

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 \(UNGPs\)](#), 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.

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.

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

* 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

Agnieszka

* Surname

Skorupińska

* Email (this won't be published)

agnieszka.skorupinska@cms-cmno.com

* Organisation name

255 character(s) maximum

Krajowa Izba Gospodarcza (Polish Chamber of Commerce, PCC), ESG Committee

* 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"/> Austria | <input type="radio"/> France | <input type="radio"/> Lithuania | <input type="radio"/> Slovakia |
| <input type="radio"/> Belgium | <input type="radio"/> Germany | <input type="radio"/> Luxembourg | <input type="radio"/> Slovenia |
| <input type="radio"/> Bulgaria | <input type="radio"/> Greece | <input type="radio"/> Malta | <input type="radio"/> Spain |
| <input type="radio"/> Croatia | <input type="radio"/> Hungary | <input type="radio"/> Netherlands | <input type="radio"/> Sweden |
| <input type="radio"/> Cyprus | <input type="radio"/> Iceland | <input type="radio"/> Norway | <input type="radio"/> Switzerland |
| <input type="radio"/> Czech Republic | <input type="radio"/> Ireland | <input type="radio"/> Other country | <input type="radio"/> United Kingdom |

- Denmark
- Estonia
- Finland
- Italy
- Latvia
- Liechtenstein
- Poland
- Portugal
- 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

* Please specify your activity field(s) or sector(s)

The Polish Chamber of Commerce is the largest independent business organisation in Poland. It was established in 1990. It represents a significant number of entrepreneurs, joining 160 business organisations, 70 chambers and trade unions, 61 regional chambers, 21 bilateral chambers and 8 other organisations (associations, foundations).

*** 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

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.

In general terms we understand the necessity of applied external supervision (checks). However, in our opinion the indicated criteria do not ensure sufficient objectivity.

As to criterion a.: the court conviction can be considered a sufficiently objective criterion for deeming a company non-compliant only if the court meets the EU standards of impartiality and independence. As was correctly indicated in the Report, authoritarian regimes and governments can use certain allegations or even convictions by courts which are not impartial or independent to silence critical voices and civil society. This has to be taken into account. Moreover, it should be clear that court conviction of natural persons (i.e. top management) are relevant only if they pertain to activity of this natural person in the particular company which is under assessment. A distinction should be made between court proceedings involving serious violations and the minor ones.

As to the criterion b.: while external checks may be helpful in determining whether a particular company fulfils the relevant requirement(s), reliance on factors such as failure to respond to complaints at OECD national contact points or allegations via Business and Human Rights Resource Centre seems to be a too far-fetched simplification. Also, in addition to the non-response criterion, the Report states that a company can be deemed non-compliant simply due to a statement of OECD NCPs. It does not seem consistent - a statement of an OECD NCP should not have the same gravity as a final conviction of the court, in particular if a given OECD NCP is not sufficiently impartial or independent and its statements are not subject to appeal or other legal recourse. At minimum, the company should be able to demonstrate that despite the second criterion not being met, it is in fact compliant. Alternatively, the criterion b. could be skipped altogether.

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.

With respect of human rights, only cases involving groups of people (class action) or repeating identical, i.e. based on the same legal grounds, individual cases should be taken into account. With respect to labour law only cases concerning following issues should be selected: health and safety requirements; prohibition of discrimination; respect of diversity in the workplace; mutual respect, equality, access to development opportunities and optimal use of employee talent regardless of ethnic origin, age, gender, nationality, citizenship, religious orientation, political convictions or trade union memberships. For labour law, consumer protection law, data protection law, humanitarian law and criminal law only cases with serious violations should be taken into account.

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

Please specify and explain the other types of external checks you would suggest:

5000 character(s) maximum

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

Basically we suggest no other types of external checks. However, it may be considered to use of guidelines contained in certification procedures and standards, for example (ISO: ISO 37001, ISO 37301, ISO 19600, ISO 45001; SA8000, OHSAS 1800).

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.

