

# ESBG response to the Platform for Sustainable Finance consultation on minimum safeguards

Executive Summary  
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The Platform for Sustainable Finance (PSF) [draft 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, as per Article 3 (and as further defined by Article 18) of the [Taxonomy Regulation](#). The report looks at human rights including workers' rights and consumers' rights, bribery/corruption, taxation and fair competition as topics for which compliance with minimum safeguards has to be defined. Inadequate or non-existing human rights due diligence processes as well as company's final conviction in court, among others are considered as signs of non-compliance with MS. The Platform will analyse the feedback received and prepare the final report in Q3 2022. The final report will be carefully analysed by the Commission, but it does not bind the Commission on any decision on the matter.

## TWO-PRONGED APPROACH ON ESTABLISHMENT OF NON-COMPLIANCE WITH MINIMUM SAFEGUARDS

The draft report proposes a two-pronged approach for identifying non-compliance with MS, namely one related to adequate due diligence processes implemented in companies (internal checks) and the other related to the actual outcome of these processes or the company's performance (external checks). ESBG highlights that assessing whether a company complies with the due diligence processes should, other than relying on external checks as only possibility, be demonstrated by: i) proving that the applicable national legislation provides for sufficient guarantees concerning the specific topic; ii) self-declarations made by the client concerning the specific topic.

## HUMAN RIGHTS DUE DILIGENCE PROCESSES

Currently, financial market participants such as investors rely on ESG ratings agencies to check compliance with MS. On one hand, ESG ratings agencies mainly employ controversy screening techniques (e.g. media reports) to find out whether there are allegations on human rights abuses on the company. Yet the report recommends that the focus should be on assessing the human rights due diligence processes of a company, as judgement that certain controversies are considered more severe or important than others is based on a value judgement and is sometimes difficult to justify. In this context, ESBG believes that the criterion to consider the human rights due diligence processes companies have implemented rather than rely on controversy checks based on media coverage will significantly increase the difficulty to evaluate companies' performance as they generally rely on ESG rating agencies. Evaluation on the suitability of the implemented processes is not straightforward and media coverage may be an indicator. The administrative cost derived from direct analysis for the institutions to perform instead of relying on a ESG rating is too burdensome and would impair the financial activity.

## THRESHOLDS FOR APPLYING EXTERNAL CHECKS ON A COMPANY

ESBG emphasizes that gravity thresholds for non-compliance should be defined, so that not every minor violation (e.g. of taxation or work laws) leads to the establishment of an external check. The criteria regarding a final conviction needs to be further clarified by assessing how a "material" conviction can be evaluated (by claim amount, fine amount, number of affected parties, etc by providing a source for information for companies that are in the scope of the Corporate Sustainability Reporting Directive (CSRD), and by clarifying the timeframe for a final conviction that a company had at court in the past is to be considered non-aligned.

## ALIGNMENT WITH CSRD PERIMETER

We emphasise that expectations from banks should be aligned with the CSRD perimeter, in order to avoid different scopes and expectations. For example, banks cannot audit customers for compliance every year (long-term transactions; SMEs involved, corporate loans, etc) and therefore this requirement should not be included. There could be a disproportionate burden for banks due to lack of data availability and differences in perimeters with CSRD. Moreover, a transition time after the CSRD is applicable should be considered as building data systems for a just transition period is costly.

## LEVEL OF APPLICATION

The report recognises that the data required by the template for [Article 8 disclosures](#) should be considered at the level of the undertaking, even though the table asks the company to state compliance with the minimum safeguards on the basis of individual activities. ESBG believes that further clarifications are needed in this respect e.g. in case of an exposure to a company active in sectors that by definition do not fulfil the minimum safeguards to be taxonomy-eligible or -aligned, even if the specific transaction finances activities that fulfil all requirements.

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