

# Call for feedback on the Platform for Sustainable Finance's report on minimum safeguards

Fields marked with \* are mandatory.

## Introduction

### Disclaimer:

This call for feedback is part of ongoing work by the [Platform on Sustainable Finance](#), which was set up by the Commission to provide advice on the further development of the EU taxonomy framework.

This feedback process is not an official Commission consultation. The draft report produced by the Platform is not an official Commission document. Nothing in this feedback process commits the Commission nor does it preclude any policy outcomes.

The [report on minimum safeguards](#) is intended to provide advice on the application of the minimum safeguards (MS) which bring a social and governance component to the [EU taxonomy](#). The MS are mentioned in Article 3 of the [Taxonomy Regulation \(TR\)](#) as one of the criteria for environmentally sustainable activities, and are further defined in Article 18. The advice in the Report is structured by a) embedding the MS in existing EU regulation, b) identifying the substantive topics of the standards and norms referenced in Article 18 of the Taxonomy Regulation and c) by working out how compliance with MS can be established.

Analysing the standards referred to in Article 18 of the TR ([OECD guidelines for multinational enterprises \(MNE\)](#), [UN guiding principles on business and human rights \(UNGP\)](#), the [eight conventions on fundamental principles and rights at work](#) and the [international bill of human rights](#)), the report identifies four core substantive topics for which compliance with minimum safeguards has to be defined. These four topics are

- Human rights including workers' rights and consumers' rights
- Bribery/corruption
- Taxation

- Fair competition

The advice on these four topics is worked out close to the standards referenced in Article 18 TR and to upcoming EU regulation which is built on these same standards, the [Corporate Human Rights Due Diligence Directive \(CSDDD\)](#) and the [Corporate Sustainability Reporting Directive \(CSRD\)](#) and the respective disclosure requirements. As both are still not yet fully finalised there remains some uncertainty as to their implementation. Therefore, the solution developed in this report is to a) build the requirements for MS compliance on the international standards referenced in Article 18 and especially on the six steps of the UNGPs/OECD guidelines for MNE, b) point to upcoming regulations and disclosure requirements that build on these standards and c) to point to independent sources of information covering particular aspects of MS implementation which could be used for external performance checks.

More concretely the report advises to consider the following as a sign of non-compliance with MS

1. inadequate or non-existing human rights due diligence processes in companies including labour rights, bribery, taxation and fair competition
2. a company's final conviction in court, if it is related to any of the above listed topics
3. a lack of collaboration with a national contact point (NCP) or an assessment of non-compliance with OECD guidelines for MNE by an OECD NCP
4. a company not responding to allegations raised by the [Business and Human Rights Resource Centre](#)

It is further suggested that points two to four should be valid until the company has implemented a due diligence system that makes such breaches unlikely.

On the basis of this advice, the [EU Platform on Sustainable Finance](#) would like to solicit public feedback on the following questions.

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**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-platform-sf@ec.europa.eu](mailto:fisma-platform-sf@ec.europa.eu).

More information on

- [the publication of the report on minimum safeguards](#)
- [the EU Platform on Sustainable Finance](#)
- [sustainable finance](#)
- [the protection of personal data regime for this call for feedback](#)

## About you

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\* Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☒ Danish
- ☐ Dutch
- ☐ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

\* I am giving my contribution as

- ☐ Academic/research institution
- ☒ Business association
- ☐ Company/business organisation
- ☐ Consumer organisation
- ☐ EU citizen
- ☐ Environmental organisation
- ☐ Non-EU citizen
- ☐ Non-governmental organisation (NGO)
- ☐ Public authority

- ☐ Trade union
- ☐ Other

\* First name

\* Surname

\* Email (this won't be published)

\* Organisation name

*255 character(s) maximum*

\* Organisation size

- ☐ Micro (1 to 9 employees)
- ☐ Small (10 to 49 employees)
- ☒ Medium (50 to 249 employees)
- ☐ Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

\* Where are you based and/or where do you carry out your activity?

Please add your country of origin, or that of your organisation.

