SFDR Targeted Consultation and the SFDR RTS Final Report in our previous insights, which can be accessed [here](#) and [here](#). An analysis of the results of the SFDR Targeted Consultation can be found [here](#). In the meantime, a number of players has published position papers on how SFDR and the EU Sustainable Finance framework could develop in the future, including ESMA's recent opinion which we have commented [here](#).

Many market participants consider the Guidelines to be an untimely move in light of the European Commission's work on reforming SFDR. Moreover, different from the UK SDR regime,<sup>10</sup> they are mandatory for all types of funds, including those targeting professional investors which are very likely to look beyond the fund name. At the same time, fund managers may easily "escape" ESMA's new regime if they chose a fund name which does not contain ESG or sustainability-related terms – as it is often the case for professional investor funds.

## 2. TO WHOM DO THE GUIDELINES APPLY?

By their legal nature, the Guidelines are only addressed to the national regulators (**NCA**s) in the EU since ESMA has no own enforcement or standard-setting powers in the EU countries. The NCAs have to follow the so-called "comply-or-explain" procedure, meaning that they must notify ESMA by 21 October 2024 whether they will comply with the Guidelines. NCAs that have declared to comply must incorporate the Guidelines in their national legal or supervisory frameworks and enforce them (see section 6. below).

We have tracked the positions taken by NCAs in the EU on the Guidelines in a separate guide available [here](#) (**NCA Compliance Guide**). By now, most NCAs have declared that they comply with the Guidelines. An interesting case is France where the AMF had established a regime for retail funds referring to non-financial procedures and strategies in the fund name as well as in the marketing documents already prior to the application of SFDR.<sup>11</sup> According to market information, AMF has asked ESMA to provide further guidance before it can declare whether it complies with the Guidelines.

Once incorporated in the national frameworks, NCAs must apply the Guidelines to all types of fund managers in scope of EU fund regulation, i.e. UCITS management companies, alternative investment fund managers (AIFMs), managers of EuVECA, EuSEF, ELTIF and MMA<sup>12</sup> as well as internally-managed funds. The Guidelines do not contain any explicit geographic limitation but since ESMA relies on powers from the UCITS Directive and the AIFM Directive (see section 1. above), their scope is limited to the scope of these regulations. Accordingly, the Guidelines will apply to fund managers domiciled in the EU as well as to fund managers when they market certain funds in the EU – similar to the scope of SFDR.

Although not in scope directly of the Guidelines, many benchmark providers of ESG indices will need to align their index composition methodologies with the Guidelines (notably the exclusions, see section 4. below) to permit funds using ESG terms in the fund name to track these ESG indices. ESMA points out that regardless of how the ESG index is called or set up, funds may only use ESG or sustainability-related terms in their fund name if they comply with the Guidelines – a clear sign to index-tracking funds which often use the index name as part of the fund name.

<sup>10</sup> For further details on the UK SDR regime, please refer to our blog posts "Tackling greenwashing – a priority for the FCA" accessible [here](#) and "FCA publishes rules on sustainability disclosures," accessible [here](#).

<sup>11</sup> "[Position/Recommendation 2020-03](#)" on non-financial claims of retail funds.

<sup>12</sup> EuVECA refers to European Venture Capital Funds; EuSEF refers to European Social Entrepreneurship Funds; ELTIF refers to European Long Term Investment Funds and MMA refers to Money Market Accounts.

### 3. WHAT ARE THE MINIMUM REQUIREMENTS?

The Guidelines outline the minimum requirements that each fund must fulfil before using any ESG/sustainability-related terms in its name. The Guidelines delineate six distinct categories of ESG/sustainability-related terms and corresponding minimum requirements for using each. These categories are:

- "Transition"-related terms;
- "Environmental"-related terms;
- "Social"-related terms;
- "Governance"-related terms;
- "Impact"-related terms; and
- "Sustainability"-related terms.

