

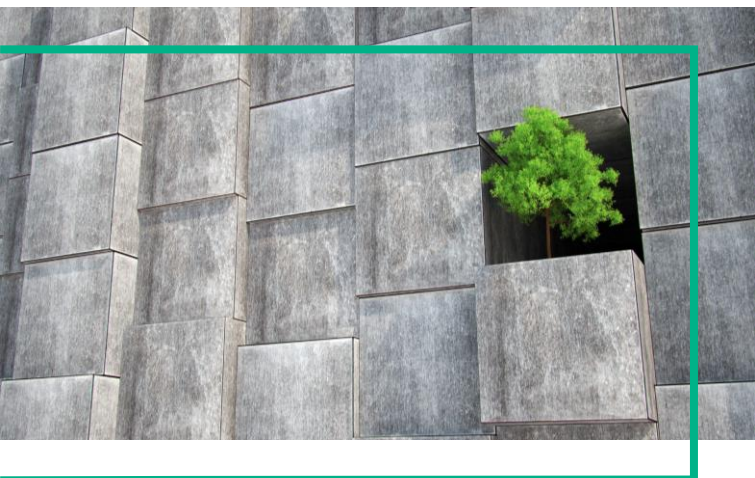
Social Economy & Human Rights

TAXANOMY - DRAFT REPORT
ON MINIMUM SAFEGUARDS

VdA EXPERTISE



July 2022 | [ESG Integrated Services Platform](#)



The Platform on Sustainable Finance requests public feedback on its Draft Report on Taxonomy Minimum Safeguards until 22 August

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 (the "Taxonomy Regulation" or "Regulation"), provides companies, investors and policymakers with appropriate definitions for which economic activities can be considered environmentally sustainable. However, contrary to what might appear at first glance, this concept also encompasses a social and governance dimension. For those activities to be considered environmentally sustainable, Article 3 (c) requires that they are carried out in compliance with the *minimum social safeguards* ("MS" or "Minimum Safeguards") laid down in its Article 18 of the Taxonomy Regulation.

In turn, the aforementioned Article 18 provides that respect for the MS requires the implementation of procedures, by companies, to ensure that they comply with i) the **OECD** Guidelines for Multinational Enterprises; ii) the **UN** Guiding Principles on Business and Human Rights ("**UNGP**"); iii) the eight **ILO** conventions on fundamental principles and rights at work (which cover some major human rights issues such as forced labour and child labour); and iv) the International Bill of Human Rights.

Against this background, on 11 July 2022 the Platform on Sustainable Finance published and submitted for public consultation a Draft Report ("Report") with guidelines for companies' compliance with Minimum Safeguards. The report aims to clarify and support companies on the application of the MS, namely through the following methods:

a) **Embedding MS in existing EU regulation** – In addition to the Taxonomy Regulation, the Report makes reference to three European instruments of the European Green Deal which have an impact on MS compliance: i) the Sustainable Finance Disclosure Regulation

("SFDR"); ii) the upcoming Corporate Sustainability Reporting Directive ("CSRD"); and iii) the upcoming Corporate Sustainability Due Diligence Directive ("CSDDD").

- b) **Identifying reference areas covered by Article 18** – the Report identifies four topics : i) human rights, including workers' rights; ii) bribery/corruption; iii) responsible taxation; and iv) fair competition;
- c) **Presentation of guidelines for compliance with MS** – the Report recommends considering the following criteria as a sign of non compliance with MS: i) failure to implement adequate human rights due diligence processes; and ii) lack of proper implementation of due diligence processes resulting in human rights violations.

In other words, contrary to what would be expected by many, it is not enough for a company to have internal policies that reflect the OECD Guidelines, the UNGP or the ILO Conventions to ensure compliance with MS. In fact, the Report explicitly states that **there is a misunderstanding in regard to what compliance with MS actually means**, stating, namely, that the system underpinning the UNGP requires companies to actively implement Due Diligence processes and report on these processes.

It goes further, stating that "The first step to assess compliance with MS is to understand whether a company reports on its due diligence approach. If this is missing, a core element of UNGP is absent, and the company cannot be considered as being MS compliant."

It is therefore very clear from the Report that the **implementation of human rights due diligence processes is at the heart of alignment with the MS.**

This means, in practice, that companies with inadequate processes (or which do not have them at all), should be considered as being **non-compliant with the MS**, with the very serious consequence inherent to this circumstance – a company that does not comply with the MS rules out the possibility of any of the economic activities it carries out being considered as “environmentally sustainable” under the Taxonomy Regulation. And this “non-compliant” status will be maintained until the company proves that its due diligence processes are sufficiently developed as to make it unlikely that a breach of human rights, labour rights etc. will occur.

In addition, the Report refers to the importance of the principle of “do no significant harm” in the implementation of the procedures aimed at compliance with MS.

Finally, the Report also underlines that the normative construction of a MS category does not validate any disregard of more stringent obligations on environment, health, safety and social sustainability enshrined in European legislation, where these exist / are applied.

Stakeholders are now invited to provide feedback [here](#) by 22 August 2022. Following the analysis and possible inclusion of contributions received, the Platform will submit a final version to the European Commission by September 2022.

A final text is expected to be approved by the European Commission by the end of 2022 and enter into force in 2023. The Report may be revised in the future depending on the final versions and practical implementation of the CSRD and the CSDDD.

The MS Report aims to provide guidance to companies on how to comply with MS and how this criterion of the Taxonomy Regulation will be assessed, underlining that human rights due diligence is at the heart of the alignment with MS.

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