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| <input type="radio"/> Czech Republic | <input type="radio"/> Ireland | <input type="radio"/> Other country | <input type="radio"/> United Kingdom |

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| <input type="radio"/> Finland            | <input type="radio"/> Liechtenstein | <input type="radio"/> Romania  |

\* Field of activity or sector (if applicable)

- ☐ Accounting
- ☐ Auditing
- ☒ Banking
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☒ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☐ Other
- ☐ Not applicable

\* **Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?**

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- ☒ **Yes, I agree to my responses being published under the name I indicate ( name of your organisation/company/public authority or your name if your reply as an individual – your email address will never be published)**
- ☐ **No, I do not want my response to be published**

☒ I agree with the [personal data protection provisions](#)

## Your opinion

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The Report proposes two sets of criteria for the establishment of non-compliance with MS: one related to adequate due diligence processes implemented in companies (i.e. relying on corporate reporting and disclosure) and the other related to the actual outcome of these processes or the company's performance (i.e. relying on external checks on companies).

**Question 1. Do you agree with this two-pronged approach?**

- ☒ Yes

- ☐ No
  - ☐ Don't know / no opinion / not applicable
- 

The advice of the report is that companies covered in the future by the EU due diligence law (the [proposed CSDD Directive](#)) which are acting in compliance with the law would be considered aligned with the human rights part of the minimum safeguards as the demands of these two legislations overlap (provided that the final scope and the requirements of CSDDD will indeed be aligned with the standards and norms of Taxonomy Regulation Article 18).

### Question 2. Do you agree with this advice of the report?

- ☒ Yes
  - ☐ No
  - ☐ Don't know / no opinion / not applicable
- 

The [UNGPs](#) require that due diligence processes implemented in a company result in human rights abuses being effectively prevented and mitigated. To check whether processes implemented in a company fulfil this requirement, the report suggests applying external checks based on a company

- a. having had a final conviction at court
- b. or not responding to complaints at OECD national contact points or allegations via [Business and Human Rights Resource Centre](#).

### Question 3. Do you agree with this approach?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

### Please explain your answer to question 3:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We agree that the implementation of the due diligence processes are monitored to ensure they are effective and agree in principle that a final conviction in court is a good external check. Should checks other than court convictions be warranted, we find that it is important to adhere to established international governmental cooperation structures such as the OECD NCP complaints procedure.

It is, however, important to take into account that court cases may take years to complete and that final convictions may not indicate the current performance of a company. A company should be able to demonstrate – both in relation to its court records and human rights complaints according to the second criterion - that action has been taken to remedy the adverse impact. An undertaking's court record should not mean an extended period of non-compliance – if adequate action has been taken.

In addition, we would point out, the importance of reliable data from ESG rating agencies and data providers – and that their methods in assessing taxonomy alignment are efficient. Otherwise, the financial sector will be left with a data challenge.

### **Question 3.1 Which type of court cases should be selected as criterion for non-compliance with minimum safeguards?**

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In deciding which types of court cases should be selected as criterion, it should be considered that to ensure a level playing field. Until EU wide legislation is in force, breaches of fundamental human rights according to national due diligence laws on human rights should be applied, given that most national laws already draw on OECD MNE and UNGP guidelines. It is, however, important to consider the severity of the breaches – e.g. labor law cases linked to contracts etc. should not be considered. In such cases the legislation from one EU country to another differs considerably, which could leave companies in a situation, where the minimum standards also differ between EU countries.

### **Question 3.2 Are there other types of external checks you would suggest (data for these checks should be publicly available and lead to the same result for a company)?**

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

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The advice given in the Report on corruption, taxation and fair competition is comparable to the advice on human rights in that it requires that a company has implemented processes to avoid and address negative impacts and that the company has not been finally convicted for violations in these fields.

### **Question 4. Do you agree with this approach?**

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

### Please explain your answer to question 3:

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In principle we agree to the approach where both adequate internal processes and monitoring are required to meet the MS. The advice of the platform on these issues, is however, not as detailed as that on Human Rights and these elements are not as well covered by CSRD and CSDD as human rights. Particularly taxation and fair competition, are not at present addressed by many data providers, which will in itself be a challenge in the short term.

On taxation it should furthermore be considered that the assessment of whether a company is living up to the “spirit of the tax laws” is a rather complicated matter. Providing that data is available and that a way to create a level playing field as mentioned under question 4.1, the two outlined criteria seem reasonable, where the effectiveness of the internal risk management and oversight system is measured by final convictions on tax evasion.

### Question 4.1 Which type of court cases should be selected as criterion for non-compliance with minimum safeguards?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It should be a priority that only convictions related to EU wide legislation on taxation, competition and corruption should be applicable as a non-compliance criterion. Since national tax legislation differ considerably from country to country, this would risk creating an unlevel playing field within the EU.