The categories and the corresponding requirements can be condensed as below:

Category	Transition	Environmental	Social	Governance	Impact	Sustainability
<b>Relevant terms in the fund name</b>	any terms derived from the base word "transition", e.g. "transitioning", "transitional" etc. as well as terms deriving from "improve", "progress", "evolution", "transformation", "net-zero", etc.	any words giving the investor any impression of the promotion of environmental characteristics, e.g., "green", "environmental", "climate", etc.	any words giving the investor any impression of the promotion of social characteristics, e.g., "social", "equality", etc.	any words giving the investor any impression of a focus on governance, e.g., "governance", "controversies", etc.	any terms derived from the base word "impact", e.g., "impacting", "impactful", etc.	any terms derived from the base word "sustainable", e.g., "sustainably", "sustainability", etc.
<b>Minimum threshold</b>	80% of investments used to meet E/S characteristics or sustainable investment objectives under SFDR	80% of investments used to meet E/S characteristics or sustainable investment objectives under SFDR	80% of investments used to meet E/S characteristics or sustainable investment objectives under SFDR	80% of investments used to meet E/S characteristics or sustainable investment objectives under SFDR	80% of investments used to meet E/S characteristics or sustainable investment objectives under SFDR	80% of investments used to meet E/S characteristics or sustainable investment objectives under SFDR
<b>Minimum exclusions</b>	Climate Transition Benchmark (CTB) exclusions – see section 4. below	Paris-aligned Benchmark (PAB) exclusions – see section 4. below	CTB exclusions	CTB exclusions	PAB exclusions	PAB exclusions
<b>Additional requirements</b>	Investments must be on a clear and measurable path to social or environmental transition	None	None	None	Investments must be made with objective to generate positive, measurable social or environmental impact alongside a financial return	Commit to "invest meaningfully" in sustainable investments as defined under SFDR

The requirements for the six categories are also presented in graphic form in the Appendix to this briefing.

For the minimum threshold, ESMA refers explicitly to the disclosures required for Article 8 and 9 SFDR funds on the "binding elements" of their strategy under the SFDR implementing provisions.<sup>13</sup> Consequently, funds which only disclose on sustainability risks under Article 6 SFDR may not use any ESG or sustainability-related terms in their fund name.

<sup>13</sup> Commission Delegated Regulation 2022/1288 accessible [here](#).

Funds using terms from more than one category above must fulfil the requirements for all categories cumulatively. An exception applies to funds using terms from the "transition" category which only have to meet the "transition" requirements. This would mean that an "impact transition" fund does not have to pursue an impact strategy and a "sustainable transition" fund would not have to hold sustainable investments – a slightly odd result.

#### 4. WHAT ROLE DO MINIMUM EXCLUSIONS PLAY?

The exclusions applied by funds in scope of the Guidelines must be aligned with either the CTB or the PAB exclusions.<sup>14</sup> These had been introduced in 2020 for benchmark administrators providing climate change mitigation-aligned benchmarks in listed securities – i.e., for a relatively narrow purpose which is not comparable to their scope under the Guidelines, being funds investing in all kinds of asset classes and strategies.

After strong criticism to the consultation's proposal of applying the PAB exclusions (which contain extensive fossil fuel industry exclusions) to all funds with ESG or sustainability-related terms, ESMA rowed back in the Public Statement by creating two categories of exclusions. "Transition", "social" and "governance" funds can use the CTB exclusions which do not exclude fossil fuel investments. This gives at least a bit more room to invest in the economic transition.

Funds using "impact" however still have to apply the PAB exclusions – apparently ESMA sees impact investing only as environmentally focused strategy. This is a strange perception for an industry which traditionally has focused very much on the social angle and another sign that ESMA is still grappling to understand the concept of impact investing.

Whether the fund needs to apply CTB or PAB exclusions, investments in companies active in the cultivation and production of tobacco are always excluded. Although some responsible investing initiatives have taken a strong position against tobacco,<sup>15</sup> there is no general perception that tobacco companies should be excluded from all types of Article 8 and 9 SFDR funds. On the contrary, they may even currently be overweighted in some strategies based on ESG indices focusing on ESG performance in the operations of the investee companies.

