

CSSF Update: ESMA Guidelines on Funds' Names Using ESG or Sustainability-Related Terms

Purpose and Scope

On 21 October 2024, the *Commission de Surveillance du Secteur Financier* (the "CSSF") published a *communiqué*¹ containing Circular CSSF 24/863² (the "Circular"). This *communiqué* follows on from the *communiqué*³ published on 21 August 2024, announcing the translation of the ESMA Guidelines on funds' names using Environmental, Social and Governance ("ESG") or sustainability-related terms into all the official languages of the European Union (the "Guidelines").

In summary, the Guidelines place an obligation on UCITS management companies (including any UCITS which do not have a UCITS management company), Alternative Investment Fund Managers (including internally managed AIFs, EuVECA, EuSEF and ELTIF and money market fund managers) and competent authorities to act honestly, fairly and ensure all information, including fund documentation and marketing communications, are fair, clear and not misleading.

The Circular implements the Guidelines into the Luxembourg regulatory framework. The Guidelines will apply to all new funds from 21

November 2024 and a six-month transition period until 21 May 2025 will apply for existing funds.

Key Terms in the Guidelines

Certain key terms used in the name of funds / sub-funds will trigger the Guidelines (e.g. transition, environmental, social, governance, impact, sustainability, etc.) However, it must be noted that any term derived from these obvious terms will also fall under the Guidelines (e.g. progress, evolution, green, impactful, etc.)

Recommendations to Fund Managers

A fund / sub-fund named with a term falling under the Guidelines must meet a threshold of 80% (being the proportion of investments used to meet environment or social characteristics or sustainable investment objectives).

Priority for Existing Funds

The CSSF has announced that it will use a priority processing procedure (the "PPP") for existing UCITS and AIFs. The use of the PPP will be limited to amendments to relevant documents necessary to comply with the Guidelines. These amendments will be restricted to a name change

¹ <https://www.cssf.lu/en/2024/10/communication-to-the-investment-fund-industry-in-relation-to-the-esma-guidelines-on-funds-names-using-esg-or-sustainability-related-terms/>

² <https://www.cssf.lu/en/Document/circular-cssf-24-863/>

³ <https://www.cssf.lu/en/2024/08/esma-publishes-translations-of-its-guidelines-on-funds-names-using-esg-or-sustainability-related-terms/#:~:text=The%20CSSF%20hereby%20informs%20market%20participants%20that%20the%20translations%20of>

of at least one sub-fund or minor adjustments related to ESG engagement or Sustainable Finance Disclosures Regulation ("SFDR") pre-contractual disclosure.

How to Avail of the PPP

To avail of the PPP, the CSSF have established a Fund Naming Confirmation Letter⁴ (the "Confirmation Letter") which needs to be completed and submitted to the CSSF by the relevant market participant, along with the related updated documentation to perfect the filing. The Confirmation Letter contains:

- (a) Appendix 1 provides text boxes to insert changes related to the sub-funds name; and
- (b) Appendix 2 provides a 'tick the box' method to enable market participants to address the minor changes in the fund / sub-funds investment policy.

Supervisory Expectations

In the *communiqué* the CSSF notes that they expect market participants to carry out a self-assessment on which Guidelines are applicable to them. The CSSF has reminded market participants of the following principles when applying the Guidelines to their funds / sub-funds:

- (a) funds' names should accurately reflect their sustainability characteristics and not be misleading, and ensure that any claims made are supported by actual characteristics within the fund;
- (b) pre-contractual documents must provide sufficient disclosure supporting the use of ESG or sustainability related terms in funds' names;
- (c) the ESG and sustainability-related terms referenced in the Guidelines are not an exhaustive list and names of financial products should be reviewed individually; and

- (d) market participants must monitor and consider any further developments on the Guidelines at a European level.

How We Can Help

Our Luxembourg Funds & Investment Management practice are currently working with clients to identify existing funds / sub-funds to whom the new Guidelines apply and who need to take action in accordance with the Guidelines; and are advising clients on the Guidelines when setting up new funds / sub-funds.

Further Information

For further information, please reach out to your usual Maples Group contact or any of the contacts listed below.

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⁴ <https://www.cssf.lu/en/Document/fund-naming-confirmation-letter-accompanying-the-submission-of-the-fund-prospectus->

[issuing-document-prospectus-updated-in-accordance-with-the-esma-guidelines-on-funds-name/](#)

UPDATE

This update is intended to provide only general information for the clients and professional contacts of Maples Group. It does not purport to be comprehensive or to render legal advice.

In Luxembourg, the Maples Group provides full service legal advice through our independent law firm, Maples and Calder (Luxembourg) SARL, which is registered with the Luxembourg Bar