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EU Regulators Take Different Enforcement Paths for ESMA ESG Fund Name Guidelines

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European regulators have taken different routes as to how they plan to enforce the European Securities and Markets Authority's ("**ESMA**") guidelines (the "**Guidelines**") with respect to the use of sustainability-related terms in fund names. The deadline to implement these changes for existing funds is by 21 May 2025 and has applied to new funds in scope from 21 November 2024.

The Guidelines set out minimum exclusionary criteria for funds with sustainability-related terms in their names as well as requiring minimum asset allocation levels in line with the environmental and/or social characteristics promoted or sustainable investment objectives. For further information on the Guidelines themselves, please see our alert here.

ESMA has commented that a "temporary deviation" from the threshold and/or exclusions requirements in the Guidelines will generally be treated as a "passive breach" and should be corrected in the best interest of investors, provided that the deviation is "not due to deliberate choice" by the fund manager.

Supervisory action may be taken where there are discrepancies in quantitative thresholds that are not explicitly passive breaches or in circumstances where the fund does not demonstrate a substantively "high level" of investments to reference the sustainability-related term(s) in its name.

As noted by the Responsible Investor (link to article attached here), EU regulators have confirmed a variety of approaches so far, as outlined below:

More stringent approaches

Austria	Austrian Financial Markets Authority	The Austrian regulator stated that any violation of the Guidelines will be committing an administrative offence and liable for a fine of up to €60,000 in line with the Investment Funds Act.
Belgium	Belgium Financial Services and Markets Authority	With respect to enforcement tools, the Belgian regulator has noted that they will look to impose administrative and remediation measures such as orders to be dealt with by a specific deadline if they suspect greenwashing.
Norway	Financial Supervisory Authority of Norway	The Norwegian regulator specified that enforcement will be aligned to possible supervisory actions taken in other areas and may include corrective orders to be determined by the severity of the violations. For more severe violations, fines may be imposed.
Croatia	Croatian Financial Services Supervisory Agency	The Croatian regulator has noted that it will apply a proportionate enforcement approach which can range from formal warnings, requests for corrective action, to administrative measures for serious or repeated breaches.
Lithuania	Bank of Lithuania	In cases of non? compliance, the Bank will instruct management companies to rectify the situation and sanctions may be applied in accordance with existing regulation.

Liechtenstein	Liechtenstein Financial Market Authority	The regulator has noted that they will evaluate whether enforcement action will be necessary, but that any procedures will follow existing alternative investment fund manager law ranging from warnings to fines.
Spain	Spain National Securities Market Commission	The Spanish regulator has confirmed that it will set reminders to managers to adapt before the end of the transitional period. If non?compliance is determined after this date, measures will be implemented to align with Spanish collective investment scheme regulations.
Lighter touch approaches		
Luxembourg	Luxembourg regulator CSSF	The Luxembourg regulator has noted that subject to relevant circumstances, it may consider further investigation and enter into a supervisory dialogue with market participants where necessary.
Italy	Italian Companies and Stock Exchange Commission	The Italian regulator has confirmed that it will also open dialogue with any managers that might be in breach of the guidelines.
France	Autorité des Marchés Financiers	The French regulator has said that it is planning to rely on its existing enforcement tools to sanction “established” regulatory breaches.
Ireland	Central Bank of Ireland	The Irish regulator has noted that it plans to assess compliance once the implementation period has concluded but has noted that this will be multifaceted in nature.

Denmark	Danish Financial Supervisory Authority	The Danish regulator has commented that supervisory actions will depend on the circumstances, but that “significant breaches” may result in an order being issued to the fund to remedy the situation by a specific deadline.
Germany	BaFin	BaFin has flagged that it has the power to issue orders in line with the German Capital Investment Code, but that the Code does not stipulate that managers should be fined solely on the basis that the fund name is misleading.
Malta	Malta Financial Services Authority	The Maltese regulator has confirmed that they will complete gap analysis to determine fund compliance, which could subsequently lead to other supervisory engagements.
Finland	Finnish Financial Supervisory Authority	The Finnish regulator has not disclosed any current enforcement plans, but not that there are disclosure requirements with respect to ESG thresholds and exclusions present in their current regulatory regime.
Estonia	Estonia Financial Supervisory Authority	The Estonia regulator chose not to disclose any information relating to their supervisory activities due to legal and confidentiality conflicts.

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