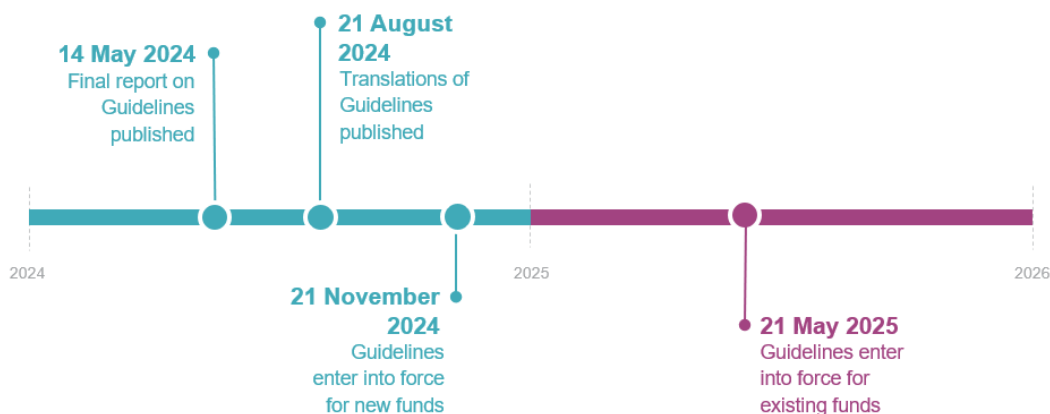
CTB exclusions	PAB exclusions
Companies involved in any activities related to controversial weapons	
Companies involved in the cultivation and production of tobacco	
Companies that benchmark administrators find in violation of the United Nations Global Compact ( <b>UNGC</b> ) principles or the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises ( <b>OECD Guidelines</b> )	
Not applicable	Companies that derive 1 % or more of their revenues from exploration, mining, extraction, distribution or refining of hard coal and lignite
Not applicable	Companies that derive 10 % or more of their revenues from the exploration, extraction, distribution or refining of oil fuels
Not applicable	Companies that derive 50 % or more of their revenues from the exploration, extraction, manufacturing or distribution of gaseous fuels
Not applicable	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

<sup>14</sup> Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, accessible [here](#).

<sup>15</sup> For example the [Tobacco-Free Finance Pledge](#) initiated by UNEP FI.

## 5. WHEN DO THE GUIDELINES APPLY?

On 21 August 2024, the Guidelines were published on ESMA's website in all EU languages, thus triggering the implementation deadlines provided within the Guidelines. The Guidelines have begun to apply three months after the publication date, i.e. on 21 November 2024. New funds launched on or after 21 November 2024 must comply with the Guidelines immediately. Funds existing before 21 November 2024 (including those that are already closed to investors) are required to comply with the Guidelines by 21 May 2025.



The attempts of the industry to achieve a grandfathering for funds already closed to new investors have unfortunately not been successful, although it is difficult to imagine how investors that have already subscribed to a fund could still be misled by the fund name.

## 6. HOW WILL THE GUIDELINES BE ENFORCED?

Although ESMA coordinates supervision at EU level, it does not have its own enforcement powers. Accordingly, the Guidelines will have to be enforced by the NCAs which have incorporated them into their national legal or supervisory frameworks (see section 2. above). ESMA clearly states that these NCAs must take all necessary measures to ensure that fund managers comply with the Guidelines. When and how they will enforce and what may be the result of confirmed violations of the Guidelines will be defined by the NCAs, which could lead to diverging practices across the different EU countries.

ESMA recommends using the periodic disclosures for Article 8 and 9 SFDR funds under SFDR as starting point for regulatory investigations and provides a few "markers" for potential Guidelines violations to be investigated by NCAs, such as minimum threshold breaches (except for passive breaches, see below) and discrepancies between the fund name and the expectations of investors.