This approach seems generally adequate, as long as the risk that the court convicting the violations may not meet the EU standard of independence and impartiality is sufficiently addressed and mitigated. As was correctly indicated in the Report, authoritarian regimes and governments can use certain allegations or even convictions by courts which are not impartial or independent to silence critical voices and civil society. This has to be taken into account. Moreover, it should be clear that court conviction of natural persons (i.e. senior management), where mentioned, are relevant only if they pertain to activity of this natural person in the particular company which is under assessment. Definitely distinction should be made between court proceedings involving serious violations and the minor ones.

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.

This should be cases which are subject to reporting under the EFRAG ESRS standards. It should be specified at EU level which crimes and violations meet the definition of corruption, as well as which violations related to taxation and fair competition should be taken into account. In particular given that there is a broad range of types of cases that may be involved, we believe that value thresholds should be applied in order to distinguish between relevant and non-relevant cases.

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

Please specify and explain the other types of external checks you would suggest:

5000 character(s) maximum

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

Basically we suggest no other types of external checks. However, it may be considered to use of guidelines contained in certification procedures and standards, for example (ISO 20400:2017).

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.

While consideration of implementation and performance of due diligence processes is not a perfect tool, we certainly perceive it as a step in the right direction and we agree with this approach as it results in a more objective approach to the level and method of implementing MS in the companies and its assessment. There were lots of cases when the media did not present information on the human rights due diligence processes performance very objectively.

On the other hand of course this approach will be more challenging to the companies as they will need to introduce necessary changes to the principles of the company's operation as well as in the supply chain. Especially the necessity to obtain information from supply chain will be demanding and postponing this requirement should be considered.

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.

These changes will provide more objective information for investors, making it easier to make business decisions.

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

Question 6.1 Which other aspects of good corporate governance matters do you believe the advice should cover or refer to would you like to add?

5000 character(s) maximum

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

The Report gives many examples of insufficient Human Rights Due Diligence, in particular when certain objectively known risks for human rights have not been addressed by the company, but does not provide similar examples for the anti-corruption systems. It would be helpful to include examples when an anti-corruption system can be considered insufficient to comply with the minimal safeguards to help the companies better understand the requirement. The same concerns: bribery / corruption and taxation. As for the rest in general we believe that as a starting point the proposed criteria are sufficient.

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.

In general, the PCC's ESG Committee welcomes the Report and appreciates all the hard work that has been put into its drafting. Based on the analysis performed by the PCC's ESG Committee it seems apparent that the content of Report is well thought, hence it will result in the unification of approach to the application of the MS. We appreciate the positive impact this may have on reaching the sustainability aims in general. Having said this, we are of a general opinion that the requirements put forward in the Report are rather demanding. Meeting these requirements will constitute a significant challenge for all undertakings subject to assessment under EU Taxonomy. Polish entities may find some issues presented in the Report difficult to implement. However, the most crucial among them is the approach to the value chain. These requirements are too far-reaching. From the Polish perspective, obtaining reliable information on the value chain will be very difficult and will not happen overnight. Thus, we are of the opinion that these requirements should be crossed out from the Report or at least significantly phased in to allow for the preparation of the value chain for meeting the respective requests.

In general the adjustment to the requirements of the Report will be time consuming. In our opinion many companies will require professional (most probably external) assistance to adjust to the requirements of the Report. Thus, reasonable approach to the timeline of application of the requirement of the Report should be considered.

Moreover, we strongly believe that the companies required to adjust to requirements of the Report should receive a support package in the form of access to free tools, training, external consulting schemes, subsidizing the preparation of internal documents and subsidizing the whole adaptation processes. In our opinion, some form of tax relief should be considered, which should encourage entrepreneurs to make the essential changes in the company. This may not be in a grant form but a widely available tax mechanism. The support package should in particular be directed at SME sector.

Moreover, the support package should include an information campaign as many of the companies will not be aware of these obligations.

As a more specific comment we would like to point out that the two-pronged approach seems generally adequate, with exception of the external audit requirement. The main issue is to ensure that in case of the second criterion (i.e. the one related to the actual outcome of the processes or the company's performance) the company is assessed fairly and to eliminate the risk that the external check may be unduly biased against the company or influence by authoritarian regimes to silence critical voices and civil society.

Additional information

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)

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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

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