### Question 4.2 Are there other types of external checks you would suggest (data for these checks should be publicly available and lead to the same result for a company)?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

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A suggestion given in the Report on MS is to consider the human rights due diligence processes companies have implemented and do checks on their performance, rather than rely on controversy checks based on media coverage (as is done by some ESG rating agencies).

### Question 5.1 What do you think these changes imply for companies?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.



As is also mentioned in the report, this change could initially leave a high number of companies non-compliant with the taxonomy.

## Question 5.2 What do you think these changes imply for investors?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For the financial sector and investors, the change would result in a considerable data challenge in addition to the potential difficulties in the application of the taxonomy by investee companies. In the short term this is therefore likely to lead to a minimal number of taxonomy-aligned investments and present a data and usability challenge for the taxonomy.

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The [OECD guidelines for multinational enterprises](#) highlight the importance of good corporate governance. The Report takes this up by developing criteria for bribery/corruption, taxation and fair competition.

## Question 6. Do you agree with this approach?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

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## Question 7. Do you have further suggestions or comments on the Report?

*5000 character(s) maximum*

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We very much welcome the report and the guidance it gives. It is of the highest importance that the different pieces of sustainable finance legislation work in conjunction towards the same end and that reporting requirements and substantial requirements to what makes an activity green are aligned across legislative texts. In that light it is positive that CSRD and CSDDD seem to fulfill the human rights criteria and that the related SFDR PAIs cover the same information. This, however, still leaves some challenges – mainly related to data challenges.

We agree to the advice set out in the report on the two criteria, we need to be aware of the practical challenges in terms of data availability and uptake in the market.

The implementation of the green taxonomy is at the early stages, and as the report also mentions, companies and FMPs are struggling to understand how to apply the minimum standards. At the same time, the interpretation of compliance with human rights due diligence guidelines stated in the report, carries the risk of leaving very few companies taxonomy compliant thereby exacerbating the problem that very few investments are taxonomy compliant with both substantial contribution and DNSH criteria.

At this stage it is important to focus on the usability of the taxonomy for the market to start applying the classification system and the risk is that the inclusion of further elements in the minimum standards would add complexity. We would therefore not consider it prudent to expand the scope of the minimum standards at this time as question 6.1 touches upon. We would instead welcome further discussions on this as part of a discussion on a social taxonomy.

Much of the information will only be available in 2025/2027 and then only for CSRD companies. The lack of data in this interim period will need to be taken duly into account in the level of ambition in the requirements to be MS compliant. The financial sector will play an important role – among other things through active ownership – to push for companies to implement the adequate processes mentioned in the minimum standards. In order for the taxonomy to become usable in the short term, it could be considered that until CSRD and CSDDD have taken effect and data becomes available, that full emphasis should be put on the outcome part of the non-compliance criteria. Meaning that in the absence of convictions related to national due diligence human rights laws and EU legislation on taxation, corruption and fair competition, a company would be considered compliant with MS.

Further guidance is also needed in relation to when a bank has an exposure to an undertaking that carries out a Taxonomy activity and when the bank is an undertaking that carries out a Taxonomy activity and therefore needs to comply with the MS. It is not clear whether a bank has to meet the minimum standards criteria, when the activity includes the work "financing" (page 49 of the report). Green transport is used as an example and it is not clear whether it is necessary to ensure that both the bank and the NFRD company meet the minimum safeguards when granting e.g. a vehicle loan to an NFRD company. And if in the case of households the MS requirement only applies for the bank.

## Additional information

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

### Useful links

[More on this call for feedback \(https://ec.europa.eu/info/publications/220711-sustainable-finance-platform-report-minimum-safeguards\\_en\)](https://ec.europa.eu/info/publications/220711-sustainable-finance-platform-report-minimum-safeguards_en)

[More on the EU Platform on Sustainable Finance \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance\\_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/overview-sustainable-finance/platform-sustainable-finance_en)

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[Specific privacy statement \(https://ec.europa.eu/info/files/2022-platform-sustainable-finance-minimum-safeguards-report-specific-privacy-statement\\_en\)](https://ec.europa.eu/info/files/2022-platform-sustainable-finance-minimum-safeguards-report-specific-privacy-statement_en)

### Contact

fisma-platform-sf@ec.europa.eu