ESMA also states that compliance with the Guidelines must be ensured throughout the life of the respective fund, which may be difficult for funds investing in illiquid assets. ESMA therefore clarifies that temporary deviation from the minimum threshold and minimum exclusions applicable to the fund should be treated as passive breach which can be corrected in the best interest of investors, unless the deviation has deliberately been caused by the fund manager.

## 7. WHAT GUIDANCE IS AVAILABLE ON THE GUIDELINES?

In their statements on the Guidelines, a number of NCAs have identified unresolved aspects or questions on which they expected further clarification from ESMA.<sup>16</sup> On 13 December 2024, ESMA has provided further guidance on the interpretation of the Guidelines in its Q&A IT tool.<sup>17</sup> The three Q&A published by ESMA cover the following topics:

- According to ESMA, the requirement to "invest meaningfully" in sustainable investments for funds using sustainability-related terms in their names requires these funds to invest a minimum share of 50% in sustainable investments. In ESMA's view, that amount may be even higher, subject to the circumstances of the case which requires a case-by-case analysis carried out by the NCA. With this guidance, ESMA returns to its position in the consultation in which it had proposed a 50% threshold. After strong criticism in the consultation (mostly from fund managers investing in listed assets) ESMA had abandoned this threshold in favour of the softer term "meaningful".
- ESMA has suggested that for the purposes of the Guidelines, the exclusion relating to controversial weapons<sup>18</sup> should be interpreted in line with the respective indicator for principal adverse impacts of investment decisions on sustainability factors (**PAI**). PAI indicator no. 14 in Table 1 of Annex I to Commission Delegated Regulation (EU) 2022/1288 contains a list of controversial weapons (anti-personnel mines, cluster munitions, chemical weapons and biological weapons).
- The PAB and CTB exclusions do not have to be applied to investments in European Green Bonds within the meaning of Regulation (EU) 2023/2631. Activities financed by European Green Bonds must be Taxonomy-aligned and are therefore screened based on the EU Taxonomy criteria to ensure that they do not cause significant harm and respective company complies with minimum safeguards.
- For investments in any other type of use of proceeds instruments (such as green loans or bonds and social loans or bonds according to Loan Market Association (LMA) or International Capital Market Association (ICMA) standards), the PAB and CTB exclusions apply to the financed activities, but not to the company as a whole (look through approach). There is one important exemption: the exclusion relating to violations of OECD Guidelines or UNGC principles<sup>19</sup> applies to the company as a whole and not only the financed activities. Accordingly, if the company is involved in such violations in the context of another activity which is not financed by the instrument, the investment still needs to be excluded.

## 8. WHAT SHOULD FUND MANAGERS DO NEXT?

Fund managers should familiarise themselves with the minimum requirements in the Guidelines and screen existing or intended new funds in scope of the Guidelines (see section 2. above) to identify funds using relevant terms in their fund names. As mentioned above, Article 6 SFDR funds may no longer use any of the terms outlined by ESMA. If the relevant fund is an Article 8 or 9 SFDR fund, the fund manager then needs to analyse if the fund already complies with the applicable minimum requirements.

If it does not, the fund manager will need to decide whether it wants to keep the fund name (for marketing or consistency purposes) or change the fund name, so it no longer contains the relevant term. The former will likely require substantive changes to the fund documents and procedures. The latter will likely require fewer material changes but will need to be managed carefully in relation to investors and the public.

Although there is still a bit of time until 21 May 2025 (the date from which existing funds need to comply with the Guidelines) fund managers should take into account any approval and publication requirements that may be associated with changing the fund documents to ensure that the respective process can be completed by that deadline.

<sup>16</sup> For more information on the comply or explain statements of the NCAs see our [NCA Compliance Guide](#).

