

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

Fields marked with \* are mandatory.

## Introduction

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### 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.

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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

maria

\* Surname

van der heide

\* Email (this won't be published)

maria.vanderheide@shareaction.org

\* Organisation name

*255 character(s) maximum*

ShareAction

\* 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.

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

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

- |  |                               |                                     |                                      |
|--|-------------------------------|-------------------------------------|--------------------------------------|
| <input type="radio"/> Austria            | <input type="radio"/> France  | <input type="radio"/> Lithuania     | <input type="radio"/> Slovakia       |
| <input checked="" 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

\* **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

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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

### Please explain why you do not agree with this advice of the report:

*5000 character(s) maximum*

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

We recommend against assuming compliance with minimum safeguard for those companies in scope of the EU due diligence law. Further clarity from the European Commission on the implementation of the Minimum Safeguards is needed urgently. Providing this clarity cannot be delayed to await the outcomes of the CSDDD discussions, and after that, the stipulated transposition period. Moreover, we would like to note that the current CSDDD proposal is not fully aligned with the UNGPs and the OECD Guidelines. Relying on the CSDDD in its current form would therefore not be compliant with article 18 of the Taxonomy regulation.

Additionally, it is unsure how sound supervision systems of CSDDD compliance in different member states will be. Not all member states will (be able to) introduce effective compliance checks swiftly, leaving many companies unchecked for long periods of time. The lack of supervision may encourage company non-compliance. Experiences from the implementation of similar due diligence based rules, such as the conflict mineral regulation, show that member states follow very different approaches. This led to a situation in which companies in certain member states have not been held to the same standard. See for instance: <https://www.germanwatch.org/sites/default/files/Review%20of%20member%20state%20RU%20policy%20regulacion%20on%20responsible%20sourcing.pdf>

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The [UNGP](#)s 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 with the suggested two pronged approach that considers two criteria for MS compliance, namely 1) the existence of adequate due diligence processes and 2) the absence of final convictions in court or absence of the refusal to engage in stakeholder mechanisms. We support the proposed external checks for criterion 2 of MS compliance, yet we recommend not to present this as a comprehensive list, as there will be other (existing or future) stakeholder mechanisms that are relevant in this regard. This could be at national or at regional/ international level, for instance structures coming out of the UN Treaty in Business and Human Rights negotiations or the UN Special Rapporteur complaints procedure.

**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.

Cases at legitimate courts at local, national, regional and international level, including courts with a specific focus such as human rights, or equality.

**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.

See answer to question 3

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.

Avoiding and addressing negative impacts, through due diligence processes, on the topics of corruption, taxation and fair competition is in line with the OECD Guidelines.

#### 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.

Cases at legitimate courts at local, national, regional and international level.

#### 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.

Relying solely on controversy checks does represent company efforts to prevent and address violations in their operations and value chains well. Violations by known consumer brands are more likely to be covered by media outlets. Less known industries/companies may have similar risks in their operations/value chains, which are not picked up by simple controversy checks but will be identified through check on due diligence processes and performance. Companies may benefit from this approach, as it gives a more reliable picture of company due diligence efforts, and it may improve the level playing field by not over relying on media coverage.

## 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.

There are many investors that already go beyond ESG rating agencies' controversy screenings. They have put in place their own data collection systems, which are also required to feed into investor engagement activities. Moreover, having information about due diligence systems and performance, provides for a better reporting basis to comply with SFDR Article 8 or Article 9 requirements.

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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.

ShareAction welcomes the Platform for Sustainable Finance's report on minimum Safeguards, and the opportunity to provide feedback. It is important that further clarity is given on the interpretation and implementation of the Minimum Safeguards.

The Minimum Safeguards are a key, yet often overlooked, element of the Taxonomy Regulation. The Minimum Safeguards stipulation ensures that the Taxonomy Regulation incentivises a just transition, in which social crises are not aggravated by solutions aimed at addressing climate and environmental crises.

A further elaboration of the Minimum Safeguards is required to provide businesses and investors that wish to declare their activities as Taxonomy compliant with much needed clarity. Without this clarity, interpretation is left to the market which will cause confusion and may facilitate "social washing". Green investments can only be labelled sustainable if they prevent negative impacts on human rights, labour rights and cannot be linked to non-compliance in the area of tax law, corruption rules and anti-competitive practices (as per the OECD guidelines). Investors will be helped with clear guidance on the interpretation of the safeguards which will

support them in scaling up investments that respect social and governance factors. In addition, it will ease reporting under SFDR.

We strongly urge the European Commission to swiftly follow up on the report by developing a delegated act that follows the key recommendations of the report.

Finally, we recommend that further consideration is given to the absence of complaints being submitted to or declared admissible by courts or stakeholder mechanism in contexts characterised by low levels of civic space. The second criterion may therefore not be fully representative, and stricter attention should be paid to the existence of sound due diligence systems. Resources to consider to retrieve further information about the civic space in different countries are for instance:

<https://monitor.civicus.org/>

<https://freedomhouse.org/>

<https://www.frontlinedefenders.org/>

## 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)

[More on sustainable finance \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance\\_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en)

[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