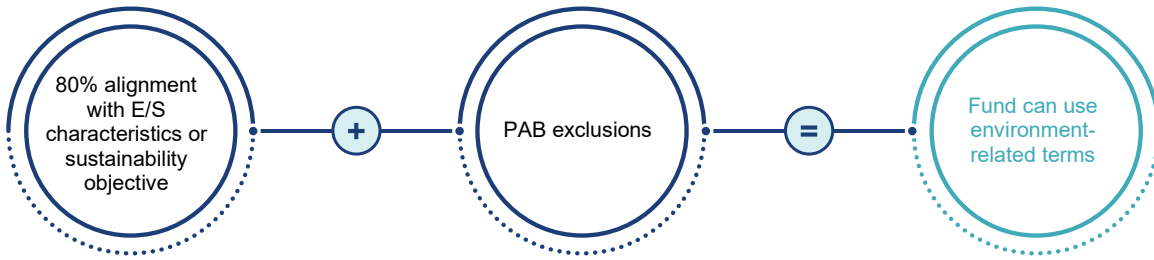
<sup>17</sup> Available [here](#) (see questions ID 2368-2374).

<sup>18</sup> See Article 12(1)(a) Commission Delegated Regulation (EU) 2020/1818.

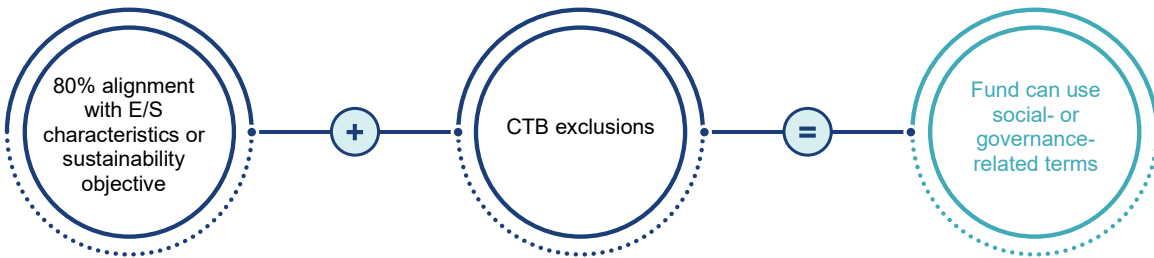
<sup>19</sup> See Article 12(1)(c) Commission Delegated Regulation (EU) 2020/1818.

## 9. APPENDIX – CLASSIFICATION CHARTS

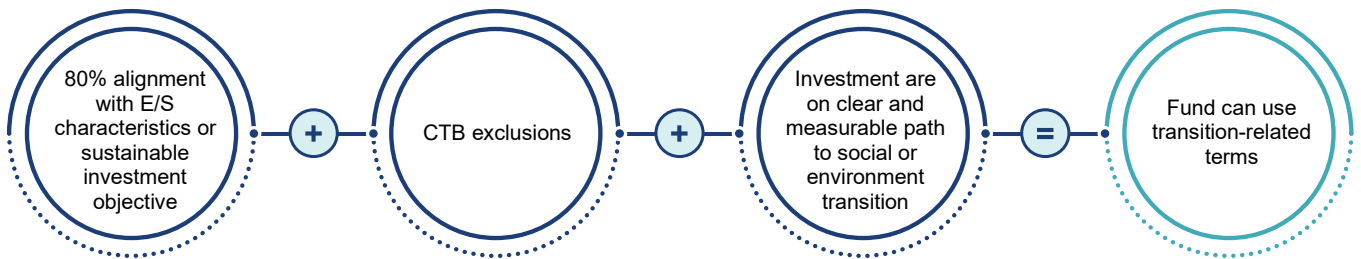
**Chart 1: For funds using environment-related terms**



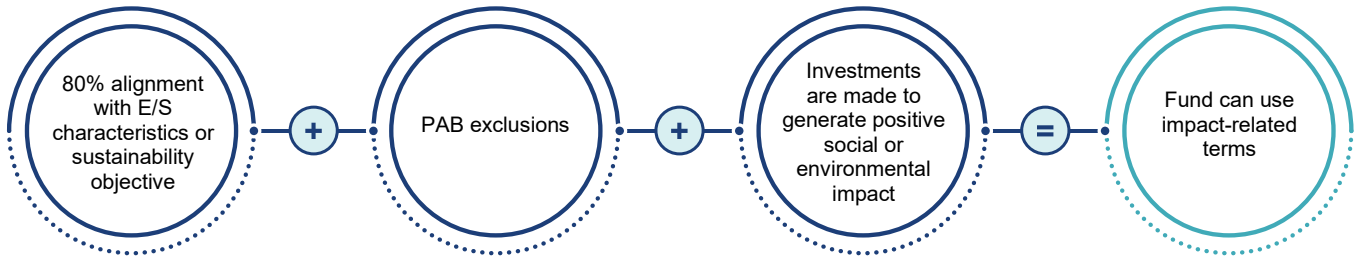
**Chart 2: For funds using social/governance-related terms**



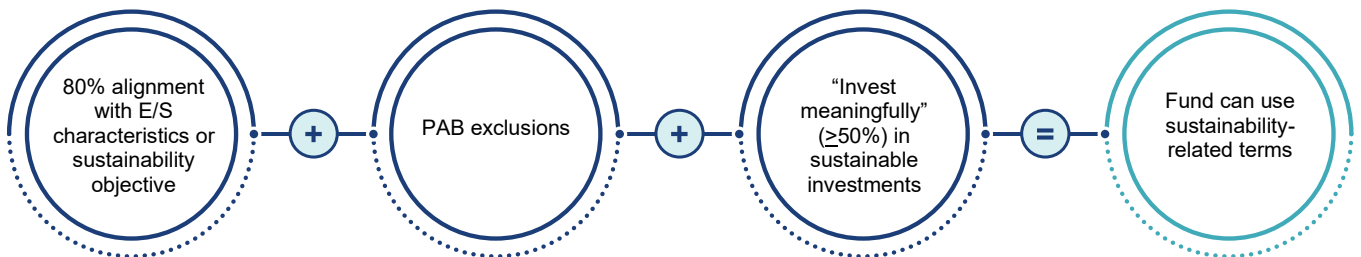
**Chart 3: For funds using transition-related terms**



**Chart 4: For funds using impact-related terms**



**Chart 5: For funds using sustainability-related terms**



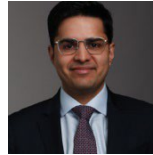


## 10. CONTACTS



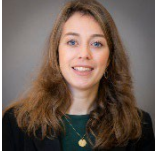
**Heike Schmitz, Partner  
Co-Head EMEA ESG**

T +49 69 2222 82540  
M +49 172 731 8669  
[heike.schmitz@hsf.com](mailto:heike.schmitz@hsf.com)



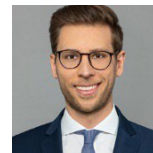
**Shantanu Naravane, Partner**

T +44 20 7466 2077  
M +44 7730 092 192  
[shantanu.naravane@hsf.com](mailto:shantanu.naravane@hsf.com)



**Leonie Timmers, Senior Associate**

T +34 91 423 4088  
M +34 606 695 154  
[leonie.timmers@hsf.com](mailto:leonie.timmers@hsf.com)



**Jan Labusga, Junior Associate**

T +49 69 2222 82425  
M +49 152 566 28342  
[jan.labusga@hsf.com](mailto:jan.labusga@hsf.com)



**Lewis Saffin, Associate**

T +44 20 7466 2230  
M +44 7809 200 494  
[lewis.saffin@hsf.com](mailto:lewis.saffin@hsf.com)

If you would like to receive more copies of this briefing, or would like to receive Herbert Smith Freehills briefings from other practice areas, or would like to be taken off the distribution lists for such briefings, please email [subscribe@hsf.com](mailto:subscribe@hsf.com).

© **Herbert Smith Freehills LLP 2024**

The contents of this publication, current at the date of publication set out above, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on the information provided herein.

For a full list of our global offices visit [HERBERTSMITHFREEHILLS.COM](https://www.herbertsmithfreehills.com)